

# Chapter 6

## Overview of Licensed Post Office arrangements

### Introduction

6.1 Licensed Post Offices (LPOs) are Australia Post outlets that are not owned and operated directly by Australia Post but are independent businesses that hold a licence to provide Australia Post products and services.

6.2 The 2,895 LPOs operating in Australia represent over 65 per cent of Australia Post's total retail outlet network. In particular, over 1,600 LPOs operate in rural and remote areas, representing approximately 63 per cent of all non-metropolitan Australia Post outlets.<sup>1</sup> The LPO Group estimated an aggregate capital investment by licensees of approximately \$1.5 billion.<sup>2</sup>

6.3 The following discussion provides an overview of the LPO model, the LPO Agreement and representation of LPOs.

### Introduction of the LPO model

6.4 With the introduction of community service and commercial obligations in the *Australian Postal Corporation Act 1989*, Australia Post sought to change its retail model based on postal agencies (which operated under arrangements dating back to 1942) to a model offering a greater array of services on a commercial basis.

6.5 Australia Post, in consultation with the Post Office Agents Association Limited (POAAL), formulated a plan to convert postal agencies to LPOs. This involved moving to the current LPO business model, based on 'a commercial framework with in-built incentives to improve profitability thus giving licensees greater freedom to grow their own businesses with the benefit of Australia Post's brand and foot traffic'.<sup>3</sup>

6.6 The basis of the new arrangement was the LPO Agreement, which 'is a contract with an indefinite term and no defined territory'.<sup>4</sup> The LPO Agreement includes such matters as the obligations of Australia Post and licensee, termination of the agreement and fees, commissions and discounts.<sup>5</sup>

6.7 Existing Post Office Agents were given the opportunity to opt-in to the new agreement, and provided top-up payments where the new LPO agreement provided

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1 Australia Post, 'Licensed Post Office (LPO) information', <http://auspost.com.au/about-us/licensed-post-office-information.html> (accessed 20 November 2013).

2 LPO Group, *Submission 65*, p. 9.

3 Australia Post, *Submission 8*, p. 25.

4 Australia Post, *Submission 8*, p. 25.

5 A copy of the agreement is available at Australia Post, *Submission 8*, Appendix 1.

less remuneration than under their previous arrangements. Australia Post indicated that currently 140 rural and remote LPOs remain in receipt of this payment.<sup>6</sup>

6.8 POAAL informed the committee:

The underpinning principle of Licensed Post Offices under Retail Post was that privately-owned post offices would no longer be dependent upon Australia Post for their total income.

Licensed Post Offices would be able to offer Australia Post's products and services, while operating in-conjunction with another business or simply offering other complementary services and products...The LPO arrangements would give protection and support to LPO owners and be sufficiently flexible to cope with changes over the years to come.<sup>7</sup>

6.9 POAAL also noted that the 'Special Conditions' clause of the LPO Agreement can be customised for local conditions and allows for negotiation between the licensee and Australia Post.<sup>8</sup>

6.10 POAAL concluded that as a result of the implementation of the LPO arrangements:

- a. The network was tightened.
- b. Agents operating tiny Post Office Agencies were given the opportunity to leave the business gracefully.
- c. Retail technology was extended to more post offices.
- d. Australia Post had a fresh image, and Australia Post would provide signage to LPOs.
- e. Simple, easy-to-understand payment scheme for LPOs.
- f. Australia Post's retail network was transformed from a loss-making network to a profitable, modern and efficient network.<sup>9</sup>

### ***Types of LPOs***

6.11 LPOs are owned through a variety of entities and structures, including sole practitioners, partnerships and corporations. In some instances, multiple LPOs are owned by the same principals.<sup>10</sup>

6.12 LPOs operate as either standalone – that is, run solely as a post office – or 'in conjunction' businesses. Standalone LPOs account for 42 per cent of total LPOs. The 'in conjunction' LPOs operate with a host business. This is encouraged by Australia Post, particularly in smaller communities.<sup>11</sup>

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6 Australia Post, *Submission 8*, p. 25.

7 POAAL, *Submission 9*, pp 3 and 4.

8 POAAL, *Submission 9*, p. 4.

9 POAAL, *Submission 9*, p. 4.

10 LPO Group, *Submission 65*, p. 9.

11 Australia Post, *Submission 8*, pp 20–21, 43.

6.13 There was some discussion among stakeholders about the extent to which 'in conjunction' LPOs are still dependent on Australia Post for their income. Mr Fahour, CEO, Australia Post, informed the committee that for many LPOs operating in conjunction with another business, 'postal services are, on average, around 10 to 30 per cent of their total activities'. Mr Fahour stated that Australia Post has 'no visibility' on the rest of the business activities undertaken by LPOs.<sup>12</sup>

6.14 In contrast, licensees informed the committee that, while 56 per cent of LPOs are labelled 'in conjunction' businesses, this simply means that they are authorised to offer some non-Australia Post products or services, even if this is a very small proportion of their overall business. Ms Angela Cramp from the LPO Group noted:

...I have been given the right to change the status of my LPOs to 'in conjunction' offices, which will allow me to sell gift cards and stationery. It might be two to five per cent of my turnover, and that would put me in the 56 per cent which Australia Post is saying is 'in conjunction'...It is an unclear statistic. Fifty-six per cent of post offices may well be stamped 'in conjunction', but most of them would be like me. I can have a small range of gift ware and greeting cards which are non-Australia Post. That allows my office to be an 'in conjunction' office. In reality, I have three stand-alone post offices and I do not have any capacity to take on other businesses.<sup>13</sup>

### ***The number of LPOs***

6.15 A licence to operate an LPO is granted as an indefinite licence (rather than a licence with a fixed period). Over time, the number of LPOs decreased: from 2,963 in 2009–10 to 2,895 as at 31 October 2013.<sup>14</sup> The change to the number of LPOs was generally the result of closures, with only a small number of new licences being issued.

**Table 6.1: Closures of LPOs**

<b>Financial year</b>	<b>Number</b>
2009–10	8
2010–11	13
2011–12	11
2012–13	16

*Source: Australia Post, Answer to written question on notice Nos 1 and 2.*

12 Mr Ahmed Fahour, Australia Post, *Supplementary Estimates Hansard*, 19 November 2013, p. 18.

13 Ms Angela Cramp, LPO Group, *Committee Hansard*, 6 December 2013, pp 6–7.

14 Budget Estimates 2012, Australia Post, *Answer to question on notice*, No. 236; Supplementary Estimates 2013, Australia Post, *Answer to question on notice*, No. 65.

