

Environment Protection Authority

**Managing the Delivery of
Unsolicited and Unaddressed
Advertising Material**



ENVIRONMENT PROTECTION AUTHORITY

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1 Introduction

In 2000, the New South Wales Legislative Council asked the Government to examine the control of the delivery of unsolicited advertising material to letterboxes where signs indicate that people do not wish to receive such material. The Environment Protection Authority engaged Macinante Consulting Pty Ltd to undertake a preliminary investigation of unaddressed and unsolicited advertising material. This report is based on that investigation; it does three things:

- examines current practices in managing the delivery of this material in Australian and selected international jurisdictions
- sets out possible models to regulate the delivery of material by statute and considers some implications
- poses questions for stakeholders.

Unsolicited advertising material or ‘junk mail’ generally refers to two circumstances. The first is unsolicited and addressed advertising material that Australia Post delivers. The Commonwealth has jurisdiction over postal services and, therefore, discussion of this activity lies outside the purposes of this paper.

The second is unsolicited and unaddressed advertising material, of which there are two general types:

- printed matter of a commercial nature (for example, store catalogues and flyers or advertisements from real estate agents, tradespeople, restaurants and fast food outlets)
- non-commercial material (e.g. local government information, electoral material, flyers from small and large charities and public utility notices).

Anecdotal evidence indicates that some members of the community find the delivery of unsolicited material as either a nuisance or a waste of paper. The prevalence of ‘No junk mail’ signs on letterboxes is one indication of some people’s concern. Other people welcome the delivery of such material as providing a valuable service.

The Environment Protection Authority (EPA) has not undertaken a detailed survey of people’s attitudes about this issue, which would require a purpose-designed research project. However, two studies offer some indications of community views. First, the EPA’s community-wide survey, *Who cares about the environment 2000?*¹ asks respondents to identify environmental issues of most concern. Waste is the third most important issue but respondents did not specifically mention junk mail. Secondly, the EPA commissioned six focus groups on litter in early 2000 to gauge the effectiveness of the Government’s litter campaign. Junk mail was seldom mentioned in the context of litter, although there is evidence that many people have developed a new, broader understanding of litter as a waste and ethical issue.

¹ NSW Environment Protection Authority (2001), *Who cares about the environment?*, p11.

2 Current national and international arrangements

This section reports on the ways that industry, Australian states and territories and comparable overseas jurisdictions address the issue of unsolicited and unaddressed advertising material deposited in letterboxes. Information comes from three sources: reviewing any relevant legislation; contacting regulators in those jurisdictions; and contacting local government bodies. Other agencies contacted are listed in Appendix 1.

Industry code of practice

The Distribution Standards Board is the self-regulatory arm of the Australian Catalogue Association. The board states that its members print and distribute about 80% of all unaddressed mail in Australia. Members must abide by the board's code of practice relating to the deposit of unsolicited advertising material. The code provides, among other things, that material not be placed in receptacles that display a sign requesting non-delivery. The board maintains a database of known addresses that carry such a sign. It provides free 'No advertising material' signs. It receives complaints from the public and local authorities and acts on them, contacting the company concerned then reporting the outcome back to the complainant.²

Commonwealth Government

The *Privacy Amendment (Private Sector) Act 2000* will commence on 21 December 2001. Under the Act, once a person indicates that they do not wish to receive unsolicited marketing approaches, it will be illegal for the organisation to contact them again.³

Australian states and territories

New South Wales

Community education material explaining the new advertising provisions under the POEO Act states:

Putting material into letterboxes with 'No advertising material' signs, or similar, is against the distribution industry's Code of Practice. You should respect people's wishes not to receive this material. For a copy of the Code of Practice, write to the Distribution Standards Board, Level 10, 128 Exhibition St, Melbourne 3000, or email: dsb@catalogue.asn.au.⁴

Australian Capital Territory

ACT Environment advises that there are no regulations dealing with unsolicited mail.

Queensland

The Environmental Protection Agency advises that there are no regulatory controls concerned with the distribution of unsolicited mail.

² Distribution Standards Board, *Code of practice*.

