

# adma

Australian Direct Marketing Association

(ACN 002 909 800)

**Submission**

**to the**

**House of Representatives Committee on  
Legal and Constitutional Affairs**

**concerning its inquiry into the**

**Privacy Amendment (Private Sector) Bill 2000**

May 12, 2000

## EXECUTIVE SUMMARY

- The Australian Direct Marketing Association (ADMA) has, over many years, consistently supported a legislative approach that would ensure a single, national standard based on the OECD Guidelines (1980).
- Direct marketing has an enormous economic impact on Australia, employing 650,000 people and generating advertising media spending of \$9 billion. Consumer-driven growth of direct marketing is currently running at 15% a year.
- Privacy-related enquiries against direct marketing have declined steadily in the last three years from 428 (1997) to 312 (1998) to 205 (1999). Direct marketing-related enquiries represent just 2.3% of enquiries received by the Federal Privacy Commissioner.
- The direct marketing industry has demonstrated its ability to administer the National Privacy Principles within the context of its Code of Practice. Provided the Privacy Bill is passed by Parliament without substantive amendment to the Principles or their application to direct marketing, it is ADMA's intention to seek approval from the Privacy Commissioner for the privacy principles in the Code.
- It is ADMA's firm view that compliance with privacy and fair trading principles can only be achieved through the application and continuous monitoring of compliance systems within organisations.
- The need for an adjustment/education period in order to bring existing private sector databases fully into compliance is real. Criticism that this 12 month period will be used to amass databases is unfounded.
- "Privacy" means different things to different people. It is important to differentiate between human rights issues and commercial interests in establishing an acceptable legislative framework.
- ADMA's Code of Practice will exceed the legislative benchmark in several ways:
  - ADMA members are obliged to remove from their marketing campaigns those individuals who have registered for the Do Not Mail/Do Not Call and E-mail Preference Services.
  - Members will be obliged, on request, to disclose the source of personal information used in direct marketing campaigns.
  - All members who handle customer personal information will be obliged to develop and maintain compliance systems in respect of privacy principles.
  - All members will be obliged to designate an individual within their organisation who is responsible for the organisation's compliance with the ADMA Code of Practice including privacy principles.
  - Members will not be allowed to use the small business exemption as a defence in the event they are brought before the ADMA Code Authority for breach of the privacy provisions of the Code.

## BACKGROUND

As the peak body representing Australian organisations that communicate with consumers across a variety of media, including various print media, telephone, television, kiosks and the Internet, ADMA has an enormous stake in developing an acceptable legislative framework for the safeguarding of consumer privacy in this country. Because ADMA members deal with their clients at a distance, they rely heavily on the consumer's trust in transacting business in this way. Thus, enlightened self-interest dictates that these organisations handle customer personal information responsibly and in line with consumer expectations.

ADMA was very pleased to have been part of the Government's core consultative group that assisted in the development of the private sector privacy legislation currently before Parliament. The Association's involvement in this issue predates by more than a decade the Government's 1996 discussion paper "Privacy Protection in the Private Sector" which first proposed to extend the Commonwealth Privacy Act 1988 to cover the private sector. Since that time, ADMA has consistently supported a single, national legislative framework for the private sector based on the OECD Guidelines Governing the Protection of Privacy (1980).

When, in 1997, the Federal Government opted to pursue a self-regulatory approach to private sector privacy protection, ADMA worked closely with the Federal Privacy Commissioner, consumer groups, government and other industry representatives to craft the National Privacy Principles that form the basis of the current Bill.

In a parallel initiative under the auspices of the Ministerial Council on Consumer Affairs, ADMA worked closely with government, consumer and industry groups on the development of a Model Code of Practice for Direct Marketing. The conclusion of this work coincided with the release, in February 1998, of the NPPs. ADMA immediately announced its intention to make the NPPs an integral part of its new Code of Practice. Thus, ADMA became the first national industry association to adopt the NPPs in their entirety in its Code of Practice (**attachment 1**).

Subsequently, ADMA sought and obtained the authorisation of the Australian Consumer and Competition Commission under section 88(1) of the Trade Practices Act to enable its independent Code Administrative Authority to apply punitive sanctions against any member found to be in breach of the Code, including its privacy provisions. This measure significantly strengthened the Association's powers to enforce its Code.