6.16 In the five-year period to May 2013, 55 LPOs closed permanently: 19 in metropolitan areas; and 26 in rural/remote areas.<sup>15</sup>

*Trading of licences in the secondary market*

6.17 On average, 260 LPO licences have been traded annually over the last six years, with 270 licences bought and sold in the 2012–13 financial year. Purchases of LPO licences are mediated through business brokers and Australia Post has no control over the purchase price. Australia Post does, however, assess the suitability of prospective licensees before the purchase can occur.<sup>16</sup>

6.18 Australia Post indicated that 73 per cent of LPOs have had their licence for less than 10 years.<sup>17</sup> Australia Post also commented that it could not provide information where a buyer is not able to be found for an LPO as this is not captured on a central database.<sup>18</sup>

6.19 POAAL provided information on the LPO sales market and stated that LPOs 'continue to be seen as stable small businesses to own'.<sup>19</sup> However, since the global financial crisis, the LPO market has been slow. The value of post offices has, on average, fallen from five to six times the annual adjusted net profit figure to around 3.8 to 4.3 times in metropolitan areas. In rural areas, LPOs are currently valued at around three times the adjusted net profit figure. POAAL commented that:

This decline could be seen as a commercial-based reduction, as prices for post offices were very high and the market forces adjusted the value.<sup>20</sup>

6.20 In particular, purchase prices for country LPOs, where the adjusted net profit is under \$100,000, are being squeezed. POAAL stated that this is typically because potential buyers do not wish to purchase a business, with an adjusted net profit under \$100,000, and have to work in the business for five to five and a half days a week.<sup>21</sup>

*Termination of licences*

6.21 Licences may be terminated by Australia Post or the licensee. The LPO Agreement provides for termination of a licence with cause by Australia Post under several circumstances, including where a licensee breaches the terms of the LPO Agreement and does not remedy those breaches within 30 days. Actions that may lead to termination of a licence include fraudulent conduct, the abandonment of the

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15 Budget Estimates 2013, Australia Post, *Answer to question on notice*, No. 160.

16 Australia Post, *Submission 8*, p. 26.

17 Australia Post, *Submission 8*, p. 43.

18 Supplementary Estimates 2013, Australia Post, *Answer to question on notice*, No. 65.

19 POAAL, *Submission 9*, p. 12.

20 POAAL, *Submission 9*, p. 12.

21 POAAL, *Submission 9*, p. 12.

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business, a network planning decision around the establishment of a new outlet or an irreparable break-down in the licensor/licensee relationship.<sup>22</sup>

6.22 Under the LPO Agreement, either party may terminate the agreement without cause, with a notice period of 90 days. Examples where this provision has been invoked include the establishment of a corporate outlet in close proximity to an existing LPO in a new regional shopping centre location and the unresolvable breakdown in the relationship between Australia Post and a licensee.<sup>23</sup>

6.23 In cases where Australia Post terminates an agreement the payment of compensation is subject to the circumstances surrounding the termination of the Agreement, for example, compensation would be payable if Australia Post took steps to close an LPO as part of a network planning decision.<sup>24</sup>

6.24 Australia Post noted that in relation to licenses terminated by the licensee (rather than traded):

LPOs and CPAs [community postal agencies] are run by small business operators, many in conjunction with another business. Agents may terminate for a number of reasons including availability of premises when a lease expires, closure of the business that hosts the LPO or CPA or for a range of personal reasons. In these instances, Australia Post seeks expressions of interest to try to secure a new operator to ensure continuity of postal services.<sup>25</sup>

6.25 At the November 2013 Supplementary Estimates, Mr Fahour commented on closures of LPOs:

There are a number of reasons they give as to why they want to hand back their licence and why they cannot sell it on. The biggest and most prevalent reason that we hear is that they are retiring. They have reached an age where they do not want to do this business anymore...

Obviously they will try to sell the business, but there are some who are in some communities in some places where their total business is not of a state where anybody else in the community wants it.<sup>26</sup>

6.26 Australia Post provided information on termination of LPO agreements.

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22 Supplementary Estimates 2013, Australia Post, *Answer to question on notice*, No. 52

23 Australia Post, *Answer to written question on notice*, No. 4.

24 Budget Estimates 2013, Australia Post, *Answer to question on notice*, No. 160.

25 Supplementary Estimates 2012, Australia Post, *Answer to question on notice*, No. 6.

26 Mr Ahmed Fahour, Australia Post, *Supplementary Estimates Hansard*, 19 November 2013, p. 27.

**Table 6.2: Terminations of LPO agreements, 2010–11 to 2012–13**

	2010–11	2011–12	2012–13
Agreement terminated by Australia Post with cause	5	4	0
Agreement terminated by Australia Post without cause	0	2	0
Agreement terminated by licensee	15	13	10

Source: Australia Post, Submission 8, p. 32.

### **Location of LPOs**

6.27 Australia Post has 2,561 retail outlets in rural and remote areas. The majority of these, 64 per cent, are LPOs. The majority of rural and remote LPOs are run in conjunction with a host business.

**Table 6.3: Rural and remote network**

	<b>Rural</b>	<b>Remote</b>
Corporate Post Offices	223	21
Licensed Post Offices	1357	268
Community Postal Agencies	456	236
<b>Total</b>	<b>2036</b>	<b>525</b>

Source: Australia Post, Submission 8, p. 23.

6.28 Australia Post noted that it did not capture on any central database the mail volumes passing through LPOs in regional areas.<sup>27</sup>

### **Support provided by Australia Post to licensees**

6.29 Australia Post stated that licensees receive a range of benefits associated with being part of the Australia Post LPO network which include:

- being part of a highly trusted and recognised brand which drives foot traffic into their business which can be leveraged for host business sales;
- benefitting from the continual product development/customer acquisition strategies of Australia Post; and
- that the cost associated with these benefits is typically borne by Australia Post and provided either free of charge or at a subsidised rate to licensees.<sup>28</sup>

27 Budget Estimates 2013, Australia Post, Answer to question on notice, No. 161.

28 Australia Post, Submission 8, p. 32.

6.30 Other support provided by Australia Post to licensees includes technology such as point of sale technology, site communications equipment and hand-held scanners; product and service marketing; training; and credit arrangements.<sup>29</sup>

### **The LPO Agreement**

6.31 LPOs are subject to a number of licensing and trading conditions under their agreement with Australia Post. These conditions are outlined in the LPO Agreement and other related documents.<sup>30</sup> Additionally, the relationship between Australia Post and licensees is subject to the Franchising Code of Conduct, a mandatory industry code regulated by the Australian Competition and Consumer Commission (ACCC).

6.32 The LPO Agreement is made up of a number of individual components including but not limited to:

- contractual terms for Australia Post's relationship with its licensees;
- basis of payment to licensees; and
- operational and accounting instructions.<sup>31</sup>

6.33 Australia Post noted that:

While the contractual terms between Australia Post and its licensees have remained largely unchanged since the inception of the LPO Agreement in 1993, the other elements of the Agreement such as the payment scheme and operational procedures are subject to constant review in line with changing business requirements. This results in, for example, annual adjustments to payments in line with price adjustments for a large majority of products and services. Any changes to either the LPO payment scheme or operational procedures are subject to consultation with the licensee representative body, the Post Office Agents Association Limited (POAAL).<sup>32</sup>

### ***Australia Post's obligations***

6.34 Australia Post's obligations under the LPO Agreement includes obligations to provide the licensee with:

- relevant operational manuals;
- product and services information; and
- initial and ongoing training covering the postal system generally and operating procedures relating to LPOs.

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29 Australia Post, *Submission 8*, p. 32–34.

30 Related documents include the LPO Manual and the LPO Operating and Accounting Procedures; see Australia Post, *Submission 8*, p. 29.

31 Australia Post, *Submission 8*, p. 28.

32 Additional Estimates 2013, Australia Post, *Answer to question on notice*, No. 84.

6.35 In addition, the LPO Agreement requires Australia Post to 'use its best efforts to maximise sales of Products and Services to the mutual benefit of the Licensee and Australia Post'.<sup>33</sup>

### ***Licensee obligations***

6.36 Under the LPO Agreement, licensees are required to provide certain 'mandatory' products and services to customers, as well as an obligation not to offer products that compete with specified products and services provided through Australia Post. The mandatory products LPOs are obliged to provide are postage assessment, mail acceptance and delivery and agency banking and bill-pay.

