

Direct Marketing

a Model Code of Practice

**A model code prepared
by the
Ministerial Council on
Consumer Affairs**

September 2003

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FOREWORD

The Ministerial Council of Consumer Affairs is pleased to release this revised edition of the Direct Marketing Model Code of Practice ('the Model Code').

The Model Code represents a best practice model of conduct between direct marketers and consumers. Industry Associations whose members are involved in direct marketing are encouraged to establish their own codes based upon the provisions contained in this Model Code. Individual companies are also encouraged to adopt the standards set out in this Model Code.

The Ministerial Council of Consumer Affairs encourages businesses to regulate themselves rather than rely on the government to do it for them. Effective self-regulation has the potential to achieve greater and lasting improvements in business practices by using negotiation and consultation rather than prescriptive legislation and enforcement. Consumers can benefit from a greater focus by business on customer service and on being responsible and accountable for regulating its own behaviour.

Where self-regulation is not an effective tool in addressing inappropriate direct marketing practices increased involvement by regulators may be necessary.

The Ministerial Council of Consumer Affairs will continue to monitor and review the Model Code on a two yearly basis. This regular review will ensure that the standards established in the Model Code remain relevant and effective in building consumer confidence in direct marketing in the context of a growing global market place.

Signed

MINISTERIAL COUNCIL OF CONSUMER AFFAIRS

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PART 1: INTRODUCTION

BACKGROUND AND OBJECTIVES

1. By using direct marketing techniques, distance selling has the potential to increase consumers' choice of, and access to, a wide range of goods and services. However, features that distinguish distance selling from traditional retailing suggest that specific rules for distance selling may be appropriate.

This code is intended to enhance the potential for consumers to benefit from distance selling, and to improve the market for reputable businesses. It is also intended to prevent unreasonably intrusive forms of marketing by a variety of users of direct marketing techniques including distance sellers and fundraisers. It seeks to do this by:

- (a) ensuring that consumers have access to the product and service information they need to make informed choices;
- (b) promoting ethical sales practices and ensuring that fair trading principles are complied with;
- (c) ensuring that consumers have access to appropriate returns policies, complaints procedures and remedies where there is a problem with a sale; and
- (d) protecting consumers from unreasonably intrusive direct marketing practices.

STATUS OF CODE

2. This code is a model code. Industry associations whose members are involved in direct marketing are encouraged to establish their own codes based upon the provisions contained in this code. Individual companies are likewise encouraged to adopt the standards set out in the code.

APPLICATION

3. This code is designed to apply to direct marketers including distance sellers, charities and fundraising organisations, that use direct marketing techniques.

EXEMPTIONS

4. The following sales practices, goods and services are exempt from the code:

- (a) automatic vending machines; and
- (b) automated commercial premises.

5. Contracts for the supply of perishable goods are exempt from the right of cancellation or 'cooling off period' provisions of the code (clauses 32–38).

6. Part 2 of this code is designed to apply to distance sellers rather than charities and fundraisers. However, charities and fundraisers are encouraged to adopt those provisions in Part 2 which are of relevance to their operations.

7. Part 2 of this code is not intended to apply in circumstances where a contract is initiated from a contract solicitation made using a means of communication at a distance but is finalised in the presence of both parties to the contract.¹

CONFLICTING LEGISLATION

8. Where there is any conflict between a provision of this code and Australian Government, State or Territory legislation, the legislation shall prevail.²

ADOPTING THE CODE

9. Any party involved in direct marketing is encouraged to adopt this code. Parties adopting the code are requested to notify the secretariat of the Ministerial Council of Consumer Affairs of that fact and provide to the secretariat a copy of their code.³

CITATION

10. This code may be cited as the Direct Marketing Model Code of Practice.

INTERPRETATION

11. References to singular include references to plural and vice versa.

12. For the purposes of this code:

Calling line identity means data generated by a telecommunications network which identifies the originating telephone number.

