



POAAL

Post Office Agents Association Limited
ACN 006 382 314

Ref: 046/099/7/11/N1542

6 July 2011

General Manager
Small Business and Deregulation Branch
Department of Innovation, Industry, Science and Research
GPO Box 9839
CANBERRA ACT 2601

Email: smallbusiness@innovation.gov.au

Dear Sir or Madam,

National Dispute Resolution Service for Small Business

The Post Office Agents Association Limited (POAAL) is the national association representing the owner/operators of Licensed Post Offices. There are 3000 LPOs across Australia, comprising about 80% of Australia Post's post office network. POAAL also represents the 3500 Mail Contractors who deliver mail under contract for Australia Post.

These are all small business operators who have collectively invested in excess of \$1bn in the Australia Post network.

The LPO Agreement, which is binding upon Licensees and Australia Post, includes a low-cost dispute resolution procedure, which was negotiated by POAAL. POAAL also contributed extensively to the formation of the Franchising Code of Conduct and its dispute resolution code.

Attached is a submission outlining our philosophy on small business dispute resolution and responding to the options put forward in the discussion paper.

If the Department has any questions regarding POAAL's submission, I may be contacted at the POAAL National Office or via email at ian@poaal.com.au.

Yours faithfully,

Ian Kerr
CEO



POAAL

Post Office Agents Association Limited

POAAL submission on

National Dispute Resolution Service for Small Business

June 2011

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Background

1. The Post Office Agents Association Limited (POAAL) represents the nearly 3,000 small business owners of the Licensed Post Office network that comprise over 75% of the Australia Post retail network. Our members are also drawn from the operators of the approximately 5,000 mail contracts, delivering mail and parcels to Australia Post customers across the country, together with around 630 Community Postal/Mail Agents. (Further information on the background of our organisation may be found on our website www.poaal.com.au.)
2. Our members are all small business owner/operators who have invested heavily financially – and personally – in the Australia Post network either through purchasing a Licensed Post Office or successfully tendering for a mail contract. Post office licences are purchased on the open market, and prospective Licensees undergo extensive training. They are the front line for the services provided to Australian communities, especially in regional, rural and remote areas of Australia.
3. Licensed Post Offices are operated under licence from Australia Post. Each LPO forms part of Australia Post's retail and delivery network. Licensees are small business people, and their businesses provide the framework for delivery of postal services in their area. The Licensee is responsible for all business expenses, including providing premises, operating overheads such as utilities, and staff costs.
4. Most LPOs are operated in conjunction with another small business such as a general store, convenience store, newsagency, pharmacy, or stationery and gift sales.
5. Mail Contractors are also small business owners. They may employ a number of drivers and maintain a small fleet of vehicles. Other Contractors are sole operators, who perform their contract on their own. All Contractors are responsible for their own business expenses, such as wages, vehicle purchase or leasing, vehicle servicing and superannuation.

Dispute resolution for LPOs

6. POAAL negotiated the LPO Agreement, which is the agreement between LPOs and Australia Post.
7. The LPO Agreement includes a simple, low-cost dispute resolution procedure which can be used to resolve disputes between Licensees and Australia Post.
8. The aim of this dispute resolution procedure was always to settle disputes at the earliest and least costly opportunity. Disputes left to drag on tend to fester and engender bad feelings, particularly on the part of the complainant.
9. The LPO dispute resolution procedure does not encourage legal representation without the express agreement of both parties.

Dispute resolution for Mail Contractors

10. There is a rudimentary dispute resolution procedure in the standard mail contract. It is seldom used because most Contractors perceive the dispute resolution process as being costly and unlikely to result in a fair outcome.

Franchising Code of Conduct

11. POAAL contributed extensively to the formation of the Franchising Code of Conduct (FCC) and in particular its dispute resolution code. At the time, the LPO Agreement was a ground-breaking agreement, and POAAL drew upon the lessons learned from the Agreement's negotiation and implementation for contributions to the FCC.
12. The favoured dispute resolution method under the FCC has appeared to be mediation, which in POAAL's opinion favours the larger (and therefore stronger) party involved in a dispute.

