



# POAAL

Post Office Agents Association Limited  
A.C.N. 006 382 314

Submission to:  
The Senate Employment, Workplace Relations and  
Education Legislation Committee

Independent Contractors legislation

**Submitter:** Ian Kerr

**Organisation:** Post Office Agents Association Limited (POAAL)

**Address:** PO Box 18042  
COLLINS ST EAST VIC 8003

**Phone:** 03 96544533

**Fax:** 03 96544577

**Web:** [www.poaal.com.au](http://www.poaal.com.au)

July 2006

## **Background**

The Post Office Agents Association Limited (POAAL) welcomes the opportunity to provide a written submission on behalf of its members regarding proposed Independent Contractors legislation.

POAAL's members who hold contracts with Australia Post have a strong interest in developments in this area.

Australia Post contracts out a large portion of its delivery network. According to its 2004/2005 Annual Report, there were 5421 mail contracts Australia-wide.

## **About POAAL**

The Post Office Agents Association Limited (POAAL) is the national independent body that represents Licensees (the owner/operators of Licensed Post Offices) and Contractors who deliver mail under contract to Australia Post.

POAAL was formed in 1939 to assist the owner/operators of privately owned post offices. Today, there are almost 3000 privately owned post offices spread across Australia and they form almost 80% of the retail postal network. In addition, there are more than 600 Community Mail/Postal Agents operating Agencies in small mostly rural and remote communities.

Mail Contractors: POAAL also assists Mail Contractors. There are over 5000 mail contracts across Australia, ranging from contracts to deliver parcels in capital cities through to rural roadside delivery mail contracts that can cover hundreds of kilometres of outback Australia. Many Licensees and Community Mail/Postal Agents have a dual role as they are also Mail Contractors.

There are significant numbers of Mail Contractors who operate their mail services in rural and remote areas. These loyal and committed people fulfil community service obligations, and the local residents are very appreciative of their presence and service to the community. They ensure that mail (both business and private), including medicines and educational material, is delivered, despite extremes of weather, terrain and distance.

Couriers: POAAL also has a category of membership for couriers. POAAL's courier members are sole-operators or work as a courier on contract to a courier company. Couriers who work on contract to a courier company face the same challenges as Mail Contractors.

## **Definition of an independent contractor**

There does not appear to be any precise definition of an independent contractor as it relates to the legislation. A lack of a precise definition will cause uncertainties.

## **Use of Contractors by Australia Post**

AP uses contractors to keep some costs to a minimum. In the case of Mail Contractors, AP keeps its delivery and administration costs low by using Mail Contractors to deliver mail. Mail Contracts are usually for a specified term, typically for three or five years. Contractors are selected following a competitive tendering process.

It could be queried if in reality Mail Contractors, and indeed a great number of independent contractors, are in fact truly independent. The terms of their contract and in many cases the nature of the industry dictates that they are tied to one particular company or corporation. However, they still require protection under legislation.

There are several classes of mail contracts, such as:

- Parcel Contracts – delivering parcels, usually to metropolitan areas
- Street Mail Contracts – delivering letters, usually to outer metropolitan areas, regional towns and small country towns
- Roadside (RSD) Contracts – delivering a mix of mail to rural and remote communities
- Line Haul Contracts – transporting large consignments of mail from one point to another
- MessengerPost Contracts – Australia Post-branded courier service
- Depot Bag Contracts – transporting bags of mail to pickup points for street delivery

By using Mail Contractors, AP makes savings in areas such as superannuation, holiday and sick leave entitlements, long service leave entitlements, staff administration, vehicle costs, fuel costs, and workers compensation. For instance, some rural contracts only take a few hours per week, meaning that it would be inefficient for AP to provide a staff member and vehicle to perform this mail service. Other longer mail runs could mean that AP would have to pay overtime rates.

The contract between AP and the Mail Contractor specifies the Mail Contractor's obligations and the costs that the Mail Contractor will bear. For example, Mail Contractors must:

- Form a company;
- Provide their own vehicle (to meet AP's specifications) and meet all vehicle running costs;
- Place appropriate insurances, such as public liability insurance and marine cargo insurance; and
- Pay workers' compensation insurance (where appropriate).

AP uses a standard mail contract. The contract is made between Australia Post and the Mail Contractor's company. The mail contract is then customised for each mail service, making allowance for the class of mail service and for the delivery area. In theory, Mail Contractors can negotiate the terms of the contract with Australia Post, but in reality the AP staff who handle mail contracts are not given the flexibility to negotiate on any items other than cost items.