³ Under the new federal legislation, it seems an organisation will be restrained from using personal information for direct marketing purposes if the individual whom it concerns makes a request to the organisation not to receive direct marketing communications. Hence, a request to remove one's name from a mailing list will be enforceable. However, businesses with a turnover of less than \$3 million per year are exempt, as are, *inter alia*, political parties and local councils.

⁴ EPA (2001), *Do you use advertising material like brochures, flyers or leaflets to promote your business, service or charity? Then you should know about new litter laws that start on 1 April 2001*.

South Australia

The Environment Protection Agency advises that it does not have any direct regulatory jurisdiction. However, the EPA noted the role of the Distribution Standards Board acting as the industry's self-regulatory body.

Tasmania

The Department of Primary Industries, Water and Environment advises that efforts had been made to strengthen its Litter Act to address the issue of unsolicited advertising material. To date, these had not progressed, based on advice from the Tasmanian Solicitor-General that the Litter Act would only be applicable to distributors of junk mail if they were to allow it to blow around the neighbourhood. New legislation is proposed for late 2001 and the issue of unsolicited advertising material would be addressed in this legislation. No details are available as to whether this would include the depositing of such material in letterboxes.

Victoria

The Victorian *Litter Act 1987* is silent on the issue of unsolicited advertising material being placed into letterboxes that have "no junk mail" signs. The government relies on supporting the industry self-regulatory approach of the Distributions Standards Board. The Environment Protection Authority's *Litter Strategy* states,

If your mailbox has a 'No advertising material' label, junk mail may not be placed in it. If you are having trouble with this or other forms of junk mail, you can contact the Distribution Standards Board.

Western Australia

The Department of Environmental Protection advises that there are no regulatory controls concerning unsolicited advertising material being put in letterboxes.

Local government

The Australian Local Government Association (ALGA) advises it does not have a specific policy position on the distribution of unaddressed mail. The NSW Local Government and Shires Associations provided no response.

International jurisdictions

United States of America

The mailbox is the domain of the US Postal Service, granted by law. Therefore, no materials other than properly stamped mail may be placed in the box. If flyers, pamphlets, etc, are found in the box by the postal worker, they collect the piece(s) and return them to the Postmaster. The items are then weighed and the firm responsible for their distribution is charged accordingly. These rules are included in the Postal Service's Domestic Mail Manual.

Individual states face issues relating to managing unsolicited addressed mail.

Europe

A review of European Union legislation did not identify any regulatory measures covering junk mail (or even litter).

Great Britain

Unaddressed advertising material appears not to be the subject of legislative control.

The Direct Marketing Association (DMA) manages the industry's self regulating Mailing Preference Service (MPS). Under this service, householders can register to stop receiving addressed junk mail from participating industry members. This service cannot stop the delivery of unaddressed material in letterboxes. The DMA is introducing a new voluntary system that applies to unaddressed material, but it did not elaborate on how this would operate. It did indicate, however, that the guidelines/system would be self-regulatory. There would not be any offence and there would not be any penalty for non-compliance.

Denmark

In Denmark, the post service deals with the issue of unsolicited advertising. Householders fill in a form at the post office indicating that they do not wish to receive free-of-charge mail (advertisements, etc) that the public post office distributes for advertisers. Upon completing the form, a sticker is placed on the householder's letterbox to inform postal workers not to place material in it.

Canada

Environment Canada advises that there are no federal regulations in relation to the issue, however, controls on unsolicited mail are exercised through by-laws in certain municipalities. The *Environment Canada* website advises that offices can reduce the amount of addressed advertising material received by asking the Canadian Direct Mailing Association to remove names from some mailing lists.

The City of Hull, Quebec, is an example of a municipality that has enacted by-laws to control unsolicited mail. These by-laws provide for an offence of depositing '*articles publicitaire*' (as defined) in places where the occupant has indicated they do not wish to receive them. A form of notice is prescribed by the by-law for this purpose.

Summary

Some jurisdictions recognise the delivery of unwanted *addressed* advertising material as an issue and control it through legislation at the national level. Once a request for removal of one's name from a mailing list is made, compliance with that request becomes obligatory. This will soon be the legal position in Australia also.

