



Code Authority Annual Report

2002 - 2003



**direct marketing
code authority**

**Direct Marketing Code Authority
of the Australian Direct Marketing Association**

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What is the ADMA Code Authority?

As the self-regulatory body for information based marketing, the Australian Direct Marketing Association requires honesty and fairness in customer dealings. To this end, the Association developed a Code of Practice in consultation with the Ministerial Council of Consumer Affairs (MCCA), the Australian Competition and Consumer Commission (ACCC) and consumer and business groups. An independent Code Authority was established to monitor compliance with this Code.

The Code aims to build consumer confidence by setting standards of best practice and ethical conduct that must be followed by all 500 corporate members of ADMA. Encompassing fair trading, telemarketing, e-commerce and privacy principles, the purpose of the Code is to promote the highest standards of business practice and encourage consumer confidence in making purchases at a distance.

The Code Authority is composed of equal numbers of industry and consumer representatives and is chaired by an individual from outside the direct marketing industry.

What does the Authority do?

As a backstop to its members' own internal complaints handling processes, ADMA, through the Code Authority, offers consumers recourse in cases where they have not been able to resolve their complaint directly with the organisation.

The Code Authority investigates unresolved consumer complaints about ADMA members and, in limited cases, non-member companies. Government agencies receiving complaints about members are able to refer them to ADMA for resolution.

While the Authority's remit only covers members of the Association, casework involving non-members is also undertaken and where a breach of the Code is identified, the non-member is informed and urged to voluntarily comply. Such cases may also be referred to other appropriate bodies for review.

Should the Authority find a breach of the Code of Practice by an ADMA member it is authorised by the ACCC to impose a variety of sanctions. These include:

- Requiring a formal apology for breach
- Requiring corrective advertising or the withdrawal of offending advertisements or statements
- Requiring correction or deletion of relevant records and personal information
- Recommending refund or replacement of goods or services where appropriate
- Requiring the member to take specified remedial action to correct the breach and avoid reoccurrence
- Seeking a written undertaking for the member that the breach will not be repeated
- Recommending to the CEO that membership be revoked

Where a member demonstrates wilful non-compliance with the Code, the Authority can recommend that it be publicly expelled from the Association. It is understood that such action can inflict a serious financial penalty on the organisation in the marketplace.

The Authority may also make recommendations to the Association on possible changes to the Code.



Member Biographies

Chairman: John Wood



John Wood brings extensive consumer affairs experience to his position as Chair of ADMA's Code Authority. He has established his own consultancy specialising in complaint handling, ombudsman schemes, consumer affairs and customer service charters.

Previously, John was the Deputy Commonwealth Ombudsman and managed the organisation's quality assurance, policy, public affairs and major project activities. He was a member of the Government's Task Force on Customer Service Charters and provided advice to agencies on internal complaint handling systems, service charters and client service practices. John also provided advice to a number of international delegations that were interested in Ombudsman duties or related developments.

From 1984 to 1994 John held the position of Director of the Federal Bureau of Consumer Affairs where he advised the Federal Government as well as establishing credibility and good working relations with Federal, State and Territories agencies, industry and the consumer movement.

More recently, John was a Member of the Consumer Protection Advisory Committee to Sydney's Olympic Games organisers. He is a former President of the Society of Consumer Affairs Professionals in Business (SOCAP) and a Council Member of the Australian Consumers' Association, and chairs the Consumer Advisory Panel to the Australian Securities and Investments Commission.

Industry Representative: Colm Lorigan



As an international business lawyer with more than 20 years experience with American Express in Europe, the Pacific Rim and the USA, Colm Lorigan has an extensive legal and financial services background.

Colm manages all legal matters for American Express in Australia and New Zealand. Previously he designed and managed a legal compliance program for the company's international business in New York. He has acquired extensive and specialised knowledge of international and local laws on financial services regulation and sanctions.

He has managed legal issues in Eastern Europe and Russia, Italy, Switzerland, Austria and Germany, including major German competition-related litigation concerning the introduction of the American Express Membership Rewards program in Germany, the first card program of its kind in that country.

Previously, Colm was the Sole General Counsel in the Far East and managed legal affairs in 12 countries including the legal issues for the launch of American Express Cards in Taiwan and Indonesia. He also set up the company's first legal department in Australia.

Born in Ireland, Colm trained as a solicitor in England and began his legal career in London in the late 1970s working extensively on UK and European competition law. He holds an M.A. in Modern History from Oxford University, England.



