



POAAL

Post Office Agents Association Limited

A.C.N. 006 382 314

Submission to the

National review into model Occupational Health and Safety (OHS) Laws

Post Office Agents Association Limited (POAAL)

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July 2008

Introduction

The Post Office Agents Association Limited (POAAL) welcomes the opportunity to provide comment to the National Review into Model OHS Laws. Our members operate in all States and Territories, running retail and delivery businesses.

They have responsibilities under existing OHS legislation. Standardised OHS laws between States and the Commonwealth would assist them in providing and operating in safe work environments.

This submission will address some of the points and questions raised in the Issues Paper, as well as making some further observations.

About POAAL

POAAL is the national representative body for the owner/operators of Licensed Post Offices (LPOs). POAAL was formed in 1939 to help the owners of privately owned post offices. Since then, POAAL has been part of many changes to the postal industry, including the landmark LPO Agreement which saw the establishment of the Licensed Post Office model and the transformation of Australia Post into an efficient, profit-making corporation.

POAAL also represents Mail and Parcel Contractors who deliver mail under contract for Australia Post.

About LPOs

There are almost 3000 LPOs across Australia, which makes up about 75% of Australia Post's network of post offices. LPOs are hybrid businesses that perform mail work and retail business. Frequently, LPOs are operated in-conjunction with another business, such as a general store or newsagency.

All LPOs handle mail. LPOs outside of major metropolitan areas generally perform more mail work, including sorting, handling and various forms of delivery, than those in metropolitan areas.

Each LPO has a public space, where products are displayed and where the public is served. The size and layout of the public space varies from LPO to LPO.

About Mail & Parcel Contractors

Mail & Parcel Contractors are small business operators, many of whom are single-person operations. They are contracted to perform mail work (including sorting, handling and delivery) for Australia Post.

Contractors operate in metropolitan, regional, rural and remote Australia. Contractors in metropolitan areas typically sort mail and/or parcels for their contract at Australia Post-owned mail facilities. In regional and rural areas Contractors may sort their mail at the local LPO or Corporate (Australia Post-owned) post office. They then load their vehicle and commence deliveries.

The sorting (or set up) time can vary according to the volume of the mail and also the mix of the mail, for example letters, large letters, parcels, Express Post items and signature items.

Australia Post requires that all Contractors are incorporated. The standard mail contract requires Contractors to take insurance policies such as public liability insurance, marine cargo insurance, and any relevant workers compensation insurances. The Contractor owns or leases the vehicle(s) used to perform the contract.

Mail Contracts usually have a five-year term.

Mail & Parcel Contractors perform a variety of mail services for Australia Post, including:

- Street mail delivery
- Parcel delivery
- Roadside delivery
- Line haul
- Depot bags
- MessengerPost

Questions raised in the Issues Paper

Q11. Should general duties of care under the model OHS Act be extended to members of the public? If so, how?

From time to time a Contractor may be required to enter a private property to effect delivery. While Contractors use common sense to ensure that they are safe while on private property, residents must take adequate precautions to make sure that there are no risks to the Contractor that are not obvious to the Contractor.

For example, dangerous animals must be restrained. Pathways must be secure.

There have been instances where residents have placed spikes and other dangerous objects on grass verges or paths outside their property boundaries, posing a risk to Contractors and their vehicles. This questionable, anti-social and dangerous behaviour is often ignored by local councils and other authorities.

Q13. Are there current or emerging hazards and risks that are not effectively addressed under general duties of care? If so, how should they be provided for under a model OHS Act?

The Issues Paper notes that “more attention is being given to psychosocial and work environment problems, such as stress, fatigue and bullying.”

While organisations such as Australia Post may have Anti Bullying Policies, these policies are not always taken seriously by front-line management. Regrettably, such policies should be backed up by legal responsibilities.

In workplaces such as Australia Post Delivery Centres, Contractors are often treated as second-class employees. Management and employees force Contractors to use outdated and sometimes faulty sorting equipment, or in some instances force Contractors to work outside in an unheated or non-air-conditioned workspace, with managers hiding behind excuses of “budget restrictions” when seeking to explain Contractors’ poor working conditions.

This maltreatment, sadly, also can include bad management practices such as bullying.

Indeed, bullying can take place beyond the immediate physical workplace. POAAL is aware of many incidents where Australia Post management has bullied Licensees. Bullying can in turn lead to stress.

In these cases, the source of the stress is external to the business, and as such cannot be controlled by the Licensee or Contractor. Furthermore, there are no avenues for the victim to complain and have their complaints resolved without the risk of further bullying.

Any legislation concerning bullying should focus on:

- The reporting of bullying behaviour;
- Incentives to change bullying behaviour; and
- Safeguards against further victimisation.

Q20. Is primary reliance on employment relationships a valid basis for framing safety obligations?

OHS laws should take into consideration the relationship between the entities rather than solely “employment relationships” when considering safety obligations.

