



Australian
Competition &
Consumer
Commission

Principles for the public disclosure of record-keeping rule information provided by Australia Post

NOVEMBER 2006



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Glossary

ACCC	Australian Competition and Consumer Commission
ANF	Australian Newsagents Federation Limited
attributable cost	costs that are part of a pool of common costs that are identifiable to a particular service by a separable cause and effect relationship
cross-subsidy	the supply of one group of services at a loss which is made up by the profits on the supply of another group(s) of services
direct cost	costs that are solely associated with a particular service and so are incremental to providing that service
incremental cost	the additional cost incurred by producing a good or service (in addition to the other goods the firm produces)
MMUA	Major Mail Users of Australia
non-reserved services	services that Australia Post provides in competition with other entities
POAAL	Post Office Agents Association Limited
RAF	regulatory accounting framework, established by the record-keeping rule issued by the ACCC on 30 March 2005
regulatory accounts	the statement of financial performance, statement of capital employed, statement of movements in non-current asset values, statement of WACC and statement of service group usage, required by the record-keeping rules
reserved services	postal services reserved to Australia Post under legislation i.e. no other entity can provide these services
RKR	record-keeping rule; the ACCC may require Australia Post to keep records (a record-keeping rule) that relate to any of the ACCC's regulatory roles
service group	the service groups defined in schedule 1 of the record-keeping rule information provided by Australia Post
stand-alone cost	the cost of producing each output in isolation
UNA	United Newsagents of Australia
unattributable cost	costs that are part of a pool of common costs but are not readily identifiable (in whole or part) to any particular service by a separable cause and effect relationship
WACC	weighted average cost of capital

Summary

This report outlines the principles that the Australian Competition and Consumer Commission (ACCC) will apply when considering whether to publicly disclose information that Australia Post claims is confidential. It follows consultation with Australia Post and other interested parties.

As well as its general responsibilities in enforcing the *Trade Practices Act 1974*, the ACCC has three specific responsibilities in the regulation of postal services:

- monitoring for the presence of cross-subsidies between Australia Post's reserved services (i.e. those services in which it has a statutory monopoly) and non-reserved services (i.e. the services it provides in competition with others)
- assessing proposed price increases of Australia Post's reserved services
- inquiring into certain disputes regarding the terms and conditions under which Australia Post supplies its bulk mail services.

To assist it in undertaking these roles, the ACCC can issue record-keeping rules (RKR) to Australia Post, thereby requiring Australia Post to keep the specified records and provide them to the ACCC.

The ACCC may publish reports analysing the information provided under RKR. This includes publishing information that Australia Post claims is commercial-in-confidence (generally referred to, in this paper, as confidential information) if:

- the ACCC is not satisfied that the claim is justified or
- the ACCC considers it in the public interest to publish the information.

Publishing reports

The ACCC considers it necessary to publish regular (annual) reports presenting the results of its cross-subsidy analysis to meet the RKR provision objectives of increasing the transparency in Australia Post's accounts and identifying any areas of cross-subsidy.

It may also be appropriate to publish other (less regular) reports analysing the RKR information for a particular purpose—for example, when assessing a price notification, it may be appropriate to release a report analysing information about the reserved services.

Level of disclosure

The ACCC considers that the level of disclosure in its reports should be sufficient for the purpose of the report and that it has a duty of care to protect any confidential information it receives. Accordingly, the ACCC will generally not disclose information that Australia Post claims is confidential if it is not relevant to (or necessary for) the purpose of the report.

This approach, however, does not necessarily mean that the ACCC has accepted Australia Post's claim of confidentiality and non-disclosure for one purpose does not necessarily mean that it will be inappropriate to disclose that information for another purpose.

Confidential information

When publishing reports, the ACCC will provide Australia Post an opportunity to claim confidentiality over information in the report.

The ACCC generally considers that for a claim of confidentiality to be justified, two criteria must be met:

- the information must not already be in the public domain **and**
- disclosure of the information must, at least, have some potential to harm Australia Post's legitimate commercial interests.

The ACCC considers that disclosure of information about the non-reserved services is more likely to result in detriment to Australia Post than disclosure of information about the reserved services.

Disclosure in the public interest

The ACCC considers that, even if satisfied that a claim of confidentiality is justified, it may be necessary to publish that information if it is satisfied that the public interest in doing so will outweigh the detriment to Australia Post. In deciding whether or not to disclose confidential information, the ACCC will first consider the policy objective of its relevant regulatory roles and the purpose of the report.

The ACCC considers that the release of confidential information may be justified in circumstances where it assists in achieving its regulatory objectives or can clarify its regulatory processes. In some circumstances disclosure of confidential information may assist in increasing the quality of inputs into the ACCC's decision-making process.

In considering whether or not to disclose confidential information in the public interest, the ACCC will balance the public interest against the potential detriment to Australia Post.

1. Introduction

As well as enforcing the *Trade Practices Act 1974*, the Australian Competition and Consumer Commission (ACCC) has three specific responsibilities in the regulation of postal services:

- monitoring for the presence of cross-subsidies between Australia Post's reserved services (i.e. those services in which it has a statutory monopoly) and non-reserved services (i.e. the services it provides in competition with others)
- assessing proposed price increases of Australia Post's reserved services
- inquiring into certain disputes regarding the terms and conditions under which Australia Post supplies its bulk mail services.

To assist it in undertaking these roles, the ACCC can issue record-keeping rules (RKR) to Australia Post, thereby requiring Australia Post to keep the specified records and provide them to the ACCC. In March 2005 the ACCC issued a RKR that established a regulatory accounting framework (RAF) for Australia Post. Under this RKR, Australia Post must provide regulatory accounts segmented into 16 service groups by 15 November each year.

The ACCC may publish reports analysing the information provided under RKRs. This includes publishing information that Australia Post claims is commercial-in-confidence (generally referred to, in this paper, as confidential information) if:

- the ACCC is not satisfied that the claim is justified or
- the ACCC considers it in the public interest to publish the information.