1 This clause ensures that contracts negotiated partly at a distance and partly in person (for example, some companies use telemarketers to make the initial contact, with the contract being finalised in person) are excluded from Part 2 of the code only. The relevant clauses in other parts of the code apply to the parts of the transaction conducted at a distance. However, in general, the application of the fair trading principles to such transactions would place businesses using a part distance/part traditional approach at a competitive disadvantage to other retailers.

2 Note that this code may, at times, conflict with the door to door trading legislation in the States and Territories. Where that is the case, the legislation will apply.

3 The secretariat of the Ministerial Council on Consumer Affairs (MCCA) is located at:

MCCA Secretariat
Competition and Consumer Policy Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600
Telephone: (02) 6263 3051
Facsimile: (02) 6263 2960

Campaign means a course of action organised by a direct marketer and designed to induce the purchase of particular goods or services or the making of a donation.

Charity means any organisation undertaking or commissioning fundraising activities for a charitable purpose.

Consumer, unless otherwise indicated, means:⁴

- a person acquiring goods or services:
 - (i) where the price of those goods or services does not exceed \$40 000; or
 - (ii) where, if the price of the goods or services does exceed \$40 000, those goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption or, in the case of goods, the goods consisted of a commercial road vehicle;

and, in the case of goods, the person did not acquire the goods, or hold themselves out as acquiring the goods, for the purpose of resupply, or for the purpose of using them up or transforming them in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land.

Consumer also includes a prospective consumer.

Continuing series of goods or services includes:

- periodic distribution of distinct goods or services to a consumer; and
- periodic distribution of goods or services to a consumer where the goods or services are not complete until the final instalment is distributed.

Contract solicitation means any form of communication, whether public or personalised, including all the elements necessary to enable the recipient to enter directly, or to offer to enter directly, into a contract that is intended to be negotiated and concluded through a means of communication at a distance.

Direct marketer means any individual or organisation who engages in direct marketing, and includes a telemarketer and third party marketers.

Direct marketing means the marketing of goods or services or the seeking of donations through a means of communication at a distance where:

- (a) consumers are invited to respond using a means of communication at a distance; and
- (b) it is intended that the goods or services be supplied under a contract negotiated through a means of communication at a distance.

⁴ This definition reproduces the definition in the *Trade Practices Act 1974*, s. 4B.

Distance seller means an individual or organisation contracting or intending to contract for the sale of goods or services to a consumer where the consumer is contacted through direct marketing. A distance seller may engage in direct marketing itself or employ a direct marketer to do so.

Fundraising means soliciting donations from the public using direct marketing techniques.

Means of communication at a distance means any method permitting the exchange of information between a consumer and a distance seller not in the presence of one another. Such means include, but are not confined to:

- unaddressed printed matter;
- addressed printed matter;
- letters;
- advertising in the print media;
- radio advertising;
- television advertising;
- catalogues;
- telephone with human intervention;
- telephone without human intervention;
- videophone (telephone with screen);
- videotext (microcomputer and television screen, with keyboard, remote control or touch screen);
- electronic mail;
- short message service;
- the Internet;
- facsimile machine; and
- video/audio cassettes.

Outbound telemarketing call means a telephone call initiated by a telemarketer or by an automatic dialler mechanism that is designed to induce the purchase of goods or services or the making of a donation to a charity or fundraising cause.

Personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Restricted goods or services means goods or services that are, by Australian Government, State or Territory legislation, prohibited from being sold to a particular class of person.

Statutory warranties includes statutory warranties and statutory conditions.

Telemarketer means any individual or organisation who engages in telemarketing.

Telemarketing means all activities that relate directly or indirectly to direct marketing and which involve the use of a telephone, facsimile machine, or other customer equipment connected to a telecommunications network to contact a consumer.

Third party marketer means any organisation or individual who carries out part or all of the direct marketing process on behalf of the direct marketer.

PART 2: FAIR TRADING REQUIREMENTS

MARKETING CLAIMS

13. A distance seller shall not make false or misleading claims about an offer delivered through direct marketing whether by words, omission, illustration or any other means. Prohibited are, among other things:

- (a) making false or misleading comparisons about price or quality;
- (b) quoting scientific or technical data in support of a claim unless the data can be readily substantiated;
- (c) using false or misleading testimonials;
- (d) advertising courses of instruction and implying the promise of employment or remuneration where this cannot be guaranteed;
- (e) promising outcomes where those outcomes have no safe scientific, medical or performance bases;
- (f) overstating physical security risks; and
- (g) describing goods or samples as 'free' unless the goods or samples are supplied at no cost or no extra cost to the consumer other than actual postage/carriage when specified.

