

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates 1 - 2 November 2006

**Question:** sbt 27 (ACCC)  
**Topic:** Franchisees: Licensed Post Offices  
**Hansard Page:** Written

**Senator CONROY asked:**

- (1) Has the ACCC investigated cases where Australia Post (Franchisor) fails to disclose local specific information to Licensees (Franchisees) in the Disclosure Document (as required under the Franchising Code of Conduct)? What has been the outcome of these investigations?
- (2) Does the ACCC ensure that all parties attending mediation under the Franchising Code of Conduct dispute resolution procedure show their authority to make a decision at the time. If not, please explain why?
- (3) Does the ACCC check the Office of the Mediation Adviser process used by franchisors/franchisees (under the Franchising Code of Conduct) to ensure that franchisors with more power, resources and time do not dominate proceedings, and do not unnecessarily extend the time, thus causing financial hardship to franchisees.

What review process does the ACCC undertake in regard to franchisee/franchisor mediation through the Office of the Mediation Adviser (OMA)?

- (4) What can the ACCC do to help post office Licensees/franchisees when Australia Post, makes unilateral changes to the contract (franchise agreement)? Can the ACCC assist post office Licensees/franchisees in enforcing the franchisee, Australia Post, to respond in writing to requests, queries, and so on from franchisees?

**Answer:**

- (1) The Australian Competition and Consumer Commission (ACCC) has not to date received any complaints raising allegations of breach of the disclosure provisions of the Franchising Code of Conduct (the Code) relating to failure to supply by Australia Post of local specific information about licensed post offices.
- (2) The Code provides for two distinct dispute resolution mechanisms:
  - An internal complaint handling system through which the franchisee and franchisor can resolve the dispute without the involvement of external parties;

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- Mediation which is conducted by an independent mediator. The mediator can be either agreed upon by both parties or appointed by the Office of Mediation Advisor.

The Code does not provide for the ACCC to be involved in the mediation process and does not confer upon the ACCC the power to demand disputing parties show their authority to make a decision.

- (3) No. The Code does not provide for the ACCC to be involved in the mediation process. The OMA is an independent body and the ACCC does not have the role of reviewing its work. The Office of the Mediation Advisor reports to the Office of Small Business within the Department of Industry Tourism and Resources.
- (4) The ability of the ACCC to assist Post Office licensees/franchisees when Australia Post makes unilateral changes to the franchise agreement is likely to be determined by the provisions of the franchise agreement itself. If it is the case that the franchise agreement confers on Australia Post the ability to make unilateral changes to the franchise agreement and franchisees execute the agreement knowing that provision exists, it may be the case that Australia Post could not be found to be in breach of the agreement per se. However, there may be circumstances under which the exercise of a unilateral variation power may be indicative of a breach of s.51AC – the unconscionable conduct provisions of the TPA. If it were the case that the conduct of Australia Post was likely to contravene s.51AC of the TPA, the ACCC would be prepared to undertake an investigation into the matter.

The ACCC recommends franchisees seek legal advice about the franchise agreement and thoroughly understand the contract. The ACCC has a number of franchising publications designed to assist franchisees in their due diligence efforts prior to signing a franchise agreement. These publications are available free of charge on line at [www.accc.gov.au](http://www.accc.gov.au) or via the Small Business Helpline on 1300 302 021.

Any failure by Australia Post to respond in writing to queries from its licensees/franchisees is not a contravention of the TPA or of the Franchising Code of Conduct.