



# POAAL

Post Office Agents Association Limited  
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30 January 2012

Committee Secretary  
House Standing Committee on Infrastructure and Communications  
Parliament of Australia  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Sir or Madam,

## **Road Safety Remuneration**

The Post Office Agents Association Limited (POAAL) is the national association for Contractors who deliver mail and parcels under contract for Australia Post. Messenger Post Contractors are also members of POAAL.

The proposed Road Safety Remuneration legislation has implications for Contractors holding delivery contracts with Australia Post.

POAAL's submission to the inquiry is attached.

If the Committee has any questions regarding POAAL's submission, I may be contacted by phone at the POAAL National Office

Yours faithfully

Ian Kerr  
CEO



**POAAL submission to the**

**House Standing Committee on  
Infrastructure and Communications:**

**Inquiry into the Road Safety  
Remuneration Bill 2011 and  
the Road Safety Remuneration  
(Consequential Amendments and  
Related Provisions) Bill 2011**

January 2012

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## **Introduction**

1. The Post Office Agents Association Limited (POAAL) welcomes the opportunity to make a submission to the House Standing Committee regarding the Road Safety Remuneration Bill 2011 and the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011.
2. POAAL is pleased that the Federal Government is taking an interest in road safety for owner/drivers.
3. POAAL represents small business owners in the postal and courier sector, including owner/drivers.
4. POAAL was formed in 1939 to assist the owner/operators of privately owned post offices. There are nearly 3,000 Licensed Post Offices across Australia, comprising about 80% of the Australia Post retail network. In addition, there are in excess of 600 Community Postal/Mail Agents operating agencies in small mostly rural and remote communities.
5. Our members are also drawn from the operators of the approximately 5,500 mail contracts, delivering mail and parcels for Australia Post to customers across the country.
6. 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.
7. Further information on the background of our organisation may be found on our website [www.poaal.com.au](http://www.poaal.com.au).
8. Our Mail Contractor and Courier owner/driver members spend many hours each working day on the road, delivering mail, parcels and other consignments. They are major road users, with a vested interest in road safety.

## **About Mail Contracts**

9. There are over 3000 Mail Contractors operating about 5,500 mail contracts across Australia. Mail Contractors form a significant part of Australia Post's delivery network.
10. Australia Post has engaged contractors to deliver mail and parcels for decades.
11. There are a number of different types of mail contract, including:
  - RSD (roadside delivery) or rural mail contracts
  - Parcel contracts
  - Depot bag contracts
  - Street mail contracts
  - Line haul contracts

12. For the purposes of this submission, the term “Mail Contractors” will refer to all contractors who hold any of the above mail contracts with Australia Post.
13. Some Mail Contractors have employees or subcontractors. Others operate on their own.
14. Mail Contractors own or lease their own vehicles. Some Mail Contractors are based in Australia Post owned and operated facilities, while other work from Licensed Post Offices.
15. Typically, Australia Post awards mail contracts via a competitive tendering process.
16. Australia Post demands that Mail Contractors be incorporated companies, and it is that company that holds the contract with Australia Post.
17. Mail Contractors would be defined as “road transport drivers” under Section 7 of the *Road Transport Safety Remuneration Bill 2011*.

### **The mail contract tendering process**

18. The mail contract tendering process is a competitive tendering process.
19. Australia Post advertises contracts for tender and invites interested parties to submit a tender in a prescribed format.
20. POAAL actively encourages tenderers to submit a tender cost statement that reflects their true operating costs.
21. Australia Post sets out in the tender specification documentation critical factors such as distance, number of delivery points, anticipated volumes of mail/parcels, estimated daily sorting time and estimated daily delivery time.
22. The tender specification documentation also lists other mandatory requirements such as insurance, uniforms and any relevant safety equipment.
23. For many Mail Contractors, Australia Post is their primary hirer. They derive little or no income from other hirers. In these cases, tenderers are expected to base their “labour rate”, that is, the hourly labour costs excluding all other operating costs, on the relevant classification under an applicable transport industry award.
24. In other cases, the mail contract may be only a part of the Mail Contractor’s overall business, meaning that the labour rate may be lower than the applicable award rate.
25. For example:
  - Australia Post advertises for tenders for a mail contract to collect mail from a rural post office (Town A) and bring the mail to a nearby centre (Town B) for processing. The mail is to be collected at 5pm from the rural post office, and the nearby mail processing facility is 30km away.

- Australia Post receives two tenders: one from a sole operator with a van, another from a local bus company.
  - The sole operator's tender is based on the operating costs (including labour rate) for a single person collecting the mail and driving to the mail processing centre.
  - The bus company's tender specifies that the mail would be transported by a local bus, which as part of its existing schedule travels from Town A to Town B each day at the time specified in the tender. The bus company's tender would be considerably lower than the sole operator, as the bus company is already servicing that route.
- It is almost certain that Australia Post would award the contract to the bus company. The bus company offers Australia Post the same service as the sole operator but for a much lower cost by virtue of the lower labour rate.

26. In such cases, it is unclear how any road safety remuneration orders made by the Road Safety Remuneration Tribunal might apply.

27. Often Australia Post will negotiate with tenderers in an attempt to further reduce the price put forward by the tenderer. In these situations, Australia Post staff must tread carefully to ensure that what might be considered good business practice (negotiating as low a price as possible with a supplier) does not cross over into unconscionable conduct (abusing its relative bargaining strength or exerting undue pressure on the weaker party).