14. Where the purpose of the direct marketing is to sell a good or service distance sellers shall not represent that they are undertaking market research.

UNFAIR CONDUCT

15. A distance seller must not engage in conduct which is unfair or 'unconscionable'. For example, a consumer's poor spoken or written English, or an obvious inability to understand the offer must not be exploited.

INFORMATION PRIOR TO THE FORMATION OF THE CONTRACT

16. Prior to the formation of the contract the consumer must be given clear, unambiguous and easily accessible information, in any way appropriate to the means of communication and the reasonably anticipated audience, covering at least:

- (a) the name of the relevant distance seller and a street address at which it can be contacted — a post office, newspaper or magazine box number, facsimile or telephone number, or an electronic mail address will not suffice as a street address;
- (b) any relevant statutory registration or licence numbers, including the Australian Business Number and/or the Australian Company Number;

- (c) the total price of the goods or services, including any delivery charge and any other fee or charge for which the consumer would be liable under the contract unless otherwise authorised by the consumer. This should indicate the applicable currency;⁵
- (d) contact details, an easy method of identifying the membership of and accessing the relevant codes of practice of any relevant self-regulatory scheme, business association, dispute resolution organisation or other certification body;
- (e) the delivery arrangements;
- (f) the period, if any, for which the contract solicitation remains valid and any conditions about contract renewal or extension; and
- (g) all material restrictions, limitations or conditions to purchase. In particular, consumers should be provided with:
 - a clear and complete text of the transaction's terms and conditions;
 - details about any cooling-off period or right of withdrawal;
 - details of any explicit warranty provisions; and
 - details of any after sales service.

Part 3 of this code also includes additional requirements for the provision of information to consumers.

INFORMATION AT THE TIME OF DELIVERY

17. (a) No later than at the time of delivery, or in cases where delivery is to be effected in stages, the time of the first delivery, the consumer shall receive at least the following information in writing, in a clear and unambiguous style and in the same language as was used in the contract solicitation:
- (i) the name and contact details, including at least the street address, of the distance seller where consumers can make inquiries or complaints, or can return goods or cancel contracts;
 - (ii) payment arrangements, including any credit terms, or terms for payment by instalments;
 - (iii) all restrictions, limitations, or conditions to purchase;

5 Where a fee or charge is not able to be specified at the time of ordering, the consumer will be advised of this before the order is accepted. An example of this might be when the weight of goods ordered does not allow the seller to advise the consumer immediately of the exact cost of postage.

- (iv) any safety or care warnings required by any applicable law to accompany the goods or services and, where necessary, instructions for proper use; and
 - (v) refund, cancellation, and exchange rights and procedures.
- (b) In the case of services that, by their nature, can be delivered extremely quickly to the consumer, the information should be sent to the consumer within three days of the services commencing.⁶

INCENTIVES

18. The terms and conditions under which all rewards, prizes or gifts are offered, including the drawing:

- (a) must be clearly stated, including whether distribution is conditional upon order or purchase of other goods or services; and
- (b) must comply with the relevant laws of any jurisdiction in which they are offered.

19. A reward, prize or gift shall not be described as 'free' if the good or service to be purchased is increased in price or decreased in quality as a result of the premium offer.

20. Rewards, prizes or gifts should be forwarded within such period as may be stated in the promotion, or within 30 days if no time period is stated, and should be forwarded even if the distance seller becomes unable to supply the advertised product or service.

21. Contests or lotteries shall not be used unless:

- (a) the rules governing the contest or lottery, including any conditions associated with receiving the prize, are clearly disclosed at the point of entry;
- (b) all advertised prizes are awarded as described in the rules for the contest or lottery;
- (c) the judging takes place promptly, and fairly, and is certified by an independent auditor; and
- (d) the results of the contest or lottery are readily available to participating consumers who wish to receive them.

