

Australian Direct Marketing Association Code of Practice

Application to the Australian Competition and Consumer Commission (ACCC) for revocation of authorisation A40077 and replacement by authorisation A90876 : Draft ACCC Determination

Submission by the Australian Privacy Foundation

The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. Relying entirely on volunteer effort, the Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation uses the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed. For information about the Foundation and the Charter, see www.privacy.org.au

The Foundation has maintained a continuing interest in the regulation of Direct Marketing, which is perhaps the area of privacy intrusion most widely recognised by the public. While we did not seek to be involved in the recent conference, we have been following the progress of the application through associated organisations.

We would like to support the Financial Services Consumer Policy Centre's (FSCPC) supplementary submission to the ACCC opposing renewal of the authorisation of ADMA's Code of Practice (Dec 2005).

We agree with the FSCPC's position that the ACCC should refuse the current request for authorisation, on the grounds that it does not meet the net public benefit test.

The Code has both a real and potential detrimental impact on competition and no significant public benefit can be gained from authorising it.

The recent emergence of an alternative regulatory mechanism – the proposed national do-not-call register - will render the ADMA Code irrelevant in relation to telemarketing. Our submission to DoCITA on that proposal is available on our website at <http://www.privacy.org.au/Papers/DoCITADo-not-call0511.rtf>

We endorse all the points made by the FSCPC in their submission opposing the renewal of the ADMA Code, concerning coverage of the direct marketing industry and performance of ADMA. In the latter respect we are also influenced by failures of ADMA and its Code Authority in monitoring and reporting on the operation of the Code, and the extremely limited visibility and coverage of the ADMA do not contact lists, as documented in the submission from Robin Whittle.

We are particularly concerned that the condition of approval relating to an independent review of the Code has been breached and has not been enforced by the ACCC, without any explanation.

We also share the FSCPC concern that authorisation by the ACCC inevitably creates an impression of endorsement or approval, even if this is not intended. This results in an active misleading of the public as to the level of consumer protection actually provided.

We consider that consumer protection in relation to Direct Marketing will be better served by other approaches such as the introduction of a national Do-Not-Call register; further reinforcement of the Financial Services Reform Regime of the Corporations Act, and improvements to the Privacy Act as recommended by both the Privacy Commissioner and the Senate Committee earlier this year.

We urge the ACCC not to authorise the revised Code.

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