This paper outlines the principles that the ACCC will apply when considering whether to publicly disclose information that Australia Post claims to be commercial-in-confidence. It follows consultation with Australia Post and other interested parties.

1.1 Consultation process

The ACCC published a discussion paper, *Principles for the public disclosure of record-keeping rule information provided by Australia Post*, in October 2005.¹ Following publication of the discussion paper, the ACCC received initial submissions from the following organisations:

- Australia Post
- United Newsagents of Australia (UNA)
- Major Mail Users of Australia (MMUA)
- Post Office Agents Association Limited (POAAL)
- Australian Newsagents Federation Limited (ANF)
- Leigh Mardon.

An opportunity for comment on these submissions was also provided, and secondary submissions were made by the POAAL and Australia Post.

After considering these submissions, the ACCC published a second paper, *Principles for the public disclosure of record-keeping rule information provided by Australia Post: the ACCC's preliminary views*, in July 2006² seeking further comments on disclosure principles and practices. Submissions were received from Australia Post and POAAL.

All submissions and both previous papers on the principles for disclosure are available from the ACCC's website, www.accc.gov.au.

¹ ACCC, *Principles for the public disclosure of record-keeping rule information provided by Australia Post*, October 2005, available from www.accc.gov.au.

² ACCC, *Principles for the public disclosure of record-keeping rule information provided by Australia Post: the ACCC's preliminary views*, July 2006, available from www.accc.gov.au.

1.2. Structure of this paper

The remainder of this paper is structured as follows.

Section 2 provides an overview of the ACCC's roles in the regulation of postal services and explains the legislative provisions relating to RKR.

Section 3 outlines the information that is provided by Australia Post under the RKR issued in March 2005.

Section 4 discusses the objectives of the RKR powers and the rationale for disclosing information received under RKR.

Section 5 discusses the criteria that should be applied to determine whether or not information should be considered confidential and whether such information should be disclosed in the public interest.

2. Background

This section provides an overview of the ACCC's roles in regulating Australia Post and outlines the RKR provisions of the *Australian Postal Corporation Act 1989*.

2.1 Australia Post

Australia Post is the government-owned provider of postal services in Australia. In 2005–06 it delivered 5.42 billion articles of mail to 10.05 million delivery points, had 34 842 employees and 4462 post offices and served over one million customers in its retail outlets each business day. It reported a net profit, after tax, of \$367.9 million (operating profit before tax of \$515.6 million), representing a return on average operating assets of 18.7 per cent and a return on revenue of 11.4 per cent.³

In 1989 Australia Post was one of the first government businesses to be corporatised. The most significant aspect of this reform was that it provided for an independent board and a commercial charter, albeit with ongoing obligations to meet community service obligations.

2.1.1 Obligations on Australia Post

The Australian Postal Corporation Act imposes three general obligations on Australia Post:

- Australia Post must, as far as is practicable, perform its functions in a manner consistent with sound commercial practice.⁴
- Australia Post is required to meet certain community service obligations (which are outlined below).⁵
- Australia Post must perform its functions in a way consistent with general government policy and any directions given by the minister.⁶

Community service obligations

Australia Post has an obligation to supply a letter service. The purpose of the letter service is to, by physical means, carry letters within Australia and between Australia and places outside Australia.

Australia Post must, for letters that are standard postal articles, make the letter service available at a single uniform rate of postage for carriage within Australia.

In recognition of the social importance of the letter service, Australia Post must ensure that:

- the letter service is reasonably accessible to all people on an equitable basis, wherever they reside or carry on a business
- the performance standards of the letter service reasonably meet the social, industrial and commercial needs of the Australian community.

³ Australia Post, *Annual report, 2005–06*, pp. 1–9.

⁴ Section 26 of the Australian Postal Corporation Act.

⁵ Section 27 of the Australian Postal Corporation Act.

⁶ Section 28 of the Australian Postal Corporation Act.

2.1.2 Services ‘reserved’ to Australia Post

In recognition of its community service obligations, Australia Post has been granted a general monopoly—although this is limited by a number of exceptions—in the carriage and delivery of letters within Australia, whether the letters originated within or outside Australia.⁷ In this context, the term ‘letters’ has a wider meaning than is generally used: the Australian Postal Corporation Act defines the term ‘letter’ as meaning any form of written communication that is directed to a particular person or a particular address.⁸

The services captured by this monopoly are generally referred to as ‘reserved services’ and extend to:

- the collection, within Australia, of letters for delivery within Australia
- the delivery of letters within Australia.

Australia Post also has the exclusive right to issue postage stamps within Australia.

As noted above, the reserved services are subject to a number of exceptions (which are detailed in full in s. 30 of the Australian Postal Corporation Act), such as:

- the carriage of a letter weighing more than 250 grams
- the carriage of a letter relating to goods that is sent and delivered with the goods
- the carriage of a newspaper, magazine, book, catalogue or leaflet, whether or not directed to a particular person or address and whether or not enclosed in any sort of cover
- the carriage of a letter otherwise than for reward
- the carriage of a letter within Australia for a charge or fee that is at least four times the then rate of postage for the carriage within Australia of a standard postal article by ordinary post.

2.2 The ACCC’s roles in the regulation of postal services

As noted in the introduction, the ACCC has three responsibilities in the regulation of postal services.

These responsibilities are contained in the Trade Practices Act and the Australian Postal Corporation Act and can be summarised as:

- monitoring for the presence of cross-subsidies between Australia Post’s reserved and non-reserved services
- assessing proposed price increases of Australia Post’s reserved services
- inquiring into certain disputes regarding the terms and conditions under which Australia Post supplies its bulk mail services.