The conduct of contests and lotteries is also governed by separate State and Territory laws.

⁶ This is to cover services that can be provided almost instantaneously, e.g. certain changes to telephony services, where a charging plan may be changed or implemented while the consumer is speaking to the operator. In these circumstances, the seller may provide the detailed written information as soon as possible and in any event within three days.

PYRAMID SALES

22. No distance seller shall operate or be involved in any kind of 'pyramid selling' or 'referral selling' scheme as defined in Div 1AAA of Part V and section 57 of the *Trade Practices Act 1974*.

MINORS

23. Distance sellers shall have appropriate procedures in place to minimise the sale of restricted goods or services to minors.

24. For the purposes of clause 23, the definition of 'minor' in any restricting legislation is to apply.

DELIVERY

25. Unless the promotional material specifically warns of limited stocks, the distance seller shall not offer particular goods or services for sale until sufficient stock is available, or reasonably expected to be available, to meet the reasonably foreseeable demand.

26. The distance seller shall deliver all orders placed as the result of a contract solicitation within such time period as is clearly stated in the promotion. In the absence of any stated period, delivery is generally to be effected within 30 days of the receipt of the order.

27. When, for whatever cause, an order cannot be delivered within the time period stipulated in the offer, or 30 days where no period is so specified, an acknowledgment of the order shall be sent to the consumer. This acknowledgment shall state the date at which the order is expected to be delivered and the reason for the delay. The distance seller shall also offer the consumer the option of cancelling the transaction and receiving a full refund of any money paid.

28. If, when the revised expected date of delivery arrives, the distance seller is still unable to supply the goods or services, the distance seller shall either:

- (a) advise the consumer that it is unable to fulfil the order and refund the consumer any money paid; or
- (b) send a further communication to the consumer (enclosing a reply paid postcard or reply paid permit address if the communication is done by mail) stating a new revised expected date of delivery and offering to cancel the proposed transaction and to refund any money paid.

29. If the new revised anticipated date arrives and the distance seller is still unable to deliver the goods or supply the service, the procedure set out in clause 28 shall be repeated until such time as the goods are delivered, or until the transaction is cancelled and any monies refunded.

30. Any commitment by a consumer to receive a continuing series of goods or services shall be subject to the following conditions:

- (a) the option to cancel this continuing series of goods or services shall be available to both parties at all times with reasonable notice (subject to the discharge of any outstanding commitment); and

- (b) the distance seller shall refund any money it has received at the time of cancellation for goods, services or postage which have not been provided.

PAYMENT

31. Prepayment for goods or services may not be presented for payment to a financial institution until the distance seller has possession of the goods, or the first instalment of the goods, or immediate access to the services or to the first instalment of the services, and there is no impediment to the distance seller fulfilling the order.

RIGHT OF CANCELLATION

32. For any contract initiated through distance selling, consumers shall have a period of not less than seven working days in which they may cancel the contract.

33. Where a period for cancellation longer than seven working days may apply because of the application of State, Territory or Australian Government legislation or because of another code, that longer period shall apply.

34. In the exercise of this right, the period of not less than seven working days shall begin:

- (a) for goods, from the deemed or actual date of receipt of the goods by the consumer. The consumer will be deemed to have received the goods three days after they were dispatched unless the consumer can prove that they were received on a later date or the distance seller can prove they were delivered at an earlier date;
- (b) in the case of periodic distribution of goods that are not complete until the final instalment is distributed, on receipt of the final instalment;
- (c) in the case of periodic distribution of distinct goods, on receipt of the first instalment; or
- (d) for services, without prejudice to clause 37, from the time the contract to supply the services is made.

35. A contract initiated through distance selling may also be cancelled at any time before the goods or services are dispatched to the consumer.

36. Cancellation of the contract occurs when the consumer initiates either the return of the goods in their original condition, or the advice of the cancellation of the contract for services. A good remains in its original condition even if the packaging has been removed or tampered with.⁷

7 Note that the door to door trading legislation provides that cancellation of the contract occurs when the consumer sends the prescribed notice to the trader. The consumer is required to return the goods only if the trader demands them.

