



FUNDRAISING
Institute - Australia Ltd.

*Leading and empowering fundraisers to best serve their organisations and communities through
integrity and professionalism*

**DRAFT DETERMINATION
APPLICATION FOR REVOCATION OF A40077 AND ITS SUBSTITUTION BY A90876**

Fundraising Institute Australia (FIA) supports ADMA's aims to ensure that principles and standards of ethical practice are upheld in Direct Marketing.

With one exception FIA supports the proposed revision of the ADMA Code of conduct.

FIA also wishes to draw to the attention of the ACCC a number of matters related to the activities covered by the proposed code.

Thank you for the opportunity to provide consultation on this issue.

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Fundraising Institute Australia

Fundraising Institute Australia, established as an association in 1968, is the peak national body for fundraising in Australia. FIA became a company limited by guarantee in June 1999. As a nonprofit body, FIA is recognized as a charitable fund. FIA has established FIA Library Trust Fund, which has DGR status.

FIA has its own code of professional practice and ethics to which individual members agree to adhere. These codes are enforced by the FIA Constitution, which states two of FIA's key objectives as being:

- A) To promote, establish and maintain high standards of ethics and practice among persons and organisations engaged in the raising of funds or the conduct of appeals for charitable philanthropic religious educational or other purposes for the public good.

- B) To educate and inform organisations, companies, other bodies and the public for the purpose of bringing about a better understanding of the fundraising profession and ethical methods and practices in the raising of funds or the conduct of appeals for charitable philanthropic religious educational or other purposes for the public good.

Consultation with Members

FIA has canvassed the views of its members on the proposed revocation and substitution and the issues raised in the discussion paper. FIA has over 1,200 members among 3,000 subscribers to our services. Most of these are active users of direct marketing techniques.

Telemarketing

For many charitable organizations telemarketing is a highly profitable fundraising practice which makes a significant contribution to Australia's economic and social well being. If changes to the ADMA code reduce the cost effectiveness of telemarketing based fundraising, then the consequence will be reduced services across a wide range of the community sector.

Telemarketing is estimated to be worth \$2billion in the recently released Australian Government report *Giving Australia*.¹ On these figures, it is estimated that telemarketing represents up to 17% of the funds raised in Australia, estimated at \$11.7billion per annum.

The Proposed ADMA Code

FIA's concern with the proposed revised code is with Section D, Fair Conduct Relevant to Telemarketing, Clause 20, which outlines the permitted times and days when telemarketers are allowed to call consumers at their homes.

The Code specifies that consumers are not to be called at their homes after 8pm daily, or at all on Sundays or on certain public holidays. The number of nominated public holidays is greater than those in the current code and we have no disagreement with that.

¹ *Giving Australia Research on Philanthropy in Australia*, November 2005, an initiative of the Prime Minister's Community Business Partnership, coordinated by the Australian Council of Social Service (ACOSS) in collaboration with the Centre for Australian Community Organisations and Management at the University of Technology Sydney, the Centre of Philanthropy and Nonprofit Studies at the Queensland University of Technology, Roy Morgan Research, McNair Ingenuity Research and Fundraising Institute - Australia.

However, in the proposed code, the latest time at which calls are permitted to be made has been reduced from 9pm to 8pm. This change has been made despite the fact that in 2003, the Ministerial Council on Consumer Affairs (MCCA) published a Model Code of Practice for Direct Marketing in which 9pm on weekdays was the indicated cutoff time, a provision which was supported by the ADMA submission to the MCCA's review process.

We understand ADMA has proposed this change despite its own earlier opposition to it, because ADMA was seeking to reflect changes in the Fair Trading Laws in NSW and Victoria made in 2004. Why the governments in NSW and Victoria introduced laws, which were in conflict with each other, and also in conflict with the position they had agreed to at the MCCA a few months earlier, is beyond understanding.

However, in the case of both the NSW Fair Trading legislation and the Victorian Fair Trading legislation, with respect to telemarketing, exemptions are provided for transactions where the value is less than \$100. In practice this effectively excludes most charitable fundraisers from coverage.

In the Clause 20 of Section D of the proposed ADMA code, an exception to required adherence to the prescribed calling hours is provided through the words at the end of the clause "unless permitted by Federal or State Legislation". We understand that this wording has been included to take account of the exclusions from the NSW and Victorian laws discussed above. Whilst we applaud the intent, we believe that the wording is somewhat ambiguous and the exception would be better expressed more clearly.

Of more significance however, is that in addition to the \$100 value threshold, the NSW Fair Trading Act also specifically excludes activities that are fundraising appeals as defined in the NSW Charitable Fundraising Act.

These fundraising activities are regulated by the NSW Charitable Fundraising Act and its Regulations. In turn, the NSW Charitable Fundraising Regulations 2003 require that organizations in NSW, fundraising through telemarketing, must comply with the ADMA Code of Practice as it relates to Telemarketing. For NSW charities, this effectively eliminates the exemptions provided by the NSW and Victorian Acts and ambiguously provided for in the proposed ADMA Code.

The consequence of this is such that the ADMA code provides a competitive disadvantage for NSW based charities as compared to charities in other states.

We contend that ADMA should be asked to withdraw the proposed code and make appropriate modifications to this section.

Related Issues

Compulsory Code

Whilst being largely supportive of the ADMA Code, FIA is concerned that it remains voluntary. It is our contention that a compulsory, national code should be developed and all direct marketing organizations should be required to implement it. We also contend that such a national code should recognize the unique nature and significant social contribution of the charitable sector and provide for exemptions and concessions with respect to some appropriate activities. We urge the ACCC to add its weight to moves for the introduction of a compulsory code for Direct Marketing

Public Benefit

FIA is concerned with the tone of the ACCC material accompanying this consultation. The material appears to suggest that the only public benefit issues involved are those that relate directly to upfront consumer protection matters immediately related to transactions occurring via direct marketing.

We acknowledge that these consumer protection issues are important, but there are other public benefit issues as well.

Australian society has evolved to a point where it places a heavy responsibility for the delivery of health, social, educational, artistic and other services on the voluntary sector. This situation is broadly acknowledged by the community, the government and the voluntary sector as being highly desirable. It is part of the "Australian Way".

A fundamental element in the survival of the voluntary sector is its capacity to generate revenue directly from the community to support its endeavours.

Governments simply do not provide sufficient financial support to the sector to enable it to continue without seeking direct community support. In fact the present Australian Government has made much of its wish to see an increase in the role played by philanthropy in support of voluntary sector programs.

The popular image of fundraising being a series of high profile events, lots of cake stalls and the odd chook raffle is a myth. For much of the charity sector, direct marketing for donations or lottery sales produces the bulk of fundraising revenue. Proposals that are being assessed for their public benefit impacts, need also to be viewed from the perspective their impact on these direct marketing activities and the services they fund.

Anti Competitive Legislation and Regulation

Charitable organizations involved in fundraising are being increasingly restricted by a range of uncoordinated legislation and regulations introduced by governments at all levels and by various regulators. The example referred to in this submission is just one example of where a series of different arms of government combine to make it particularly difficult for the charity sector to function. Charities that are required to operate nationally are faced with particularly great challenges. In recent years governments were required to review most aspects of their legislation and regulation for anti competitive elements. As far as legislation, which impacts on fundraising, is concerned, most of the reviews were cursory and meaningless.

Recommendations

The ACCC indicates that it does not have the authority to make changes to the Draft Code. Fundraising Institute Australia recommends that ADMA be requested to further amend its draft code to take account of the issue raised in this submission. On all other matters related to the proposed Code, ADMA has the full support of Fundraising Institute Australia.