

## Code of Practice for Direct Marketing in New Zealand

This Code was reviewed in February 2014.

This Code has been developed by the Marketing Association (MA). The Advertising Standards Authority (ASA); Consumer Affairs, Ministry of Business, Innovation & Employment; Commerce Commission, the Privacy Commission and Consumer NZ were consulted in the review of this Code of Practice.

All marketers are expected to comply with the principles set out in the Code. The compliance guide sets out actions which can help achieve compliance with the principles. Where the compliance guide is silent on a particular issue, marketers are expected to act in accordance with the spirit and intention of the Code, which is to ensure that consumers' interests are properly protected. Although this code is written for marketers, by reading it, consumers can gain an understanding of the standards expected to be met by marketers.

### Definitions

- a. Consumers are customers or potential customers, whether they are members of the public, organisations or businesses.
- b. Direct Marketing is the process by which consumers are individually offered the opportunity to obtain or purchase goods or services or make charitable donations by email, website, text, mail, newspaper, magazine, radio, television, telephone, or any similar means of communication.
- c. Appropriate industry Codes of Practice include the Advertising Codes of Practice of the Advertising Standards Authority (ASA) and all other industry codes endorsed by the Marketing Association.
- d. Where the word advertisement is used in the Code, it covers any and all forms of advertising.

This code is based on five basic principles:

#### **Principle 1:**

Marketers will comply with the laws and bylaws of New Zealand and all appropriate industry Codes of Practice

#### **Principle 2:**

Offers will be clear and truthful and not present a product, service, or offer in a way that could mislead the consumer.

#### **Principle 3:**

Orders for products or services will be handled in a prompt and responsible manner.

#### **Principle 4:**

Marketers will carry out their business in a socially-responsible manner.

#### **Principle 5:**

Marketers will uphold high standards of business practice to generate consumer trust.

# Principle 1

## Marketers will comply with the laws of New Zealand and all appropriate industry Codes of Practice.<sup>1</sup>

This Code assumes that organisations already comply with all New Zealand Law, including relevant bylaws, and is to establish standards of customer service at or above the minimum legal requirements.

### Compliance Guide

Particular attention should be paid to:

1(a) **Consumer Laws:** Organisations involved in direct marketing must pay particular attention to the Credit Contracts and Consumer Finance Act 2003, Unsolicited Electronic Messages Act 2007, Fair Trading Amendment Act 2013, the Consumer Guarantees Amendment Act 2013 and any amendments to these Acts, which all include consumer rights provisions.

NB: From 17 June 2014 the Fair Trading Act will include extended powers covering online and door-to-door sales, unsolicited goods, etc.

1(b) **Individual Privacy:** It is important that direct marketers are familiar with The Privacy Act 1993 and the 12 Privacy Principles included in it. Marketing activities must comply with these principles. See [http://www.marketing.org.nz/Category?Action=View&Category\\_id=1464](http://www.marketing.org.nz/Category?Action=View&Category_id=1464) for an easy reference guide to implementing the 12 Privacy Principles.

Unless it is obvious from the circumstances, marketers must tell consumers in clear, simple language what information about them is being collected, what it will be used for, who it will be disclosed to (if anyone) and that the customer has the right to access their own information.

1(c) **Advertising to Children:** Marketers must also be aware of and abide by the ASA's Code of Practice for Advertising to Children and the Children's Code for Advertising Food. [http://www.asa.co.nz/code\\_children.php](http://www.asa.co.nz/code_children.php)). The term "children" for marketing purposes means all those under the age of 14 years.

1(d) **Liquor and Pharmaceuticals:** Attention is also drawn to the Advertising Codes of Practice for Advertising and Promotion of Alcohol and for Therapeutic Products & Services. Liquor advertisements require a LAPS (Liquor Advertising Pre-Vetting Service) code number, and any product making a therapeutic claim requires a TAPS (Therapeutic Advertising Pre-Vetting Service) code number. The requirements of the Sale and Supply of Alcohol Act 2012 must also be observed.