Member Biographies

Industry Representative: Robert Tolmie



With over 20 years of experience in direct marketing, Rob Tolmie brings a vital industry perspective to his position on the Code Authority.

In the late 1970s, Rob saw the potential of mail order and began a mail order photo processing company in Southport, Queensland. He

founded National Photographic Marketing which became the largest mail order photo company in Australia. The company is internationally recognised as one of the most advanced operations of its type and is a leader in the fields of software design, production automation and marketing. In early 2000, Rob founded a new company called Digital Photoworks Limited, a direct marketing photographic company specialising in the e-commerce area.

Active in direct marketing circles, Rob is a past chairman of the ADMA Board of Directors and was also its Treasurer for two years. In addition, he was instrumental in the formation of the Queensland Branch of ADMA. The recipient of the 1992 Australian Direct Marketer of the Year award, Rob currently serves on the Direct Marketing Advisory Board of Monash University and the Australia Post-Postal Services Council. He is also a member of the ADMA Board of Directors.

Consumer Representative: Robin Brown



Robin Brown brings 20 years of experience in consumer and business regulatory affairs to ADMA's Code Authority with considerable experience in dispute resolution.

He spent 10 years as the chair and chief executive of Australia's national consumer body, the Australian

Federation of Consumer Organisations. He also spent five years as an associate member of the board of the Australian Telecommunications Authority (AUSTEL) and oversaw its privacy study.

Robin has been involved in the establishment of industry-specific dispute handling mechanisms in the banking, life insurance, health insurance and telecommunications sectors, including four years as a member of the Life Insurance Industry Complaints Panel. He was a member of the inaugural Banking Industry Ombudsman Council. In addition, Robin worked as a consumer affairs consultant including on reforms to the insurance industry and to government complaint handling systems

In recent years Robin has been involved in efforts to advance consumer protection and competition regulation in developing countries including projects in Egypt and the Philippines.

Robin is a member of the council of the Australian Consumers' Association and President of the ACT Council of Social Service. He holds a BA and a Master of Public Policy from the Australian National University.

Consumer Representative: Bill Dee



A consultant who specialises in the areas of compliance, dispute management and consumer affairs, Bill Dee has extensive experience in industry codes and self-regulation.

In over 20 years at the Australian Competition and Consumer

Commission, Bill gained wide experience in the area of legal compliance. He was one of the founders of the Australian Standard on Compliance Programs and was also particularly active in codes of conduct and other self-regulatory initiatives and disputes management.

Bill drafted the ACCC's Guide on codes and various industry codes. He assisted in convening a forum on codes in Sydney in 1998 and reviewed self-regulation in the therapeutic goods industry.

For his work in developing innovative self-regulatory industry practices to strengthen the competitiveness of the Australian economy and to protect consumers, Bill was presented with an Australia Day Award by the Commonwealth Government in 1998.

Chairman's Report



Code Authority
Chairman,
John Wood

At the conclusion of my fourth year as Chairman I am pleased to present the ADMA Code Authority Annual Report for 2002-03.

The Authority held four meetings during the year at which 23 complaints were considered, 21 of them against ADMA members.

Significant Developments

The most significant development in the year under review was the decrease in the number of complaints considered by the Authority. There were three principal reasons for the reduction.

The first reason was the sharp decline in the number of complaints against non-ADMA members. This has come about because of the close relations built up between ADMA, the ACCC and the fair trading bodies, in which the Authority has played a role.

The on-going program of keeping the fair trading regulators informed has resulted in considerably fewer non-member complaints being referred to the Authority. This represents efficient utilisation of resources as the Authority's activities are supposed to be directed primarily to organisations covered by the ADMA Code; that is ADMA members.

The number of non-member complaints dropped from a high point of 19 in the 2001 year, to 12 in 2002 and down to two in 2003.

The second reason was the implementation of the amendments to the Commonwealth Privacy Act covering the private sector. The extension of the privacy legislation and subsequent public education campaign actively encouraged consumers with privacy-related concerns to take them to the Office of the Federal Privacy Commissioner. The extent to which this was the case will become apparent when the Privacy Commissioner's annual report is tabled in Parliament.

Thirdly, less complaints mean either that the customers of ADMA members are satisfied or that members' internal complaints handling procedures are working satisfactorily or there is decreasing awareness of the Code and the Code Authority amongst consumers.

The Code Authority recommends that ADMA make efforts to understand the reasons for the decline in complaints and, if appropriate, consider whether more communication of the Code itself and the role of the Authority is required.