2.2.1 Monitoring for cross-subsidy

Subsection 50H(2) of the Australian Postal Corporation Act provides that the ACCC must require Australia Post to keep records about its reserved services. The purpose of this requirement ‘is to enable the ACCC to scrutinise whether or not Australia Post is cross-subsidising from the reserved services to the services it provides in competition with others’.⁹

This requirement was introduced to address allegations raised by some competitors of Australia Post that it unfairly competes by using revenue from its reserved services to cross-subsidise the services it provides in competition with other businesses.¹⁰

In March 2005 the ACCC issued a RKR that established a RAF for Australia Post. The primary purpose of the RAF is to allow the ACCC to monitor for the presence of cross-subsidy. However, RAF data may also assist the ACCC in its other roles.

⁷ Explanatory memorandum to the Australian Postal Corporation Bill 1989, p. 3.

⁸ Section 3 of the Australian Postal Corporation Act.

⁹ Explanatory memorandum to the Postal Services Legislation Amendment Bill 2003, p. 40.

¹⁰ Explanatory memorandum to the Postal Services Legislation Amendment Bill 2003, p 39.

2.2.2 Prices notifications

The prices notification provisions are contained in Part VIIA of the Trade Practices Act; they apply only to 'notified services' and 'declared persons'. The object of these provisions is to have prices surveillance applied only to those markets where, in the view of the minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.¹¹

Declaration no. 75 declares:¹²

- the provision of letter services reserved to Australia Post to be notified services for the purposes of Part VIIA of the Trade Practices Act
- Australia Post to be a declared person for the purposes of Part VIIA of the Trade Practices Act.

This declaration means that, to avoid contravening s. 95Z of the Trade Practices Act, Australia Post must notify the ACCC if it proposes to increase the price of a reserved (and therefore notified) service above previously agreed maximums, if it proposes to introduce a new service that would fall within the definition of reserved (notified) services or if it proposes to provide an existing reserved (notified) service under terms and conditions that are not the same or substantially similar to the existing terms and conditions of that service.

The ACCC must review such notifications and take such action, in accordance with Part VIIA, as it considers appropriate.¹³ In doing so, it must especially consider:¹⁴

- the need to maintain investment and employment, including the influence of profitability on investment and employment
- the need to discourage a person who is in a position to substantially influence a market for goods or services from taking advantage of that power in setting prices
- the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals.

When the notification concerns the transmission of standard postal articles and registered publications within Australia, by ordinary post, the ACCC must also give special consideration to:¹⁵

- Australia Post's obligation to pursue a financial policy in accordance with its corporate plans as set out in ss. 35–41 of the Australian Postal Corporation Act and in particular the pricing targets contained in Australia Post's corporate plan
- The functions and obligations of Australia Post as set out in ss. 14–16 and 25–28 of the Australian Postal Corporation Act and to such directions or notifications given to Australia Post by the minister under that Act.

After considering a notification, the ACCC may do one of three things:

- It may serve a notice stating it has no objection to the person supplying the relevant goods or services on the proposed terms and the proposed price.
- It may serve a notice stating it would have no objection to the person supplying the relevant goods or services on the proposed terms at a specified price, being a price that is lower than the proposed price.
- It may not serve any notice.

¹¹ Section 95E of the Trade Practices Act.

¹² Declaration no. 75 was made under paragraphs 21(1)(a) and 21(1)(b) of the *Prices Surveillance Act 1983*. On 1 March 2004, the Prices Surveillance Act was repealed and replaced by Part VIIA of the Trade Practices Act—Part VIIA essentially replicates the provisions that were formerly contained in the Prices Surveillance Act and transition arrangements provide that a declaration made under paragraphs 21(1)(a) and 21(1)(b) has effect as though it was made under subsections 95X(1) and 95X(2), respectively, of the Trade Practices Act.

¹³ Subsection 95G(5) of the Trade Practices Act.

¹⁴ Subsection 95G(7) of the Trade Practices Act.

¹⁵ Direction 11, made under subs. 95ZH(1) of the Trade Practices Act. As with Declaration 75, Direction 11 was made under the Prices Surveillance Act, but now has effect as though it was made under the Trade Practices Act.

Failure to adhere to this procedure when increasing its prices may lead to Australia Post contravening s. 95Z of the Trade Practices Act.

The last major price notification by Australia Post was received in 2002. The ACCC did not oppose an increase in the basic postal rate of 5 cents to 50 cents, but it did oppose increases to the prices of Australia Post's bulk mail services.¹⁶ Two further price notifications have been considered since 2002—one involving changes to the pricing structure of the 'Reply Paid' service, and the other for the introduction of the 'Impact Mail' service.¹⁷

2.2.3 Inquiries into disputes

Section 32B of Australian Postal Corporation Act provides for regulations to be made to allow the ACCC to inquire into a dispute about the terms and conditions under which discounts are provided for the delivery of bulk quantities of mail.

In June 2004 the Australian Postal Corporation Act was amended to expand the range of issues that may be inquired into, with s. 32B now providing for the ACCC to inquire into disputes about 'the terms and conditions on which a rate reduction is, or would be provided to the person (including the amount of the rate reduction)'.¹⁸ The intent of these amendments is to ensure that 'persons who use bulk mail services receive fair and reasonable terms and conditions in relation to the supply of those services'.¹⁹

2.3 The record-keeping rule provisions

The RKR provisions were introduced to the Australian Postal Corporation Act by the *Postal Services Legislation Amendment Act 2004*, and while one of the primary intentions of introducing these powers was to address concerns about cross-subsidisation, the ACCC may require Australia Post to keep records that relate to any of its regulatory roles.²⁰

The ACCC may prepare and publish reports analysing the information provided to it under the RKR²¹ and the minister may direct the ACCC to prepare and publish reports analysing the information provided to it under the RKR²².

As noted in the introduction, such reports may include information that Australia Post claims is commercial-in-confidence if:

- the ACCC is not satisfied that the claim is justified
- the ACCC considers it in the public interest to publish the information.²³

To date, only one RKR has been issued to Australia Post—in March 2005. It remains open to the ACCC to issue further RKR²¹. Therefore, while this report focuses on the information to be provided under the RAF, it is intended that the principles of disclosure will be sufficiently broad to cover future RKR²¹.

