



# POAAL

Post Office Agents Association Limited

A.C.N. 006 382 314

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Committee Secretary  
House of Representatives Standing Committee  
on Legal and Constitutional Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

RECEIVED  
08 AUG 2008  
BY: LACA

Dear Secretary,

**Inquiry into whistleblowing protections within  
the Australian Government public sector**

The Post Office Agents Association Limited (POAAL) submits the attached paper for consideration by the House of Representatives Standing Committee on Legal and Constitutional Affairs for the above Inquiry.

POAAL represents the business interests of thousands of small business people. They include the owner/operators (Licensees) of almost 3000 Licensed Post Offices (LPOs). LPOs form almost 80% of Australia's network of post offices. POAAL members are also made up from the 5,000 Mail Contractors who deliver mail and parcels under contract to Australia Post and about 650 Community Postal Agents.

As part of a Government Business Enterprise, our members have an interest in whistleblowing as it applies to the public sector. Our submission addresses the points raised in the Committee's terms of reference and reflects on what is known of Australia Post's current whistleblowing policies and procedures.

If the Committee would like any clarification, POAAL representatives would be available for discussion.

Yours faithfully,

Ian Kerr  
CEO



# POAAL

Post Office Agents Association Limited  
ACN 006 382 314

**SUBMISSION TO THE  
HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL  
AND CONSTITUTIONAL AFFAIRS**

**INQUIRY INTO**

**WHISTLEBLOWING PROTECTIONS WITHIN THE  
AUSTRALIAN GOVERNMENT PUBLIC SECTOR**

**August 2008**

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## BACKGROUND

1. The Post Office Agents Association Limited (POAAL) welcomes the opportunity to comment on whistleblowing protections within the Australian Government public sector.
2. POAAL represents the nearly 3,000 small business owners of the Licensed Post Office network that comprise around 80% of the Australia Post retail network. Our members are also drawn from the approximately 5,000 mail contractors who deliver mail and parcels to Australia Post customers across the country together with around 650 Community Postal/Mail Agents. (Further information on the background of our organisation may be found on our website [www.poaal.com.au](http://www.poaal.com.au)).
3. Our members are all small business owner/operators with an estimated investment of at least one billion dollars in the Postal business alone. They are the front line for the services provided to Australian communities especially in regional, rural and remote areas of Australia.
4. In contrast, they are contracted to one of the largest and most powerful organisations in Australia. Australia Post is a Government Business Enterprise (GBE) regularly ranked as one of the top ten employers and amongst the top six financial performers in the country. Its huge management infrastructure has powerful resources at its disposal to ensure that its interests are protected.
5. Licensed Post Offices are operated under licence from Australia Post. Each LPO forms part of Australia Post's retail and delivery network. Licensees and staff at LPOs have day-to-day dealings with Australia Post staff and management.
6. Mail Contractors deliver mail on contract for Australia Post. Mail Contracts usually have a term of five years. Australia Post requires that all Contractors are incorporated. The Contractor owns or leases the vehicle(s) used to perform the contract. All Contractors report to Australia Post.
7. Licensees, Agents and Contractors deserve protection when reporting illegal or unethical behaviour within Australia Post.
8. Australia Post is considered a trustworthy service provider to all Australians. Its services include mail, banking and other financial services. Maintaining this trust is of paramount importance for such an organisation.
9. As a GBE, Australia Post straddles the government and commercial worlds. It is subject to legislative and government controls, while competing with commercial operations.

10. Whistleblowing must not be viewed in purely negative terms by any Government Department, Government Agency or GBE. A robust and reliable whistleblowing procedure can lead to greater efficiency and reliability of services.

### **Categories of people who could make protected disclosures**

11. Public sector employees who are not employed under the *Public Service Act*, such as employees of Australia Post, must be covered by any whistleblowing protections for the public sector.
12. Australia Post introduced a whistleblower policy with respect to its staff in early 2006. After sustained pressure from POAAL over a period of months, Australia Post extended this policy first to Licensees and then to Mail Contractors.
13. It is POAAL's strong belief that the same whistleblower protections offered to staff must be extended to others who have or had a contractual relationship with Australia Post. By way of comparison, the *Corporations Act* offers protection to office holders, employees, contractors and their employees.
14. Protection should be extended to those whose relationship with the parent organisation has ceased. In the case of Australia Post, it is common for Licensees and Contractors to re-enter the industry after a break. There must be assurances given that there will be no revenge exacted upon re-entry to the industry.
15. Members of the public should also be offered protection. Services offered by a Government Department or GBE must be offered impartially. There must be no threat of alteration or withdrawal of services to a member of the public who reports illegal or unethical behaviour.
16. Similarly, organisations that have a business relationship with a Government Department or GBE should be offered protection. For example, they must not be discriminated against if tendering to provide services. Or in the case of Australia Post contract parcel customers, they must not be subject to unfavourable pricing following any disclosure. While Australia Post may hold a limited monopoly, its strength in the parcels market could lead to unfair dealings with the whistleblower. Australia Post has significant market power in mail and parcels, which would leave business whistleblowers with less competitors from which to choose.