While the ADMA Code of Practice was developed within the context of self-regulation, it is the Association's view that it constitutes an effective legislative data protection framework for members. Provided the Privacy Bill is passed by Parliament without substantive amendment to the Principles or their application to

direct marketing, it is ADMA's intention to seek approval from the Privacy Commissioner for the privacy principles in the Code.

The Australian Direct Marketing Association (ADMA) represents over 450 organisations involved in information-based marketing including financial institutions, publishers, catalogue and mail-order traders, e-traders and service providers, airlines and travel services, charities and fundraisers, call centres and telecommunications service providers, direct response agencies and consultants, list and database specialists, printers, mail houses and fulfilment services and a host of other users and suppliers of direct marketing services. Direct marketing advertising spending exceeded \$9 billion in 1999 and is currently growing at an annual rate of 15 per cent. ADMA members include such prominent organisations as:

ACP Publishing	Loyalty Pacific
American Express	MasterCard International
Ansett	Morgan & Banks
ANZ Bank	Mercedes-Benz
AOL	National Australia Bank
AT&T Easylink Services	National Photographic Marketing
Atlas Editions	News Interactive
Austar Entertainment	NRMA
Australia Post	Optus Communications
AVIS	Ozemail
BBC Worldwide	Pacific Micromarketing
Berger Software	Permail
Carr Clark Rapp Collins	Reader's Digest
Cellarmaster Wines	Rodale Press
Citibank	Salmat
Clemenger Direct	Sandersons CDC
Cohn & Wells	SAS Institute
Coles Myer	Shell Australia
Colonial Limited	Simon Richards Group
Commonwealth Bank	St George Bank
Compaq	Star City Casino
Damart Thermolactyl	Streetfile
Deloitte Touche Tomatsu	Subaru
Doubleday	Telstra Corporation
Fairfax	Time Inc.
FOXTEL Management	Thomas Cook
Fuji Xerox	Tourism Victoria
GE Capital Finance	Viking Office Products
George Patterson Bates	Volvo
Harlequin Enterprises	World Book
IBM	<a href="http://www.consult">www.consult</a>
Integral Energy	Yahoo
International Masters Publishers	Zurich
John Fairfax Publications	

Members have a significant interest in the ongoing use of marketing databases in the provision of goods and services to consumers and businesses and the maintenance of customer relationships via direct response print, telecommunications and electronic media. In our “time-poor” society, these organisations bring consumers the convenience of purchasing goods and services or making charitable donations from the comfort of their home or place of business.

## **DIRECT MARKETING IN AUSTRALIA – SNAPSHOT**

Direct marketing now represents half of all media spending.  
(Source: CEASA)

Direct marketing is growing at a rate of 15% a year. (Source: CEASA)

Direct marketers currently spend over \$9 billion on advertising media.  
(Source: CEASA)

Current advertising spending on printed material delivered by mail (addressed advertising mail, catalogues, stuffers) exceeds \$2 billion (Source: CEASA).

By 2001, marketers will be spending \$210 million annually on advertising via the Internet. (Source: [www.consult](http://www.consult))

The number of online purchases grew 183% from 286,000 in Nov. 1998 to 803,00 in Nov. 1999 yet represent only 13% of Australian adults accessing the Internet.  
(Source: NOIE)

Telemarketing is currently growing at a rate of 25% a year. (Source: ACA)

Direct marketers and their suppliers employ over 650,000 Australians.  
(Source: CEASA)

Over 24,000 Australians are registered for the ADMA Do Not Mail/Do Not Call service. This free service enables consumers to have their names removed from marketing lists held by ADMA member organisations.

## **SELF REGULATION OF DIRECT MARKETING**

ADMA members feel strongly that consumers have the right to control their personal information. That is why ADMA became the first industry association to make the National Principles for Fair Handling of Personal Information, in their entirety, an integral part of its Code of Practice and make adherence to them a condition of membership in the Association.