<sup>1</sup> Industry Codes of Practice and Best Practice Guidelines:

Data Transfer	Direct Marketing Data
Direct Marketing Co-operatives	Email Marketing
Fax Marketing	Mobile Marketing
Search Engine Marketing	Social Media Marketing
Telemarketing	Unaddressed Mail
Role of a Privacy Officer	

## Principle 2

**Offers will be clear and truthful and not present a product, service, or offer in a way that could mislead the consumer.**

### Compliance Guide

2(a) **Testimonials:** Testimonials used in any form of advertising must be current, typical and genuine and any claims made must be able to be verified.

2(b) **Disguise:** Marketers must not claim to be carrying out a survey or research when their real purpose is to sell a product or service, or to raise funds.

2(c) **Misrepresentation:** Consumers must not be misled into believing that a marketing communication is news, information, research, public service or entertainment programming when its purpose is to sell goods or services or to seek donations to causes or charities.

2(d) **Timeliness:** Descriptions and promises must reflect actual conditions, situations and circumstances existing, to the best of the seller's knowledge, at the time of the promotion.

2(e) **Evidence:** Test or survey data used in any communication must be reliable, accurate and current and must support the specific claim being made. Marketers must be able to substantiate the basis for any claim or comparison and must not imply a scientific, factual or statistical basis where none exists.

2(f) **Identity:** Every offer, communication and shipment of goods must identify the marketer and provide the consumer with sufficient information to be able to contact the supplier or retailer.

2(g) **Disparagement:** Inaccurate information must not be used to harm the reputation of competitors' products, services, brands, advertisements or companies.

2(h) **Representation:** Products or services offered must be accurately and fairly represented.

2(i) **Currency:** Prices quoted in advertisements in New Zealand must be in New Zealand dollars and include GST, unless otherwise clearly stated.

2(j) **Competitions:** When contests or prizes are used to promote the sale of goods, the rules of the contest must be clearly stated, and must comply with The Gambling Act 2003, especially the provisions related to "Sales Promotion Schemes". Particular attention must also be paid to Principle 3 of The Privacy Act 1993 with regard to the collection and storage of personal data.  
[http://www.marketing.org.nz/Category?Action=View&Category\\_id=1464](http://www.marketing.org.nz/Category?Action=View&Category_id=1464)

2(k) **Refusal of Offer:** A telephone marketer must provide the consumer with a clear opportunity to refuse any appointment or offer. A definite refusal must be accepted right away, and the call ended. People must not be harassed.

2(l) **Cost and Charges:** The marketer must clearly state the total cost, all relevant terms, conditions and payment plans, plus any extra charges such as delivery or handling costs, including any costs incurred in returning goods. The date on which any contract becomes binding must be specified and the terms must be confirmed in writing within five (5) working days of this date.

2(m) **Description:** Products or services offered in all media must be accurately and fairly described. The terms and conditions of the offer must not be made less clear or unreadable by the use of type size, colour, contrast, style, placement or any other treatment.

2(n) **Advertorial/Infomercial:** Advertorials/Infomercials must be clearly identified as such.

2(o) **Comparative Advertising:** Comparative advertising must not mislead or deceive. The comparisons made must be accurate and must be of 'like' products or services available in the same market.

2(p) **Comparative Pricing:** When comparing prices to those offered by other organisations, the comparison must be based on a price at which the item is offered for sale in the local area or available on the Internet and the basis for comparison must be clear.

## Principle 3

**Orders for products or services will be handled in a prompt and responsible manner.**

### Compliance Guide

3(a) **Identity:** Advertisements which invite a reply to a Post Office box, email, website, or telephone number must clearly identify the organisation and should also provide a physical address. In the case of an Internet advertisement, this same information must be easily found on the website page linked to that advertisement.