## **Types of disclosures that should be protected**

### 17. Corruption

- a. There have been many allegations of some Australia Post managers giving preferential treatment to some tenderers.
- b. Mail Contracts are awarded via a competitive tendering process. Over the years, there have been many allegations of Australia Post management giving preference or insider information during the tendering process.
- c. At present, there is no avenue for review of the tendering process.

### 18. Illegal activity

- a. All employees, Licensees and Contractors handle mail in accordance with the *Australian Postal Corporation Act*.
- b. The integrity of the mail is sacrosanct. Whistleblowers must have protection to be able to report suspected breaches of the Act without fear or retribution.
- c. The definition of “illegal activity” must include not only any Act specific to the Government Department or GBE, but include all laws and statutes (State and Federal) that apply.

### 19. Improper conduct

- a. An Australia Post circular regarding its then-new Whistleblower Policy noted that improper conduct is a “substantial mismanagement of Australia Post resources”, conduct involving a “substantial risk to public health and safety” or a “very serious breach of the code of ethics” that could lead to prosecution or termination of employment of an Australia Post employee.
- b. This definition is open to interpretation. It may be helpful for any whistleblower policy to contain more concise definitions or examples.
- c. Furthermore, it presumes that all Australia Post employees, management and contractors are familiar with or know the existence of Australia Post’s “code of ethics”. It follows, then, that any relevant Code of Ethics must be widely distributed and publicised.

### Protection against victimisation

20. The protection against victimisation is at the core of any whistleblower policy.
21. Victimisation can take many forms, including:
  - a. Personal victimisation
    - i. Threats against the person
    - ii. Verbal humiliation
    - iii. Discriminatory management practices, including allocation of tasks, shifts, or workload
  - b. Ongoing commercial discrimination
    - i. Refusal to grant consideration to tenders
    - ii. Refusal to negotiate
    - iii. Breaches of the *Trade Practices Act*, including unconscionable conduct
22. People of a non-English speaking background are especially vulnerable to victimisation.
23. Reporting of victimisation
  - a. POAAL suggests that the Commonwealth Ombudsman be used as a safety net for reporting of victimisation following a whistleblowing disclosure.
  - b. The Ombudsman's office is seen as operating at arm's length from any Government Department or GBE and therefore offers credibility. It also has experience in investigating complaints and dealing with members of the public, employees, contractors and businesses.
  - c. As noted by the current Commonwealth Ombudsman, Professor John McMillan, the Ombudsman's office "has experience with statutory powers to obtain information and has staff experienced in handling sensitive material with discretion."<sup>1</sup> This indicates the ability and willingness of the Ombudsman's office to perform this role.

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<sup>1</sup> "Freedom of Information and Whistleblower Legislation: an Australian Perspective", Prof John McMillan, Commonwealth Ombudsman, paper delivered to the 9<sup>th</sup> Asian Ombudsman Association Conference, 30 November 2005  
POAAL Submission – House Committee on Legal and Constitutional Affairs – Whistleblowing

### **Immunity from criminal liability or civil law suits**

24. Where employees or contractors are pressured by misguided management into law-breaking labour practices (whether knowingly or through ignorance of workplace laws), as whistleblowers they should be afforded immunity from prosecution.
25. For example, Licensees and Contractors have a contractual and legal obligation to implement OH&S plans for their business. As business owners, they are responsible for providing a safe workplace for their employees. However, Australia Post demands that some Licensees and Contractors handle and deliver overweight and oversize parcels that fall outside Australia Post's allowable weights and dimensions.
26. It should be noted that the standard Mail Contract contains a confidentiality clause. A breach of the confidentiality clause could result in the termination of the Mail Contract.
27. Any whistleblower policy or legislation must clarify whether or not whistleblowing is considered a breach of contract with respect to confidentiality.
28. It is recommended that future contracts involving Government Departments, Agencies or GBEs include exclusions to the confidentiality clause concerning whistleblowing. These exclusions should enable concerned staff or contractors to report illegal or unethical behaviour under whistleblowing provisions.
29. The whistleblower provisions of the *Corporations Act* protect whistleblowers from civil and criminal liability for making disclosure. This includes instances where an employee breaches confidentiality in order to make the disclosure.
30. It may be appropriate for the Commonwealth Ombudsman to be given the discretion to seek reimbursement for costs incurred where there are repeated proven instances of malicious or false reports.

