



The

ADMA

Association for data-driven marketing & advertising

Code Authority Charter

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1. The need for the Code Authority

- 1.1 The regulatory environment in which the marketing and advertising industry operates is a complex and evolving area. Laws themselves do not address all issues that industry needs guidance on. The Association for Data-driven Marketing & Advertising believes that self-regulation is the right approach for delivering timely outcomes for consumers and guidance for industry at first instance
 - 1.2 The Association for Data-driven Marketing & Advertising (ADMA), protects, supports and champion's excellence in data-driven marketing and advertising. ADMA's Code of Practice challenges Members to put consumers' interest first, perfectly aligning self-regulation with the culture of consumer-centric marketing. The Code Authority provides a quick and efficient avenue for addressing consumer complaints in a cost effective forum. In addition, the Code Authority's Determinations help industry to navigate the complex regulatory and ethical landscape.
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2. Jurisdiction of the Code Authority

- 2.1 The function of the Code Authority is to hear and adjudicate matters in relation to:
 - (1) Allegations of non-compliance with this Code by Members where Complainants have not been able to resolve their complaint with the Member;
 - (2) Allegations of non-compliance with the Code by non-Members where Complainants have not been able to resolve their complaint with the non-Member and the non-Member has agreed to have the complaint reviewed pursuant to the Code Authority Charter;
 - (3) Any other matters referred to the Code Authority by the ADMA Board of Directors; and
 - (4) The Code Authority may commence an investigation without receipt of a written complaint where it has reason to believe that a Member is acting in breach of the Code.
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3. No Jurisdiction

- 3.1 There is no jurisdiction to review a Code Complaint if the:
 - (1) Complainant has not previously referred the complaint to the Respondent to address; or
 - (2) Complaint has been or is currently under consideration by a government regulatory authority or another advisory body.
 - 3.2 If the Code Compliance Officer or the Code Authority becomes aware that there is no jurisdiction to hear the complaint they must advise the Complainant accordingly within five business days of becoming aware.
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4. Composition of the Code Authority

- 4.1 The Code Authority is comprised of an independent Chair who is not an employee or agent of a Member and an equal number of Member Representatives and Consumer Representatives.
- 4.2 The ADMA Code of Practice sets the parameters for determinations made by the Code Authority.
- 4.3 The Code Authority is bound by the ADMA Code of Practice to the extent relevant to the discharge of their duties as a Code Authority Member.

- 4.4 Code Authority Members are appointed by the CEO and ratified by the Board, and agree to discharge their role and responsibilities in accordance with their letter of appointment until such time as they resign from the Code Authority or have their appointment terminated by the Board.
 - 4.5 A Code Authority Member may appoint a proxy to replace them for any determination of the Code Authority provided that the proxy appointed would be considered a Code Authority Member of the same category (independent Chair, Member Representative or Consumer Representative) and subject to approval from the CEO and ratification by the Board.
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5. Complaints relating to Non-Members

- 5.1 Where a complaint is received in relation to a non-Member the Code Compliance Officer will contact the non-Member to advise them of the complaint and ask whether the non-Member elects to pay the relevant non-Member fee and have the complaint dealt with as a Code Complaint pursuant to the Code Authority Charter.
 - 5.2 The non-Member is given five business days in which to advise the Code Compliance Officer whether they wish to make an election pursuant to clause 2.1(2)
 - 5.3 If the non-Member elects to have a complaint dealt with pursuant to clause 2.1(2) as a Code Complaint the non-Member will be deemed a Respondent for the pursuant to this Code Authority Charter.
 - 5.4 If the non-Member does not advise the Code Compliance Officer within five business days that they have elected to have the complaint dealt with pursuant to clause 2.1(2) then the Code Compliance Officer will refer the Complainant to the relevant government regulatory authority or another advisory body.
 - 5.5 Where a complaint relates to a non-Member and they have not agreed to deal with the complaint as if it was a Code Complaint the Code Authority may still make a determination regarding the practice or behaviour which was the subject of the complaint. Although such a determination will not be binding on the non-Member who was the subject of the complaint it will provide guidance for Members and industry in general.
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6. Making a Complaint

- 6.1 Any person or organisation who considers that a Respondent has breached a provision of this Code may lodge a complaint with ADMA, either online or addressed as follows:

Code Compliance Officer
Association for Data-driven Marketing & Advertising
GPO Box 3895
Sydney NSW 2001

- 6.2 The Complainant should set out the following details:

- (1) Their name and contact details;
- (2) The name and, if known, the contact details of the Respondent;
- (3) A brief outline of the complaint; and
- (4) A brief outline of how the Respondent previously responded to the complaint.

