



Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the operation and effectiveness of the Franchising Code of Conduct

Australia Post Submission 11 May 2018

1. Background

1.1 Introduction

The Australian Postal Corporation (Australia Post) is an iconic and trusted Australian government-owned corporation which has for over 200 years been an integral part of the Australian community, facilitating communication and delivering consumer and business services to all Australians. Australia Post appreciates the opportunity to make this submission to the Parliamentary Joint Committee on Corporations and Financial Services.

Australia Post operates a network of corporately owned and licensed post office outlets (LPOs) that provide access, sales and distribution channels for Australia Post's products and services across all Australian States and Territories. At the heart of the Australia Post business is its network of over 2,873 LPOs. The LPO network is vitally important to the Australian postal system, providing the customer interface and community involvement that has made Australia Post part of the fabric of the Australian community. LPOs vary from stand-alone businesses, to outlets located within or operated in conjunction with other businesses such as newsagencies, general stores, pharmacies, supermarkets, Tattersalls agencies, convenience stores and gift shops.

Although Australia Post views its relationship with its LPOs as distinct from the traditional franchise compact, it is acknowledged that LPOs are 'franchises' and 'franchised businesses' for the purposes of the Franchising Code of Conduct (Code). As such, Australia Post, its LPOs and licensees would be directly affected by any regulatory change to the Code.

1.2 Australia Post Network

Unlike other franchisors operating under the Code, Australia Post has unique structural features that impact on the legal and business relationship between Australia Post and its licensees. For example, Australia Post is governed by its own statute, and Australia Post's regulatory constraints, commercial obligations and community service obligations present unique challenges. In particular, the *Australian Postal Corporation Act 1989* (Cth) (APC Act) requires that Australia Post carry out its functions in a manner consistent with sound commercial practice.

However, the APC Act also requires Australia Post to make the ordinary letter service available at a single uniform rate of postage within Australia and for the letter service to be reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. Further, the *Australian Postal Corporation (Performance Standards) Regulations 1998* (Cth) impose strict performance standards to be met by Australia Post including requirements regarding the availability and accessibility of retail outlets

The model operated by Australia Post is fundamentally different to the traditional business model that most people associate with franchising. Approximately 60% of all Australia Post licensees operate within a 'host business' environment, where there is a small area dedicated to the sale of Australia Post products and the provision of postal services (or where Australia Post products and services are made available side-by-side with other products and services made available by the business), making the joint business more viable than a standalone Australia Post business in many situations. Australia Post does not control, and does not seek to control, the scope of operation or management of the broader business. Australia Post does not prescribe a defined business format, mandate business systems or standard product ranges. Australia Post simply makes the Australia Post brand and a range of Australia Post products and services available to licensees, and remunerates licensees for postal services provided on behalf of Australia Post. Licensees also derive revenue from their resale of Australia Post products.

In contrast to the vast majority of franchise systems in Australia, Australia Post does not charge its licensees any initial or ongoing franchise fees or royalties. For example, Australia Post does not charge its licensees a licence fee as a consequence of entering into a LPO Agreement, nor does Australia Post charge any service or marketing fee but rather absorbs these costs internally. Australia Post does not require any fitout refresh of the LPO premises and also supplies the LPOs with technology at either subsidies or no cost. Australia Post also currently bears most of the regulatory costs associated with complying with the Code. (Please refer to the Appendix for a comparison of key aspects of Australia Post's network to typical franchising networks).

A number of Australia Post licensees also have arrangements with other franchisors for different aspects of their business. For example, there are newsagency and lottery agreements in place in some businesses within the LPO network. While Australia Post acknowledges that this is atypical, it is important to understand the wide variety of business models that are governed by the Code, and therefore the implications to franchisors like Australia Post of any regulatory change.

