

# **Submission to ACCC regarding ADMA's application for revocation of A40077 and its substitution by A90876**

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This submission and news relating to this matter is available at  
<http://www.firstpr.com.au/issues/tm/2005/>

## **Summary**

The ACCC should revoke ADMA's existing authorisation and not provide any further authorisations.

ACCC authorisation would a net detriment to the public because it is widely perceived as government approval, encouraging individuals to trust ADMA with their personal information - while ADMA provides this information to member and non-member companies in a form which makes it highly susceptible to aggressive uses, contrary to the interests of many individuals.

The level of protection offered by ADMA is minimal, particularly in the telemarketing field - as evidenced by the government's proposal to institute full government regulation of telemarketing.

ADMA's performance in operating its "Code Authority" and in reporting on its activities is pitiful. It's hard to imagine the ACCC being asked to authorise a code from an organisation which is less competent than ADMA.

The operation of the Code Authority has never been externally reviewed or audited.

In order to protect the public, the ACCC must maintain some minimal standard of achievement for the content and enforcement of all codes - a level well above ADMA's dismal record.

## **Introduction**

The deficiencies of ADMA's code and its "Code Authority" are too numerous to detail fully in this submission. In the first section, I point out inadequacies in ADMA's reporting of the activities of its "Code Authority". I appreciate that this section is tedious, but it demonstrates the incompetence of ADMA, which is surely relevant to any decision which involves trusting the organisation to protect the public.

In the second section, I discuss the failure of ADMA to protect the public from telemarketing and how this reflects on ADMA's credibility.

In the third section, I summarise some of the objections raised in the Pre-Decision Conference on 14 November 2005.

I endorse the [submission](#) by the Financial Services Consumer Policy Centre, particularly in regard to their notes about the ACCC's requirement for review, and their analysis of how few complaints the ADMA "Code Authority" receives compared to direct marketing complaints to a variety of government privacy and consumer protection agencies.

## **1 - The "Code Authority's" annual report**

In the absence of an external audit, the only way we - the ACCC, the advocates and the public - can estimate the effectiveness of ADMA's Code is to read the slender annual reports of the "Code Authority". In order for this to be possible, the latest report needs to be published on ADMA's site. Ideally, earlier reports would be available as well, but only the most recent is available. There are a number of failings and anomalies in their current reporting procedures which which can only be explained by ADMA and/or its "Code Authority" being incompetent and/or deceptive - which should preclude continued ACCC authorisation.

Prior to the pre-decision conference I looked at the ADMA site for the latest annual reports. All I found was their 2002-2003 report, covering the financial year to June 2003. So the period July 2003 to July 2005 was unaccounted for. ADMA was two years behind in reporting the activities of their "Code Authority".

On 28 October 2005, I wrote to ADMA with a number of questions, including about annual reports, and on 8 November I received a reply. The reply included a .PDF version of a Word file, which was the pre-layout version of the forthcoming "2004" report. The .PDF had been created that morning, so it was presumably created from ADMA's most current Word file. I will refer to this as the **Pre-Layout Report**. (On 14 December ADMA strongly objected to me making this report available on my site, so members of the public will need to take my word for what it contains. However, I will send a copy to the ACCC with this submission.)

On 8 November I placed it on my website and wrote to ADMA, and on 9 November they requested that I remove it, which I did. Their objection was not that the material was incorrect. My understanding of their objection was that the material was not presented in the proper page-layout form, with attractive typography and graphics, as an annual report normally is. On 9 November they asked me to remove what they called the 2003-2004 report until they could send me:

. . . a copy of a designed version of the 2003-2004 Annual Report which should be no later than early next week.

We are happy for the information to be viewed but do not consent to the word version being published on your website at this stage. Obviously this is a branding issue. I will send you a designed version as soon as possible.