3(b) **Appointments:** In the case of an appointment for a face-to-face meeting, the marketer must give their name and contact details to enable the customer to change or cancel the appointment.

3(c) **Inertia selling/negative option:** Consumers are not responsible to pay for unordered goods or services, or for their return to the marketer. Goods or services must not be sent or charged for unless a confirmed order has been received from the consumer. If a consumer is required to advise that he or she does not wish to receive any further goods or services, that fact must be made clear in the first offer. Options available for the consumer to do this, e.g. mail, email, via the seller's website, should also be made clear.-The silence of a consumer is not enough to indicate they have accepted the goods or services. Buyers must actually state they want to buy.)

3(d) **Payment options:** Consumers must be advised in clear and simple language of the available methods of making payments, the security of those payment methods, how to use those methods and any additional costs associated with different payment mechanisms.

3(e) **Processing of payments:** Marketers must maintain efficient and complete records of orders and money received so that they can quickly and accurately answer customers' questions about their orders.

3(f) **Payment security:** Organisations must set up systems to ensure any payment information (e.g. credit card details) is collected and stored securely. The information collected must be accurate, up-to-date and kept only as long as needed for the purposes for which it was collected.

3(g) **Shipment:** All orders must be shipped within the time stated in the advertisement. If no time is stated, they must be shipped within ten (10) working days of the order being received.

3(h) **Shipment delay:** If the order, or any part of it, cannot be supplied within the required time, the customer must be notified promptly and given a reasonable idea of the expected delay. At the same time, they must also be given an opportunity to cancel the order and receive a refund.

3(i) **Returned goods:** Marketers must accept delivery of items returned in good condition within the time specified in their Terms and Conditions.

3(j) **Refunds:** Marketers must maintain efficient and complete records of goods returned by customers. Refunds and exchanges must be sent within ten (10) working days from the time the returned goods are received by the trader.

3(k) **Substitution:** If it is necessary to substitute one product for another, the customer must be given the opportunity to cancel the transaction, unless it was made clear in the advertisement that the marketer might not be able to guarantee the colour/model etc. and the consumer has given their consent to receiving an alternative colour/model.

3(l) **Terms and conditions:** The consumer must be informed of all the terms and conditions before a contract is confirmed.

3(m) **Agreements and contracts:** Copies of all relevant documents, agreements, contracts and/or advice of legal rights must be sent to customers within five (5) working days, commencing from the date of the transaction. Documents confirming an order must provide full contact details of the organisation, including a physical address.

## Principle 4

**Marketers will carry out their business in a socially-responsible manner.**

### Compliance Guide

4(a) **Children:** A marketer must not knowingly take orders from children under the age of 14 without adult approval. Note : The Minor Contracts Act 1969 states that “minor means a person who has not attained the age of 18 years. A contract entered into with a minor is unenforceable.”

4(b).1 **Do Not Mail & Do Not Call Lists:** The Marketing Association will maintain Do Not Mail (DNM) and Do Not Call (DNC) Lists containing details of consumers who have requested no unsolicited mail and/or telephone calls.

Marketers must check the Marketing Association’s DNM and/or DNC Lists against any prospecting list they plan to use and suppress from that list any names that appear on the DNM and/or DNC Lists. This does not apply when an organisation communicates with existing members or customers or individuals who have opted in to receiving marketing communications. The DNM or DNC should be matched against prospecting lists each time marketing activities are carried out.

4(b).2 **Deaths Information:** Marketers must also access the Deaths Information through the Marketing Association in order to suppress the names of deceased persons in their customer database(s) and/or any list to be used in a prospecting campaign. In accordance with the agreement between the Marketing Association and the Department of Internal Affairs, subscribers to the Deaths Information must comply with the rules governing its use. They must also adopt audit procedures approved by the Marketing Association to demonstrate that obligations under these terms and conditions are being met.