6.37 Australia Post noted that in addition to mandatory products, it offers licensees a range of additional products that LPOs may choose to sell to enhance their business and meet local customer needs.<sup>34</sup> LPOs may also source products for sale from suppliers other than Australia Post.

6.38 Licensees are obligated to maintain the premises from which the LPO is operating, and may only change location with the agreement of Australia Post. The licensee must pay costs associated with any fit-out, set-up and maintenance costs relating to the premises, and is obligated to staff the LPO appropriately and meet all staffing costs.

### ***Payments made to LPOs under the LPO Agreement***

6.39 The remuneration structures for LPOs are based on several different components, which are detailed in Annexure A of the LPO Agreement and the LPO payment scheme. The payment amount for each component is reviewed in June each year, with licensees being advised of any variations.<sup>35</sup>

6.40 The Australia Post income streams delivered to licensees are derived from:

- the sale of letter and parcel products, on which licensees receive a percentage-based purchasing discount from Australia Post;
- processing and delivery fees for mail related services such as post office box servicing;
- commissions for processing 'trusted service' transactions such as bill payments and banking; and
- some other subsidies, top up payments and discounted merchandise available from Australia Post.<sup>36</sup>

6.41 In addition, Australia Post informed the committee that arrangements exist for licensees to be provided with a minimum annual payment:

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33 LPO Agreement, Clause 11.

34 Australia Post, *Submission 8*, p. 20.

35 Australia Post, *Submission 8*, p. 28.

36 Australia Post, *Submission 8*, p. 36.

In order to ensure that all licensees are fairly compensated, Australia Post provides a minimum annual payment to licensees who have an annual income from Australia Post of less than \$13,995. This payment was initially established with POAAL in 2002 at \$10,000 and is reviewed every year.

- There are currently 154 (5%) LPOs in this category,
- The cost of providing this support to licensees was around \$480,000 in 2012/13.

The majority (94% – 146) of LPOs receiving the minimum payment are in rural and remote Australia. In some cases this represents a commensurately reduced level of service based on community expectation, for example reduced opening hours.<sup>37</sup>

6.42 Changes have been made to payments during the course of this inquiry. These are discussed in detail in Chapters 7 and 8.

### *Assessments of the LPO Agreement*

6.43 The LPO Agreement has been in place since the establishment of the LPO model in 1993. Amendments have made from time to time to the LPO Agreement.<sup>38</sup>

6.44 Some submitters, including the LPO Group, considered the LPO Agreement was inadequate and outdated particularly in relation to payment arrangements. One licensee stated:

Quite simply the LPO business arrangement with Australia Post is based on an LPO agreement which has put together in the late 1980's and was based on the basic rate of postage. It is an out dated document, and although they are observing their community service obligation to our area, the antique nature of this agreement does not reflect the work that licensees are doing on behalf of Australia Post.<sup>39</sup>

6.45 Mr Andrew Hirst, LPO Group, commented:

The 1993 LPO agreement is broken. It is well past its use-by date. Its payment regime no longer works. It has not worked for well over a decade...The evidence is that the LPO agreement has not kept up with business for more than a decade, and such is the case that it is a yardstick of the very fears I am putting forward.<sup>40</sup>

6.46 The LPO Group recommended that an independent arbitrator be appointed to review the terms and conditions of the LPO Agreement with a view to ensuring that it adequately respond to the contemporary needs of modern postal establishments.<sup>41</sup>

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37 Australia Post, *Submission 8*, p. 38.

38 Australia Post, *Submission 8*, p. 28.

39 Mr Kevin Nicholls, *Submission 53*, p. 3.

40 Mr Andrew Hirst, LPO Group, *Committee Hansard*, 4 March 2014, p. 2.

41 LPO Group, *Submission 65*, p. 34.

6.47 However, POAAL did not agree with this assessment. Mr Ian Kerr, CEO, POAAL, commented that the Agreement had coped very well with changes over the years.<sup>42</sup> Further, it has 'shown itself to be a very strong and flexible document that has been able to adapt to changes over the past 20 years. It is the benchmark for other franchise agreements.'<sup>43</sup>

6.48 Some licensees also indicated support for the LPO Agreement stating that it provided it provided flexibility to operate a small business.<sup>44</sup>

6.49 Mr Fahour was also of the view that the agreement 'has served us well over the last 25 years'. However, he commented that the real issue is that the 'fundamental business model that relies upon the letter product is broken into the future, and we need to find an alternative'. Asked whether the Agreement would be reviewed, Mr Fahour stated that Australia Post's entire business would be reviewed.<sup>45</sup>

### *Committee comment*

6.50 The committee believes that the significantly different postal environment, which continues to experience rapid change, no longer reflects the market that existed when many of the LPOs originally negotiated their service agreements with Australia Post.

### **Recommendation 7**

**6.51 The committee recommends that, at the request of any recognised association, Australia Post be required to renegotiate the terms and conditions of an LPO Agreement.**

### **Consultative arrangements**

6.52 Consultation between licensees and Australia Post are undertaken in a number of ways: through arrangements under the LPO Agreement, through consultative forums (Australia Post Licensee Advisory Council (APLAC) and the Carded Parcel Forum) and through day-to-day interactions with licensees and Australia Post employees.

### *LPO Agreement*

6.53 The LPO Agreement provides for consultation concerning the LPO Agreement between Australia Post and the 'Association'; that is, the LPO representative group. The LPO Agreement contains clauses which refer to the 'Association':

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42 Mr Ian Kerr, POAAL, *Committee Hansard*, 6 December 2013, p. 12.

43 POAAL, *Supplementary (No. 2) Submission 9*, p. 5.

44 See for example, Name Withheld, *Submission 68*, p. 2; Mr Dennis Jenner, *Supplementary Submission 92*, p. 2; Ms Sue McNichol, *Submission 107*, p. 5.

45 Mr Ahmed Fahour, Australia Post, *Committee Hansard*, 17 March 2014, p. 4.

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- clause 9 – the fees and commissions paid, and discounts made, to licensees are reviewed annually, during which review Australia Post must consult with the Association; and
  - clause 34 – any variations or amendments to the terms of the LPO Agreement to occur only after Australia Post has consulted the Association.

6.54 The LPO Agreement also provides for consultation with the Association in relation to amendments to the Licensed Post Office Manual and variations to products and services. The LPO Agreement contains a definition of 'Association' as meaning POAAL.<sup>46</sup>

### ***Australia Post Licensee Advisory Council***

6.55 Following a review of Australia Post's consultative arrangements with licensees in 2002, APLAC was established in 2003. APLAC is a forum where licensees and Australia Post representatives formally discuss business opportunities and issues, and develop ideas and recommendations for the mutual benefit of stakeholders in the LPO network. APLAC membership is free to licensees with quarterly state and national council/ board meetings with Australia Post fully funding its operations. Around 40 per cent of licensees are members. Licensees may put themselves forward to be State Council members or National Board directors who are elected in a democratic process.<sup>47</sup>

### ***Carded Parcel Forum***

6.56 Australia Post has also recently established the Carded Parcel Forum as a result of consultation between Australia Post and POAAL rather than as a result of complaints from any individual licensees. The establishment of the forum recognised the challenges being faced by Australia Post's retail network in handling the increase in carded article numbers. The forum discusses operational issues and opportunities relating to carded articles and has contributed to initiatives such as:

- introduction of formal by-pass arrangements where outlets reach site storage capacity;
- establishment of dedicated arrangements for the handling of oversize items in metropolitan areas which avoids the involvement of retail outlets;
- rollout of handheld scanners to LPOs; and
- provision of parcel trolleys to LPOs at a subsidised price.<sup>48</sup>

6.57 Australia Post commented that, as the parcel business is still experiencing rapid growth, it is intended that the Carded Parcel Forum will continue to meet

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46 LPO Agreement, Clause 1.

