

## **Review of the Direct Marketing Model Code of Practice**

Submission presented by:

### **The Consumers' Federation of Australia**

(5 November 2002)

#### **Limitation on comments:**

The Discussion Paper (August 2002) is noted. The CFA will limit its comment to the following Discussion Points:

8, 10, 15 and 18.

In addition and to provide some context for the comments on the above Discussion Points, a recent case study example is included with the submission. The consumer's experience described in the case study suggests action might that might be considered under Discussion Point 28.

#### **Summary of Key Points:**

- a) **The current Model Code delivers only a perception rather than the reality of consumer protection and responsiveness.**
- b) **Including marketing as an approved secondary purpose under the Privacy Act and the National Privacy Principles significantly undermines consumer expectations of appropriate industry behaviour.**
- c) **A comparison of "Model Codes" with other forms of self and co-regulatory arrangements suggests they are of dubious value.**

#### **Comments on specific Discussion Points:**

##### *Discussion Point 8:*

*"What are your experiences with complaints in relation to direct marketing? Do particular types of activity raise more complaints than others? Does direct marketing cause particular problems for certain groups in the community (for example, older consumers, disabled people)?"*

The CFA membership includes a considerable number of agencies dealing with financial services issues of concern to low income and vulnerable consumers. The most frequent direct marketing issue reported by these members and their clients involves unsolicited offers of credit, particularly those involving offers of credit cards or extensions to limits on pre-existing accounts. Many of the offers are described as "pre-approved", requiring only a signature and return in a reply paid envelope to take advantage of the offer.

Many CFA member groups have reported instances where these unsolicited offers of credit have been made to consumers with no capacity to repay the

credit being offered. In some instances offers have been made or continued even after consumers have reported hardship in repaying existing credit and attempted to reduce payment requirements.

Although the case study attached to this submission does not involve a consumer in financial hardship, it is indicative of the difficulties consumers can face in requesting that offers be discontinued.

Credit providers have been aware of complaints about marketing practices for credit card products for several years. The responses, to the extent they have acknowledged an issue exists at all have been disappointing. The one bright spot has been the passing of an amendment to the ACT Fair Trading Act several months ago. The amendment will commence on 25 November 2002. The change to the legislation will make it illegal to offer a credit card or extend credit on a pre-existing card without obtaining proscribed information about the consumer's capacity to repay the credit being offered.

The ACT amendment will not make a request to discontinue unsolicited marketing any more likely to succeed.

*Discussion Point 10:*

*"Is the Model Code effective in supplementing existing law?"*

It is our view that the question is either incomplete, or takes as given a starting point we do not accept as correct, namely that existing law is sufficient or effective. In this regard the consumer movement has made clear its concerns that the Privacy Act and the National Privacy Principles contained therein are of limited use.

Making a special case for direct marketing in the Privacy Act has, in the CFA's view, significantly reduced its effectiveness. A consumer who believes his or her personal information has been used without their permission for marketing purposes has no reliable recourse. Complaints can be made, as can a request for information to be deleted. Finding out where the information was gathered in the first instance, or being certain that a request to delete information has been actioned relies on the good faith of the company involved. It is frequently the case however that the company doing the marketing is not the company whose product or service is being advertised.

With the Privacy Act inadequate at best, it should come as no surprise that the Model Code provides no solution.

*Discussion Point 15:*

*"Does the Model Code effectively deal with practices that are now emerging, or could emerge, in direct marketing?" &*

*Discussion Point 18:*

*"Does the Model Code adequately address market failures?"*

We believe the response to both of these questions lies in the apparent failure of "model" codes to provide reliable, efficient mechanisms for self-regulation.

In comparison to mandatory and/or enforceable codes, model codes come a pale second in each of the following categories:

- industry take-up of both the letter and spirit of codes
- transparency, access and compliance
- entry points for raising emerging issues or policy concerns and
- proper, consultative review.

The similarity of the more general concerns we have in relation to the Direct Marketing Model Code with failures in other Model Codes (for example that dealing with Electronic Commerce), suggest it is the process itself that is flawed. A Model Code, for all the good intention that might drive its development, will never provide sufficient reliability for consumers who inevitably need just that when something goes wrong.

### **A Case Study Example:**

CFA member group and employer of the current CFA Chair, Care Inc Financial Counselling Service (ACT) provided the following case study. The consumer's experience was reported in a column called "Consumer Voice" in the Canberra Times on 26 August 2002. The journalist, Graham Downie, provided the consumer with Care's contact details. The consumer in turn provided permission for his experiences to be referred to anonymously in this submission:

The consumer had received a number of unsolicited offers from the ANZ Bank. The offers were in relation to credit card products. The consumer contacted the Bank to note that he did not want the offers and to ask that they be discontinued. Those attempts failed to achieve the intended outcome and the offers kept coming.

Unhappy with having his requests ignored the consumer again contacted the ANZ. The consumer reported that a Dispute Resolution Team Leader at the Bank told him:

"As long as we don't use a list of our own customers for mail outs, we can use names from anywhere we can obtain them."

The consumer was unhappy with the response and noted that if the Bank continued to send him offers he had expressly asked to be discontinued, that his "fee" would be \$5000.

In April 2002 the consumer received a further offer for an ANZ Gold Visa card with his name and address details already on the forms. True to his previous conversation with the Bank he decided to take proceedings in the ACT Small Claims Court. The matter did not proceed beyond the Conference stage eventually being withdrawn by consent.

The consumer was glad he took the stand against the Bank, but was bemused by how little acknowledgement his concerns received. For example, he reported that a lawyer for the Bank, involved in the process after the proceedings commenced, said to the effect:

“It is up to you to ensure that your name does not appear on any lists that the Bank might use. It would cost the Bank money to filter lists which it purchased.”

A spokesperson for the ANZ was quoted in the Canberra Times article as saying “We are looking at how to scrub data from lists.”

Discussion Point 28 asks a number of questions:

*Should the Model Code require that direct marketers be required to obtain a consumer’s consent before sending direct marketing material to that consumer. If so, should consent be express, or should constructive consent be permitted? Should direct marketers be required to update their do-not-call and do-not-mail lists within a specified time limit after receiving a request from a consumer?*

The case study suggests some answers. Going from the last questions backwards:

- Yes. The first issue is to ensure that direct marketers have both capacity and a willingness to update information after receiving a request from a consumer. Enforcement should be possible and penalties should apply if requests are ignored.
- Constructive consent should only be permitted if a general consent to use of information for marketing purposes has been sought and granted. It should also be the case that consumers are provided with information about withdrawing consent at the same time that consent is sought.

**November 2002.**