The United States is the only jurisdiction that has wide-reaching laws controlling the depositing of unsolicited and unaddressed advertising material in letterboxes, through federal law. Denmark appears to be dealing with the issue by giving responsibility to the postal service for delivering advertising material.

Several Australian states rely on supporting the industry's self-regulatory approach to managing the delivery of unsolicited advertising material to letterboxes.

3 A legislation approach to prohibiting the delivery of unsolicited and unaddressed advertising material

This section outlines a possible statutory mechanism for controlling the delivery of unaddressed and unsolicited advertising material. It also discusses some issues raised by such a proposal.

Parties that would be affected by such legislation include:

- government agencies, businesses, charities and other organisations and people whose services or products are being advertised
- organisations or individuals that arrange the distribution
- individuals who actually make the deliveries
- parties occupying the premises to which the advertising material is delivered
- local government, which is likely to have regulatory responsibility.

A wide range of organisations and individuals deliver unaddressed advertising material, including:

- large distribution companies
- small local advertisers (shops, restaurants and services) that undertake their own distribution
- free local or regional newspapers
- local council notices, for example, advising of a local issue of importance or giving notice of a public meeting (for instance, precinct committee meetings)
- utility providers advising of work being undertaken in the area or of interruptions to local services because of, for example, maintenance work on infrastructure
- charities (national and local) or community groups, for example, local scout troops
- course information from educational institutions
- notices distributed by or at the direction of local government, or state or federal government agencies, advising of upcoming public events or other matters of special interest to the local community, for example, the holding of community meetings in relation to proposed developments
- notices distributed pursuant to a regulatory obligation, for example, notices distributed by the Australian Electoral Commission
- election and political material
- individuals raising their own matters (lost pets, local amenity issues, complaints, and sale notices).

A proposed regulatory approach is based on four premises.

1. The new provisions should build on the current litter provisions in the *Protection of the Environment Operations (POEO) Act 1997*. The POEO Act includes provisions to regulate the depositing of advertising material to prevent littering. Depositing advertising material into letterboxes and similar receptacles, however, does not harm the environment. The POEO Act, therefore, may not be the most appropriate statute for any regulatory mechanism. If the practice has environmental impact, it would be that the delivery of unwanted advertising material is a waste of paper. If so, any regulatory mechanism may be more appropriately placed in the *Waste Minimisation and Management Act 1995*. If, however, the issue is principally that the receipt of such material is a nuisance to the householder or invades their privacy, other legislation may provide a more appropriate vehicle for controlling delivery.
2. Local government is the most suitable area of government to administer and regulate any scheme to manage the delivery of unsolicited and unaddressed advertising material.

Given the people affected and the range of material delivered, local management is the only practical option.

3. The regulatory system should build on the current industry self regulatory approach. The industry provides free signs and enforces its code of practice, which requires its members not to deliver material where signs are displayed. Such signs are common and their purpose understood by deliverers and the wider community.
4. The proposal should identify types of advertisements exempted from the regulatory provisions.

How would a regulatory approach work?

Based on the above, the proposed regulatory approach is as follows.

Section 146A of the POEO Act makes it an offence for a person to deposit any advertising material in any place other than a receptacle used for the deposit of mail or newspapers, or under the door of premises. Section 146B provides that a person must not deposit any advertising material in or on any vehicle (see Appendix 2 of the Act). A similar provision could be enacted that provides that a person must not deposit any advertising material in a receptacle for mail or newspapers, or under any door, where there is a sign indicating the occupant's unwillingness to accept such material. It would be necessary to clarify the meaning of the words, "a sign indicating the occupant's unwillingness to accept such material". This could be achieved by prescribing a specific form of words (for example, 'No advertising material').

The provision could further require the display of a prescribed sign issued by councils, which could include specified display requirements. A more rigorous approach would require a registration system that requires households and businesses to register with an appropriate authority (most likely local councils), which would then issue the prescribed sign. The degree of complexity would need further exploration in terms of assisting with effective enforcement.

An additional provision could parallel section 146C of the POEO Act (see Appendix 2 of the Act): a person must not cause, ask, require or induce another person to do anything that contravenes the proposed provision. This would allow authorised officers to issue a notice against a distributor or advertiser if they required their deliverers to deposit material contrary to a sign.