47 Australia Post, *Submission 8*, pp 29–30.

48 Additional Estimates 2013, Australia Post, *Answer to question on notice*, No. 87.

periodically to discuss issues and opportunities relating to the handling of carded articles.<sup>49</sup>

### ***Post Office Agents Association Limited***

6.58 The Post Office Agents Association Limited (POAAL) is the recognised representative body for licensees.<sup>50</sup> Australia Post commented that it had chosen to recognise POAAL as the LPO representative group at the time of establishing the LPO network with consideration to:

- POAAL's history in representing the interest of post office operators since around 1939;
- the involvement of POAAL from around 1989 in the development of the LPO Agreement; and
- the practicalities and benefits to Australia Post and licensees associated with engaging with a single industry group as opposed to around 3,000 individual licensees on matters relating to general contractual terms (including payment rates).<sup>51</sup>

6.59 POAAL's activities in relation to LPOs include:

- annual review of LPO payments;
- meeting quarterly at a State level with Australia Post to discuss State-based LPO operational and security issues;
- meeting quarterly with Australia Post at a National level to discuss marketing and security matters;
- meeting monthly with Australia Post to discuss operational matters such as issues with stock returns or proposed improvements to transactions;
- co-ordination of meetings, workshops and seminars (both face-to-face and by teleconference) for licensees across Australia;
- publication of regular newsletters, frequent email newsletters and its quarterly full-colour magazine *Postal News* for licensees; and
- holding payments workshops, seminars, and assistance in writing to Australia Post.<sup>52</sup>

6.60 In addition to the LPO Agreement, in 1993 Australia Post and POAAL entered into a consultative agreement. The consultative agreement was amended in

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49 Additional Estimates 2013, Australia Post, *Answer to question on notice*, No. 87.

50 POAAL was created in 1939 as a representative group for post office owners, and was made the recognised LPO representative group when the LPO Agreement was introduced in 1993.

51 Australia Post, *Submission 8*, p. 29.

52 POAAL, *Submission 9*, pp 2–3.

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1997. The agreement, which is confidential between the parties, provides the framework for how the consultative arrangements will operate.<sup>53</sup>

6.61 Licensees pay an annual fee to become members of POAAL. Together with mail contractors, the total membership of POAAL is around 4,000. While POAAL could not provide the committee with an exact number, it indicated that LPO membership was 'north of 2,000'. It stated that 'typically, the licensees who do not join any association are usually those that have the LPO as a small part of their business or the LPO generates a very small amount of income'.<sup>54</sup>

### **Dispute resolution between licensees and Australia Post**

6.62 In the event of a dispute arising between licensees and Australia Post, mechanisms are available under both the LPO Agreement and the Franchising Code of Conduct to resolve it.

#### ***LPO Agreement dispute resolution process***

6.63 The LPO Agreement provides for a five-stage dispute resolution process. Australia Post noted that the process is a staged progression commencing from the local information resolution of the issue with pursuit of legal action as a last resort. Australia Post stated that 'as a result of this staged process the historical number of formal disputes has been low'.<sup>55</sup>

6.64 Mrs Christine Corbett, Australia Post, commented that while there are 'dozens of issues that are occurring all across the country on a daily basis' only those which cannot be resolved progress to the next stage, that is Stage 2. It is only then that a dispute is recorded.<sup>56</sup>

6.65 To progress to Stage 2, an LPO11 form is issued (either by the licensee or Australia Post) and a dispute is recorded. POAAL must be informed and an attempt is made to find a resolution. If this is unsuccessful, the matter is referred to the State Dispute Resolution Committee, whose members include the state chairman of POAAL (or nominee).

6.66 Licensees who are not members of POAAL may still be represented by it at the relevant stages of the dispute resolution process with Australia Post.<sup>57</sup>

6.67 Figure 6.1 outlines the processes available for resolving disputes between Australia Post and licensees under the LPO Agreement

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53 Australia Post, *Submission 8*, p. 29.

54 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, pp 21, 22.

55 Australia Post, *Submission 8*, p. 31.

56 Mrs Christine Corbett, Australia Post, *Committee Hansard*, 6 December 2013, p. 44.

57 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, p. 21.

**Figure 6.1: Dispute resolution processes between Australia Post and licensees**

PROCESS FOR RESOLVING DISPUTES BETWEEN AUSTRALIA POST AND LICENSEES				
<b>STAGE 1 INFORMAL RESOLUTION</b>	<b>STAGE 2 MEETING OF THE PARTIES</b>	<b>STAGE 3 STATE DISPUTE RESOLUTION</b>	<b>STAGE 4 NATIONAL DISPUTE RESOLUTION</b>	<b>STAGE 5 ARBITRATION</b>
Orally, or in writing, either party (APM or Licensee) notifies the other of an issue requiring attention. If the issue cannot be resolved <b>within 10 working days</b> , the party affected completes and issues Form LPO11- 'Record of an unresolved Issue'.	<p>After receipt of Form LPO11, the APM and Licensee must meet or contact each other and try to resolve the dispute.</p> <p>This meeting must occur <b>within 10 working days</b> of submission of the form.</p> <p>If resolution is unsuccessful the Area Manager and State Chairman of POAAL must be notified and their nominees must contact each other to try and resolve the dispute.</p> <p>If the dispute cannot be resolved <b>within a further 5 working days</b>, or within any other period the parties agree to, it is then referred to the State Dispute Resolution Committee.</p>	<p>The SDRC consists of the General Manager of AP (or nominee), State Chairman of POAAL (or nominee) and an independent Chairman.</p> <p>The SDRC must hear the dispute <b>within 30 days</b>, or such other time as agreed between the parties.</p> <p><b>Legal representation is not permitted</b> without the consent of both parties and the SDRC.</p> <p>If the dispute raises significant issues affecting more than one State the SDRC may stay proceedings and refer the matter to the NDRC. If the SDRC cannot resolve the dispute within the specified timeframe either party can, with the consent refer of the other party, refer the dispute to arbitration.</p>	<p>The NDRC consists of up to 2 representatives from AP – one must be Manager Retail (or nominee)- an equal number of representatives from POAAL – one must be the National Chairman (or nominee)- and an independent person.</p> <p>The NDRC must hear the dispute <b>within 30 days</b> or such other time as agreed between the parties.</p> <p>If the NDRC cannot resolve the dispute within the specified timeframe either party can, with the consent of the other party, refer the dispute to arbitration.</p>	<p>The Arbitrator must be a member of the Institute of Arbitrators, Australia.</p> <p>The arbitration must be heard in the State where the premises are located and conducted in the way set out in the Commercial Arbitration Act of that State.</p>

SDRC: State Dispute Resolution Committee; NDRC: National Dispute Resolution Committee

Source: Australia Post, Submission 8, p. 31.