Licensees and Contractors are engaged as agents of Australia Post to sort and deliver the mail. The actions of Australia Post can have a direct bearing on Licensees’ and Contractors’ ability to comply with their own OHS plans.

Australia Post delivers mail to LPOs each morning. The Licensee (or his/her staff) sorts the mail for PO Boxes and for any Contractors who may be based at that LPO.

The size, weight and type of mail received at LPOs should all comply with Australia Post’s Terms and Conditions of Carriage. In reality, this is not always the case.

The Licensee may have safe parcel handling procedures in place, but in reality Licensees are hampered in the execution of those procedures by Australia Post’s continuing acceptance and processing of overweight and oversize parcels. Australia Post requires Licensees to accept and deliver or onforward these parcels at their LPO, regardless of the risk of injury to Licensees or their staff.

Licensees who refuse to accept overweight or oversize items may find themselves subject to bullying from Australia Post management. Australia Post management seeks out the “point of least resistance”, and in many instances that point is the Licensee. Management then heap pressure upon the Licensee to toe the line, regardless of the OHS implications. It can be an untenable position.

The same applies to Mail & Parcel Contractors. Australia Post demands that they deliver overweight and oversized parcels, regardless of Contractors' own OHS policies.

On this basis, then, Australia Post should have an obligation to ensure that its decisions and actions do not diminish a Licensee's ability to maintain a safe working environment at their LPO. Likewise, neither should Australia Post undermine a Contractor's safe working environment.

Mail delivery to businesses

It should also be noted that deliveries to businesses are made to the reception desk (or similar) of the business. This applies to Contractors, requiring them to enter the business premises to effect delivery, opening up other OHS exposures.

This is not to say that Contractors should be relieved of any personal responsibility when entering a business premises; rather, it should be the responsibility of the business owner to reduce the risk of harm to anyone entering the premises, at least in the "public" part of the premises.

Q21. How should the model OHS Act provide for duties owed to non-employees such as contractors, labour hire personnel, volunteers, apprentices/trainees and other persons performing work?
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There must be a duty of care between a contractor and the owner of a premises.

In the case of Mail and Parcel Contractors, while the Contractor is working at an Australia Post facility he/she should be treated on an equal basis with employees with respect to OHS duties of care.

Managers and staff with OHS responsibilities must include contractors in their OHS considerations, on an equal footing with employees and any other workers in the workplace.

Q22. Is there a broader concept that more effectively covers the various work arrangements?

Where there is a mix of employees and contractors in a workplace, it would make sense for OHS laws to use inclusive terminology rather than the exclusive “employee” or “contractor”.

Q26. Should the model OHS Act include duties of care for persons who are not performing work (eg visitors to a workplace, members of the public)? If so, what should the duties be?

Every Licensed Post Office has a public area, where products are displayed and where the public is served. Licensees should keep the public area of their business safe, not only because it is good business sense and public-spirited, but because claims that may result from an injury sustained by a member of the public can be extensive.

Nevertheless, this does not absolve the public from any responsibility for their own health and safety. The public should be encouraged to be observant and to report any potential hazards that they observe. It might not be suitable for inclusion in the Act, but certainly could form part of any public educational campaign.

Q45. What provisions should be made in the model OHS Act for consultation?

Q46. What are the work relationships to which a consultation provision should apply?

At Australia Post facilities, Contractors work alongside Australia Post employees. The workplace is managed by Australia Post managers. Yet Contractors are excluded from consultation with regard to OHS.

As a bare minimum, Contractors or their representative organisation must be offered the opportunity to participate in consultation on OHS matters in a workplace. This should extend to all workplaces where contractors perform work alongside or similar to employees at the workplace.

Where there is an umbrella OHS group covering many workplaces where contractors are engaged, contractors or their representative organisation must be offered the opportunity to participate.

Q47. Should there be different levels of consultation required for different work relationships?

In the interests of saving time and early detection of problem areas, it may be possible to implement overarching OHS strategies for multiple work sites by high level consultation between employers, employee groups and contractor groups.

Such high level consultative groups may be able to identify trends across work sites and to develop and implement best practice.

Q48. How should consultation be provided for:

- A multi-employer worksite;
- An employer with operations across more than one worksite;
- Small business;
- Remote workplaces;
- Precarious employment; and
- Workers from culturally and linguistically diverse backgrounds?

It may be that a Mail Contractor engages an employee or subcontractor to perform work on the Contractor's behalf at an Australia Post facility. In this case, the employee is subject to both the Contractor's OHS plan as well as Australia Post's OHS plan.

Continuing on-site assistance from workplace authorities, allied with an understanding of the pressures of small business, will assist in creating an ongoing safe working environment for small business owners and their employees.

Workers from many nations are based at Australia Post mail facilities, bringing with them differing expectations and understandings of workplace OHS. Consultation with people from culturally and linguistically diverse backgrounds requires patience.