37. Clause 32 shall not apply to:

- (a) any portion of a contract for services performed before the cancellation of the contract under clause 32. In the case of indivisible services which have commenced (eg a service of technical advice), then clause 32 does not apply at all;
- (b) transactions concerning securities and other products or services the price of which is dependent on financial market fluctuations which cannot be controlled by the distance seller;
- (c) made-to-measure products or clearly personalised products;
- (d) products which can be immediately copied, including books, magazines, computer software, cassettes, videos and compact discs that are supplied with a wrapping or seal, unless the product's immediate wrapping or seal is unbroken;
- (e) personal health or hygiene products where any wrappings or seals have been broken or tampered with; and
- (f) products which by reason of their nature cannot be returned or are liable to deteriorate rapidly.

38. The distance seller shall refund any monies already paid by the consumer within seven days of the distance seller receiving returned goods or notice of cancellation of the contract.

Separate Australian Government, State and Territory laws also require all sellers to provide additional rights of cancellation for purchase of consumer goods or services in certain defined circumstances (see Appendix 1).

UNORDERED GOODS AND SERVICES

39. Distance sellers shall not claim payment for unordered goods or services unless they have reasonable cause to believe that they are entitled to claim payment for the goods or services supplied.

40. Consumers who have been supplied unordered goods or services shall not have to pay for those goods or services.

41. Subject to clause 43, consumers who have been supplied unordered goods shall become the owner of the goods after:

- (a) one month of advising the distance seller that the goods were not ordered and of an address where the goods can be collected; or
- (b) three months of receiving the goods;

whichever is the sooner, unless the distance seller takes possession of the goods before this time has expired.

42. During the time period referred to in clause 41, the distance seller may contact the consumer to make reasonable arrangements for taking possession of the goods.

43. Distance sellers are entitled to take possession of goods in circumstances where the consumer to whom they were delivered knew, or should have known, that the goods were not intended for them. This right to take possession of the goods must be exercised within a reasonable time period, and after making reasonable arrangements with the consumer.

SUBSTITUTE GOODS OR SERVICES

44. A distance seller that cannot supply exactly the same good or service as specified by a consumer shall not supply a substitute good or service of similar kind, quality and price unless the distance seller has made a prior agreement with the consumer. If prior agreement is impossible and the good or service specified by the consumer cannot be supplied, the possibility of this occurring must be clearly flagged in the promotional material, advertisement or telemarketing call.

45. If the distance seller supplies a substitute good or service, it must clearly inform the consumer of their right to return the good or cancel the service if they are dissatisfied with the substitution, and of the time frame for doing so. The time frame for returning the good or cancelling the service shall be no less than that provided in clauses 32 and 33.

46. Where the substitute goods or services are of a type referred to in clause 47, and the distance seller intends to apply clause 47, then the distance seller shall not supply a substitute good or service of a similar kind, quality and price unless the distance seller had made a specific prior arrangement with the consumer and clearly informed the consumer of the fact that return/cancellation rights will not apply to the substitute product.

47. The right of return provided by clause 45 shall not apply to:

- (a) services, if performance has begun before the end of the period of seven working days;
- (b) transactions concerning securities and other products or services the price of which is dependent on financial market fluctuations which cannot be controlled by the distance seller;
- (c) made-to-measure products or clearly personalised products;
- (d) products which can be immediately copied, including books, magazines, computer software, cassettes, videos and compact discs that are supplied with a wrapping or seal, unless the product's immediate wrapping or seal is unbroken;
- (e) personal health or hygiene products where any wrappings or seals have been tampered with; and
- (f) products which by reason of their nature cannot be returned or are liable to deteriorate rapidly.

COST OF RETURNING GOODS

48. Where a consumer exercises his or her right to cancel the contract under clause 32, the consumer shall bear the cost of returning any goods.

49. Where a consumer exercises his or her right to return goods because of a breach of a statutory warranty, the distance seller shall bear the cost of returning the goods.