Although Australia Post does not consider itself to be operating a franchise in the traditional sense, Australia Post satisfies the broad definition of a franchise contained in the Code, and believes the franchise regulatory framework makes a positive contribution to the operation of its network. Australia Post is actively engaged in the franchise industry, exchanging ideas and information with other brands, and has been a member of the Franchise Council of Australia for many years.

1.3 Business context

The Australian community's use of the letters service and Post Offices has been declining over the past decade due to the mass adoption of mobile devices and the rise of digital communications and online services. As a result, the extent to which the letters service is regarded as an "essential service" has diminished and Australia Post's core role in Australian society is in transition.

Nonetheless, in-person services, as well as delivery services offered via the Post Office remain highly valued by the Australian community, especially in rural and remote areas and amongst the most vulnerable members of society. The changing trends and disruption in many of the traditional core products and services sold via the Post Office, while the growth in parcels and online shopping, continue to impact the Post Office network and the commercial outcomes of the corporately owned and licensed post offices.

Australia Post now earns the majority of its revenue from products and services that it offers in fully competitive markets (outside of the "reserved service" in letters). These include a broad range of parcel delivery services, financial services, identity services, Government and agency services and retail merchandise. As part of the changing nature of the Australia Post business, this has shifted the role of the Australia Post network and the nature of work that LPOs perform on behalf of Australia Post.

In the future, there are opportunities for Australia Post to pursue new service opportunities, such as international growth, continued growth in parcels and online shopping and building new service propositions. As the nature of Australia Post's business changes, Australia Post intends to continue to work with its LPOs to review opportunities and how Australia Post continues to meet regulatory obligations as outlined in the Code and the APC Act.

Australia Post acknowledges that continually fostering a mutually beneficial relationship with Licensees is important for the future of Australia Post, Licensees and the postal network. Australia Post supports that the best interests of all stakeholders are served by ensuring a sustainable business model that is supported by equitable and transparent franchising framework. The current Code provides a framework that supports fostering this relationship, while provides significant protection to franchisees and imposing appropriate compliance obligations on franchisors. Australia Post will continue to work with all its stakeholders to ensure that it supports this framework and business model as Australia Post's core business continues to change with digitisation.

As part of the future of the franchise sector, Australia Post is concerned that, if compliance costs and regulatory restrictions continue to increase for the management and operation of franchise networks, it will be difficult to continue to meet community expectations on service quality and pricing whilst continuing to build commercial relationships with Licensees.

1.4 Previous Senate Inquiry and engagement with LPOs

In 2013, Australia Post was subject to an inquiry by the Standing Committee on Environment and Communications (Committee) which focused on the performance of Australia Post and its LPOs. Following that inquiry, the Committee made 18 recommendations (Recommendations) for Australia Post to consider. In conducting this previous inquiry the Senate had a detailed look at the LPO network and accordingly Australia Post does not consider that it is necessary to revisit the LPO arrangements in this Inquiry. Australia Post's submission for the previous inquiry is a matter of public record.

Australia Post has adopted and implemented the majority of Recommendations and Senator Williams commended Australia Post on this on public record. Some of these changes included reviewing payment rates for LPOs. This has increased the overall revenue that LPOs receive from Australia Post and also increased the minimum payments levels. Since January 2016, the level of payments to LPOs has increased by 30% and the majority of LPO payments are now reviewed every year and indexed to General Retail Industry Award and the CPI rates. Since the Senate Inquiry, Australia Post has introduced additional engagement forums with Licensees and licensee representative groups.

Australia Post acknowledges the importance of the LPO network. The LPO business model has helped Australia Post to consistently meet its regulatory obligations under the APC Act, and Licensees play a critical role in helping Australia Post fulfil these obligations. The LPO business model symbiotically combines the brand, systems and resources of Australia Post with the energy, connections and service ethic of a committed and locally engaged owner-operator (the licensee or franchisee). With Australia Post's brand and the systems, products, support and resources it is possible to operate a business in many communities where overhead costs for many LPOs are high. Similarly, the engagement and motivation of a business owner adds value and local relevance to the Australia Post business, and ensures the business runs efficiently and cost-effectively.