¹⁶ A bulk mail service is a service under which bulk quantities of letters (the current minimum is 300 letters) are delivered within Australia at reduced rates provided that they are lodged at nominated offices of Australia Post and they have, before being lodged, been sorted in accordance with the terms and conditions of the service.

¹⁷ Details of past price notifications are available on the ACCC's website, at www.accc.gov.au/content/index.phtml/itemId/332074/.

¹⁸ Section 32B of the Australian Postal Corporation Act.

¹⁹ Explanatory memorandum to the Postal Services Legislation Amendment Bill 2003, p. 28.

²⁰ Section 50H of the Australian Postal Corporation Act.

²¹ Section 50I of the Australian Postal Corporation Act.

²² Section 50J of the Australian Postal Corporation Act.

²³ Section 50K of the Australian Postal Corporation Act.

3. What information is collected under the RAF and how can it be used?

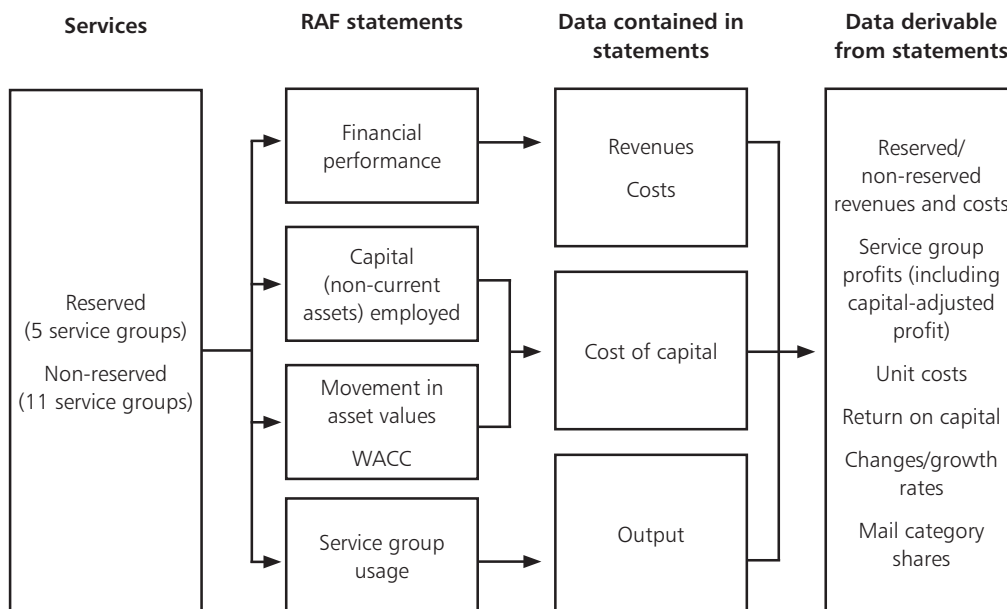
This section provides an overview of the information the ACCC collects from Australia Post under the RKR issued in March 2005 and also indicates the types of analysis that could be performed with this information.

3.1 Information available under the RAF

Under the RAF Australia Post is required to provide the ACCC with detailed accounts segmented into 16 different service groups (five reserved and 11 non-reserved) for each financial year.

Figure 1 provides a stylistic depiction of the data that is reported under, or can be derived from, the RAF.

Figure 1 Information available under the RAF



3.1.1 Services

The level of segmentation introduced by the RAF is significantly greater than that reported by Australia Post in its annual reports²⁴ and provides the ACCC with an opportunity to assess the relative profitability of Australia Post's various activities.

3.1.2 The RAF statements

The RAF requires Australia Post to provide the ACCC with:

- a statement of financial performance (disaggregated by defined service groups)
- a statement of capital employed (disaggregated by defined service groups)
- a statement of movements in the value of assets (disaggregated by asset class and allocated between reserved and non-reserved services)
- a statement of weighted average cost of capital (WACC)
- a statement of service group usage.

²⁴ The segment note of Australia Post's 2004-05 annual report provides details on four segment groups ('letters', 'parcels and logistics', 'retail and agency services', and 'other and unallocated').

Information provided to the ACCC under the RAF must be independently audited to ensure Australia Post complies with the rules and that, where possible, the statements provided under the RAF are reconciled to Australia Post's annual report. Australia Post must also provide a regulatory accounting procedures manual, providing detailed information on how the regulatory accounts were prepared.

3.1.3 Data contained in and derivable from the statements

The information contained in the five statements provided under the RAF is discussed separately below. When a statement involves the reporting of 'account items' (that is, revenues, costs and assets), these must generally be reported as direct, attributable, or unattributable:

- **Direct** account items are those account items that are solely associated with a particular service.
- **Attributable** account items are those account items that are part of a pool of common account items that are identifiable to a particular service by a separable cause-and-effect relationship.
- **Unattributable** account items are those account items that are part of a pool of common account items but are not readily identifiably related in whole or part to any particular service by a separable cause and effect relationship.

The statement of financial performance details the revenues and costs for each of the 16 service groups as assigned by Australia Post's accounting system. This information allows a calculation of the profitability for each of the service groups defined by the RAF.

The statement of capital employed details the non-current assets that Australia Post has employed in providing each of the 16 service groups. The statement of WACC is Australia Post's estimate of its return on capital. It represents the opportunity cost of the capital employed by Australia Post. Multiplying the capital employed for each service by the WACC provides the cost of capital—a cost not measured in accounting systems—for each of the service groups. This cost can be added to the other costs for each service group and allows the derivation of 'capital adjusted' profitability for each service group.

The statement of movements in non-current asset values shows movement due to depreciation, acquisition, revaluation or disposal. Assets in this statement are not segmented to the 16 service groups but are allocated between reserved and non-reserved services.