6.68 The table below provides information on disputes which have progressed to Stage 2. The committee sought evidence on the number of LPO11 forms lodged. Australia Post informed the committee that:

The details sought about the receipt of the LPO11 forms, are not captured on any central database. As such Australia Post is not in a position to provide the information as requested.

However, Australia Post does keep records of disputes which have progressed to Stage 2 or further in the process.<sup>58</sup>

6.69 Mr Fahour also commented:

We receive a number that are called stage 1, which is held in the local area and involves people wanting to deal with a range of issues, including payment issues. The reality is: what private business that operates in the community will not want to be paid more?<sup>59</sup>

6.70 Table 6.4 provides information on the number of disputes from Stage 2 of the process.

**Table 6.4: Number of disputes**

Calendar year	Formal advice of a 'dispute' (Stage 2)	Percentage of network	Number referred to State Resolution Committee/office Mediation Advisors	Percentage of network
2013	12 (YTD Sept 2013)	0.41%	4	0.14%
2012	11	0.37%	4	0.13%
2011	21	0.71%	7	0.24%

Source: Australia Post, Submission 8, p. 31.

#### *Assessment of the dispute resolution process*

6.71 Mr Stephen Giles described the dispute resolution process as 'comprehensive', containing an informal process supplementing the formal dispute resolution processes.<sup>60</sup> However, licensees commented on the inflexibility of Australia Post in relation to disputes and the cost to the licensee of proceeding to Stage 2.<sup>61</sup>

6.72 Mr Terry Ashcroft, post office broker, provided further comment and stated that Australia Post refuses to negotiate in most disputes. It then forces licensees into the disputes resolution process with the knowledge that the costs and time to the

58 Supplementary Estimates 2013, Australia Post, *Answer to question on notice*, No. 54.

59 Mr Ahmed Fahour, Australia Post, *Committee Hansard*, 6 December 2013, p. 49.

60 Mr Stephen Giles, *Submission 1*, p. 3.

61 Name Withheld, *Submission 21*, p. 1; Ms Angela Cramp, LPO Group, *Committee Hansard*, 6 December 2013, p. 11.

licensees 'create a financial disincentive for licensees to continue the dispute to fair resolution and in most cases if the licensee does proceed [Australia Post] can and has refused to be fair in the knowledge that the Licensee cannot afford court action'. Mr Ashcroft also stated that Australia Post 'has also been known to reach agreement on a dispute only to repudiate the resolved mediation a short time later leaving the licensee to start the process all over again'.<sup>62</sup>

6.73 The LPO Group recommended that the terms and conditions of the dispute resolution process be reviewed with a view to 'implementing a three tier option commencing with a fast track option through to a fully mediated option where other attempts to resolve the issues are unsuccessful'.<sup>63</sup>

*Committee comment*

6.74 In relation to Australia Post's dispute resolution process, it appears to the committee that, given the overwhelming evidence of the problems within the LPO network, the low number of Stage 2 disputes is somewhat surprising. While it may point to the effectiveness of the resolution processes available at the first, informal resolution stage, it could also point to complexity of the system, time considerations and cost of accessing the process. Or, indeed, it could point to a lack of confidence in the process.

6.75 The committee also notes that Australia Post does not keep a central database of 'issues requiring attention' received under Stage 1 of the process. The committee understands that Australia Post receives a large number of 'issues requiring attention' each day and many may be easily resolved. But it notes that this stage requires 'notification' of an issue and a timeframe for resolution so it appears that formal records of interactions must be established and kept.

6.76 The committee considers that individual matters raised by licensees can provide early evidence of broader problems that Australia Post should monitor and address. The number of unresolved issues that are dropped rather than progressing to the next stage can also be helpful in identifying problems.

6.77 The committee notes, in this regard, the evidence provided by POAAL which pointed to problems experienced for many years in New South Wales. Owing to the attitude of NSW Australia Post management, which Mr Kerr described as 'verging on bullying', the number of licensee complaints from New South Wales at times outnumbered licensee complaints from the rest of Australia. While POAAL welcomed the recently implemented changes in the management team in New South Wales, it reported that many people were affected by the actions of the former management team.<sup>64</sup>

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62 Mr Terry Ashcroft, *Submission 94*, p. 4.

63 LPO Group, *Submission 65*, p. 29.

64 POAAL, *Supplementary Submission 9*, p. 8; see also Mr Ian Kerr, POAAL, *Committee Hansard*, 6 December 2013, pp 16, 24.

6.78 The committee therefore considers that it would be desirable for Australia Post to capture this information on a central database to identify possible systemic problems at an early stage as well as the number of unresolved issues that are not progressed to Stage 2 of the process.

### **Recommendation 8**

**6.79 The committee recommends that Australia Post capture information relating to 'issues requiring attention' raised under the dispute resolution process in order to provide early identification of systemic problems.**

6.80 The committee further considers that the dispute resolution process is overly complex. If disputes are not resolved at an informal level (Stage 1), the parties must move through three further stages before independent arbitration. Time limits are provided for at each stage which appears to allow a maximum of 85 working days before moving to arbitration. The committee considers that this is an overly prolonged timeframe which may result in significant costs – such as lost wages, representation and travel costs – being incurred by the parties involved.

6.81 The committee notes that more streamlined dispute resolution processes are generally the norm in both the government and business sectors. The committee therefore considers that the dispute resolution process should be simplified so that there are fewer stages to be traversed before arbitration. This will provide for a more time and cost efficient system.

6.82 The dispute resolution process includes POAAL at Stages 2, 3 and 4. With the establishment and expansion of other groups representing licensees, notably the LPO Group, the committee considers that the dispute resolution process should be changed to recognise this development.

### **Recommendation 9**

**6.83 The committee recommends that the Australia Post dispute resolution process should be amended to provide for a more streamlined process.**

#### ***Dispute resolution under the Franchising Code of Conduct***

6.84 LPOs are also covered by the Franchising Code of Conduct. The Code is mandatory and provides a dispute resolution process, including the option of mediation. The Office of the Franchising Mediation Adviser was established under the Franchising Code of Conduct to regulate the conduct of franchisees and franchisors towards each other and provide a cost-effective dispute resolution solution to the industry. The Department of Communications noted that the LPO Agreement emphasises the use of dispute resolution services.

6.85 The Department also indicated that it had received communications from LPOs, expressing concerns with the viability of their businesses and other matters. It stated that in 2000, 2006 and most recently in mid-2013, the Office of Small Business conducted reviews of the Franchising Code of Conduct which included LPO issues. Likewise in 2002 and 2007 there were reviews of the competition provisions of the then *Trade Practices Act 1974*. These reviews considered the rights and remedies available to small businesses, including LPOs. The Department concluded it:

...considers it appropriate that, in the case of dispute, LPOs avail themselves of the protections of the CCA and the opportunities for redress and resolution afforded by the Franchising Code of Conduct.<sup>65</sup>

6.86 Mr Fahour also commented that licensees had the choice of using either the internal dispute resolution process or the process under the Franchising Code of Conduct. However, he acknowledged that not all licensees may understand that there was another option available:

I think we could do a better job of communicating the rights and the process to ensure that our licensees understand that it is far broader than that. And I think we have not done a very good job in communicating the various options available, and we should do a better job on that.<sup>66</sup>

*Committee comment*

6.87 The committee considers that licensees and franchisees require better information on the dispute resolution processes available to them under the Franchising Code of Conduct.