Its original name was "Code Authority Annual Report 2003 - 2004.pdf". It is entitled:

## **Code Authority Annual Report 2004**

and it clearly states the period covered (boldface added):

### **CASEWORK**

#### **7th January 2004 to 11th November 2004**

##### **Consumer Complaints**

During the financial year, the Code Authority considered 35 written complaints from consumers.

The Pre-Layout Report is based on the 2002-2003 report, with some alterations to CVs and some new text and table information. The equivalent section of the 2002-2003 Annual Report is:

### **Casework - 1 July 2002 to 30 June 2003**

##### **Consumer Complaints**

During the financial year, the Code Authority considered 25 written complaints from consumers.

I interpreted the "2004" and "CASEWORK 7th January 2004 to 11th November 2004" of the Pre-Layout Report as indicating that the new reporting cycle was for a calendar year, with the changeover somehow missing the period July to December 2003. I raised this at the pre-decision conference on 14 November and there was no response from ADMA. I would have thought that if my view of the reporting period was wrong, that they would have said so then.

At the pre-decision conference, ADMA apologised for being late in publishing the Annual Report. The "Code Authority" chairman said that he sent the report (presumably the Word file from which the Pre-Layout PDF was generated) in October 2004 and that some time later, when he realised it hadn't been published, sent an urgent reminder email to ADMA. My best guess at the time was that he meant November 2004, since there was no disagreement with my statement that the report was for the calendar year, starting January 2004 and ending in November - and because I could not imagine how the specific January to November dates would have been put in by accident if the reporting period really was from July to June.

In late November, whilst preparing my submission for DCITA's Do-Not-Call Register project, I checked back with the ADMA site to see if the new Annual Report had been published. There was no new report in all of November. The first time I found it was on 12 December 2005. It may have been on the site for days or maybe a week or so before this. What I did find, on 27 November, on the main page, was lots of information about ADMA's annual awards night, including two PDF press releases and a picture of a gentleman dressed as the Pope, at a dais / altar, with extensive religiously themed graphics. Some of the text was:

### ADMA Awards 2005

A sell out congregation of over 650 guests joined in to help celebrate and reward the "work that worked" at the ADMA Awards

ceremony held at Melbourne's Crown Casino last night. The setting was a religious "Holy Grail" theme, with guests joined by the pope, priests and other religious figures at the presentation ceremony, which was then followed by dinner and dancing in "Heaven".

The picture is no longer at the ADMA site, but is available in my Do-Not-Call submission at <http://www.firstpr.com.au/issues/dnc/> .

ADMA seems perfectly able to add documents to its website within days and spend a lot of money on parties and the like. However, it seems that protecting the public and accounting for that work properly are not the highest of ADMA's priorities.

It was early December before any report appeared on ADMA's site to replace the two year old 2002-2003 report. That old report, (86264001075417154046.pdf) was removed from their site. I have archived here: [ADMA-2002-2003.pdf](#) .

On, or days before, 12 December 2005, a new report appeared at ADMA's site, on the "Information > Code Authority" page:

<http://www.adma.com.au/asp/index.asp?pgid=6649> .

(It is not possible to use the Internet Archive to view ADMA's site as it was in the past. The Archive has no records of ADMA's site, citing ADMA's robots.txt file being set to prevent this.

[http://web.archive.org/web/\\*/http://www.adma.com.au](http://web.archive.org/web/*/http://www.adma.com.au) : "We're sorry, access to <http://www.adma.com.au> has been blocked by the site owner via robots.txt.")

That report [ADMA Code Authority 03\\_04.qk.pdf](#) is also archived here:  
[ADMA-2003-2004.pdf](#) .

This 2003-2004 Report is clearly based on the Pre-Layout Report. The date of creation (File > Properties in Adobe Reader) gives the creation date as 17 November (9 days after ADMA sent me the Pre-Layout Report), but there are significant differences:

- The period covered is the financial year July 2003 to June 2004.
- The numbers of complaints are different. See table below.
- The Sample Decision (page 10 of the Pre-Layout Report) does not appear in the final 2003-2004 Report. The final report's TOC states that pages 11 and 12 contain "Example Decisions", but the last page of the report (a blank back-cover) is page 10.
- The number of complaints against non-members is 1 in the final report, but 2 in the Pre-Layout Report. It was 2 in the year before, and the text "The number of non-members complaints has remained at two despite the big increase in complaints against members." has been changed to " . . . remained at one . . .".