The statement of service group usage provides details of the volume for each service group provided by Australia Post. This data allows, for some of the service groups²⁵, the calculation of average (or unit) revenues and costs. It also allows calculations of each mail category's share of the overall mail volume and changes in these shares, and in total volumes, over time.

3.2 Use of information collected under the RAF

While the primary purpose of the RAF is to allow the ACCC to monitor for the presence of cross-subsidy, the information collected may also be useful to the ACCC in its other roles. These uses are discussed separately below.

²⁵ Some of the service groups, such as 'other non-reserved mail services' and 'customised services', incorporate a diverse range of products/services and so no meaningful averages can be calculated for such service groups.

3.2.1 Monitoring for cross-subsidy

The primary purpose of the RAF is to allow the ACCC to monitor for the presence of cross-subsidy between Australia Post's reserved and non-reserved services.

A product can generally be considered the recipient of a subsidy if its revenues are not sufficient to recover the incremental cost²⁶ of providing the product and the potential source of subsidy if its revenues are greater than the stand-alone cost²⁷ of providing the product.²⁸

To establish that Australia Post is cross-subsidising any of its non-reserved services with revenues from its reserved services, it is necessary to establish that:

- revenue from any non-reserved service is less than the incremental cost of providing that non-reserved service **and**
- revenue from Australia Post's reserved services is greater than the stand-alone cost of providing the reserved services **and**
- the reserved services are the only possible source of subsidy.

As noted above, the account items (assets, revenues and costs) reported under the RAF are required to be reported as direct, attributable and unattributable. These classifications allow the ACCC to use accounting data as a proxy for the economic cost concepts of incremental and stand-alone cost. For a more complete discussion of the ACCC's approach to monitoring cross-subsidy in Australia Post, see section 3 of *Assessing cross-subsidy in Australia Post: an ACCC report*.²⁹

3.2.2 Prices notifications

In assessing price notifications the ACCC follows the approach outlined in its *Statement of regulatory approach to assessing price notifications*.³⁰

The ACCC's general approach to assessing price notifications is to use a forward-looking, cost-based methodology that considers the efficiency of the declared company's cost base and allows a reasonable rate of return.³¹

Where the declared company also provides non-regulated services, as is the case with Australia Post, allocations of costs and revenues between regulated and non-regulated services will also be important.

Data collected under the RAF is historical revenue and cost information that will inform the ACCC's price notification process but will not form the basis of the ACCC's assessment of Australia Post's pricing proposal (as noted above, this will be based on forward-looking financial information). RAF data will enable the ACCC to assess Australia Post's performance—for example, by considering changes in costs to provide services over time. It will also allow the ACCC to compare the forward-looking estimates with Australia Post's actual performance in subsequent years.

3.2.3 Inquiring into disputes

Similar to the ACCC's price notification role, information collected under the RAF will inform the ACCC's bulk mail dispute resolution role, but more specific information is likely to be required when inquiring into a dispute about the terms and conditions of a bulk mail service.

26 The incremental cost of providing a product is the additional cost of providing that particular product, given the other products that the firm provides.

27 The stand-alone cost of providing a particular product is the cost of providing that product and that product only.

28 When the revenue of a particular service is greater than the stand-alone cost of providing that service, that service will be a source of subsidy only if the revenue from another service is below the incremental cost of providing that service. That is, revenue greater than stand-alone cost for a particular service is a necessary but not sufficient condition for the presence of cross-subsidy.

29 ACCC, *Assessing cross-subsidy in Australia Post: an ACCC report*, November 2006. This report is available at www.accc.gov.au.

30 ACCC, *Statement of regulatory approach to assessing price notifications*, July 2005, available at www.accc.gov.au.

31 The ACCC's approach to assessing price notifications is outlined in its *Statement of regulatory approach to assessing price notifications*, July 2005, available at www.accc.gov.au.

4. Why disclose the record-keeping rule information?

This section discusses the disclosure of information collected under RKR and the policy objectives of the provisions.

As previously noted, the RKR provisions allow the ACCC to publish reports analysing the information. In considering what level of detail those reports should provide, the ACCC will seek to achieve the underlying policy objectives of its roles in the regulation of postal services.

4.1 Benefits of disclosure

The intention of introducing the RKR provisions was described in the explanatory memorandum to the Postal Services Legislation Amendment Bill 2003:

These amendments are proposed to enable the ACCC to get access to relevant information necessary to enable it to properly carry out its functions of determining whether Australia Post is cross-subsidising its reserved services with the non-reserved services, of inquiring into bulk mail disputes, and carrying out its functions relating to prices surveillance in relation to Australia Post.³²

In the second reading speech for this Bill, the minister also described a key objective of the RKR provisions as being to 'ensure transparency in Australia Post's accounts and identify any areas of cross-subsidy'.³³

The ACCC is concerned with enhanced transparency in regulated industries because its regulatory roles usually target industries that are characterised by natural or statutory monopoly. Competitors (or potential competitors) and customers of the regulated firm are often required to negotiate with an incumbent that possesses significant market power and therefore an information advantage. In these circumstances, reducing the level of information asymmetry can assist in reaching more efficient outcomes.

4.1.1 Submissions

In responding to the ACCC's October 2005 discussion paper on disclosure, Australia Post submitted that it had no reservations about providing the ACCC with any information and data needed to carry out its statutory functions. However, Australia Post also considered that the level of detail provided and assessed by the ACCC is sufficient reassurance that the public interest has been served. It did not consider that any further publication was required to add to this reassurance. Australia Post submitted that it was not necessary for the ACCC to demonstrate the correctness of its conclusions by allowing others to replicate its calculations and submitted that 'the public interest' needed to be clearly defined by those seeking to have the information disclosed.

ANF submitted that disclosure of information gained under the RAF would allow the small business community to either have confidence in the existence of a level playing field or, alternatively, validate newsagents' concerns regarding cross-subsidisation.