**Recommendation 10**

**6.88 The committee recommends that Australia Post provide further information to licensees and franchisees on the alternative dispute resolution processes available under the Franchising Code of Conduct.**

*Commonwealth Ombudsman*

6.89 The Commonwealth Ombudsman submitted that it received a number of complaints from licensees. These typically relate to the terms of the LPO agreement and commercial arrangements; Australia Post's policies for mail sorting and delivery; and the behaviour of Australia Post employees or contractors.

6.90 Generally, the Ombudsman exercises the discretion under the *Ombudsman Act 1976* to not investigate complaints about LPO agreements and commercial practices. Licensees are advised to use the avenues for resolving disputes open to them under LPO agreements, the Code, or through the courts. The Ombudsman also commented that, depending on the issue raised, ACCC may also be relevant.

6.91 The Ombudsman noted that when complaints from licensees about Australia Post are investigated, 'it is typically to resolve a lack of response or an unclear response from Australia Post to the complainant's attempts to resolve the matter, rather than license or commercial matters. We investigate such matters under the Commonwealth jurisdiction.'<sup>67</sup>

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65 Department of Communications, *Submission 7*, p. 7; see also, The Treasury, *Submission 12*, p. 2.

66 Mr Ahmed Fahour, Australia Post, *Committee Hansard*, 6 December 2013, p. 48.

67 Commonwealth Ombudsman, *Submission 26*, p. 6.

## Effectiveness and adequacy of LPO representation

6.92 The committee received extensive evidence from licensees during the inquiry about the effectiveness of the representation under the LPO Agreement by POAAL. This ranged from support for POAAL's role to severe criticism of its ability to effectively represent LPO interests, including during dispute resolution processes.

6.93 For example, one licensee was highly supportive of POAAL and commented:

POAAL is the recognised representative body for LPOs. It is the only body with which Australia Post deals. In my experience POAAL understands the details and complexity of Australia Post/LPO issues in a way that the LPO Group does not, and they deal with Australia Post in a professional manner – assertive and even adversarial when necessary, but not in public.<sup>68</sup>

6.94 During a number of estimates hearings, Australia Post also commented on its working relationship with POAAL. For example, at the October 2011 Supplementary Estimates, Mr Fahour praised POAAL, along with the CEPU and Australia Post staff, for their contribution to the results gained by Australia Post.<sup>69</sup> At the May 2013 Budget Estimates, Mr Fahour commented on the successful conclusion, after 18 months of negotiation, of agreement on the additional payment of 22c scanning fee.<sup>70</sup>

6.95 Other matters noted by Australia Post which had been concluded following discussion between Australia Post and POAAL included:

- the introduction of new scanning technology at no cost to licensees;
- an increase in minimum payment allowance; and
- a number of operational changes such as by-pass arrangements, subsidised equipment and improved carding arrangements.<sup>71</sup>

6.96 At the May 2014 Budget Estimates, Mr Fahour noted:

I am saying I believe, from looking at the track record that I have seen, that we have actually been very good at discussions and dialogue with POAAL.<sup>72</sup>

6.97 Australia Post also commented that it considered that POAAL represented the views of licensees:

Australia Post is satisfied that POAAL represents the views of licensees with consideration to the nature of the issues they represent on behalf of licensee to Australia Post and Australia Post's engagement directly with

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68 *Confidential Submission 141.*

69 Mr Ahmed Fahour, Australia Post, *Supplementary Estimates Hansard*, 18 October 2011, p. 91.

70 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 30 May 2013, p. 60.

71 Australia Post, *Answer to written question on notice*, No. 38.

72 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, p. 108.

licensees who are POAAL members at various POAAL hosted events throughout each year.<sup>73</sup>

6.98 During evidence to the committee, POAAL also outlined its efforts on behalf of licensees in relation to matters such as parcels, product margins, competitive practices by Australia Post and failure to negotiate in good faith. In relation to competitive practices, POAAL commented that it had sought assistance from politicians, the ACCC and the franchising inquiries to resolve the issue, to no avail.<sup>74</sup> However, Mr Kerr concluded:

We send out to licensees a list of our achievements, things that I know with great certainty that we have achieved. We might not have had traction on a couple of matters...but we have done an awful lot for licensees.<sup>75</sup>

6.99 However, many other submitters commented on POAAL's role in negative terms. These ranged from general criticisms, including the confidential nature of POAAL's agreement with Australia Post, to specific instances where licensees had unsuccessfully sought assistance from POAAL to help address an issue with Australia Post.<sup>76</sup>

6.100 In addition, a number of licensees raised with the committee matters concerning the operational effectiveness of POAAL, including that:

- annual reports and financial statement were not received;
- membership renewals were not received or not acknowledged or returned to the sender;
- membership was refused; and
- no response to correspondence was received.

6.101 POAAL responded to a number of these issues. Mr Kerr indicated that while annual reports were not provided on POAAL's website, a hardcopy was posted to each member each year.<sup>77</sup>

6.102 In relation to the refusal of membership to POAAL, Mr Kerr commented that 'the board [of POAAL] was unaware of any applications for membership being refused in recent years'.<sup>78</sup> However, Mr Kerr had earlier stated:

If a licensee were a member of an alternative association and indicated that they were an office holder of that association, we probably would not even bother offering them a membership in the first place.<sup>79</sup>

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73 Australia Post, *Answer to written question on notice*, No. 25.

74 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, p. 25.

75 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, p. 26.

76 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 26 March 2014, p. 14.

77 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, p. 26.

78 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 26 March 2014, p. 14.

79 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, p. 14.

Mr Kerr clarified this comment by stating that should an office holder of another association seek membership, the matter would be provided to the POAAL board for its consideration.<sup>80</sup>

6.103 Following its March hearing with POAAL, the committee requested additional information from POAAL including information on its financial position. In particular, the committee sought clarification of a significant discrepancy of some \$400,000 in the POAAL 2012–13 financial statements.<sup>81</sup> POAAL responded that:

Following enquiries, we have ascertained that the dash that appears in Note 7 is an error that occurred during print production. In short, it is an inadvertent printing error. Instead of a dash, the amount of \$393,870 should have been included in accordance with the notes. This amount of \$393,870 is included in Note 16 of the same printed notes and is included in the amount of \$1,831,727 in the printed financial statement. The notes to the financial statements show the figure in both Notes 7 and 16. The dash is a mistake made by the printers and the correct amount is disclosed in Note 16 of the printed Notes.<sup>82</sup>

6.104 The committee, on four occasions, sought additional comments and information from POAAL including further clarification of its 2012–13 financial statements. Finally, in September POAAL provided a statement from its auditors clarifying the matter.<sup>83</sup>

#### *Committee comment*

6.105 The position of POAAL in relation to the delivery of postal services in Australia is unique: it is specifically named in the LPO Agreement in relation to consultative arrangements related to fees, commissions and discounts; and the variation of the agreement. It is thus a key player in negotiations of matters that go to the viability of LPOs. POAAL also advocates on behalf of LPO with the Minister for Communications and politicians generally in relation to postal matters.

6.106 In addition, POAAL is included at Stages 2, 3 and 4 of Australia Post's dispute resolution process. Again, this is a very significant role in terms of ensuring the effective functioning of the LPO network.