Application was made under Section 88.1 of the Trade Practices Act for authorisation of the Code by the Australian Competition and Consumer Commission. After an extensive period of public consultation, authorisation was granted on 16 August, 1999. This significantly strengthens the Association's powers to enforce its Code of Practice, including privacy provisions, through an independent Code Authority.

The Code Authority, chaired by a consumer representative and with equal representation from industry and consumer sectors, has the power to investigate unresolved consumer complaints against ADMA members. Its sanctions could result in the public expulsion of an offending member from the Association. Such action carries a considerable marketplace penalty.

The Code seeks to curb behaviour by members that may be inconsistent with widely accepted principles of fair conduct in direct marketing. This approach has been applied consistently across all direct marketing media and across all sectors of direct marketing activity on both the user and supplier sides of the ADMA membership.

A major industry education initiative has been undertaken to assist members in ensuring that their organisations comply with the Code. This has taken the form of full-day Code Compliance Workshops across Australia that have, to date, attracted over 350 staff from ADMA member organisations. It is ADMA's firm view that compliance with privacy and fair trading principles can only be achieved through the application and continuous monitoring of compliance systems within organisations. This will increasingly become a key feature of the Association's services to its members once private sector privacy legislation is in place.

At the consumer level, and leveraging the considerable resources of the publishing, catalogue and addressed advertising mail sectors of ADMA's membership in particular, an awareness campaign ("What's in a Symbol") has been launched to help educate consumers in how to ensure they are doing business at a distance with an organisation that abides by the highest standards of fair trading, customer satisfaction and privacy protection.

## **INTERNATIONAL CO-OPERATION**

The emergence of new electronic media has not only brought new competition for the Australian consumer dollar, it has created an opportunity for Australian business to market products directly to overseas consumers in their homes via the Internet.

At a recent meeting of Direct Marketing Association leaders, ADMA proposed the adoption of common e-commerce standards of practice, including OECD-based privacy principles, in order to harmonise approaches to consumer protection. This initiative was welcomed by DMA leaders: as a first step to address consumer concerns about unsolicited e-mail, especially from US sources, DMA's have launched an e-mail preference service whereby consumers can register ([www.e-mps.org](http://www.e-mps.org)) to have their e-mail addresses removed from marketing lists.

In the area of cross-border complaints handling and dispute resolution, DMAs are developing procedures to share information on individual complaints with a view to providing an internationally-operative network of complaint resolution.  
**(attachment 2)**

Finally, through its chairmanship of the Asia-Pacific Direct Marketing Council, ADMA is in a strong position to influence the pace and scope of self-regulation of e-commerce among major players in the region as well.

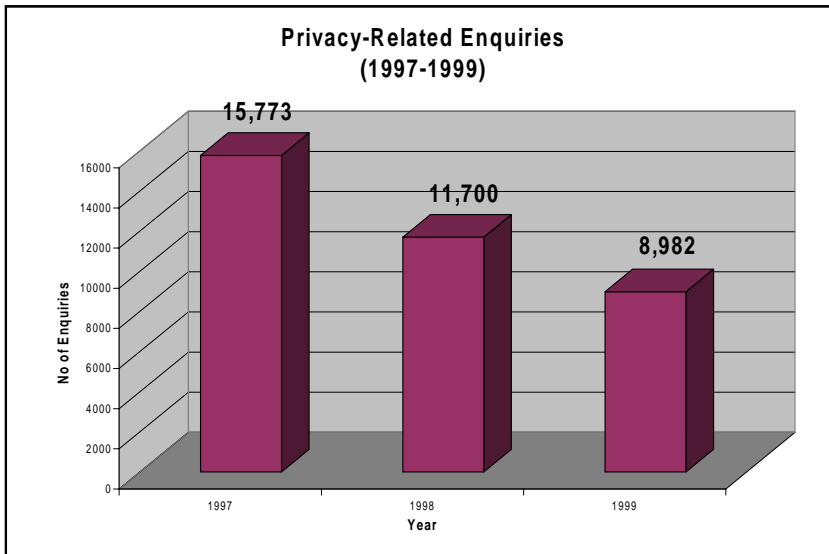
## **SUPPORT FOR LIGHT TOUCH LEGISLATION**

ADMA welcomed the Commonwealth Government's December 1998 announcement of "light touch" privacy legislation covering the private sector and pledged to support a legislative approach that would ensure a single, national standard based on the National Privacy Principles which the Association had only a month previously built into its own Code of Practice.