50. Where the distance seller supplies a substitute good or service and a consumer exercises his or her right to cancel the contract under clause 45, the distance seller shall bear the cost of returning any goods.

PART 3: PRIVACY REQUIREMENTS

51. Direct marketers are required to comply with the National Privacy Principles (NPPs)⁸ as specified in the *Privacy Act 1988*. These include:

- NPP 1 – Collection
- NPP 2 – Use and disclosure
- NPP 3 – Data quality
- NPP 4 – Data security
- NPP 5 – Openness
- NPP 6 – Access and correction
- NPP 7 – Identifiers
- NPP 8 – Anonymity
- NPP 9 – Transborder data flows
- NPP 10 – Sensitive information

52. In particular, direct marketers should note NPP 2.1 which states that an organisation must not use or disclose personal information about an individual for a purpose other than the primary purpose of collection unless one of the exceptions applies. One exception allows use for the secondary purpose of direct marketing as long as:

- (a) it is impracticable for the organisation to seek the individual's consent before that particular use;
- (b) the organisation will not charge the individual for giving effect to a request by the individual to the organisation not to receive direct marketing communications;
- (c) the individual has not made a request to the organisation not to receive direct marketing communications;
- (d) in each direct marketing communication with the individual, the organisation draws to the individual's attention, or prominently displays a notice, that he or she may express a wish not to receive any further direct marketing communications; and

8 A full copy of the NPPs can be found at <http://www.privacy.gov.au/publications/npps01.html>.

- (e) each written direct marketing communication by the organisation with the individual (up to and including the communication that involves the use) sets out the organisation's business address and telephone number and, if the communication with the individual is made by fax, telex or other electronic means, a number or address at which the organisation can be directly contacted electronically.

53. To assist with the interpretation of the NPPs, direct marketers are encouraged to refer to the Guidelines to the NPPs.⁹

9 To assist organisations in understanding their obligations under the *Privacy Act 1988*, the Office of the Federal Privacy Commissioner has developed a set of guidelines that provide organisations with helpful information about the NPPs. A copy of these guidelines can be found at <http://www.privacy.gov.au/act/guidelines/index.html#3.2>.

PART 4: MARKETING CONDUCT

54. The following provisions apply to all direct sellers, charities and fundraisers engaged in direct marketing.

IDENTIFICATION INFORMATION

55. At the earliest possible opportunity a direct marketer shall:

- (a) identify themselves;
- (b) identify the direct marketing organisation they represent;
- (c) clearly state the purpose of the contact; and
- (d) if contacting the consumer from outside of Australia, state the country in which they are located.

56. The name, address and telephone number of the direct marketer and, where different the telemarketing organisation, must be in a telephone directory or, if a new listing, available through a directory assistance service.

57. Where the purpose of the contact is to sell a good or service direct marketers shall not represent that they are undertaking market research.

INFORMATION TO BE PROVIDED ON REQUEST

58. When direct marketers contact a consumer they shall, at the request of the consumer, provide the following information:

- (a) direct marketer's name, contact details, including at least its telephone number and street address, and the name of a person within the organisation who is responsible for handling consumer complaints; and
- (b) details of the source from which the direct marketer obtained the consumer's personal information.

THIRD PARTY MARKETERS

59. A direct marketer is required to inform third party marketers of the provisions of the Model Code.

REMOVAL FROM LISTS

60. A direct marketer must remove a consumer's name from all internal marketing lists or lists for transfer to a third party within 30 days of a request being made by a consumer; or in the event that the consumer is deceased, within 30 days of a request being made by any other person.

COMMERCIAL E-MAIL

61. Direct marketers should not send commercial e-mail except:

- (a) to people with whom they have an existing relationship; or
- (b) to people who have already said they want to receive commercial e-mail.

TELEMARKETING

62. These provisions cover requirements for distance sellers, charities and fundraisers engaged in telemarketing.¹⁰ Other parties engaging in telemarketing are also encouraged to adopt the provisions in this part of the model code.