Mediation and negotiating in good faith

13. POAAL's experience is that mediation is the dispute resolution method least likely to achieve a satisfactory result for small business. Likely causes include:
 - a. The larger party (be it the franchisor, principal, or other) is under no obligation to be flexible or act in good faith;
 - b. The larger party rarely enters into mediation with the aim of resolving the dispute in a collaborative manner;
 - c. The larger party fails to send representatives with the authority to make a decision "on the spot";
 - d. The larger party refusing to move from its original position;
 - e. The larger party deliberately and unnecessarily elongating the process because it has a greater capacity to absorb the costs of prolonged mediation, meaning that the small business owner, faced with the mounting costs of mediation and the need to return to their business, succumb to the larger party's demands;
 - f. The small business owner losing patience with the process;
 - g. The small business owner running out of funds to continue to pursue a solution through mediation;
 - h. The small business owner lacks the skills to adequately document the dispute, especially when compared to the resources available to the larger party;
 - i. In the case of a franchise relationship, the franchisee fears later retribution from the franchisor;
 - j. The mediator having little or no experience of the business.
14. For any mediation process to succeed, there is a need to have an explicit obligation to act in good faith incorporated into the mediation process.

Critical factors in dispute resolution

15. There is a real need for the costs of dispute resolution to be kept to a minimum for small business owners.
16. Small business owners frequently work full-time in their business, and they need to minimise the time they are required to be away from the business for the dispute resolution process.
17. Where disputes are resolved at a local or State level of a national organisation/business, it is imperative that no higher part of that organisation or business is able to overrule or refuse to participate in the decision.
18. Some disputes can arise because of language difficulties. Many small businesses are operated by people of a non-English speaking background who can feel pressured under some circumstances, including dealing with what they perceive to be bureaucracies. Some find it difficult to express themselves and may need assistance.
19. POAAL has observed that those small business people who performed proper due diligence before going into business have a lower level of disputes requiring resolution compared to those who did not do such a thorough checking and analysis before purchasing their business.
20. Disputes must be resolved swiftly, unless both parties agree to a more lengthy process of resolution, because the impact of a dispute on a business and on the health and wellbeing of the small business owner can be severe.
21. Disputes are best resolved where there is early discussion of the dispute and resolution at the lowest possible level of management. Any dispute process should include provision for higher referral if the dispute is not resolved quickly and to the satisfaction of both parties.

Options for national dispute resolution services for small business

22. A dedicated national small business referral service to provide information and guidance on dispute resolution must be available outside of standard business hours and in all States and Territories, preferably for the cost of a local call.
23. As noted above, many small business owners come from a non-English speaking background, and operators at any referral service must be trained to handle possible language difficulties.
24. The National Small Business Tribunal (NSBT) option appears to be attractive because of the potential to get a resolution. It would certainly need to be fair, economical and expedient and to this end have strong guidelines regarding process and timeframes.

25. POAAL sees some difficulties in the NSBT carrying out the majority of its work by telephone: that implies that it would be done during working hours, posing difficulties to small business owners working in their business.
26. Online dispute resolution, while clearly not an option for those with no or limited internet access, would pose a problem for many small business owners who may have poor computer or typing skills.
27. Conciliation is a strong and attractive dispute resolution option under the NSBT, however care would need to be taken to achieve results which are satisfactory to both parties, otherwise this could be seen as a weak mediation-type process.
28. Tribunal members should include those who have small business experience, and also include representatives from all States, and from regional and metropolitan areas. As many small business operators are women, the Tribunal must be gender balanced.
29. Decisions reached through dispute resolution should be binding on both parties. There seems little point in spending time and resources on dispute resolution if at the end of the process the outcome is non-binding and instead relies upon the good will of both parties. There would appear to be little incentive for the stronger party to perform its part of the decision without some form of obligation to do so.
30. We agree that "forum shopping" should be discouraged. Should an existing dispute resolution procedure be available for small business, for example as part of a franchise agreement, then the industry/franchise dispute resolution process should be first attempted.
31. It may be necessary to categorise small businesses according to factors such as turnover, location, company structure and number of staff.

Conclusion

32. A dispute resolution service for small business will provide a safety net for small business operators who have no alternative dispute resolution procedure other than taking costly and time-consuming court action.
33. Small business operators often risk everything to start up and continue their business. They often operate with tight cash flows and work long hours, meaning that resolving a dispute can appear daunting, involving an investment of time, money and resources that they may not have.
34. POAAL supports the establishment of a national dispute resolution service for small business.