



A.C.N. 006 382 314

# POAAL submission to

## Review of the Franchising Code of Conduct

September 2023

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## **Introduction**

1. The Post Office Agents Association Limited (POAAL) is the national, independent and experienced association for small business owners in the postal sector.
2. POAAL was formed in 1939 to assist the owner/operators of privately owned post offices. There are around 2900 Licensed Post Offices across Australia, comprising about 80% of the Australia Post retail network. In addition, there are about 780 Community Postal Agents and about 50 Community Mail Agents operating agencies in small mostly rural and remote communities.
3. Our members also include Contractors who deliver mail and parcels for Australia Post and Star Track to customers across the country.
4. POAAL also has a category of membership for courier owner/drivers who operate either as independent couriers or on contract to larger courier firms. They are not connected in any way to Australia Post.

## **About Licensed Post Offices and the LPO Agreement**

5. LPOs are operated under the Licensed Post Office Agreement. The LPO Agreement is an indefinite term agreement with no territory.
6. LPOs are considered franchises under the Franchising Code of Conduct (FCC).
7. Each individual LPO Agreement can be customised via Special Conditions.
8. There is no franchise fee paid to Australia Post by the Licensee when taking over or selling a Licensed Post Office. Australia Post charges the incoming Licensee a training fee for the mandatory post office training.
9. POAAL contributed extensively to the formation of the Franchising Code of Conduct and in particular its dispute resolution code. 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.

## **Usefulness and relevance of the Disclosure Document**

10. Any Disclosure Document must include relevant and appropriate information on the franchisor's future plans and changes, and must be customised to incorporate any local issues or developments that will potentially impact on individual franchisee's operations.

## **Changes to Disclosure Document requirements**

11. The wording of Clause 16 of the FCC regarding how often a Franchisee may request a Disclosure Document needs clarification.
12. It is common for Licensees to request a Disclosure Document when listing their businesses for sale. If a Licensee lists their business for sale towards the end of a Disclosure Document period, then by the time the sale is agreed a new Disclosure Document may be in place – but the Licensee will be prevented from requesting a new Disclosure Document because 12 months have not elapsed since their previous request.
13. The wording of Clause 16(2) limits franchisees to one request per 12 months. Many franchisors now offer an online information portal for their franchisees, including information customised for each franchisee. Franchisors should be obliged to make the current Disclosure Document for each franchisee available online for access.
14. Franchisors should be required to send Disclosure Documents annually, not just at the franchisee's request. The Disclosure Document should be provided as soon as it is completed, and no later than 14 days after the period specified in Clause 8(6) of the FCC.

## **Unilateral variation**

15. Franchisors must be penalised for unilaterally changing the terms of the franchise agreement.
16. Franchisees are most sensitive to changes to franchise agreements and operating conditions when their business is on the market – all the more so when a buyer has been found and the transfer of the business to the new franchisee is imminent. Franchisor-initiated changes to franchise agreements (including any related operating systems or payments) during this period pose a significant problem to Post Office Licensees, especially in relation to matters such as mail delivery and collection times, the changing or removal of mail services, franchisor-mandated upgrades to security arrangements, and any business payments.

## **Dispute resolution**

17. POAAL has been involved in resolving disputes for post office Licensees for over 30 years. Based on our experience, there are a number of core points that need to be addressed prior to any dispute resolution hearing (be it mediation or any other dispute resolution method) proceeding:
  - a. The franchisee and franchisor representatives who attend any hearing must have the authority to make a binding decision.
  - b. Franchisor representatives must be prepared to negotiate, rather than simply “stonewall”. To “stonewall” is a breach of good faith and a misuse of bargaining power.

- c. Timing and location of any dispute resolution hearing must be mutually agreed and take into account franchisees' limited ability to travel far from their businesses to take part in mediation.
18. Dispute resolution procedures should focus on resolving disputes early, before going to a dispute resolution hearing.
  19. Early resolution of disputes saves time, stress, and money, as well as reducing damage to the franchisor-franchisee relationship.
  20. It is important that any disputes over matters relating to good faith be resolved via a low-cost dispute resolution procedure, because court action is often prohibitively expensive for small business franchisees.
  21. Timeframes for the resolution of disputes encourage early dispute resolution. Franchisors and franchisees must participate in dispute resolution in good faith with the intention to find a solution to the issue.
  22. POAAL supports the enforcing of financial penalties on franchisors that intentionally delay dispute resolution proceedings. There is a power and financial imbalance in favour of the franchisor, meaning franchisors can stonewall and string out proceedings to the detriment of the franchisee.
  23. Potential costs of dispute resolution under the FCC must be disclosed to the franchisee and franchisor prior to the commencement of any dispute resolution proceedings.
  24. Dispute resolution must be available via teleconference, videoconference, online conference or any other remote conferencing tool available to allow for accessible cost-effective dispute resolution for franchisees operating outside of major population centres.
  25. Mediation is only successful as a dispute resolution procedure if both parties are prepared to compromise and negotiate in order to resolve the dispute. If the franchisor is unwilling to compromise then mediation is ineffective.

### **Monitoring disputes**

26. It would be useful if all disputes lodged under the FCC are recorded, with the aim of better understanding why certain disputes arise and if there are ways to prevent such disputes in the future.
27. In the case of disputes that are resolved under the FCC dispute resolution process, it would also be useful for the independent person / mediator to comment on the behaviour of the franchisor in respect to acting in good faith and abiding by the terms of the FCC. There may of course be confidentiality issues to address, however scrutiny and reporting may assist in earlier resolution of disputes.

### **Good faith**

28. POAAL is pleased that the FCC now contains an explicit mutual obligation on franchisors and franchisees to act in good faith.
29. It is important that any disputes over matters relating to good faith be resolved via a low-cost dispute resolution procedure (such as the dispute resolution procedure that applies for LPOs through the LPO Agreement), because court action is often prohibitively expensive for small business franchisees.
30. Good faith on the part of the franchisee is a given, since it is often the franchisee who has the greatest personal involvement in the franchise. It is in the franchisee's best interests to gain maximum value from their business, through their day-to-day business income and the capital growth of the value of their business. Growing the business usually requires acting in good faith towards the franchisor.

### **Penalties to franchisors**

31. There must be a true deterrent for a franchisor as large as Australia Post to abide by the FCC. Court action is expensive and out of reach for small business owners, especially when up against a large corporation like Australia Post with its deep pockets.

### **Other comments**

32. While the FCC relates to regulating the franchising sector and keeping franchisors honest, franchisees want their businesses to be successful. Operational support from the franchisor is a key part of business success. POAAL's experience over decades is that too often operational support (or field management) staff have little understanding of franchising, small business, the FCC, or the franchise agreement. Improving the quality of support offered by franchisors would improve franchisee profitability and reduce the number of disputes between franchisees and franchisors.