Permissible hours of calling

63. Without a consumer's consent, a telemarketer shall not make an outbound telephone or Automatic Calling Equipment call to contact a consumer before 8 am or after 9 pm local time at the consumer's location or on Sundays and the following public holidays:

- New Year's Day;
- Australia Day;
- Good Friday;
- Easter Monday;
- Anzac Day;
- Christmas Day; and
- 26 December (Boxing Day).^{11 12}

10 Note that any conflict between this code and State and Territory door to door trading legislation will be resolved in favour of the legislation. Where the legislation does apply to telemarketing, telemarketers will have to comply with the legislation, regardless of this code's provisions.

11 Where the restrictions on times of contact under door to door trading legislation (which may apply to telemarketing) in some States and Territories are more rigorous and would conflict if they apply to telemarketing, the legislation shall apply.

12 Any parties adopting the model code are also encouraged to consult with key religious and ethnic organisations to develop a guideline for telemarketers for what other times and days would not be suitable for telemarketers to contact consumers.

Line disconnection times

64. Where a telemarketer uses the telephone to contact a consumer, the telemarketer shall release the line within five seconds of the consumer hanging up or otherwise indicating that he or she requires the telemarketer to release the line.

Calling line identity

65. When making an outbound telemarketing call, a telemarketer shall not block the transmission of the calling line identity to the receiving service.

Frequency of calling

66. A telemarketer, or its agents, shall not contact a consumer more than once in any 30 day period for the same or similar campaign without that consumer's prior consent.

PART 5: COMPLAINT AND DISPUTE HANDLING PROCEDURES

INTERNAL COMPLAINT HANDLING PROCEDURES

67. Direct marketers that adopt this code and all other organisations that receive consumer complaints in relation to breaches of this code, shall have in place procedures for dealing with complaints from consumers.

68. The procedures required under clause 67 shall be available to all consumers who have been contacted by direct marketing and shall comply with the Australian Standard on Complaints Handling (AS 4269).

REFERRAL TO EXTERNAL DISPUTE RESOLUTION PROCESSES

69. Each party to the code shall be a member of an independent dispute resolution mechanism that is capable of dealing with consumer complaints arising under this code and meets the *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*.¹³

The principles underpinning the benchmarks are:

(1) **Accessibility**

The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.

(2) **Independence**

The decision-making process and administration of the scheme are independent from scheme members.

(3) **Fairness**

The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.

13 Complete copies of the benchmarks are available from:
Competition and Consumer Policy Division
Department of the Treasury
Langton Crescent
PARKES ACT 2600
Telephone: (02) 6263 3997
Facsimile: (02) 6263 3964

(4) **Efficiency**

The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.

(5) **Effectiveness**

The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

The key practices necessary to give effect to the benchmarks are set out in full in the benchmarks document.

PART 6: ADMINISTRATION OF THE CODE

70. The code should be administered by a code administration body.¹⁴
71. The administration plan should be set out in the code document and include:
- monitoring and reporting on compliance;
 - obtaining from members adequate finance for administering the code and preparing budgets and financial reports;
 - appointing the independent dispute resolution body required in Part 5;
 - developing a strategy for ensuring the active promotion of the code;
 - making provision for employee awareness of the code;
 - imposing agreed sanctions on members for breaches of the code;¹⁵
 - conducting periodic reviews of the effectiveness of the code and its procedures and recommending amendments if necessary; and
 - preparing annual and other reports on the operation of the code.
72. Membership of the code administration body should include:
- an independent chair; and
 - an equal number of industry and consumer/community representatives.¹⁶
73. The code administration body should meet a minimum of twice a year.

14 The requirements in this part are based upon the guide on codes of conduct developed by the Australian Government, State and Territory consumer affairs agencies and approved by the Ministerial Council on Consumer Affairs: *Fair Trading Codes of Conduct: Why have them and How to prepare them*. Copies of the document are available from the Department of the Treasury at the contact details listed in footnote 13.

15 Authorisation for a code may be required from the Australian Competition and Consumer Commission (ACCC). In considering whether to authorise the code the ACCC will consider whether the public benefit of the code outweighs any anti-competitive detriment. Further information about authorisation can be obtained by contacting the ACCC at the address listed at the back of this document or on the ACCC's web site: <http://www.accc.gov.au>

16 *Fair Trading Codes of Conduct* provides guidance on how to select consumer representatives.