And include any supporting information such as invoices, receipts, emails or other correspondence.

7. Fees and Charges

- 7.1** Code Complaints considered pursuant to the Code Authority Charter incur the following fees (the Requisite Fee):
- (1) Members
 - a) Consideration by the Code Compliance Officer \$150 per complaint
 - b) Review by the Code Authority (including hearings where applicable) \$500
 - (2) Non-Members
 - a) Consideration by the Code Compliance Officer \$450 per complaint
 - b) Review by the Code Authority (including hearings where applicable) \$950
- 7.2** The Code Authority may from time to time make a recommendation for the introduction of new fees and/or charges for or relating to the determination of Code Complaints pursuant to the Code Authority Charter. Such fees and charges are to be levied against the Respondent and include an increase in fees and/or charges. Any such recommendations will be made to the CEO and require Board ratification if they are to be introduced.
- 7.3** The Board may from time to time levy other fees or charges against the Respondent for determination of the Code Complaints pursuant to the Code Authority Charter.
- 7.4** Complainants must bear their own costs with respect to making a Code Complaint pursuant to the Code Authority Charter.
- 7.5** If a Member fails to pay a fee or charge levied with respect to the determination of a Code Complaint pursuant to the Code Authority Charter that failure will itself constitute a breach of this Code and may be dealt with accordingly.
- 7.6** If a non-Member agrees to have the complaint against them dealt with as a Code Complaint pursuant to the Code Authority Charter they will be required to pay the requisite fee prior to the Code Complaint being dealt with. Failure to pay the Requisite Fee within five business days from the date on the invoice issued for the purpose will result in the complaint being referred to the relevant government regulatory authority or another advisory body.
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8. Consideration by Code Compliance Officer

- 8.1** Acknowledgement and Investigation.
- (1) Where the Code Compliance Officer receives a Code Complaint they will write to the Complainant acknowledging receipt of the Complaint and outlining the Code Complaint processes. Where applicable the acknowledgement will include a request for any further information needed in order to consider the Complaint.
 - (2) The timeframes for dealing with a Code Complaint start running from either the receipt of the Code Complaint or receipt any further information from the Complainant as a result of a request by the Code Compliance Officer, whichever is the latter.
 - (3) Once all information has been received from the Complainant and where the Code Compliance Officer considers that a Respondent may have breached the Code, they shall write to the Respondent within five business days outlining the particulars of the alleged misconduct and requesting any further information required. Respondents must provide a written response to the allegations and any further information requested within five business days.

8.2 Outcomes

- (1) If within five business days the Respondent advises that they have independently resolved the complaint, the Code Compliance Officer will take no further action and confirm this with the Complainant in writing.
- (2) If the Respondent disputes the complaint they must show evidence of steps undertaken in the matter to comply with the Code within 10 business days. If within that period the Respondent provides clear evidence of acting in compliance with the Code the Code Compliance Officer will take no further action and advise the Complainant in writing why no further action will be taken, offering the Complainant the option of requesting that the Code Authority review the complaint.
- (3) If the Respondent is not able to demonstrate compliance within 10 business days, the Code Compliance Officer shall refer the complaint to the Code Authority for determination.

8.3 Referral to the Code Authority

- (1) If within 10 business days of receipt of the complaint the Code Compliance Officer has not resolved the Code Complaint under clause 8.2 above, the Code Compliance Officer will forward the Complaint to the Code Authority for determination.
- (2) Where the Code Compliance Officer has made a determination under clause 8.2 above either the Complainant or the Respondent can ask the Code Compliance Officer to refer the matter to the Code Authority for determination.
- (3) Where a request is made pursuant to the preceding paragraph the Code Compliance Officer will refer the Code Complaint to the next Code Authority Meeting or Code Authority Hearing for determination.

9. Code Authority Review

9.1 Upon reviewing the complaint, the Code Authority may:

- (1) Request the Code Compliance Officer to obtain more information;
- (2) Request the Code Compliance Officer to investigate the complaint further and report the results of such investigation to the Code Authority;
- (3) Cause the Code Compliance Officer to send a notice to the Respondent inviting the organisation to attend a hearing regarding the alleged breach of the Code by the Respondent. The notice should stipulate the place, the day and hour of the hearing and offer the Respondent the opportunity to attend the hearings by way of telephone conference; and
- (4) Cause the Code Compliance Officer to send a notice to the Complainant inviting them and/or their representative to attend a hearing regarding the alleged breach of the Code by the Respondent. The notice should stipulate the place, the day and hour of the hearing and offer the Complainant the opportunity to attend the hearings by way of telephone conference.
- (5) Make a determination pursuant to this Code Authority Charter.