Here is a table showing the changed figures for the types of complaint. The tables "Fig 1" of the final and Pre-Layout reports is very different too, but I don't have time to analyse

them. The differences in the Final Report are highlighted in bold. Some classifications have been added and some deleted.

Pre-Layout Report classification	Pre-Layout Report number	Final Report number	Notes on Final Report
Contact List			
Request for personal details removal	0	0	
Source of personal details	2	<b>4</b>	
Not heeding DNM/C	31	<b>29</b>	
List acquisition	0	0	
Delivery / payment			
Payment demand for unordered goods	0	<b>1</b>	
Unordered goods	0	<b>1</b>	
Payment demand for a paid account	0	0	
Refunds			
Charged for cancelled order/goods returned	0	0	
Failure to refund	2	<b>1</b>	
Marketing Content			
Misleading advertising	5	<b>3</b>	
Customer service / business practice			
Account re-opened without permission	0		<b>Deleted</b>
Deceptive business practice		<b>1</b>	New
Sweepstakes		<b>3</b>	New
Unsatisfactory customer service	1	<b>3</b>	
Other	2	0	
Total Complaints	43	<b>46</b>	

On 14 December, it is not possible for me - or probably any member of the public or the ACCC - to understand these discrepancies. Here were the most obvious options, neither of which made proper sense:

1. The Pre-Layout Report was for the January - November 2004 period and the information has been somewhat modified and presented as if it was for July 2003 to June 2004. If this is the case, then the minor alterations in the figures do not seem to fit with the idea that about half the pre-layout report's figures were deleted and a July - December 2003 set of figures were added.
2. The Pre-Layout Report was for July 2003 to June 2004. In this case, the alteration to figures in the final version are simply fine-tuning in November 2005. But if this is the case, why would the pre-layout report clearly state: "CASEWORK 7th January 2004 to 11th November 2004"?

On 15 December, after ADMA had reviewed a draft of this section of my submission, I received an explanation - from the person responsible who, I understand, was new to the "Code Authority" secretariat at the time these errors occurred. This staff person had originally created the 2003-2004 report with the mistaken January to November dates. The "Pre-Layout Report" PDF of 8 November was prepared from a Word file which was:

. . . the year to year version and not the correct fiscal one which is why there were such variances in types and numbers of complaints etc.

I am still puzzled that the shift in timeframe resulting in such a small change in case numbers. I would have thought that in the context of doubling of complaints since 2002-2003, that dropping the July-December 2004 complaints and adding the July-December 2003 complaints would have produced greater changes in case numbers.

It seems that the bulk of the report is generated by the secretariat, and that in November 2005 the secretariat altered the text attributed to the chairman: "The number of non-members complaints has remained at *one* . . ." while the Pre-Layout Report had "two" - even though the previous year's figure was two.

The new secretariat member was, according to an earlier email from ADMA, appointed in early 2005 - so the initial list of case numbers which are in the Pre-Layout Report was presumably created after early 2005. This raises the question of what figures the chairman had before him when he wrote his report in (approximately) October 2004.

The final report has no sample decisions. It provides no breakdown of the complaints in respect of direct-mail, telemarketing etc. On 15 December the ADMA secretariat person told me:

The reason there is no example decision in the 2003-2004 report is because there was no significant cases that could be used as an example to our members.

This strikes me as incompetent or unreasonable. This so-called "Code Authority" wields a supposedly effective disciplinary stick over the rogues in a multi-million dollar industry, and handles 45 or so complaints a year. Yet they don't provide information about any of these cases to help the public or the ACCC understand how well they do their job.