6.107 The committee acknowledges changes that have been made which have benefited licensees. Both Australia Post and POAAL commented that these have arisen directly from the work of POAAL. The committee also acknowledges that POAAL expressed a degree of frustration with the lack of progress in relation to a number of matters that are having a significant adverse impact on licensees particularly elements of Australia Post's competitive practices.

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80 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 6 December 2013, p. 27.

81 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 26 March 2014, p. 11.

82 Mr Ian Kerr, CEO, POAAL, clarification of evidence, dated 2 April 2014.

83 Mr Robert Chizzoniti, Director, POAAL, correspondence dated 2 September 2014.

6.108 Evidence of slow progress, or lack of progress, in negotiating matters is of great concern to the committee and appears to be at odds with Australia Post's acknowledgment of the importance of the LPO network. For example, it seems extraordinary to the committee that it would take 18 months to negotiate the introduction of the 22c scanning fee for parcels at a time when the increasing number of parcels being processed was a serious concern to licensees. Of deeper concern is the evidence from POAAL of the lack of good faith negotiation by Australia Post in relation to certain matters.

6.109 It appears to the committee that these matters point to either a significant power imbalance in the relationship between Australia Post and POAAL which places POAAL at a disadvantage; or, the lack of effectiveness of POAAL as the main advocacy body for licensees. Adding complexity to these matters is the lack of transparency in the relationship between POAAL and Australia Post. This is evidenced by the confidential nature of the consultative agreement between POAAL and Australia Post. Given that POAAL is acting on behalf of the members who provide it with its funding, the committee can see no reason why such an agreement would remain confidential from its members. Indeed, the perception of secrecy by POAAL in its dealings with Australia Post can only serve to undermine its position.

6.110 While the committee considers that POAAL appears to have a somewhat difficult negotiating position, there are other matters which raise questions in the committee's mind as to its competence. The committee notes that, in some instances, the evidence provided by POAAL was less than satisfactory. Mr Kerr, CEO of POAAL, appeared to lack an in depth knowledge of POAAL's membership, the structure of its subsidiary company, POAAL Services Ltd, and was less than helpful to the committee in relation to some matters it wished to pursue. In its dealings with licensees, POAAL also showed a lack of sound administrative practices. For example, the committee received evidence that letters addressed to POAAL at its post office box were returned to the sender as they had remained uncollected. Indeed, one of the committee's letters sent to POAAL suffered this fate.

6.111 The committee also sought information in relation to POAAL's financial statements. The committee considered that this information was important to its inquiry as POAAL represents LPOs not only in direct negotiations with Australia Post but also during meetings with the responsible Minister.

6.112 In relation to the information sought by the committee, POAAL had four opportunities to provide the information the committee requested following the March 2014 hearing. While the committee eventually received a response in relation to POAAL's 2012–13 financial statements, no other information was forthcoming. The committee considered the use of its powers to call for documents and persons. Ultimately, the committee agreed not to use these powers as it considered that it already had sufficient evidence that called into question the effectiveness of POAAL as an organisation advocating on behalf of licensees.

6.113 The committee's view on the adequacy of POAAL's representation of licensees was also informed by evidence from licensees and their assessment of

POAAL. Many submitters pointed to the positive outcomes that POAAL has achieved for licensees while others were damning in their assessment of POAAL.

6.114 The committee notes that the LPO Group has emerged as a second organisation seeking to represent licensee views to Australia Post and the Government. Some licensees indicated that they had joined the LPO Group as a result of the dissatisfaction they felt with POAAL's representation of licensee issues.

6.115 The committee notes that membership of the LPO Group is expanding. As a consequence, the committee therefore considers that Australia Post must recognise this new group in its negotiation of licensee matters.

### ***Recognition of other groups by Australia Post***

6.116 POAAL had, for many years, been the only representative body with which Australia Post would enter into consultations. However, by the commencement of the committee's inquiry a second body, the LPO Group, had formed to represent a number of licensees. As at March 2014, the LPO Group had approximately 700 members.<sup>84</sup>

6.117 Australia Post has recognised the establishment of the LPO Group and at the committee's December hearing Mr Fahour stated:

We do not have an exclusive relationship with POAAL. It is not exclusive. They are a very important partner in representing many licensed post offices. We have had a very fruitful relationship. But the reality is we have also agreed that we will deal with any individual post office or a collection of them. We have agreed that LPO [Group] represent a number of legitimate licensed post offices and they should have a voice. We are very happy to engage.<sup>85</sup>

6.118 Mr Fahour informed the committee in March 2014 that a documented 'professional process' had been established to discuss issues with other licensees.<sup>86</sup> While Australia Post has a formal agreement with both the LPO Group and POAAL, Mr Fahour described them as 'different types of agreements. In a sense, we have formalised and recognised LPOG. We are having conversations that recognise that they are an important stakeholder in the licensed post office community.'<sup>87</sup>

6.119 At the May 2014 Budget Estimates, Mr Fahour reiterated Australia Post's engagement with other groups, including the LPO Group:

Where we have had to face into the current reality is that there are other interest groups who are either a single post office or a culmination under different groupings, we have had to improve the quality of dialogue with

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84 Mr Andrew Hirst, LPO Group, *Committee Hansard*, 4 March 2014, p. 14.

85 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, pp 83–84.

86 Mr Ahmed Fahour, Australia Post, *Committee Hansard*, 17 March 2014, p. 1.

87 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, p. 84.

them too. We are happy to say that we have improved a lot since that Senate inquiry.<sup>88</sup>

6.120 Mr Fahour added:

As you know, one of the positives that came out of the Senate inquiry is that we have agreed on an extended level of understanding for consultation and dialogue to include the LPO Group, and we have exchanged letters on that basis.<sup>89</sup>

6.121 The LPO Group stated its desire to engage with Australia Post to identify solutions to ensure the long-term viability of the LPO network. Mr Andrew Hirst, Vice Chair, LPO Group, stated:

All the LPO Group are interested in is dealing with Australia Post in good faith, including bringing to the table the collective wisdom and experience of its members to solve the common problem: how to make the network financially viable in everyone's interest.<sup>90</sup>

6.122 At the committee's March hearing with the LPO Group, it was indicated that a consultative agreement had been signed. The agreement included a 'good-faith' negotiation clause at the instigation of the LPO Group.<sup>91</sup> The LPO Group indicated that it had expectations that a consultative agreement entered into with Australia Post would allow for a consultative process between the LPO Group and Australia Post. However, the LPO Group stated that:

The reality is that some Australia Post junior executives, without decision making authority, agree to meet with LPOG representatives in order for fruitless discussion to be held. The LPOG has been advised that Australia Post do not agree to negotiate or consult with LPOG, but will continue to agree to meetings. This appears to be nothing short of a token gesture to satisfy the need to be seen to address the need to consult with the LPOG.<sup>92</sup>

6.123 The LPO Group stated that it had prepared a list of issues of major concern to licensees for Australia Post and presented several submissions. However, rather than the expected meaningful discussion, the LPO Group submitted that it had been advised by Australia Post that there will be no such discussions with it and that most correspondence from the LPO Group to Australia Post remains unanswered. In addition, all its submissions except that on the Dispute Resolution Process have been dismissed out of hand or ignored or denied. The LPO Group went on to state that it has had no further communication from Australia Post in regard to the only agenda item that was agreed to be reviewed in March 2014.<sup>93</sup>

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88 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, p. 108.

89 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, p. 110.