Support for this approach was based on the understanding that it would be workable, cost-effective and consistent with international standards. From ADMA's point of view, it was very important that the Government's response to the issue was in balance with the scope of the problem. The best measurement of that is complaints.

However, neither the Government's nor ADMA's own complaints handling programs have found evidence of widespread market failure in respect of personal information handling practices in the private sector. Indeed, despite considerable media attention to the issue over the past three years, consumer enquiries related to

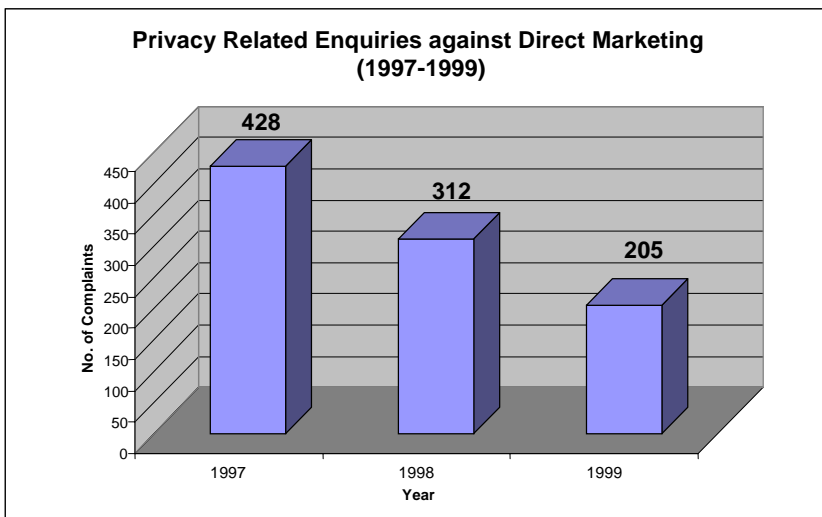
privacy have been in sharp decline for as long as the Privacy Commissioner's Office has been compiling and publishing statistics.



(Source: Privacy Commissioner's Annual Reports)

## PRIVACY COMPLAINTS CONCERNING DIRECT MARKETING

Privacy-related enquiries against direct marketing have followed the general trend, declining steadily in the last three years from 428 (1997) to 312 (1998) to 205 (1999). Direct marketing-related complaints represent just 2.3 percent of complaints received by the Federal Privacy Commissioner.



(Source: Privacy Commissioner's Annual Reports)

Against this background, it would not be unreasonable to infer that Australians are becoming more knowledgeable about public and private sector use of personal



information and less likely to complain about its abuse. These figures also seem to point to improvements in information handling practices among public and private sector organisations, leading to fewer complaints.

This is not to suggest there is not a problem, however it is important to keep it in perspective. It is equally important to understand that privacy means different things to different people. For example, ADMA receives approximately 12,000 registrations each year for its Do Not Mail/Do Not Call program, a free consumer service that enables individuals to have their name and contact details suppressed from marketing campaigns. Many who feel moved to register for this service express their annoyance with unwanted telephone calls or mail in terms of compromising their privacy. This is by far the largest segment of the community that objects to direct marketing.

A much smaller group includes those who are concerned about **who** has their personal information (ie name and contact details) and **how** they got it. ADMA members sympathise with the legitimate concerns of these individuals around control of their personal information. Indeed, the NPPs provide considerable comfort in this area, since they create an obligation on the part of private sector organisations to be open about their information gathering practices and to obtain consent before transferring personal information to other organisations. The ADMA Code of Practice raises the industry benchmark in this area by requiring members to disclose, on request, the source of information used to contact consumers.

Issues of “annoyance” and “control” are not insignificant matters in relation to privacy, however they are relatively easy to address and have been effectively dealt with in the NPPs as well as the industry’s Code of Practice.

Much more difficult are human rights issues around surveillance, abuse or economic disadvantage arising from inaccurate credit information, and exploitation resulting from unauthorised release of sensitive information. The privacy debate in Australia has been largely driven by individuals with profound concerns around issues of human rights. Serious issues of confidentiality (secrecy), surveillance, identity theft or access to information underlie demands for tougher legislative protection.