The "Sample Decision" in the Pre-Layout Report concerned an ADMA member for which an increase in number of complaints (a "high volume of complaints") was noted "throughout 2004". (Note the reference to the whole of 2004, when this is supposedly a report on the July 2003 to July 2004 period. I guess this was written in early 2005 by the new secretariat staff person.) Here is my paraphrased version. In the pre-layout report, the ADMA member is identified.

The complaints concerned misleading advertising and failing to heed requests for no further contact. The member company (or rather, I assume, the relevant managers - it is a large company) was invited to a meeting with the Code Authority. The company provided an overview of internal "suppression" procedures (I assume this relates to their own list of people not to contact) and of how they performed data matching to work with ADMA's Do Not Contact files. The Code Authority "requested clarification of the guidelines" the company used when developing promotional material, particularly regarding sweepstakes. The Code Authority was satisfied by the company's response to the above requests, and by the company's explanation of its new consumer complaints handling procedure. After the meeting the company provided an "overview of the changes and modifications that had been made to promotional mailings and marketing material to avoid consumer confusion.".

This is somewhat shorter than the original, but includes every significant detail.

The final report (as on the ADMA site 12 to 15 December 2005 and as archived above on this site) has not been properly proofread. As with the Pre-Layout Report, the entire set of 3 paragraphs under the heading "What is the ADMA Code Authority?" is repeated verbatim on the same page under the heading "What does the Authority do?".

The reports do not mention how many people have registered with the Do-Not-Call/Mail lists or how many ADMA members and non-members have used these lists.

On 15 December I was told that the three repeated paragraphs and the errors in the table of contents would be corrected.

**This annual report is completely inadequate for the purposes of advocates, the public or the ACCC evaluating how well ADMA's "Code Authority" carries out its responsibilities for protecting the public.**

Even if we accept the final report as being accurate, within its very limited scope, there is the problem of the extreme lateness. Here is a timeline.

July 2004:

Financial year ends, so the 2003-2004 report can be expected soon.

October or November 2004:

"Code Authority" Chairman completes report. (Actually, on 15 November 2005 I now think he wrote the text "Chairman's Report" - not the whole report.)

July 2005:

Financial year ends, so the 2004-2005 report can be expected soon.

ADMA is a year behind in accounting for the activities of its "Code Authority".

October 2005:

ACCC in its Draft Determination, evidently with some reluctance, gives approval to ADMA's request for revocation and authorisation, despite the last 27 months of "Code Authority" activity being entirely unaccounted for in any annual report, and so presumably in any material given to ACCC.

Latest report is still for the period ending June 2003.

November 2005:

8 November: Pre-layout report sent to me.

17 November: Final report created.

28 November: Website updates include extensive material on annual awards night, but still there is no new annual report.

December 2005:

12 December or earlier: 2003-2004 report is made available on ADMA's website - 17 months after the period it covers.

14 December: Following an email to ADMA asking them to look over this section of my submission and provide any additional information or corrections to errors of fact, they told

me that:

1. The delay in the 2003-2004 report was caused by "a change in secretariat in late 2004 which left a gap until early 2005."
2. "The 2004-2005 report is due to be published during the first week of January 2006. As requested at the pre-Determination meeting, the Code Authority has added further details on the ADMA Do Not Contact services to provide a fuller picture of the Code Authority's work."
3. I was also assured that any issues with the layout of the 2003-2004 report would be addressed as quickly as possible.

15 December: Further explanation from secretariat, as noted above.

Submissions to the ACCC must be completed by 16 December, yet **ADMA has still not produced an annual report covering the July 2004 to June 2005 period.**

My aim in this submission is not to sleuth the process by which the "Code Authority" chairman and various secretariat staff members prepared the text and information in the final report. The point is that there is no way the public, or the ACCC, can be confident that the report is accurate, given the discrepancies and the complete lack of audit or oversight.