90 Mr Andrew Hirst, LPO Group, *Committee Hansard*, 4 March 2014, pp 1–2.

91 Mr Andrew Hirst, LPO Group, *Committee Hansard*, 4 March 2014, p. 13.

92 LPO Group, *Supplementary Submission 65*, p. 1.

93 LPO Group, *Supplementary Submission 65*, p. 2.

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*Committee comment*

6.124 The committee was pleased when Australia Post indicated that it was consulting with the LPO Group in relation to licensee matters. However, the LPO Group expressed its concern that its consultations with Australia Post were not adequate.

6.125 The committee is disappointed that the LPO Group feels that it has been unable to engage with Australia Post in any meaningful way. The LPO Group is expanding and now represents a considerable number of licensees. No doubt, other groups will emerge in the future. In these circumstances, it would be expected that Australia Post would also consult with all these groups.

6.126 Indeed, the committee was led to believe that Australia Post was committed to consulting effectively with other groups, including the LPO Group, rather than just agreeing 'on an extended level of understanding for consultation and dialogue'.<sup>94</sup>

6.127 The committee understands that the LPO Agreement definition of 'Association' is limited to POAAL unless the consultative agreement with POAAL is terminated. The committee notes that in recent correspondence to a licensee Australia Post stated:

Australia Post has in place various arrangements for consulting with licensees and their representatives. In more recent times these arrangements have been extended to include meeting with representatives of the Licensed Post Office Group (LPOG).

Notwithstanding any other arrangements that may exist the LPO Agreement has specific requirements for consultation relating to the review of LPO payments. As provided at clause 9.b of the Agreement, Australia Post is required to consult with the Association on the review of payments. The LPO Agreement defines the Association as POAAL.<sup>95</sup>

6.128 The committee considers that as the LPO Group is now a major representative body, the LPO Agreement should be amended to recognise the representation of licensees by other groups.

### **Recommendation 11**

**6.129 The committee recommends that the definition of 'Association' in the LPO Agreement be amended to include, in addition to POAAL, other licensee representative groups including but not limited to the LPO Group.**

6.130 Australia Post is facing considerable challenges in the face of declining mail volumes and digital substitution. The LPO network is also feeling the effects of these challenges. In order to find a way ahead, and a long-term solution to viability concerns, all parties must work together. This includes Australia Post engaging in meaningful consultations with all stakeholders, including the LPO Group.

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94 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, p. 110.

95 LPO Group, *Supplementary (No. 4) Submission 65, Attachment 1*, p. 1.

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***Direct consultation with Australia Post by licensees***

6.131 Australia Post noted that day-to-day interactions between it and LPOs occur through dedicated network managers, giving licensees a contact point within Australia Post to raise issues or opportunities. LPOs can use this mechanism 'to represent opportunities and issues directly to Australia Post'.<sup>96</sup> The committee received much evidence from licensees which pointed to difficulties in having issues resolved and the attitude of some Australia Post employees to the LPO network.

6.132 Licensees did not consider that Australia Post saw them as partners in the postal network. For example, one licensee stated:

Licensees need to be recognised as important cogs in the Post machine, we need to be treated with respect and as equal partners.

From over 40 years of working in the postal industry I have seen at firsthand how Australia Post treats Licensees. When I was employed in the Government section of Australia Post many of the staff referred to postal agents (pre Licensee) and now Licensees in derogatory and disparaging remarks.

It was and still is, "us versus them" mentality. Many line managers of Post think we are inferior and treat us as second class personnel of the Postal industry.

This culture needs to be addressed as a matter of urgency. We should be valued members of a big team, yet Post does not recognise us and is quite dismissive of us.<sup>97</sup>

6.133 Mr Kerr, POAAL, was also of the view that 'there are people within corporate Australia Post who do not understand the value of the LPO network and how they can contribute and how licensees can contribute to the success of products'.<sup>98</sup>

6.134 Other comments received by the committee from licensees included that they felt intimidated, dismissed and are not treated with respect.<sup>99</sup>

6.135 In addition, there were concerns about the lack of negotiation on items which the LPO Agreement allowed for negotiations. For example, the LPO Agreement allows for negotiation of the fee where more than 25 carded articles are received per week. However, POAAL stated that 'it is greatly disappointing that Australia Post has failed to negotiate increases in this payment in good faith with Licensees'.<sup>100</sup> Mr Kerr commented that POAAL had 'approached Australia Post on numerous occasions to

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96 Australia Post, *Submission 8*, p. 30.

97 Name Withheld, *Submission 113*, p. 4.

98 Mr Ian Kerr, POAAL, *Committee Hansard*, 6 December 2013, p. 23.

99 See for example, Ms Helen Bain, *Submission 19*, p. 1; Name Withheld, *Submission 25*, p. 4;

100 POAAL, *Submission 9*, pp 15, 30.

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point out that the existing payment structure is a negotiated payment and that Australia Post must negotiate with licensees'.<sup>101</sup>

6.136 Mr Kerr went on to comment that if a licensee lodged an LPO11 and commenced Stage 2 of the dispute resolution process, there was usually a satisfactory outcome for the licensee. However, as previously noted, very few LPO11s are lodged.<sup>102</sup>

6.137 Although the committee received some submissions which indicated success in negotiating with Australia Post over the carded article fee, many other licensees commented that they had been unsuccessful. Other submitters reported instances of licensees seeking to negotiate on this matter with no result.<sup>103</sup>

6.138 Mr Fahour responded to comments concerning negotiations on payments and stated:

We act in good faith. When you sit down and negotiate—negotiation does not mean they ask and I give whatever anybody wants. Negotiation means we have a dialogue; we have a discussion; we have a debate; we look at the facts; we look at what we can afford. I have just said that we are about to lose money and we are becoming financially unviable. There are some things that they will get and there are some things that they will not get.<sup>104</sup>

*Committee comment*

6.139 The committee acknowledges that not all representations from licensees can be met by Australia Post: Australia Post has its own sustainability to consider as well as the wider postal network. However, the committee was concerned by the number of submissions from licensees which pointed to some very difficult relationships between Australia Post employees and licensees including comments about bullying and harassment.

6.140 It appears to the committee that often these difficulties arise when licensees choose to exercise their rights under the LPO Agreement to negotiate over issues with Australia Post. The committee also notes the evidence from POAAL that if the licensee lodged an LPO11 form, there was often a successful outcome for the licensee. However, very few LPO11s are lodged and it appears to the committee that many licensees, rather than exercise their rights to negotiate under the LPO Agreement, cease to continue to pursue the issue.

6.141 The committee was also disturbed by the evidence of lack of good faith negotiating, in some instances, by Australia Post and the attitude of some Australia Post employees to licensees. The committee has not pursued particular cases – it is not the committee's role to do so. However, there was evidence of inflexibility by

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101 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 26 March 2014, p. 13.

102 Mr Ian Kerr, CEO, POAAL, *Committee Hansard*, 26 March 2014, p. 13.

103 See, for example, Mr Terry Ashcroft, *Submission 94*, p. 4.

104 Mr Ahmed Fahour, Australia Post, *Budget Estimates Hansard*, 28 May 2014, p. 109.

managers, competitive practices undertaken by some Australia Post employees and a lack of understanding of the value of the LPO network.

6.142 While the committee concedes that the Australia Post executive has been at pains to acknowledge the important role of LPOs within the postal network, it appears that an attitudinal shift may be beneficial in some areas of Australia Post corporate offices.