



POAAL

Post Office Agents Association Limited
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Submission to the

Senate Education, Employment and Workplace
Relations Committee of the Australian Parliament

Inquiry into the Fair Work Bill 2008

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Introduction

The Post Office Agents Association Limited (POAAL) welcomes the opportunity to provide a written submission on behalf of its members to the Senate Education, Employment and Workplace Relations Committee of the Australian Parliament.

Approximately 78% of the Australia Post retail network is operated by Licensees in a Licensed Post Office (LPO). The LPO network operates in a similar manner to a franchise network.

While the majority of LPOs are owner/operator businesses, they also employ staff. All LPOs are engaged in duties associated with the sale of products and services and in some cases the delivery of mail and parcels on behalf of Australia Post. In many situations this service is offered in conjunction with another business such as a newsagent or general store. All LPOs have less than 15 staff.

Over half of these businesses operate in rural and remote localities. Their business follows the fortunes of rural and regional Australia, including the severe challenges of drought and poor commodity prices as well as the competition for labour especially from re-emerging industries such as mining. They have little time for red-tape and complexity or for an industrial environment that attempts to attribute the obligations of major corporations to them.

In this context we offer the following comments on a number of aspects of the Fair Work Bill 2008.

Right of Entry Provisions

The Bill provides the unions with a right of entry to hold discussions with workers on premises and to obtain records and documents that they suspect relate to breaches of the legislation. This will raise concerns where membership coverage overlaps between unions and the competitive aspects of membership drives encourages unions to “demonstrate” they are protecting the interest of employees or that they have something of value that would attract membership.

It is inequitable that unions have access to names of contact details of people who are not union members or of people who are members of other unions. It is our understanding that the union can also access documents that have no connection to employee records in their role of testing if an employer has contravened the legislation.

The assurances of the Deputy Prime Minister that these situations are not intended consequence of the legislation need to be strengthened in the Bill if it is not to be misused.

It is also inconsistent with the stated objectives of the legislation that the role of the union is imposed in this and in other sections of the proposed legislation in what should be primarily a relationship between employer and employee.

The risk of this is particularly likely in those industries, such as the Licensed Post Office network, which are not highly unionised.

It is also inconceivable that small businesses – especially Licensed Post Offices – have the space for a tea room or staff room that would allow a union official to have private conversation with staff.

The union is being given the role of “policeman” while it may also be pursuing objectives related to its own advantage around membership and revenue growth and even long term survival. The potential for conflicted interest is high in any organisation attempting these two competing roles of “policeman” and “recruiter”.

To this point, POAAL has received very few complaints from post office Licensees regarding union activity in the LPO sector. This is in no small part due to the energies committed to maintaining a working relationship between POAAL and the CEPU. It is a relationship fostered in the current workable industrial relations environment.

Unfair Dismissal

POAAL believes that the model of a fair dismissal process for small businesses with fewer than 15 staff is a positive initiative. The code that has been developed is practical and gives a good understanding to small business of when they can dismiss someone.

There are, however, some aspects that need further clarification.

It is proposed that dismissal for genuine redundancy is not valid if it would have been reasonable for the employer to redeploy the employee. Redeployment includes considering other businesses associated with employer.

The extent of the requirement to redeploy to an enterprise of an associated entity of the employer would need to be clarified. For example how will this relate to a franchise system such as the Licensed Post Office which operates in conjunction with other business such as a pharmacy or newsagent? If one part of the business is declining this implies they must be redeployed to the other. One person trained in the postal side of the business may not be able to transfer to

the other even if there was a vacancy to be transferred to. Some franchisees have multiple entities in the franchise system. Does this mean that they need to be redeployed to those businesses?

The Deputy Prime Minister asserts in the Bill's Explanatory Memorandum that the new legislation and its procedures will likely promote a greater number of unfair dismissal claims.

Although there are further assurances that these claims will be simpler and less costly to resolve this raises serious concerns for the members of POAAL. It has been our experience with dispute resolution processes such as the *Franchising Code of Conduct* that this objective has not been met.

The government should do more to modify its processes and its legislative provisions to minimise unfair dismissal claims, not increase them.

Staff Leave Provisions

POAAL agrees with a number of the provisions related to leave. In particular the right to cash out annual recreation leave which can be a serious burden to the liabilities of the business if it remains unused.

However there are a number of areas where our members as small business people will find a major disincentive for the employment of staff.

Right to request flexible working arrangements. This is often impracticable in a small business. The most usual manner of handling this is for the employer to explain the expectations around a potential staff member's employment with any acceptance of the employment based on this understanding. Subsequent changes to these arrangements would need to fit within the capacity of the small

business operations. These are limited compared to the capacity at larger establishments which enjoy greater flexibility because of their size.

Community Service Leave. POAAL notes the ambitions for an improved community benefit from the provisions related to emergency service and jury duty. The proposal for jury service has the additional burden for a small business of making up the pay of empanelled juror as well as replacing them while they are absent. While we accept that the economic impact for the community may be within tolerable limits they fall unreasonably on small businesses. As such they need to be limited to businesses of a certain size.