MMUA, POAAL, UNA and Leigh Mardon submitted that disclosure would increase transparency and help determine whether Australia Post's non-reserved services benefit from the existence of the reserved services. POAAL stated that transparency in the profitability of Australia Post's retail operations would substantially assist in assuring the community that there is not a 'misuse of privileges' provided with the reserved services. Leigh Mardon also stated that transparency would enable the public to determine whether Australia Post is providing cost-effective reserved services. It submitted that the more detailed the analysis and the more widespread its publication, the less likely it is that Australia Post will be able to provide inefficient reserved services or engage in unfair competition regarding its non-reserved services.

³² Explanatory memorandum to the Postal Services Legislation Amendment Bill 2003, p. 39.

³³ Postal Services Legislation Amendment Bill 2003, second reading, 19 June 2003.

In response to the release of the ACCC's July 2006 papers, Australia Post submitted that it understands the desire for greater transparency in the public reports and agreed to the disclosure of information that is 'appropriate for the purpose of the report'.

4.1.2 ACCC view

The ACCC considers that there are benefits for each of its regulatory functions that would accrue from the regular release of RAF data. These benefits are discussed below.

Monitoring for cross-subsidy

As noted above, one of the objectives of introducing the RKR provisions was to ensure transparency in Australia Post's accounts (and identify any areas of cross-subsidy). By requiring that Australia Post report under the RAF and analysing this data for the presence of cross-subsidy, the ACCC is applying increased scrutiny to Australia Post's accounts. However, this additional scrutiny by the ACCC does not increase the transparency of Australia Post's accounts.

The ACCC considers it is necessary to publish regular (annual) reports presenting the results of its cross-subsidy analysis to meet the RKR provision objectives of increasing the transparency in Australia Post's accounts and identifying any areas of cross-subsidy.

Price notifications

The regular release of information about the reserved services collected from Australia Post under the RAF would reduce the level of information asymmetry between Australia Post and its customers and policy makers.

The ACCC considers the submissions it receives from interested parties to be an important part of its decision-making process. More informed industry stakeholders may lead to a more robust consultative process; if parties making submissions have information about Australia Post's historical costs, the profitability of various components of the reserved services and trends in volumes, as well as Australia Post's submission supporting the price notification, they may be better placed to make a more informed and relevant submission to the ACCC about the proposal. Conversely, where there is a persistent and significant information asymmetry, it may be difficult for interested parties to prepare submissions.

Having more information in the public domain may also provide interested parties, and the community at large, with greater insight into the reasons for the ACCC's decision.

The ACCC considers that it may be appropriate to publish other (less regular) reports analysing the RKR information for a particular purpose—for example, when assessing a price notification, it may be appropriate to release a report analysing information about the reserved services.

Inquiring into disputes

Information asymmetry is also a potential issue in the ACCC's dispute inquiry role. It may be difficult for a user of bulk mail services to form a view about whether the rate of discount is fair and reasonable if it does not have information about the cost of providing a particular service or the costs saved by Australia Post when the user prepares the mail in accordance with the relevant service.

This type of difficulty, where users of a particular service are required to negotiate in the presence of a significant market power imbalance (and information asymmetry), was noted by the Hilmer Committee inquiry. This inquiry provided the impetus for national competition policy and the use of the 'negotiate–arbitrate' access model in Australia. In its final report the Hilmer Committee concluded that:

... to facilitate negotiations ... the owner of the facility should be required to provide relevant cost or other data to the party entitled to seek access.³⁴

The ACCC's dispute inquiry role for Australia Post's bulk mail services is not, strictly speaking, a negotiate–arbitrate model. However, it is not dissimilar to such models which apply to various industries under Parts IIIA and XIC of the Trade Practices Act; and users of bulk mail services are required to negotiate in the presence of a market power imbalance and face information asymmetries in doing so.

The data contained in the RAF will not provide the user of bulk mail services with information about the costs of a particular bulk mail service. It will, however, provide that information for a broad category of mail services.

4.2 The level of detail in disclosure

The ACCC must decide what level of disclosure to adopt in published reports. To release nothing more than is currently publicly available does not achieve the policy objective of increasing the transparency of Australia Post's accounts. Releasing all information the ACCC receives would certainly increase transparency, but to the possible detriment of Australia Post through the disclosure of confidential information.

4.2.1 Submissions

Australia Post initially submitted that guidance on what is reasonable for publication is available from its annual report. Australia Post stated that the regulatory accounting procedures manual and the following schedules are appropriate for public disclosure:

- schedule 1: service group definition
- schedule 3: list of account items for revenues
- schedule 4: list of account items for cost
- schedule 6: list of account items for asset values
- schedule 7: statement of movements in non-current asset values
- schedule 8: statement of WACC.

Australia Post also submitted that some letter volume data contained in schedule 9 is provided to the MMUA and that it would be acceptable to disclose volume data for small letters ordinary, small letters PreSort, large letters ordinary and large letters PreSort. Australia Post also suggested merging the large letter service groups as it sees no purpose served by splitting these volumes into reserved and non-reserved classifications.

³⁴ National Competition Policy: the Independent Committee of Inquiry, 1993, p. 256.

UNA submitted that significantly more detailed retail-specific and retail-related data should be obtained from Australia Post and disclosed. However, Australia Post and POAAL rejected this and POAAL stated that such disclosure would be contrary to the intent of the ACCC's role and would impose an onerous and costly obligation on Australia Post.

POAAL considered the ACCC should report on the methodology or any changes to the treatment of overheads and the cost of capital for both reserved and non-reserved services to establish profitability and to ensure that costs are not overly attributed to reserved services to inflate the profits of reserved services. It also considers the accounts should reveal the gross contribution to profits from reserved and non-reserved services.

In its comments on Australia Post's initial submission, POAAL considered that information other than a statement by the ACCC on the issue of cross-subsidy will be required to address the intended transparency and assurances to the broader community. To achieve this, it considered that some or all of the details in the statement of financial performance (schedule 2) and statement of capital employed (schedule 5) may need to be disclosed.