Exemptions

The provisions would necessarily include power to exempt certain classes of unsolicited material.

Some of these activities would require exemption from any legal action to control the distribution of unaddressed advertising materials. For example, the Distribution Standards Board Code of Practice⁵ exempts the following items defined as 'non-commercial':

- newspapers
- council information
- state and federal government information
- election information
- police matters

⁵ Distribution Standards Board, *No advertising material: what your N.A.M. stops*.

- neighbourhood watch material
- church and school items.

Deliverers would need to have a good knowledge of the material they are permitted to deliver. Complications may easily arise. For example, the Distribution Standard Board's exemption list above includes some but not all charities. For example, should material from national charity appeals be exempted?

Similarly, householders would need to know the exempted items before they may make a complaint. Council enforcement is likely to become more difficult (and costly) as the list of exemptions grows.

Proving an offence

The other main difficulty with enactment of the offence as proposed would be in proving the commission of the offence in the absence of eyewitness evidence. In the absence of eyewitness evidence that the deliverer actually deposited the advertising material into a letterbox marked 'No junk mail', it may in some circumstances prove difficult to establish beyond reasonable doubt. A defendant might reasonably argue that anybody could have come along after them and taken the material from another unmarked letterbox and put it in the marked box. Nevertheless, the existence of the offence provision may provide a sufficient deterrent value in itself.

The alternative approach would be to make the offence stricter, i.e. that the presence of the material in the box marked 'No junk mail' might raise a rebuttable presumption that the deliverer had placed it there. The onus would then be on the deliverer to establish that they had in fact not placed the material in that box. Such an approach, however, might be considered unduly harsh on the deliverer, since it would be just as hard for the deliverer to establish that they had not placed the material in the box in the absence of eyewitness corroboration.

4 Conclusion and questions

Statutory regulation of the delivery of unsolicited and unaddressed advertising material is limited.

It would be possible to draft provisions under the POEO Act to regulate the delivery of unaddressed and unsolicited advertising material, however, there are three main areas that would require careful consideration before proceeding.

The first is complexity, caused by the need to exempt items from the ban on delivery. It may put an undue onus on the deliverer, householder and regulator to know which types of advertising material can appropriately be delivered contrary to a sign.

The second is that proving an offence may be difficult.

The third is that local government would need to consider the impact of administering and regulating the system. A simple signage system may reduce administration but increase enforcement responsibilities. For example, the legislation may recognise any sign that householders attach to their letterboxes saying they do not want junk mail. However, complications may arise in proving offences in these circumstances.⁶ A registration system may be more demanding administratively but may make enforcement easier.

Wider questions also arise from the proposal. Is the regulation of unsolicited advertising material at the point of delivery the most appropriate way to manage this issue? Would management tools, other than 'end-of-pipe' regulation, be more suitable? Such tools could include education programs for advertisers, distributors, and deliverers working outside the major distribution companies. This could include encouraging alternative advertising strategies. Alternatively, it may be more appropriate for the government to give greater support to the distribution industry self-regulatory approach.

The EPA has no data on the impacts of adopting a regulatory approach. It may be appropriate to undertake an analysis of benefits and costs before considering actual legislation.

Questions

The Government seeks responses on the following questions.

How big a problem is the delivery of unsolicited and unaddressed advertising material to household and business letterboxes?

If the problem requires action, does it require government intervention?

If government intervention is desirable, is legislation the best way to deal with the problem?

What would be the practical implications of establishing and enforcing an effective regulatory scheme?

What will be the impact on stakeholders, such as advertisers, distributors, deliverers, householders and regulatory authorities (particularly, local government)?

What would be the benefits and costs?

Are there alternative regulatory approaches other than the approach discussed in this paper?

⁶ The more loose the signage system, the more opportunity to challenge to the owner's intention.

If statutory regulation were contemplated, would it be more appropriately placed elsewhere other than the *Protection of the Environment Operations Act 1997*?

Are there wider implications with introducing such legislation?

If you wish to provide comments, please send them to:

Assistant Director General
(Chemicals & Waste)
NSW Environment Protection Authority
PO Box A290
SYDNEY SOUTH NSW 1232

Submission period finishes on 20 July 2001.