2. Submissions on Terms of Reference

2.1 Executive Summary

Australia Post's view on each of the Terms of Reference is summarised below:

- 1 In many cases the Australia Post activities are an adjunct to an existing business operated by the licensee outside of the Code. Accordingly, much of the information provided in order to meet the Code obligations is less relevant to licensees as the host business is the main part of their business operation.

Conceptually, the current disclosure requirements outlined in the Code provide a useful framework for pre-contractual discussion, and can assist prospective Australia Post licensees to make informed decisions about joining the LPO network.

Prospective licensees have rarely enquired for further information outside of what is presented in the disclosure document prepared by Australia Post under the Code (Disclosure Document). Australia Post considers that the current Disclosure Document is adequate.
- 2 There are rarely formal disputes in the Australia Post LPO network. In circumstances where a dispute does arise, the current dispute resolution process specified in the Code has been effective in resolving disputes. Further, this framework also operates in conjunction with Australia Post's own Dispute Resolution Committee arrangements that has been implemented by Australia Post to assist in the resolution of LPO disputes.
- 3 In light of the Australian Consumer Law's new unfair contract terms provisions, Australia Post reviewed the standard LPO Agreement (used in Australia Post's LPO network). The changes made to the standard LPO Agreement were to the benefit of the licensee.
- 4 As the Oil Code is irrelevant to the Australia Post LPO network, Australia Post does not offer an opinion on that code.
- 5 The termination provisions under the Code are appropriate in the context of the franchisor/franchisee relationship and should not be narrowed in application. It is uncommon for Australia Post to terminate a LPO Agreement and Australia Post believes it remains appropriate to restrict a franchisor's right to terminate to provide protection for franchisees. Notwithstanding the above, Australia Post would invite discussion surrounding restrictions on franchisors terminating franchisees for breach of their workplace obligations (for example, payment of superannuation to their employees) in light of the introduction of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) (Vulnerable Workers Act).
- 6 The LPO Agreement does not contain, and Australia Post does not impose, restraints of trade on its licensees following the termination of a LPO Agreement.
- 7 Australia Post has not had any direct experience with allegations of breaches of the Code. Australia Post considers the Australian Competition and Consumer Commission (ACCC) to be a well-resourced and effective regulator.

2.2 General Observations

The Code was introduced in 1998, with the ACCC being given oversight of the franchise sector. Since 1998, the Code has been reviewed four times (in 2006, 2008, 2009 and 2013) resulting in numerous changes to the franchising regime. The 2013 review by franchising expert Alan Wein was intended to be a comprehensive review, with Mr Wein directed to include findings and recommendations based on evidence and undertake specific consultation with State and Territory stakeholders due to concerns that submissions to past inquiries were largely anecdotal. Mr Wein produced a comprehensive report that addressed all aspects of the regulatory framework, and noted that the sector was suffering from review fatigue. Indeed Recommendation 17 of the Wein Report noted that there should not be another review of the Code for a minimum of five years after any amendments to the Code took effect.

Franchisors and licensors such as Australia Post have incurred significant costs to ensure ongoing compliance with the complex regulatory obligations in the franchising space given the numerous reviews and amendments to the Code and sector in general. These increasing costs and complexities invariably impact customers as well as franchisees and licensees.

Australia Post accordingly views this inquiry into as a platform to recover public perceptions of franchising and to inform the community of the diversity of franchise models in the industry. The recent media attention on certain franchises within Australia appears to have significantly contributed to the calling of this review and the need for all businesses to adhere to the same high standards in their dealing with their franchisees as Australia Post (and indeed many other businesses that operate under a franchise model) does.