ANF submitted that particular revenues and costs of each service group should be disclosed along with information outlining what the cost drivers are for the allocation of costs across the lines nominated, including a statement by the auditors of their suitability. ANF also submits that philatelic product should be removed from the retail category as it is not sold by any other retailer; therefore its inclusion reduces the value of the information gleaned about Australia Post's retail operations.

Leigh Mardon considered that the service group reporting requirements are summarised at such a level that even with the ACCC analysis it would be impossible to determine whether there has been a cross-subsidy. It considers that, at the very least, the data itself and the methodology of allocating costs to each service group should be disclosed at the level of detail reported, as well as the ACCC's analysis.

Following the release of the first cross-subsidy report and the paper outlining the ACCC's preliminary views on disclosure in July 2006, Australia Post submitted that the level of disclosure should be sufficient **for the purpose of the report** in identifying any subsidy—if there is no subsidy identified then there is no need to disclose confidential information. Australia Post therefore submitted that disclosure choices for each report should be made by the ACCC in light of that particular report's conclusions rather than to a general formula.

Australia Post has now accepted that its initial position on disclosure was unduly restrictive and that the information disclosed in the ACCC's cross-subsidy report was insufficient for the report's purpose. Australia Post has agreed to increase the level of disclosure to meet the purpose of the report.

In its submission of 2 October 2006 Australia Post proposed the following information should be disclosed:

- revenue for each service group in reserved services
- break-up of total costs into direct, attributable and unattributable components for reserved services as a whole
- direct, attributable and unattributable cost shares for each reserved service group as a percentage of total cost for that service group
- revenue, direct cost, attributable cost and unattributable cost for non-reserved letters, parcels and logistics, retail and agency, and other non-reserved services
- greater identification of segments and financial data in the text section of the July 2006 report.

Australia Post also accepted that the identity and size of any cross-subsidy needs to be disclosed and commented on by the ACCC.

POAAL submitted that the ACCC's first cross-subsidy report does much to reassure that cross-subsidy does not exist between the reserved and non-reserved services. However, it considered that the segment reporting for reserved services currently omitted from the cross-subsidy report should be disclosed. POAAL believe that if more information on reserved services were in the public domain, it would lead to more informed debate among interested parties. POAAL maintain that revealing the financial performance of a non-reserved service should be undertaken with caution.

4.2.2 ACCC view

The ACCC considers that in the interests of increasing transparency it should disclose as much of the RAF data as possible without releasing information that causes undue detriment to Australia Post's commercial interests. However, it also considers that it has a duty of care to protect any genuinely confidential information it receives.

The ACCC accepts Australia Post's submission that the level of disclosure should be sufficient for the purpose of the particular report. Such an approach appears to weigh the possible detriment from the disclosure of too much information against the benefit of meeting the policy objective of the RKR provisions. It also minimises the risk that the release of information will result in unnecessary harm to Australia Post's legitimate commercial interests.

The ACCC considers that the level of disclosure in its reports should be sufficient for the purpose of the report. The ACCC will generally; not disclose information that Australia Post claims is confidential if it is not relevant to (or necessary for) the purpose of the report.

This approach, however, does not necessarily mean that the ACCC has accepted Australia Post's claim of confidentiality and non-disclosure for one purpose does not necessarily mean it will be inappropriate to disclose that information for another purpose.

Disclosure of the service group results in the reserved services, for example, is not relevant to (or necessary for) the purpose of monitoring for the existence of cross-subsidy from the reserved services to the non-reserved services. The ACCC has therefore decided not to include this information in its cross-subsidy report. However, in the context of assessing a price notification it may be appropriate for the ACCC to issue a report analysing the RKR information; the service group results in the reserved services are relevant to that purpose and, accordingly, the ACCC may decide to disclose that information in that context.

5. Disclosure of information Australia Post claims is confidential

This section discusses the issues that may be considered when the ACCC is considering the disclosure of information that Australia Post claims is confidential.

In meeting the objective of the RKR provisions, the ACCC may need to give consideration to publishing information that Australia Post has claimed to be confidential. Section 50K of the Australian Postal Corporation Act provides that the ACCC may publish information that Australia Post claims is commercial-in-confidence (generally referred to through this report as confidential information) if the ACCC is satisfied:

- that the claim is not justified or
- that it is in the public interest to publish the information.

As the ACCC must consider whether the claim is justified, it appears to be necessary for Australia Post to provide reasons that demonstrate its claims of confidentiality are justified. The ACCC considers it has an obligation to give consideration to any such reasons. This raises two important questions:

- How can Australia Post demonstrate to the ACCC that a claim of confidentiality is justified?
- When will the ACCC consider disclosure of confidential information to be in the public interest?

5.1 When is information confidential?

The ACCC regularly receives information—both voluntarily and under its various information-gathering powers—that the provider claims is confidential. The ACCC considers that it has a general duty of care to protect any confidential information it receives. However, the ACCC must also weigh that general duty of care against its regulatory objectives and the particular circumstances in which the information has been received. Such considerations may include (but are not necessarily limited to) the policy objective of the role the ACCC is undertaking, the statutory provisions within which the ACCC is operating and the level of detriment that disclosure may cause.

When information claimed as confidential is already publicly available, the ACCC would not consider that information to be confidential and would not consider that it has an obligation to protect that information.³⁵

Moreover, the ACCC does not consider the fact that the information is not in the public domain to be, of itself, sufficient to satisfy a claim that the information is commercial-in-confidence; disclosure of the information must, at least, also have some potential to be detrimental to the firm providing the information.

The ACCC has previously accepted—regarding the telecommunications industry—that information disclosure could be detrimental to a firm³⁶ in three conceptual ways.³⁷ When information disclosure:

- encouraged new entry of firms or affected the strategic decisions of existing firms (known as competitive harm)
- constrained the firm to charge different (generally lower) prices to its customers than otherwise
- affects investor/share market perception of the firm.