4(b).3 **Opting out:** In addition to the requirements of the 12 principles of the Privacy Act, consumers must be given the opportunity to 'opt out' of receiving marketing information which

they have not requested. Marketers must have a system in place which enables them to honour such requests.

4(b).4 **Marketing list referrals:** Marketers must not allow individuals to provide details of others (e.g. friends, colleagues, family members) to receive marketing offers without their permission.

4(b).5 **Third party lists:** Marketers using third party lists must ensure the list complies with the requirements of The Privacy Act 1993 [http://www.marketing.org.nz/Category?Action=View&Category\\_id=1464](http://www.marketing.org.nz/Category?Action=View&Category_id=1464) and the Unsolicited Electronic Messages Act 2007. <http://www.antispam.govt.nz/>

4(c).1 **Calling hours:** Telephone calls to private homes should only be made between 8.00 am and 9.00 pm, unless the caller is advised that another time would be more convenient and acceptable.

4(c).2 **Calling days:** Telephone marketing calls should be avoided on Sundays and public holidays, unless the caller has a reason to believe that the calls will be readily acceptable.

4(d) **Confirmation of credit card details:** If, while placing an order via telephone, a consumer authorises the charge for goods or services to be made on a credit card, the telemarketer must read back all relevant details of the credit card. They must also be sure that the customer understands that the cost of the goods or services will be charged to the credit card.

4(e) **Verification of Internet orders:** When purchasing over the Internet, consumers must be given an opportunity to check that the details of their orders are correct and be given the right to accept or reject the terms and conditions of the contract.

4(f) **Confirmation of contract/offer:** The receipt of confirmed contracts/offers placed via the Internet or in response to an emailed offer must be acknowledged within 2 working days in order to reassure the consumer that their order has reached its destination.

4(g) **Safety and health warnings:** Where applicable and appropriate, consumers must be given any mandatory safety and health care warnings when purchasing over the Internet or in response to an emailed offer which they would be given at any other point of sale.

## Principle 5

**Marketers will uphold high standards of business practice to generate consumer trust.**

### Compliance Guide

#### 5(a) Internal Complaint Handling

5(a).1 **Procedures:** Organisations must have fair and effective procedures in place to handle consumer complaints and queries within a reasonable time and in a way that results in both the consumer and the organisation being satisfied. These procedures will be free of charge to the consumer and will not affect his or her right to seek legal redress.

5(a).2. **Consumer information:** If asked to do so, organisations must give consumers clear and easy-to-obtain information about complaints handling procedures.

5(a).3 **Dispute resolution:** If a consumer is not satisfied with the way an organisation has handled their complaint and requires independent assistance, they must be provided with the Marketing Association's contact details

## 5(b) Data Standards

5(b).1 **Collection, management and maintenance of data:** Organisations collecting and storing consumer/personal data should comply with the Best Practice Guidelines for Direct Marketing Data [http://www.marketing.org.nz/Category?Action=View&Category\\_id=1460](http://www.marketing.org.nz/Category?Action=View&Category_id=1460).

These require that personal information used for marketing purposes is collected, managed and maintained in accordance with best practice standards.

5(b).2 **Data Warranty:** Marketers collecting, storing or using personal data are required to become 'Data Warranted' and thereby entitled to use the 'Data Warranted' trustmark. The Data Warranty Register (DWR) is maintained by the MA and contains the details of all organisations who follow industry best practice in management of personal data. A list of these organisations is published on the MA website.

5(b).3 **Opting out of the Data Warranty:** Notwithstanding the requirements of 5(b).2 above, marketers may elect to opt out of the DWR. For the sake of transparency, a list of organisations who opt out of the DWR will be published on the MA website.

## 5(c) Marketing By Telephone

5(c).1 **Identity and purpose:** At the beginning of a call, telemarketers must clearly state their name, the organisation they represent and the general reason for their call. If the consumer expresses a wish to end the conversation, then the caller must end the call as soon as possible.