5.2 Participation and Representation

At Australia Post facilities, Contractors work alongside Australia Post employees. The workplace is managed by Australia Post managers. Yet Contractors are excluded from being part of any workplace committee with regard to OHS.

It may be that workplaces need not have a Health and Safety Committee, burdened by bureaucratic demands. A regular (monthly or quarterly) consultative process, held at times that suit all participants, might be more appropriate.

Larger workplaces (say, 30 employees/contractors and above) may benefit from having a more structured organisation relating to HSRs and HSCs for the workplace. In these cases, contractors must be given the opportunity to be involved.

The most important aspect is to ensure that all views are canvassed and that there is a focus on health and safety of all involved in or at the workplace.

Q63. What provision should be made in the model OHS Act to assist the effective resolution of health and safety issues?

POAAL has many years' experience in dispute resolution. The following principles are essential:

- Timeframes. Without timeframes – and adherence to timeframes – employers (especially large, bureaucratic employers) can put off resolving any issues.
- Hierarchy for escalation. If an issue is not resolved within the given timeframe, it must be clear how the matter is to be escalated in order to achieve resolution.
- Responsibility and representation. If an issue has been raised with an appointed employer representative, the process (and any timeframes) must not be derailed by staff leave or absences. There must be clarity as to with whom any OHS issues are to be raised.
- Independent resolution. In instances where it is impossible to reach a resolution internally, an external party must be brought in to resolve the issue.
- Cost-effectiveness. Any procedure for resolving health and safety issues must be low cost.

Q67. Should a model OHS Act specifically provide for the right of workers to refuse or cease to undertake work they consider unhealthy or unsafe?

If Contractors are afforded the same OHS cover as an Australia Post employee, they would then have the same ability to refuse unsafe work. At the moment, because they are under contract, they could be considered to be in breach of their contract if they refuse to deliver an item directed by Australia Post to attempt delivery.

Q68. Should a model OHS Act provide for the right of a HSR to direct that work cease? If so, what conditions, limitations or restrictions should be placed on the exercise of the right by a worker or representative?

HSRs in workplaces that have a mix of employees and contractors will need to be sensitive to any contractual pressures contractors may experience. If the actions or

equipment of a contractor are the cause of unsafe work then the HSR may need to work in concert with the workplace manager.

Q69. Should the model OHS Act require payment of wages and/or associated benefits to workers who have exercised the right to cease work in accordance with the Act? If so, what should be provided?

This raises the issue of fault and reciprocal responsibility. If a contractor or employee has an obligation to maintain a safe work area, there must be common sense limitations to their obligation.

Q71. What provision should be made in the model OHS Act to protect persons from discrimination or victimisation and who should be protected?

The Act should not overlap or contradict any existing laws concerning discrimination.

Q76. What remedies should be available to the victims?

In the case of contractors, one remedy would be for the employer to pay out the contract in full.

Q77. Should there be mechanisms in the model OHS Act for resolution of discrimination or victimisation disputes, as alternatives to criminal prosecution by the regulator, such as conciliation or arbitration before a tribunal?

It is preferable for workplace disputes to be resolved swiftly and at a low cost. As noted in response to Q63, the critical elements of dispute resolution are set timeframes, a path for escalation of any dispute resolution proceedings, clarity of roles and responsibilities, the option for involvement of an independent person as part of the escalation path, and cost-effectiveness.

Q145. How should an effective reporting system be provided for in the model OHS Act without an unnecessary compliance burden?

Notification is not just about compliance and enforcement. It is about tracking trends and planning for the future.

A useful database of OHS incidents will assist with this.

Incidents must be broken down by appropriate indicators, such as injuries sustained, industry type, size of workplace, history of workplace OHS incidents, any previous remedial action taking, to name but a few.

Further observations

Exposure to UV radiation

This submission has focused largely on parcel handling and safe retail working environments. One issue not addressed above is exposure to UV radiation.

Mail & Parcel Contractors work in the outdoors for much of the day. In order to reduce potential exposure to UV radiation from the sun, Contractors prefer to complete deliveries as early as possible. It is especially important to avoid the peak UV and heat times during the early afternoon.

UV radiation in Australia can regularly exceed safe levels. At present, Contractors are under an obligation to deliver mail within a daily timeframe.

It is vital for the continuing wellbeing of Contractors that positive action is taken. POAAL recommends:

- Australia Post to invest in developing lightweight and durable UV resistant uniforms that are made available to Contractors;
- Australia Post must have mail ready earlier so that Contractors can commence their daily deliveries earlier in the day with more suitable completion times; and
- Australia Post must manage mail volumes for Contractors (including unaddressed advertising mail) so as to assist Contractors in avoiding being outside performing deliveries during peak heat and UV periods of the day.

It would be appropriate for any model OHS Act to explicitly note that UV radiation must be a consideration of any OHS plan.