Year	Complaints Against Members	Total Complaints
1999-2000	25	33
2000-2001	27	46
2001-2002	37	49
2002-2003	21	23



Chairman's Report

Direct Marketing Model Code

I am unable to report satisfaction with the decision-making process on the Model Code of Practice for Direct Marketing to which this Authority owes its existence. As reported in last year's Annual Report, the Ministerial Council on Consumer Affairs delegated the work of reviewing the original Model Code to a Working Party.

The Code Authority provided the Working Party with two opportunities for consultation, both of which were ignored. As ADMA is the only association that bases its code entirely on the Model Code and the Code Authority is the designated complaints handling body, the Working Party's omission undermines MCCA's final determination.

On a more positive note, it was pleasing to note that MCCA responded positively to the Authority's recommendation that direct marketers be required to delete consumers from their marketing lists within 30 days of receiving a request to do so. As noted in my previous Annual Report, the most frequent cause of complaint since the implementation of the private sector privacy regime has been the failure of direct marketers to respect consumers' wishes not to be contacted.

As seen in the United States this will result in legislation unless ADMA can bring about a significant improvement in compliance. Both the privacy legislation and ADMA's code require consumers' request to be respected, but the lack of a deadline for compliance is a loophole which hopefully will now be rectified by self-regulation.

Meetings with Regulators

As noted above, the on-going contact with Commonwealth State and Territory complaint handlers has resulted in improved focussing of the Authority's work. As part of that process the Authority held meetings with both the Australian Competition and Consumer Commission and the New South Wales Department of Fair Trading.

These consultations were held in conjunction with scheduled Authority meetings and it is planned to continue this practice in the future. Our thanks are due to

Brian Given, Assistant Director-General of the NSW Department of Fair Trading and ACCC Commissioner Sitesh Bhojani for facilitating these consultations which have proved to be valuable exchanges.

In addition to ADMA-related issues, the issue of the lack of uniform consumer complaint statistics was raised at these meetings. The Authority's work would be assisted if there were reliable data on the extent and nature of complaints against direct marketers in general.

The prospect of achieving co-ordinated complaints data seems to be diminishing as the avenues for registered complaints becomes more diverse particularly in the telecommunications and on-line environments. With the State and Territory fair trading bodies becoming involved in telemarketing regulation, consumers can face a bewildering range of choices.

It would seem to be timely for one or more of the national regulators to take the lead and initiate a consultation on co-ordinating consumer complaint mechanisms in relation to the new media.

Appreciation

Finally I would like to record my thanks to my colleagues on the Authority and the ADMA staff who provide advice and secretariat services. The consumer representatives, Robin Brown and Bill Dee, in particular have made a significant contribution to our work, and Jodie Sangster and Belinda Meli of ADMA have ensured that the Authority continues to work smoothly and effectively.



John Wood
Code Authority Chairman



Casework - 1 July 2002 to 30 June 2003

Consumer Complaints

During the financial year, the Code Authority considered 25 written complaints from consumers. It undertook follow-up action with organisations concerned in a number of cases (see Example Decisions).

Of the 23 complaints against members, 23 were resolved, but in one of these cases the consumer did not confirm that the issue had been settled to their satisfaction. The Authority has listed these cases as "Matter Closed".

Figure 1 shows the number of complaints made against individual member companies.

Fig 1. Complaints reviewed by the Authority by Member Company

Member	Number of Complaints	% of total complaints
American Express Inc.	2	8.8
APVC Business Holdings	2	8.8
Australian Kidney Foundation	1	4.3
Austar	1	4.3
Citibank	1	4.3
Doubleday Australia	2	8.8
Foxtel	1	4.3
International Master Publishers	1	4.3
Magnamail	1	4.3
Pacific Micromarketing	1	4.3
RA Jenkins	1	4.3
Reader's Digest	4	17.5
Response Direct Publishing Pty Ltd	1	4.3
Scholastic at Home	2	8.8
The List Bank	1	4.3
Trendwest	1	4.3
Total Cases	23*	100

*Does not include complaints against non-members

Note: The above figures should be read in the following context: that the figures for each member company will be affected by the size of the company, the nature of its business and the volume of personalised customer communications. Figures are also affected by subjective factors such as the prominence of the ADMA Code Compliant symbol on the company's customer material.



Casework - 1 July 2002 to 30 June 2003

Types of Complaint

The table below shows the distribution of complaints by consumers against both members and non-members. The Authority dealt with some non-member complaints but directed most to the appropriate State Fair Trading Departments.

Figure 2 shows the distribution of the various complaints received this fiscal year.