### **Procedures in relation to protected disclosures**

31. Under the present Australia Post whistleblower policy, improper conduct is to be reported by phone to a central contact service operated by an outside provider.
32. Whistleblowers must be made aware up front of what will happen with any information or personal data that is provided as part of the disclosure process. They must also be given assurances that their information will be acted upon and that their personal details will be protected.
33. The information on whistleblowing provided by Australia Post notes that any whistleblower disclosures "may be investigated internally or by external agencies."

34. With regard to the whistleblower maintaining the confidentiality of any whistleblower disclosures, each situation should be taken on its merit. A disclosure relating to a safety issue that required immediate attention would be different to a disclosure relating to allegations of corruption.
35. Whistleblowers must be made aware at the time of disclosure what investigative agency will most likely carry out the investigation. For example, Australia Post has stated that investigations of criminal or fraudulent behaviour will be investigated by Australia Post's Corporate Security Group. This must be divulged at the time of disclosure.

### **Electronic lodgement and tracking**

36. Whistleblowers should be given the option of submitting information or complaints via electronic means such as email or online forms. Whistleblowers should be given a unique tracking number as an acknowledgement and to allow follow-up.
37. The details of any user (be they employee or contractor) who accesses or downloads whistleblowing information must not be tracked or stored.



## Investigations

38. Complaints must be investigated comprehensively by an impartial body.
39. It is preferable that investigations be carried out by an external body. There is a perception that HR departments focus on the minimisation of complaints and avoidance of litigation.
40. Using an impartial body to investigate complaints should lessen the chances of disillusionment among those whom the policies are supposed to protect.
41. POAAL's experience is that large bodies, such as Australia Post, are overly bureaucratic in handling complaints or disputes. For example, where a dispute arises between a Mail Contractor and Australia Post, the Mail Contractor is directed to firstly take up the matter with his or her Australia Post manager. This is untenable, because it is often with that Australia Post manager that the Contractor is in dispute.
42. By handling investigations of whistleblowing externally, allegations of conflict of interest, interference or impartiality can be reduced.
43. External investigative bodies should report to the Commonwealth Ombudsman (or in the case of Australia Post, the Postal Industry Ombudsman) to enable high level and impartial monitoring of disclosures and the investigative process. The Commonwealth Ombudsman (or PIO, as the case may be) should be empowered to deliver binding recommendations and findings based on the outcomes of the investigations.
44. The Postal Industry Ombudsman is funded on a "user pays" basis, where the PIO charges the postal carrier (for example, Australia Post) when an investigation is made into a complaint against it. If the same funding arrangement were put in place for whistleblowing investigations, there would be an added incentive for the Department or GBE to put proper procedures and policies in place to develop a culture of high ethical standards, probity and security.

### **Procedures and policies**

45. Whistleblowing procedures and policies must be easily available to staff, contractors and management. Ideally, anonymous access to whistleblowing procedures and policies should be available. Failing that, the policy must be provided to all existing employees and contractors, and provided to all new employees and contractors as part of the induction process.
46. It is also recommended that a notice be placed on a staff noticeboard (or similar), summarising the whistleblower policy and giving contact details.
47. For example, Australia Post's whistleblower policy is not available through its intranet. Moreover, Australia Post managers appear unaware of the policy's existence, let alone its whereabouts.
48. POAAL has surveyed its members, who have reported that the promotion of Australia Post's whistleblower policy has been minimal at best. This is a major failing on Australia Post's part. An organisation that prides itself on being ranked as one of Australia's most trustworthy should make every effort to prove its trustworthiness.
49. As part of the whistleblower disclosure process, the whistleblower must be given assurances that their disclosures will be acted upon without delay.
50. In summary, a crucial part of any whistleblower policy is the promotion and awareness of whistleblowing procedures and policies. It should not be incumbent on the employee or contractor to seek out the information.

### **False reports**

51. Australia Post notes that "false or vexatious" reports will be subject to Australia Post's discipline process. This fails to note any definition of "vexatious", or how it would be determined that a report is either false or vexatious. Such a dire warning appears to be aimed less at reducing false reports and more at reducing the likelihood of any whistleblower coming forward.
52. While it is important to ensure the integrity of the process and keep it free from being abused as a method of exercising personal grievances, there must be a commonsense, tactful approach to weeding out false reports.
53. The identification and reporting of any false or vexatious reports must be carried out by an independent body to avoid any undue influence or corruption.

### **Providing a safe working environment for all**

54. An effective and trusted whistleblower policy forms part of an OHS policy because it contributes to a safe working environment. It does this by reassuring staff and contractors that they will not be pressured or forced to act illegally or unethically.

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### **Glossary of Terms Used**

AP	Australia Post
GBE	Government Business Enterprise
CMA	Community Mail Agent/Agency
CPA	Community Postal Agent/Agency
LPO	Licensed Post Office
OHS	Occupational Health & Safety
PIO	Postal Industry Ombudsman
POAAL	Post Office Agents Association Limited

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