While many mail contracts are in place because it is more appropriate for the mail service to be performed by a contractor, there are increasing sentiments that AP is using contracting purely as a method to distance the corporation from some costs and risks. There is a strong feeling among contractors that AP is in some cases not acting merely to reduce costs but has possibly crossed over into exploitation.

### **Nature of the relationship**

The mail contract sets out the boundaries of the relationship between AP and the Mail Contractor. The mail contract is specific in defining the relationship as a contract relationship. Clause 4 (Status of Contractor) of the mail contract outlines the relationship.

*4.1 The Contractor is an independent contractor and shall not for any purpose in connection with the provision of Services or otherwise represent or hold itself out to be or act as or be or be deemed to be an employee or agent of Australia Post. Nothing in this Agreement either express or implied shall give rise to the relationship of employer and employee, principal and agent, or partnership between Australia Post and the Contractor.*

The Clause goes on to specify that the Mail Contractor acknowledges and accepts that Australia Post is not responsible for payments of any employer obligations and that the Mail Contractor must keep Australia Post indemnified against any payments by Australia Post of employer obligations or employee obligations.

### **Dispute resolution**

The mail contract contains an inadequate and inappropriate dispute resolution procedure for the majority of Mail Contractors. The procedure outlined in the mail contract has two stages – first, the Mail Contractor and an AP representative meet to discuss the problem, and if no resolution can be found then the matter is referred straight to arbitration. Arbitration is expensive and usually beyond the means of Mail Contractors. Thus Contractors do not proceed with it.

It would be more suitable if there were a low-cost dispute resolution procedure available to Mail Contractors.

Independent contractors do not have the resources of the companies and organisations to which they are contracted, which comes into play when there are disputes between the two parties. There needs to be some protection for

independent contractors, perhaps in the form of a low-cost, simple dispute resolution procedure. Many contract disputes are minor and do not warrant going to court, where the legal and other costs involved in many instances exceed the amount in dispute – if indeed the dispute is about monetary considerations.

A multi-stage dispute resolution procedure would be appropriate, with scope to allow disputes resolved as early as possible at as low a level as possible with as little cost as possible. Any dispute resolution procedure must compel both parties to discuss and negotiate in good faith. While obviously there must be allowance for disputes that cannot be resolved via the procedure to progress to court, it is strongly recommended that court action may only be taken if dispute resolution has failed. (Otherwise the possibility exists for companies to force contractors to go straight to court, rendering any dispute resolution procedure redundant.)

It is strongly recommended that any dispute resolution procedure does not involve lawyers – at least in the initial stages – as the costs and time frames involved with legal disputes can result in delays and additional costs, often at the expense of the independent contractor. Small individual contractors do not have the resources of their principals.

A suggested multi-stage dispute resolution procedure could be modelled on the dispute resolution procedure that exists for disputes between Australia Post and its Licensees. The procedure is low cost, allowing disputes to be resolved at a minimum cost to both parties. The first stage of the dispute resolution procedure involves the Licensee and Australia Post manager meeting to discuss the problem. If there can be no resolution at stage 1, the dispute progresses to stage 2. At stage 2, representatives of the Licensee and AP meet to try to resolve the dispute. If no resolution can be found, then the dispute is referred to stage 3.

At stage 3, an independent person meets with a representative of the Licensee and a representative of AP. The parties then agree whether to use mediation, arbitration, or any other dispute resolution method.

POAAL would welcome the introduction of an independent and inclusive dispute resolution procedure for Mail Contractors, designed to resolve disputes as quickly and cost-effectively. This would allow both parties to get on with business as quickly as possible instead of facing the prospect of potentially lengthy and costly legal proceedings.

We believe that any Federal legislation for independent contractors must contain a basic, low cost, “good faith” dispute resolution procedure.

### **Collective strength and unfair and unconscionable conduct**

Contractors must be permitted to group together to lobby or negotiate on certain issues, be it grouping by worksite, company or industry. The principle here is choice, in that contractors must have the choice to “go it alone” or seek the comfort of collective strength.

In the case of Mail Contractors, each individual Mail Contractor has to tender for a mail contract with AP, and each individual contractor is responsible for managing their relationship with AP. The General Terms and Conditions section of each Mail Contract is fundamentally the same, and provision must be made for Mail Contractors to be able to band together in order to effectively negotiate with AP on matters of broader interest. The recent Trade Practices Act Bill before Parliament contains provision for small businesses to band together to negotiate with large corporations – this is a welcome sign that the Parliament is concerned about unconscionable conduct and unfair dealings in relation to small businesses, including independent contractors.