Fig 2. Cases considered by the Authority 2002/2003

Total number of cases = 25

Complaints (as described by consumer)	Number	% of Total (approx)
Contact list		
Request for personal details removal	1	4
Source of personal details	4	16
Not heeding DNM/C	6	24
List acquisition	1	4
Delivery / payment		
Payment demand for unordered goods	1	4
Unordered goods	3	12
Payment demand for a paid account	1	4
Refunds		
Charged for cancelled order/goods returned	2	8
Failure to refund	1	4
Marketing Content		
Misleading advertising	1	4
Customer service / business practice		
Account re-opened without permission	1	4
Unsatisfactory customer service	3	12
Total Complaints	25*	100

Sample Decisions

Internal Complaints Handling Procedures Revisited

As part of the Authority's role in recognising what appear to be systemic issues developing out of the complaints lodged, the Authority noted an increasing amount of complaints against member company Doubleday Australia. Although Doubleday's response to complainants was considered by the Authority to be the benchmark for the industry the fact remained that complaints continued to rise.

Assisting the ADMA Code Authority to gain a better understanding of members' internal complaint handling and code compliance procedures, the Authority requested an outline of the policies and processes used by Doubleday Australia in handling, monitoring and measuring complaints. Of particular interest was Doubleday's policies regarding timeliness in complaint resolution and whether the controls and compliance procedures were benchmarked.

After reviewing the documentation presented the Authority agreed Doubleday had demonstrated satisfactory cause analysis and demonstrated the ability to provide adequate feedback to the consumer. The Authority suggested some minor improvements in using the information gathered (through consumer complaints) to adjust the current system of programs and procedures. This would assist in the reduction of further complaints regarding the same issues.

Identifying the Condition of an Offer

A complaint was lodged with the Authority suggesting misleading advertising against member ACCOR Premiere Vacation Club. The complaint centred on the misrepresentation of an offer for a free night's accommodation at various well-known hotels on the condition of attending a presentation and payment of a nominal fee. The complainant alleged the telemarketer did not communicate the terms and conditions of the offer namely an apparent surcharge for a Saturday night booking.

Despite the prompt response from ACCOR, the Authority investigated the matter further to establish whether the offer was in fact misleading. ACCOR provided all requested materials including offer brochures and the campaign telemarketing script. There appeared both in the script and the gift certificate received at the presentation a reference to the surcharge. After much debate the Authority concluded the following:

1. as the telemarketing script outlines the Saturday night surcharge the Authority could only assume the script was followed, therefore no misleading advertising could be established
2. the Authority suggested as a matter of good business practice that such conditions are given more emphasis within the scripting. Where the terms and conditions are repeated to ensure the consumer has fully understood the terms of the purchase.



Sample Decisions

Business to Business (B2B) and the ADMA Code

Upon review of a B2B matter the Authority expressed concern with its inability to mediate in this area.

Currently, the provisions of the Code of Practice relate to consumers of direct marketing goods and services or recipients of direct marketing material. Whether the consumer be person or business, should there be a breach of the Code the Authority has the power to intervene.

It concluded that there appeared to be no reference to the Authority being limited to reviewing only B2C complaints and an amendment to section G:1 of the Code termed Enforcement, that reference to “consumer” be omitted to reflect complaints made by both consumers and businesses. Section G:1 will now appear:

The scope of the ADMA's enforcement procedures is limited to allege breaches of the Code and does not include mediation of complaints, which do not involve an allege breach of the Code and would normally be dealt with by a member's internal complaints handling process. Complaints involving alleged breach of the Code, which are not resolved under a member's internal complaints handling process, must be referred by the member as a complaint under this Part G.

The Authority further discussed the issue of contractual disputes against members and decided that where a dispute is of a contractual nature it has no jurisdiction. In such cases the Authority will suggest a process of alternate dispute resolution, namely mediation/conciliation/arbitration.



Useful information

Do Not Mail/Call registration

To have your name, address and telephone number (or those of a deceased person) removed from marketing lists used by ADMA members, register your contact details on the ADMA website at www.adma.com.au or write (no postage required) to:

ADMA
PO Box 464
KINGS CROSS NSW 1340

How to lodge a complaint

Consumers who have been unable to resolve a complaint directly with an ADMA member organisation should send details, including any supporting documentation, to:

ADMA Code Authority
PO Box 464
KINGS CROSS NSW 1340

Code of Practice

You can download a copy of the Code of Practice from the ADMA website at www.adma.com.au

All other inquiries should be directed to ADMA.

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