I am not aware that any form of annual report beyond the 2002-2003 report were provided to the ACCC by October 2005. So I don't see how the ACCC could have made a properly informed draft determination.

## **2 - Failure to protect the public from telemarketing - and ADMA's credibility**

I understand that the ACCC needs to decide this matter without assuming that the proposed Do-Not-Call Scheme ([http://www.dcita.gov.au/tel/do\\_not\\_call](http://www.dcita.gov.au/tel/do_not_call)) will go ahead. The prospect of this welcome development has lead to advocates caring less about ADMA and this decision, since the Do-Not-Call system should replace ADMA's ineffective scheme with proper protection against most or all telemarketing.

However, the Do-Not-Call proposal does have some implications for the ACCC decision

regarding ADMA.

Firstly, the fact that the Australian government is proposing to join governments in the USA, the UK, Europe and Canada in forceful government regulation of telemarketing demonstrates what the advocates have been telling the ACCC all along: industry self-regulation of telemarketing is so inadequate that it cannot be considered a solution to the problem.

Secondly, the problems of self-regulation of telemarketing are very similar to the problems of self-regulation of other intrusive methods of marketing - including direct mail and the other modes ADMA's code covers. Despite the continuing anti-regulatory sentiment amongst governments the world over, an increasing number of governments have concluded that self-regulation of direct marketing is so inadequate that they must legislate to provide proper controls.

The ACCC is clearly underwhelmed with ADMA's code, even on paper.

The reality of ADMA's self-regulation is surely dimmer than the modest goals the code supposedly sets out to achieve. This is an organisation with 544 corporate members, that does not put out annual reports on time. ADMA's passions and energies clearly lie in promoting itself to its members and in trying to fend off the threat of proper regulation, such as by getting government approval for their code. ADMA's resources are not primarily directed towards the real work of protecting the public, or to reporting on that work in a way which genuinely informs the public.

Despite its lofty claims, ADMA has failed to protect the public from telemarketing.

Why should the ACCC believe ADMA's claims to be properly protecting the public from other intrusive communication problems, or from the various problems which can result from purchases and donations which result from a proportion of these intrusions?

There has been no independent audit of ADMA's "Code Authority" or its opt-out list operations - which do not come under the control of the "Code Authority" (as was stated by the "Code Authority" chairman in the pre-decision conference). We have to simply accept the word of ADMA that they are doing good work. But why should we believe them?

Authorisation of ADMA's code confers the status of government approval for ADMA's so-called protective work. It encourages the public to trust their personal information to ADMA and anyone who obtains a copy of their opt-out list.

To the extent that ADMA and its members are genuinely keen to protect consumers, there is no benefit in ACCC authorisation. They can continue this work without ACCC authorisation. The only benefit of authorisation is to enable the code to be enforced via the threat of expulsion from ADMA. The benefits of membership in ADMA to a direct marketer who disrespects consumers are minimal and the costs of membership are financial and to a limited extent restrictive of bad behaviour. So the threat of expulsion is likely to be little incentive to improve a member's behaviour.

A year after the "Code Authority" requested ADMA change its limit on excluding people from being called from 45 to 30 days, ADMA is still requesting ACCC approval for a code with the same old 45 day limit.

The "Code Authority" clearly has little influence over ADMA. It is a group of consultants who meet every 3 months or so to look over a complaints handling process run by ADMA staff - and who write a few pages of text for each year's annual report.

I don't see why the ACCC should treat ADMA and its code seriously. This is a ploy to get the stamp of government approval - and ADMA have demonstrated in many ways that they do not deserve to be trusted to protect the public.

### **3 - Summary of other failings identified in the pre-decision conference**

I don't have time to document all the objections to ACCC authorisation in detail. This section is to remind the ACCC of some of the matters raised - as I recorded them. I can't be sure that the following account accords with the experience of others at the meeting. The ACCC promised that a record of the meeting - not complete minutes, but some kind of summary of matters discussed - would be provided. I first noticed such a document - Minutes of Pre-decision Conference - 14.11.05 D05+76878.pdf (89.8 KB) on the ACCC site on 19 December, but found that it did not produce any readable results in the various versions of Adobe Reader I tried.