There is already some protection for Mail Contractors against unfair and unconscionable conduct under the *Trade Practices Act*. It is important that small parties that negotiate with large parties (for instance Mail Contractors negotiating with AP) have some legal protection to ensure that the larger party cannot deal with them unfairly or in an unconscionable manner.

It can happen that large parties to contracts can make threats, which may not always be explicit but may sometimes be implied. That does not diminish the effectiveness of the threat.

Nevertheless, Mail Contractors cannot afford legal remedy when it comes to unfair and unreasonable conduct, and are often ignorant of the protections available to them.

### **Occupational Health & Safety**

There are mutual obligations under OH&S. In the case of Mail Contractors, the contract specifies that the contractor is responsible for certain OH&S obligations. However, where the Mail Contractor works out of an AP mail facility there is interaction with other Mail Contractors and AP staff, in which case AP must provide a safe working environment for the Mail Contractor.

Contracts can be a good way for companies to reduce costs and increase efficiencies, but it does not lessen any of their OH&S responsibilities.

### **Harassment**

While the relationship between Mail Contractors and AP may be a contractual one, it is still incumbent upon AP to ensure that its dealings with Mail Contractors (and Mail Contractors' staff) are professional.

For instance, POAAL has written to AP requesting that AP put in place a harassment policy relating to Mail Contractors. There are similar safeguards in place for AP corporate staff, and there is no reason why AP's contractors can't be afforded the same protection.

## **Payments of invoices and entitlements**

Independent contractors' principals can sometimes withhold payments, causing major problems to contractors who have their own business expenses to pay.

Withholding payments has been used by principals as a cruel and unnecessary way to resolve disputes with independent contractors. It is grossly unfair, especially where there are severe penalties for the contractor if they withhold their own services. This further underlines the need for a dispute resolution procedure.

## **Diminution of rights**

AP requires that all Mail Contractors be incorporated entities. When this requirement was introduced in 2002, many Mail Contractors feared that AP was trying to diminish Mail Contractors' rights.

Any Independent Contractors legislation introduced must ensure that there are no "backdoor" methods for companies using contractors to diminish contractors' rights.

## **Couriers working under contract**

Many courier companies engage contract drivers. Usually, the contract driver has to provide a vehicle and be responsible for all their own business costs.

These courier drivers experience many of the same difficulties that Mail Contractors face, such as:

- Lack of a simple, low-cost dispute resolution procedure;
- Allegations of unfair or unconscionable conduct on behalf of courier principals;
- Queries regarding OH&S responsibilities; and
- Harassment.

The legislation must help protect couriers.

## **Conclusion**

POAAL supports the use of Mail Contractors as part of AP's delivery network. These arrangements help AP remain competitive in the very competitive parcels and logistics market.

Mail Contractors work under AP's direction, however they provide their own vehicle and are responsible for all their own business costs.

It is vital that independent contractors have the right to pursue and are not prevented from pursuing collective negotiation, either within the workplace, with a company, or within an industry.

Contractors must be afforded some of the basic rights of employees, such as provision of a safe working environment, especially where the Contractor works alongside employees or other contractors. By contracting work, a company does not lose its obligations to provide a safe working environment for its contractors.

Independent contractors must be protected from predatory, unfair or unconscionable conduct on the part of the company to which they are contracted. The protection of a dispute resolution process would be welcomed.

Contractors would support the introduction of an independent, low-cost and simple dispute resolution procedure which requires the parties to participate in good faith. Lessening the need for legal action in contractual disputes would strengthen all industries where independent contractors are involved.

Care must also be taken that the Independent Contractors legislation does not weaken any existing unfair contract laws.

The courier industry also sees widespread use of contractors. Contract courier drivers share many common issues with Mail Contractors, including their dealings with their contractual principal. Couriers would benefit greatly by being recognised as independent contractors or small business people rather than de facto employees with all the responsibilities of employees but without the rights of employees.

Many of our comments and observations made in relation to Mail Contractors and couriers could also apply to a range of other independent contractors. While we support the use of independent contractors, we do not support their exploitation.



**Abbreviations and Glossary**

AP	Australia Post
LPO	Licensed Post Office
OH&S	Occupational Health & Safety
POAAL	Post Office Agents Association Limited
RSD	Roadside Delivery