10. Prior to a Code Authority Hearing

10.1 The Code Authority may:

- (1) Cause the Code Compliance Officer to send a notice to the Respondent inviting the organisation to attend a hearing regarding the alleged breach of the Code by the Respondent. The notice should stipulate the place, the day and hour of the hearing and offer the Respondent the opportunity to attend the hearings by way of telephone conference; and

(2) Cause the Code Compliance Officer to send a notice to the Complainant inviting them and/or their representative to attend a hearing regarding the alleged breach of the Code by the Respondent. The notice should stipulate the place, the day and hour of the hearing and offer the Complainant the opportunity to attend the hearings by way of telephone conference.

10.2 The Respondent must be given a reasonable opportunity to inspect any documents that the Code Authority proposes to have regard to in reaching its decision on the allegations.

10.3 The Respondent may make written submissions to the Code Authority.

11. Code Authority Hearings

11.1 At the Code Authority hearing, the Respondent may make written submissions to the Code Authority.

11.2 At the Code Authority hearing the Respondent shall be given a reasonable opportunity to present its case.

12. Code Authority Determinations

12.1 Following a Code Authority Review or Code Authority Hearing the Code Authority may make one of the following determinations in relation to a Code Complaint against a Respondent:

(1) Find that the Code Authority has no jurisdiction to make a determination and refer the Complainant to the relevant government regulatory authority or another advisory body;

(2) Find that there has been no breach of the Code;

(3) Resolve not to further pursue the alleged breach;

(4) Resolve that the matter has already been adequately dealt with by the Respondent or Code Compliance Officer; or

(5) Impose a sanction pursuant to the Code Authority Charter.

12.2 The Code Authority may also make a determination that the Respondent to a Code Complaint has failed to co-operate in the investigation of the complaint, this in itself is a breach of the Code and is open to sanction.

12.3 Where the complaint involves a non-Member who has not agreed to have the matter dealt with as a Code Complaint pursuant to the Code Authority Charter the Code Authority may still make a determination regarding the practice or behaviour which was the subject of the complaint. Although such a determination will not be binding on the non-Member who was the subject of the complaint it will be provide guidance for Members and industry in general.

13. Sanctions for Breach

13.1 Where the Code Authority finds that a Respondent has been in breach of the Code it may, impose such sanctions as it considers appropriate including, but not limited to:

(1) Requiring a formal apology for breach.

(2) Requiring corrective advertising or the withdrawal of offending advertisements or statements.

(3) Requiring the correction or deletion of relevant records and personal information.

- (4) Recommending refund or replacement of goods or services.
- (5) Where appropriate requiring the Respondent to take specified remedial action to correct the breach and avoid re-occurrence.
- (6) Seeking a written undertaking from the Respondent that the breach will not be repeated.
- (7) Where the Respondent is a Member, recommending to the CEO that Membership be suspended or revoked.
- (8) Where the Respondent is a non-Member, recommending to the CEO and Board that they be prohibited from becoming a Member either indefinitely or for a specified period.
- (9) Such other powers as may be conferred on the Code Authority by the Board.

13.2 During suspension or after termination, the Member must take immediate steps to cease using any ADMA logo or trade mark and must not imply in any way that it is a Member of the Association.

14. Compliance with Sanctions

- 14.1** Within five business days of the conclusion of the Code Authority hearing, the CEO shall send the Respondent a notice containing the decision of the Code Authority and detailing any sanctions that the Code Authority has imposed.
- 14.2** The Code Authority must advise the Complainant in writing of the decision of the Code Authority in relation to the complaint and provide a statement of any reasons the Code Authority has for making that decision.
- 14.3** The Respondent will have 10 business days from receipt of the decision of the Code Authority to take the necessary steps to comply with the decision.
- 14.4** If within 10 business days from receipt of the decision of the Code Authority the Respondent is unable to demonstrate compliance with any sanction or sanctions imposed by the Code Authority:
- (1) Where the Respondent is a Member the CEO will call a special meeting of the Board of Directors to consider removing the Member from the Association, subject to the recommendation of the Code Authority; or
 - (2) Where the Respondent is a non-Member the Code Compliance Officer will refer the Complainant to the relevant government regulatory authority or another advisory body.
- and will advise the Complainant accordingly.
- 14.5** If the Respondent is a Member and is found to have breached the Code on two or more occasions in the preceding 12 months, the Code Authority may recommend to the CEO and Board that ADMA Membership be revoked either indefinitely or for a specified period (the Suspension Period).
- 14.6** Where a complaint is received about a former Member during the Suspension Period it will be referred to the appropriate government regulatory authority.
- 14.7** If the Respondent is a non-Member and, having elected to have a complaint dealt with as a Code Complaint pursuant to clause 2.1(2) is found to have breached the Code on two or more occasions in the preceding 12 months, the Code Authority may recommend to the CEO that they be prohibited from becoming a Member either indefinitely or for a specified period (the Suspension Period).
- 14.8** Where a non-Member has been prohibited from becoming a Member either indefinitely or for a specified period any complaints received regarding that the non-Member during the Suspension Period will be referred to the appropriate government regulatory authority.