The "Code Authority" chairman stated that ADMA had never used the sanctions against a member. On the one occasion where this had been threatened, the member left ADMA and continued trading as before.

Chris Connolly criticised the ACCC for not insisting on an independent review or audit of ADMA's code, as was required in the original authorisation 6 years ago.

A spokeswoman for the Fundraising Institute of Australia (<http://www.fia.org.au>) discussed the importance of telemarketing to charities. I responded in several ways:

Telemarketing is very expensive in terms of calls and employment costs.

It is intrusive - with no benefits to the recipients of the calls compared to other less intrusive methods of learning about or donating to the charity.

Recipients can't tell the difference between a real charity and a company licensing a charity's name. I gave the example of the latter, where I was offered a beautiful pen set for a \$39.95 "donation" (approximate figures) and when I spoke to the supervisor, she was quite unashamed to tell me that \$2 of this went to the charity.

The whole idea of people giving their credit card details to people who call them is at odds with common sense. I would expect the ACCC to see this

as a major hazard and to warn consumers about it. I explained how easy it would be for scammers posing as commercial or charity telemarketers to call people at home or at work, collecting hundreds of credit card numbers, names, expiry dates and 3 digit security codes. These can be used for fraudulent purposes, for instance signing up hundreds of people to adult porn web sites via a referral scheme which gives commissions to the perpetrator. (Further discussion of the great dangers in giving personal information, especially credit card details, to anyone who calls can be found in my Do-Not-Call submission: <http://www.firstpr.com.au/issues/dnc/> .)

We learnt something about ADMA's Do-Not-Call/Mail list. The figures ADMA gives for numbers of people on this list can be found at:

<http://www.firstpr.com.au/issues/tm/2005/ADMA-docs/> . ADMA charges \$450 a year for members to use the list, and \$800 for non members. All ADMA members are expected to use the list, either directly or via a separate company who provides "list washing" (I prefer "list flagging") services.

The number of list users recently (I guess in mid or late 2005) is:

8 members of ADMA.  
15 non-members of ADMA.

ADMA is in the process of ensuring, by some means, that all its members use the do-not-call/mail list to screen all their lists before any calling or mailing campaign.

ADMA recently began offering a "list cleaning" service. I regard this as a very welcome development, because it avoids the wholesale distribution of name-phone-number and name-address information which can be so easily used for purposes contrary to the interests of the individuals concerned. (For a fuller discussion of the dangers inherent in exporting an opt-out list, especially with names, and why list flagging is a far better approach, please see my Do-Not-Call submission. If ADMA were to offer their opt-out service purely on a list-flagging basis, with appropriate controls to guard against misuse, my privacy and security objections to their list would be largely eliminated.)

There was discussion of the meaning of ACCC "authorisation". I had been using the term "approval", but in this instance, "authorisation" is being sought by ADMA, while in other codes the ACCC does apparently issue "approvals". The ACCC argued that authorisation of the code did not constitute anything more than whatever this formally means. However there was general agreement that the finer semantic distinctions would not be apparent to the public, and that ACCC authorisation would be widely perceived as some kind of government approval for ADMA and its claim to being a responsible protector of the public. Chris Connolly continued the discussion by pointing out that the original code's authorisation in 1999 had been accompanied by a rather unusual (possibly unique) public launch of the code, by the ACCC chairman, with considerable fanfare.

As previously noted, I pointed out that the Code Authority had asked, in its 2004 report, for ADMA to tighten the time for stopping calls and mailings (after a person asks them to stop) from 45 to 30 days. Now, a year later, ADMA is asking for ACCC approval of a code which still says "45 days".

Neither ADMA nor any of the three members of the "Code Authority" responded to this.