5(c).2 **Identification:** The name and address of the organisation on whose behalf calls are made must be readily able to be verified via the Internet and/or public directories

5(c).3 **Calling line identity:** When making an outbound telemarketing call, organisations must not block the transmission of the calling line identity to any calling number display or any calling name display of a customer who receives the telephone call. Where technically feasible, organisations should ensure that when outbound calls are made from within the organisation, the number which is transmitted or displayed on the receiver's telephone is one which is suitable for return telephone contact by an individual.

5(c).4 **Ex-directory numbers:** Calls must not be made to unlisted or unpublished numbers, unless the consumer has given the calling organisation permission to call them.

5(c).5 **Workplace Permission:** A consumer must not be contacted by telephone on private business at their place of work without permission.

5(c).6 **Source of Personal Information:** When making unsolicited telemarketing calls, organisations must provide, on request, accurate details of the source from which it obtained the customer's personal information.

5(c).7 **Duration:** If a call is expected to take more than three (3) minutes, telemarketers must state honestly how long the call is likely to take. The consumer must be given the opportunity at this time to end the call.

5(c).8 **Cooling-off period:** After a consumer has received any new contract, they must be given a five (5) day "cooling off" period. During this time the consumer may cancel the agreement without being penalised, and any payment or deposit they have made must be promptly and fully

refunded. The consumer is to be told of this "cooling off" period, both at the time the offer is made and in the written contract.

5(c).9 **Recording calls:** Calls may be recorded and the consumer must be advised that this is being done.

#### **5(d) Internet and Other Electronic Media**

5(d).1 **Application:** All forms of electronic media, including (but not limited to) the Internet, electronic mail, TXT, mobile phone applications, interactive kiosks, databases and computer-based information services, are covered by these guidelines.

5(d).2 **Spamming:** Unsolicited commercial electronic messages must not be sent by email or TXT or fax unless the recipient has consented to receiving such messages and they are relevant to the existing relationship between an organisation and its customer.

5(d).3 **Internet, email, and TXT message opt-out:** All unsolicited commercial electronic messages must carry a functional 'unsubscribe' mechanism via the same channel and at no cost to the consumer to enable them to opt out of receiving such messages. Whenever consumers are required to provide personal information on a website, they must be given the opportunity to opt out of having that data made available to others for marketing purposes.

5(d).4 **Reply:** Every electronic commercial communication must clearly identify the marketer and provide the person receiving it with a simple and easy-to-use method of replying.

5(d).5 **Disclosure:** When information is being gathered from individual consumers that could identify them, and which will be linked with clickstream data (such as that obtained from their behaviour, pathway, or choices expressed when visiting a website), they must be advised what information is being collected and how it will be used. This advice must be given before the consumer sends data that could identify them.

#### **5(d).6 Website security**

5(d).6.1 Consumers' personal and payment information must be protected by effective security systems.

5(d).6.2 Consumers must be able to access information in clear, simple language about an organisation's security systems.

5(d).6.3 Consumers need to have confidence that they are dealing with a bona fide person or business and that the transaction is also bona fide. Authentication systems, such as digital certificates, should be used to verify the contents of transactions and the identity of the parties where that is necessary and appropriate.

5(d).6.4 Consumers must not be encouraged to provide confidential information in a manner that is considered insecure.

5(d).6.5 All security and authentication processes linked to personal data must be reviewed and updated regularly to ensure appropriate security levels are consistently maintained.

#### **5(e) Protecting the Environment**

Whenever practicable, marketers should use renewable or recyclable materials.



## **Review**

This Code was formally reviewed in 2001, 2006, 2008, 2009, 2012 and in February 2014. It will be reviewed at least every three years.

In addition, the Code may be amended between reviews if necessary. Reviews will be carried out by the Marketing Association, in consultation with the Commerce Commission, Advertising Standards Authority, Consumer Affairs, Ministry of Business, Innovation and Employment, the Privacy Commission and consumer organisations.

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