REVIEW OF THE DIRECT MARKETING MODEL CODE OF PRACTICE

74. A working party established by the Ministerial Council on Consumer Affairs shall review the model code at two year intervals.

APPENDIX 1: SUMMARY OF THE STATUTORY WARRANTY SCHEME

Goods and services supplied through a distance selling technique have to comply with any statutory terms implied into contracts by State, Territory, and Australian Government legislation. Requirements in the States and Territories differ. Information from local consumer affairs agencies or legal advice should be sought about the requirements that apply.

The post-sale provisions in Division 2 of Part V of the Australian Government's *Trade Practices Act 1974* apply to distance sellers who supply goods or services to consumers and who are corporations or are trading interstate or within a territory. (The fair trading provisions of the Act also apply to persons using the post, telephone, television or radio to conduct their direct selling business.)

Under the Trade Practices Act, the seller must be entitled to sell the goods and the goods must:

- match any sample or description given to the consumer;
- be fit for any particular purpose made known by the consumer; and
- be of merchantable quality.

Merchantable quality means that the goods must be as fit for the purposes for which goods of that kind are usually bought as it is reasonable to expect in light of the relevant circumstances, including the price paid and any description given. This means that this condition may still be effective after an express warranty given by the manufacturer or supplier has expired.

If goods supplied do not meet the implied terms, then the consumer may return the goods and get a refund, provided that the goods are returned, or the supplier is notified, within a reasonable time of the consumer having the opportunity to inspect the goods. In all cases, the consumer is entitled to monetary damages for any loss or damage suffered as a result of the failure of the goods to meet the implied terms.

Under the Trade Practices Act, services must be rendered with reasonable care and skill and be fit for any particular purpose made known by the consumer, and any materials supplied as part of the service must be reasonably fit for the purpose for which they were supplied.

If services supplied do not meet the implied terms the consumer is entitled to damages.

Claims under these provisions can be enforced through State and Territory small claims or consumer claims tribunals, or through the courts.

Distance sellers who are also the manufacturer of the goods they sell should be aware of the provisions in Division 2A of Part V of the Trade Practices Act. These provisions give consumers a right to compensation from the manufacturer if there are not reasonable facilities for repairs or reasonable availability of spare parts, or for a failure to meet an express warranty. Legal advice should be sought about whether Division 2A applies to a particular business.

CONTACTS

STATE AND TERRITORY

New South Wales Office of Fair Trading 1 Fitzwilliam Street PARRAMATTA NSW 2150 Telephone: (02) 9895 0111	Victoria Consumer Affairs 452 Flinders Street MELBOURNE VIC 3000 Telephone: (03) 9627 6444
Queensland Office of Fair Trading Level 21, 50 Ann Street BRISBANE QLD 4000 Telephone: 1300 658 080	Western Australia Department of Consumer and Employment Protection 219 St. Georges Terrace EAST PERTH WA 6001 Telephone: (08) 9222 0777
South Australia Office of Consumer and Business Affairs 91–97 Grenfell Street ADELAIDE SA 5000 Telephone: (08) 8204 9777	Tasmania Office of Consumer Affairs 15 Murray Street HOBART TAS 7000 Telephone: (03) 6233 4567
Australian Capital Territory Office of Fair Trading Level 2, GIO House City Walk CANBERRA ACT 2600 Telephone: (02) 6207 0400	Northern Territory Consumer Affairs 1st Floor, Minerals House 66 The Esplanade DARWIN NT 0800 Telephone: (08) 8999 1999

AUSTRALIAN GOVERNMENT

Competition and Consumer Policy Division Department of the Treasury Langton Crescent PARKES ACT 2600 Telephone: (02) 6263 1111	Australian Competition and Consumer Commission 470 Northbourne Avenue DICKSON ACT 2602 Telephone: (02) 6243 1111
Office of the Federal Privacy Commissioner GPO Box 5218 SYDNEY NSW 2000 Telephone: 1300 363 992	