### **Messenger Post Contractors**

28. Messenger Post is the national courier division of Australia Post.

29. Messenger Post engages contractors to perform courier deliveries.

30. Messenger Post Contractors may work specific, set courier runs or they may also do ad hoc work as allocated to them by Messenger Post.

31. Messenger Post Contractors would also be defined as "road transport drivers" under the *Road Transport Safety Remuneration Bill 2011*.

32. Messenger Post Contractors have repeatedly raised concerns with Australia Post's Messenger Post management regarding income projections given to Contractors at the time of signing their contract with Messenger Post.

### **Will the Road Safety Remuneration Bill improve road safety for Mail Contractors?**

33. It seems unlikely that the Bill would improve road safety for Mail Contractors.

34. The object of the Bill, as laid out in Section 3, will have only limited application for Mail Contractors.

35. One of the premises of the Bill is that the high accident rate in the road transport sector is directly related to poor pay and conditions for owner/drivers that in turn encourage speeding.
36. There is limited ability for most Mail Contractors to reduce their delivery time through speeding or other dangerous driving practices. The stop-start nature of mail and parcel delivery means that there is little or no benefit from attempting to exceed safe driving practices.
37. Measures that would improve road safety for Mail Contractors would include:
- a. Mandatory, enforceable standards for placement and size of mail boxes;
  - b. Greater public awareness of the dangers posed to Mail Contractors by vehicles reversing from driveways; and
  - c. Improved accuracy of tender specification documentation.
38. There are genuine road safety issues to be addressed, but for Mail Contractors a Road Safety Remuneration Tribunal offers very little in the way of improved road safety.

#### **Protection against unfair contracts**

39. There is existing legislation, in the form of the *Independent Contractors Act (2006)*, which has unfair contract provisions that protect against Contractors being engaged at a rate “that is, or is likely to be, less than that of an employee performing similar work”<sup>1</sup>.
40. This provision offers protection to Mail Contractors and Messenger Post Contractors.
41. The proposed Road Safety Remuneration Bills do not appear to add to those protections. Instead, the Bills seem to merely add to the bureaucracy.

#### **Collective bargaining**

42. Part 3 of the *Road Safety Remuneration Bill* concerns collective bargaining by groups of independent contractors.
43. Collective bargaining is already available under the *Competition and Consumer Act 2010*.

#### **Unconscionable conduct**

44. As noted above in (27), Australia Post may from time to time seek to negotiate contract prices with the Mail Contractor. Some Contractors have previously accused Australia Post of unconscionable conduct in their negotiations.

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<sup>1</sup> Independent Contractors Act (2006), Section 15(c)

45. The *Competition and Consumer Act 2010* provides some protection against unconscionable conduct by hirers.
46. The major drawback of trying to use the unconscionable conduct protections under the *Competition and Consumer Act* is the cost of action and the timeliness of action.

### **Dispute resolution**

47. Access to low-cost and swift dispute resolution is crucial to owner/drivers.
48. Section 42 of the *Road Safety Remuneration Bill* sets out the terms under which the Tribunal may attempt to resolve disputes between a hirer and an independent contractor.
49. POAAL does not consider this to be an effective or appropriate dispute resolution procedure for owner/drivers.
50. Dispute resolution procedures are currently available to owner/drivers under certain State legislation (such as the Victorian *Owner Drivers and Forestry Contractors Act*) however the sector would benefit from a national code.
51. The introduction of the Franchising Code of Conduct and its dispute resolution procedure helped introduce minimum standards of dispute resolution between franchisees and franchisors. POAAL was the driving force behind the dispute resolution procedure. POAAL's campaign to include a dispute resolution procedure in the Franchising Code of Conduct stemmed from the success of the dispute resolution procedure in the LPO Agreement (which governs the relationship between Australia Post and Licensed Post Offices).
52. Disputes need to be resolved at the lowest possible cost, in the shortest possible time and at the lowest possible level.
53. The *Road Safety Remuneration Bill*, however, is vague on how disputes may be resolved, the timeframes involved and the division of costs among the parties to the dispute.
54. A mandatory code of conduct, modelled on the Franchising Code of Conduct, would provide greater protection to owner/drivers.

### **Better contracts**

55. Other transport industry stakeholders have raised concerns regarding factors such as "wait times", when an owner/driver has to wait unreasonable lengths of time to load or unload their vehicle. This points to a problem with the contract underpinning the work, rather than a problem that requires legislation. The contract should specify penalties payable to the owner/driver if the owner/driver is kept waiting for an unreasonable length of time.

56. It has been observed that hirers can be unwilling to negotiate the terms of a contract with an owner/driver. The owner/driver is presented with a “take it or leave it” offer, and the owner/driver, who may have already invested in a commercial vehicle and is feeling pressure to win a contract, may accept a contract even when it is not in the owner/driver’s best interests to do so.

57. An industry code of conduct could address some of these issues.

### **Recommendations**

58. POAAL recommends that the legislation in its current form be rejected.

59. A mandatory industry code of conduct would resolve many of the problems identified, including dispute resolution and more equitable contract terms.

60. Owner/drivers must have available to them clear and easy to access channels to the unfair contract and unconscionable conduct provisions of existing legislation.

61. Owner/drivers must be allowed to negotiate contract provisions in good faith.