As there has already been significant changes to the Code and the Australian Consumer Law unfair contract law changes concerning standard form small business contracts, it is hard to see how further amendments to the Code would be of significant benefit. Australia Post proposes that the Inquiry focuses on addressing specific concerns arising from the behaviour of the small number of franchisors that operate unlawfully or inappropriately, rather than make any broad regulatory changes that impact all franchisors and franchisees.

2.3 Disclosure

As noted above, in many situations some of the content in the Disclosure Document is irrelevant to the business operated by the licensee. Nevertheless it is a comprehensive document that provides a prospective licensee and their advisors with significant information on the LPO network, the franchisor (Australia Post) and the key commercial terms of the LPO Agreement. Prospective licensees also have the opportunity to make contact with any existing Australia Post licensee (and any licensee that has left the LPO network within the last 3 years) to get their perspective on the Australia Post LPO network.

The Code's disclosure framework is already very comprehensive and strikes an equitable balance between the interests of all parties to franchise and licenced relationships. In Australia Post's view, the information required to be disclosed is more than adequate to enable a prospective franchisee to make a reasonably informed decision about the opportunity.

Australia Post's response to the four specific questions in relation to the adequacy of disclosure from the terms of reference are as follows:

1 *likely financial performance of a franchise and worse-case scenarios*

Earnings information is not provided by Australia Post to its licensees, and is not in a position to do so. Remuneration to licensees in relation to postal activities is directly linked with the volume of transactions, and is reviewed annually in consultation with licensee representative groups.

The costs associated with operating an LPO vary greatly from location to location especially when considering Australia Post's vast number of LPOs across both metropolitan, rural and remote Australia and the array of businesses conducted in conjunction with the Australia Post activities.

2 *the contractual rights and obligations of all parties, including termination rights and geographical exclusivity*

Australia Post's Disclosure Document gives a detailed overview of the rights and obligations of the parties. Australia Post also believes that the terms of the LPO Agreement are clear and easy to understand.

In order to support its community service obligations under the APC Act, Australia Post is obliged to service all parts of Australia. To ensure LPOs remain open and viable, Australia Post pays certain LPOs in those locations (approximately 300 LPOs primarily in rural and remote areas) minimum income payments. With this safety net in place, there is an overwhelming incentive for Australia Post to treat its licensees in good faith, do what is possible to ensure the fairness of contractual rights and obligations under the LPO Agreement and to ensure licensees have the opportunity to prosper.

Australia Post does not grant any geographical exclusivity. Australia Post's contractual rights are limited to the circumstances prescribed by the Code.

3 *the leasing arrangements and any limitations of the franchisee's ability to enforce tenants' rights*

Australia Post licensees will generally negotiate directly with a landlord for the right to occupy the LPO premises and Australia Post has no control or involvement in the leasing arrangements between its licensees and their landlords. Australia Post is not permitted to take over the premises or to impose any restrictions on the rights the licensee may exercise as tenant in these circumstances.

In circumstances where Australia Post holds the lease and sub-leases or licenses the premises to a licensee, Australia Post will enter into commercial, fair and reasonable terms with the licensee. However, it is Australia Post's preference that licensees independently negotiate with a third party landlord to arrange for a suitable premises from which to conduct their LPO business.

4 *expected running costs, including cost of goods required to be purchased through prescribed suppliers*

The Code requires the provision of comprehensive information regarding establishment and operational costs. However, this information has limited use given the significant variations in costs between LPO locations.

As it is not possible for Australia Post to provide specific information on turnover, costs or profits, and as there are significant differences between Australia Post LPOs across the LPO network. The Australia Post Disclosure Document provides for broad ranges of costs. For these reasons, Australia Post does not support any amendment of the Code to require franchisors to provide any additional information on revenue or profitability to franchisees.

2.4 Effectiveness of Dispute Resolution under the Code

There are two forms of dispute resolution permitted under the LPO Agreement, which are sufficient avenues for dispute resolution and assist in ensuring industrial harmony:

- 1 the internal dispute resolution mechanism set out in the LPO Agreement; and

2 the mediation based dispute resolution framework set out in the Code.