Appendix 1 Other agencies contacted

Australian states and territories

ACT Waste
Environment ACT
Northern Territory Department of Lands, Planning and Environment
Queensland Environmental Protection Agency
South Australian Environment Protection Agency and
Department for Environment and Heritage
Tasmanian Department of Primary Industries, Water and Environment
Victorian Environment Protection Authority
Western Australia Department of Environmental Protection

Local government

Australian Local Government Association
NSW Local Government and Shires Associations

International jurisdictions

Canada

Environment Canada
City of Hull, Quebec

Europe

Environment Agency for England and Wales
European Union (Legislation database search)
Her Majesty's Post Office
Scottish Environment Protection Authority
Various local British authorities and Members of Parliament

United States of America

California Integrated Waste Management Board
District of Columbia Department of Public Works (Solid Waste Management Administration)
Florida Department of Environmental Protection
Illinois Environmental Protection Agency
Michigan Department of Environmental Quality
New Jersey Department of Environmental Protection
New York Department of Environmental Conservation
Pennsylvania Department of Environmental Protection
United States Environmental Protection Agency
United States Postal Service

New Zealand

Ministry for the Environment
Local Government New Zealand

Appendix 2 Sections 146 A - C, *Protection of the Environment Operations Act 1997*

146A Depositing of advertising material

(1) Offence

A person must not deposit any advertising material in or on any place, other than:

- (a) in a receptacle that is provided for the deposit of mail, or
- (b) in a receptacle that is provided for the deposit of newspapers, or
- (c) under the door of any premises.

Maximum penalty: 5 penalty units.

(2) Application of this section

This section applies whether the place is a public place or a private place, and whether the place is in or on land or is in or on waters, but does not apply to the deposit of any advertising material in or on a vehicle.

(3) Exceptions

This section does not apply to the deposit of:

- (a) any newspaper, or any material folded or inserted in a newspaper, or
- (b) anything that is of such a size, shape or volume that it is not possible or appropriate for it to be deposited in accordance with subsection (1) (a)–(c), or
- (c) anything in a place by a person who is the custodian of the place or is acting with the express consent of the custodian of the place, or
- (d) anything by a person who deposits it in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.

146B Advertising material not to be placed in or on vehicles

(1) Offence

A person must not deposit any advertising material in or on any vehicle.

Maximum penalty: 5 penalty units.

(2) Application of this section

This section applies whether the vehicle is situated in or on a public place or a private place.

(3) Exceptions

This section does not apply to the deposit of:

- (a) any material by a person who is the custodian of the vehicle or is acting with the express consent of the custodian of the vehicle, or
- (b) any material by a person who deposits it in accordance with any regulations made for the purposes of this section or in such circumstances as may be prescribed by any regulations made for the purposes of this section.

- (4) For the purposes of subsection (3) (a), a person is not the custodian of a vehicle parked at a parking station merely because the person is the custodian of the parking station. In this subsection, *parking station* means a place (such as a car park) provided for the parking of vehicles, and includes a place or place of a class prescribed by the regulations.

146C Offence to cause or ask person to commit offence

A person must not cause, ask, require or induce, or attempt to cause, ask, require or induce, another person to do anything that contravenes or would contravene section 146A or 146B.

Maximum penalty:

- in the case of a corporation — 30 penalty units, or
- in the case of an individual — 7 penalty units.

References and further information

Distribution Standards Board

- *Code of practice*
- Distribution Standards Board, *No advertising material: what your N.A.M. stops*

Macinante Consulting Pty Ltd (2001), *Report for the New South Wales Environment Protection Authority: consultancy report: litter reduction (unsolicited advertising material) program*

NSW Environment Protection Authority

- (2000), *Who cares about the environment?*
- (2001) *Do you use advertising material like brochures, flyers or leaflets to promote your business, service or charity? Then you should know about new litter laws that start on 1 April 2001.*

Taylor Nelson Sofres (2000), *Fast life, fast litter: the parameters for strategic response*

Legislation

Protection of the Environment Operations Act 1997
Waste Minimisation and Management Act 1995.