



# POAAL

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

## POAAL submission to the Productivity Commission Inquiry into the Market for Retail Tenancy Leases in Australia

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POAAL  
PO Box 190  
CARLTON SOUTH VIC 3053

Ph: 03 96544533  
Fax: 03 96544577  
[www.poaal.com.au](http://www.poaal.com.au)

## **Profile of POAAL**

The Post Office Agents Association Limited (POAAL) represents the nearly 3,000 small business owners of the Licensed Post Office network that comprise 80% of the Australia Post retail network.

Our members are all small business owner/operators and it is estimated that they have invested at least one billion dollars in the Postal business alone. They are the front line for postal services provided to Australian communities in metropolitan, regional, rural and remote areas of Australia.

Licensed Post Offices (LPOs) can be found in shopping strips, shopping centres and malls. Some LPOs, particularly those in country Australia, occupy an entire building.

The Licensee (the owner of the Licence to operate the LPO) is responsible for all business costs, such as rent, utilities, stock and staffing. Where the LPO is situated in rented premises, it is the Licensee's responsibility to negotiate the lease with their landlord.

LPOs have been subject to large rent increases in recent times. This has been and continues to be especially prevalent in Sydney, NSW Coastal areas, some parts of SE Queensland and mining areas.

The Licensee as tenant does not have the ability to pass on any rental increase due to the nature of their business. The tenant usually is not in a position to negotiate on equal terms with the landlord. This is especially so in cases where Australia Post insists that a Licensed Post Office remain in a certain area, thus limiting the Licensees' options.

Licensees do not have the freedom of other independent business owners who can shift their business to another area if rents become prohibitive. This can have the effect of handing excessive power to any landlord when it comes time to negotiate or renew a lease.

## **Shopping strips**

Licensees who rent retail space in a shopping strip for their LPO premises typically have a reasonable chance of fairly negotiating with the landlord. True negotiation can take place, especially where there are vacancies in the shopping strip.

Nevertheless, there is still the possibility that the landlord might attempt to impose an unreasonable rent increase on a renewing tenant.

## **Change of shopping centre management**

If a lease has a renewal clause, it is usual for the tenant to have to exercise the option six or nine months before the end of the lease. This can pose a problem for tenants in shopping centres.

In cases where the centre has been sold, the outgoing landlord will often refuse to negotiate with a tenant, saying that it is the responsibility of the new landlord.

It is not possible to negotiate with the new landlord until they take over, which might not be until after the expiry of the lease. This leaves the tenant in a situation where they are on a month-by-month lease, offering no long-term security and stifling future business plans.

## **Shopping centres**

Shopping centre management can choose to exercise a greater degree of control over tenants and hold greater bargaining power. Changes to the Trade Practices Act to allow collective bargaining may go some way to help redress the balance of power.

## **Unfair fit-out requirements**

Some shopping centres require that tenants tailor the fit-out of their shop to fit in with the shopping centre image.

A problem arises where the shopping centre changes its image and the tenant is expected to re-fit the shop to fit in with new shopping centre colour scheme, sometimes at great expense. This can be a particular burden where the tenant has only recently fitted out their business.

This underlines the need for disclosure in leases. If a tenant is made aware that the shopping centre's colour scheme may change, especially if that change is scheduled to occur in a short time, then the tenant (or prospective tenant) is in a better position to make an informed decision.

Licensees of LPOs and many other franchise operations are in the position of being limited in colours and fit-outs by their principal. Add demands of landlords and profits start disappearing quite rapidly.

## **Dispute resolution procedures**

All dispute resolution procedures needs to be structured in such a way that they are fair and equitable. Dispute resolution procedures need to be simple, fair, consistent and cost-effective for instances where landlords and commercial tenants cannot reach agreement. Tenants often lack an effective bargaining position.

## **Technology**

Costs associated with the relocation of telephony lines and data connections make it expensive to move an outlet, even within a shopping centre or shopping strip. This cost may be greater than any proposed increase in rent. This can deter tenants moving to a more attractively sited position.

## **Disclosure**

In all States, there should be an obligation upon landlords and tenants to provide a useful level of disclosure. Disclosure by landlords to prospective and existing tenants should be enacted to enable tenants to make better business decisions relating to leasing. Disclosure by tenants to landlords could assist landlords in planning and managing shopping centres.

Disclosure provisions would protect both landlords and tenants.

Some aspects that should be considered in regard to disclosure:

- Shopping centre colour schemes
- Parking charges
- Shopping centre security
- Shop usage
- Proposed changes of ownership/management

## **Franchisees**

One of the difficulties faced by franchisees is that landlords can perceive that franchisees have the same resources and backing as the franchisor. Many franchisees, despite the administrative support of their franchisors, do not have the financial might of a large corporation, and certainly not the income.

Landlords may jump to the conclusion that the franchisee's capacity to pay is higher than reality.

## **Conclusion**

In the interest of maintaining small business profitability in Australia, POAAL believes that steps need to be taken to ensure that leases are fair to both parties and take into account the requirements of the landlord and the tenant to enable both to have a reasonable return on their investment.