The Code contains a highly effective mediation based dispute resolution mechanism that is a cornerstone of the success of Australian franchising. According to the Franchising Australia Surveys conducted by Griffiths University for the Franchise Council of Australia the level of disputation in Australian franchising is very low, rating consistently at under 2%. This compares very favourably with other countries, including the USA where the disputation rate is estimated to be 6 - 8 %.

Australia Post considers the Code's prescribed dispute resolution process to be appropriate and effective when it has been required to be relied upon and sees no reason why this should be changed.

2.5 Impact of Unfair Contract terms provisions

Australia Post conducted a comprehensive review of the terms of the LPO Agreement in relation to the Australian Consumer Law unfair contract terms provisions, and made amendments (after consultation with the licensee representative groups and the ACCC) where appropriate to ensure compliance with these provisions.

As only franchise agreements entered into or renewed after November 2016 are impacted by the new unfair contract regime, the practical impact of these changes is too premature to assess.

However, Australia Post seeks to maintain a close and mutually beneficial relationship between itself and licensees through fair and reasonable contract terms.

2.6 Adequacy and operation of termination provisions

The Code imposes some limitations on the ability of Australia Post to terminate a LPO Agreement, but these limitations are manageable and appropriate in the broader franchise industry context. It is uncommon for Australia Post to terminate LPO Agreements. Australia Post believes it is appropriate to restrict a franchisor's right to terminate to provide protection for franchisees in the manner described currently in the Code, but would not wish to see a narrowing of the grounds for termination.

As is evident by the low level of formal disputes within the LPO network, Australia Post considers the current regime to contain fair and reasonable restrictions on termination.

Notwithstanding the above, Australia Post would invite discussion surrounding restrictions on franchisors terminating franchisees for breach of their workplace obligations (for example, payment of superannuation to their employees) in light of the introduction of the Vulnerable Workers Act..

2.7 Enforcement of breaches of the Franchising Code of Conduct

Australia Post takes compliance with its obligations under the Code seriously, and dedicates considerable resources to supporting its licensees and facilitating compliance. Australia Post routinely confers with licensee representative groups to encourage network-wide compliance and to assist with any common concerns of the licensees.

Australia Post has not been accused of breaching the Code, but understands the ACCC to be an effective regulator.

2.8 Conclusion

The current Code provides significant protection for franchisees and prospective franchisees and imposes substantial compliance obligations on franchisors. In Australia Post's view, it strikes an appropriate balance between the rights and responsibilities of franchisors and franchisees. Accordingly, Australia Post's position is that no changes to the Code are necessary.

Appendix – Comparison

ATTRIBUTE	TYPICAL FRANCHISE NETWORKS	AUSTRALIA POST LICENSEE NETWORK
1. Contract term	Fixed term typically 3, 5 or 10 years	Indefinite term
2. Licence fee	Lump sum paid to franchisor	Nil
3. Service and/ or marketing fee	Percentage fee paid to franchisor	Nil
4. Range of products and services	Simple mandatory range for both products and services	Complex mandatory range of services and simple small product range
5. Technology	Supplied at full cost recovery	Supplied at subsidised or no cost
6. Fitout requirement	Required for most models with refresh generally at contract conclusion	Minimum fitout requirement with no ongoing refresh
7. Franchisee representation	Franchise advisory councils	Two licensee associations. Relationship engagements embedded into the LPO Agreement
8. In conjunction with other business	Uncommon but known as a business model, e.g. Tatts Lotto and Harvey Norman	Approximately 60% are co-located with another business
9. Entity	Generally mandated company and/or trust	Range of entities from sole trader, partnership, company or trust
10. Location	Determined on a commercial basis only.	Historical and partially commercial basis. Minimum retail outlet numbers determined by regulation
11. Agreement changes	At end of term or by mutual consent	After consultation with licensee representative associations