- 14.9** If the Member withdraws from ADMA Membership or if a non-Member Respondent withdraws the complaint from consideration pursuant to the Code Authority Charter at any point:
- (1) During the consideration of a complaint by the Code Compliance Officer or the Code Authority; or
 - (2) Subsequent to a determination being reached by the Code Authority which renders sanctions unenforceable;
- the Code Compliance Officer shall forward the complaint, including relevant documentation and the determination, to the appropriate government regulatory authority or another advisory body.
- 14.10** The decision of the Code Compliance Officer or the Code Authority does not preclude either the Complainant or Respondent from pursuing other forms of redress such as lodging the complaint with a government regulatory authority or another advisory body.
- 14.11** If new information becomes available following a determination by the Code Authority, the Complainant or the Respondent may request that the complaint be reviewed again. Where this occurs the complaint will be treated as a new Code Complaint.
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15. Code Authority Procedure

- 15.1** In the conduct of any hearing and adjudication by the ADMA Code Authority the hearing must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the permits.
- 15.2** The Code Authority may use its discretion to conduct reviews and hearings using any available mediums, including but not limited to: mail, email, telephone, Skype, webinar, video conference and face-to-face meeting.
- 15.3** The Code Authority is not bound by the laws of evidence but may inform itself on any matter in such manner as it thinks appropriate.
- 15.4** A Quorum is required for any determination made by the Code Authority.
- 15.5** Code Authority Hearings and Code Authority Meetings will be set on dates and times determined by the Code Authority. Code Authority Hearings and Code Authority Meetings can be held contemporaneously and will be held no less frequently than every four months and no-more frequently than monthly.
- 15.6** Any Code Authority Hearing or Code Authority Meeting can be held either in person or via telephone conference or webinar at the discretion of the Code Authority.
- 15.7** All Code Authority determinations, including the imposition of sanctions, are to be decided by a majority vote of Code Authority Members.
- 15.8** All Code Authority Determinations are to be reduced to writing by the Chair.
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16. Reporting

- 16.1** All Code Authority Determinations will be published by ADMA at least once per calendar quarter.
- 16.2** The introduction to the Annual Report will be written by the Chair.
- 16.3** ADMA may publish in its Annual Report the number of the complaints received by the Code Compliance Officer during that year; the number of breaches established by the Code Compliance Officer and Code Authority during that year; an analysis of the enforcement action taken during that year; and a statistical analysis of complaints by company.

17. Definitions

ADMA means the Association for Data-Driven Marketing & Advertising ABN 34 002 909 800 of Level 6, 50 Carrington Street, Sydney, New South Wales

Advisory body means an industry body, other than the Code Authority which has responsibility for review of complaints within their own locus of authority

Board means the Board of ADMA

CEO means the Chief Executive Officer of ADMA

Chair means the independent Chair of the Code Authority

Code means the ADMA Code of Practice as published on the ADMA website.

Code Authority means the body of persons convened to review and hear Code matters referred by the Code Compliance Officer

Code Authority Charter means this document

Code Authority Determination means a determination by the Code Authority made pursuant to this Code Authority Charter as a result of either a Code Authority Review or a Code Authority Hearing

Code Authority Hearing means a hearing by the Code Authority pursuant to this Code Authority Charter at which one or more of the parties to the Code Complaint or their representatives are present

Code Authority Review means a review by the Code Authority pursuant to this Code Authority Charter other than a Code Authority Hearing

Code Complaint means a complaint involving an alleged breach of the Code

Code Compliance Officer means the person appointed by ADMA to deal with Code complaints at first instance and to forward same for review or hearing by the Code Authority where required

Consumer Representative means a Code Authority Member who is not the Chair or an employee or agent of a Member

Independent means a person who is not an employee or agent of a Member

Member Representative means a Code Authority Member who is an employee or agent of a Member

Respondent means either a Member who is bound by the Code or Non-Member who has agreed to be bound by the Code for the purpose of dealing with a complaint which would have been considered a Code Complaint had they been a Member

Member means an ADMA Member

Non-Member means a non-ADMA Member

Quorum means the Chair and an equal number of both Member Representative and Consumer Representatives

Year means financial year