There is undoubtedly serious potential for harm to individuals where inadequate access to information bars them from identifying and correcting, for example, inaccurate credit information on file in the private sector. There is also the potential for discrimination where confidential information related to an individual’s political opinions, religious beliefs or sexual preferences or practices is concerned. Fortunately, there are few instances of systemic failure in the private sector giving rise to these kinds of abuses in Australia. The Privacy Legislation makes such abuse even less likely to occur in the future.

## **NEED FOR LEVEL PLAYING FIELD**

ADMA welcomes the prospect that all private sector organisations using direct marketing techniques will be required to meet the same standards of information handling as are currently prescribed in the ADMA Code. This will redress a situation in which many ADMA members find themselves potentially at a competitive disadvantage, due to their higher compliance standards and costs.

By establishing a legislative framework that sets basic standards for privacy, the Government will encourage individual organisations and industry groups to differentiate themselves by raising the benchmarks for responsible information handling. The benefits of creating an environment that encourages organisations to compete on this basis will flow through to consumers in the form of enhanced service and respect for privacy of personal information. Through its recent round of Code Compliance Workshops, ADMA has already seen evidence of this kind of positive, competitive differentiation. **(attachment 3)**

## **SMALL BUSINESS EXEMPTION**

An important area in which a level playing field has not been achieved is in regard to the Small Business exemption. ADMA is on record as being opposed to this exemption for that reason.

ADMA undertakes that any member of the Association that fits the Government's definition of small business for purposes of this Act, will not be able to use the Small Business exemption as a defence in the event it is found to be in breach of the privacy principles in the ADMA Code of Practice.

## **TIMING OF APPLICATION OF NATIONAL PRIVACY PRINCIPLES**

During the public consultation phase that preceded the introduction of the Bill, there was extensive discussion of the phase-in periods necessary in order to ensure private sector compliance, once the legislation was in place. ADMA supported an approach that would have seen the principles relating to accuracy, storage, security, access and correction apply at the commencement of the legislation. The Association recommended that the New Zealand model be adopted in respect of collection, use and disclosure. Under that model, a three year education program was implemented to assist private sector organisations in understanding their responsibilities and ensuring their information handling practices were compliant.

The Government has decided that NPPs 1,2,3 (in relation to collection) 6,8 and 10 will apply to information collected *after* commencement and NPPs 3 (in relation to use and disclosure), 4,5,7 and 9 will apply to information held pre and post commencement.

This approach has given rise to criticism that it will be “open slather” for organisations to amass personal information in databases during the one year phase-in period. This criticism is unfounded, since it makes no sense from a commercial perspective to amass data without a specific purpose in mind. Marketing databases, by their nature, must be kept up to date in order to be commercially viable. It would be illogical for organisations to allocate precious IT resources to the maintenance and upkeep of databases that had no identified purpose other than to be held in reserve for some undetermined future use.

It is also worthy of note that in New Zealand the private sector was given three years to ensure that existing databases were compliant with collection, use and disclosure principles and there is no evidence to suggest that this adjustment period was used as a window of opportunity to amass data. The need for a period of adjustment and education to ensure existing private sector databases are made compliant is real.

## **HOW ADMA’S CODE WILL EXCEED THE LEGISLATIVE BENCHMARK**

- In addition to meeting the standards for information collection, use and transfer set out in the NPPs, ADMA members are obliged to remove from their marketing campaigns those individuals who have registered for the Do Not Mail/Do Not Call and E-mail Preference Services.
- Members will be obliged, on request, to disclose the source of personal information used in direct marketing campaigns. This will enable consumers to exert better control over the transfer of personal data among private sector organisations.
- All members who handle customer personal information will be obliged to develop and maintain compliance systems in respect of privacy principles.
- All members will be obliged to designate an individual within their organisation who is responsible for the organisation’s compliance with the ADMA Code of Practice including privacy principles.
- Members will not be allowed to use the small business exemption as a defence in the event they are brought before the ADMA Code Authority for breach of the privacy provisions of the Code.

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