These may (or may not) be relevant considerations regarding information received under RKR from Australia Post. For example, Australia Post is not subject to competition in the reserved services, so disclosure of information about the reserved services appears less likely to result in detriment than disclosure of information about the non-reserved services.

Information that might cause competitive harm includes business plans, development proposals or investment data. Firms may also argue that cost, volume or revenue data causes competitive harm in certain circumstances. Information that might constrain a firm's pricing includes profit data, revenue and usage data.

³⁵ ACCC, *Collection and use of information*, October 2000, p. 15.

³⁶ The ACCC did not, however, consider that such detriment would necessarily be to a firm's legitimate commercial interests.

³⁷ ACCC, *Regulatory principles for the public disclosure of record-keeping rule information*, p. 30.

5.1.1 Submissions

Australia Post previously submitted that the disclosure of the following statements will give its current and potential competitors an unfair advantage:

- schedule 2: statement of financial performance
- statement 5: statement of capital employed
- schedule 9: statement of service group usage

POAAL initially considered aspects of Australia Post's business that should remain confidential could include profit margins on non-reserved services (especially where it may reveal the cost price offered by suppliers) and any ancillary relationships with suppliers and/or distributors such as contribution to promotion, point of sale advertising, return of product terms, sale of remaining stock and the treatment of unsold stock. POAAL considers that revealing the profit margin alone of an individual item or even a class of products may be misleading, could incorrectly contribute to the deliberations on the issue of cross-subsidy and could jeopardise supplier relationships with Australia Post's other vendors. POAAL also believes details of any commercial arrangements should not be revealed in any public reporting except for where the ACCC believes Australia Post is misusing its position.

Leigh Mardon submitted that at the service level defined in the RKR, no data should be regarded as confidential. It also believes that, provided Australia Post is providing cost-effective reserved services at a fair price and not cross-subsidising non-reserved services, there can be no detriment to Australia Post in disclosure. However, if the opposite is found to be true, Leigh Mardon submits that it is even more important in the public interest that the fullest disclosure is made.

In response to the ACCC's preliminary views paper in July 2006 of how disclosure of additional RAF information could harm Australia Post's legitimate commercial interest, Australia Post submitted that in the interest of aiding transparency, they now do not object to the disclosure of revenue for each service group in the reserved services. However, Australia Post considers that revenue for individual service groups in the non-reserved items is commercial-in-confidence and not appropriate for disclosure.

Australia Post considers that even though a number of service groups are reserved to Post, they cannot support publication of their cost levels as it would put them at a commercial disadvantage if they were opened to competition (as has previously been government policy). However, Australia Post has proposed, in the interests of increasing transparency, that rather than showing dollar values for costs at a service group level within reserved services, the cost shares across each service group line be shown.

Australia Post submitted that it is not appropriate to disclose asset data for any service group as it could give an unfair insight into cost allocations across service groups. Likewise, Australia Post does not believe it is necessary to disclose volume data as it plays no part in the calculation of cross-subsidy.

POAAL has submitted that the details on the performance of reserved services should be made public. POAAL also maintains its view that the details of profit from non-reserved services should be revealed as a total class of services.

No interested party disputed the general principles put forward by the ACCC that for information to be confidential it must not already be in the public domain and it must, at least, have potential to harm Australia Post's legitimate commercial interests.

5.1.2 ACCC view

When publishing reports, the ACCC will provide Australia Post an opportunity to claim confidentiality over information in the report.

The ACCC generally considers that for a claim of confidentiality to be justified, two criteria must be met:

- the information must not already be in the public domain **and**
- disclosure of the information must, at least, have some potential to harm Australia Post's legitimate commercial interests.

The ACCC considers that disclosure of information about the non-reserved services is more likely to result in detriment to Australia Post than disclosure of information about the reserved services

5.2 When will disclosure of confidential information be in the public interest?

Even if satisfied that a claim of confidentiality is justified, the ACCC may publish that information if it is satisfied that it is in the public interest to do so. In considering the public interest, the ACCC will especially consider the policy objective of its roles in the regulation of postal services and will balance the public interest against the potential detriment to Australia Post.

5.2.1 Monitoring for cross-subsidy

The policy objective of the ACCC's cross-subsidy monitoring role is to 'ensure transparency in Australia Post's accounts and identify any areas of cross-subsidy'.³⁸ If, for example, analysis of the RAF data revealed that a particular (non-reserved) service was receiving a subsidy from the reserved services, it would appear to be in the public interest to not only report the existence of cross-subsidy but also report the extent of cross-subsidisation.

Assuming that the ACCC was satisfied that this information was confidential, in deciding whether or not to disclose the information, the ACCC would balance the benefit from disclosing the information against the detriment to Australia Post.

5.2.2 Price notifications

The object of Part VIIA of the Trade Practices Act is to have prices surveillance applied only in markets where, in the view of the minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers.³⁹ In assessing price notifications, the ACCC's approach is generally aimed at allowing the regulated firm (in this case Australia Post) to recover its efficient costs and a reasonable rate of return, while seeking to ensure that the regulated firm is not making monopoly profits.

If disclosure of information from the RAF allows interested parties to make better, more informed submissions during the ACCC's assessment of price notifications, thereby improving the quality of information on which the ACCC makes its assessment, it may be in the public interest to disclose such information.

³⁸ Postal Services Legislation Amendment Bill 2003, second reading, 19 June 2003.

³⁹ Section 95E of the Trade Practices Act.

5.2.3 Inquiring into disputes

The policy objective of the ACCC's dispute inquiry role is to ensure that 'persons who use bulk mail services receive fair and reasonable terms and conditions in relation to the supply of those services'.⁴⁰

Users of Australia Post's bulk mail services have no choice other than to use Australia Post's services and, as noted in section 4.1.2, such users may face significant information asymmetries in negotiating with Australia Post. Disclosing some of the information about reserved services collected under the RAF may, even though it is aggregated into service groups (rather than disaggregated into individual services), reduce such information asymmetries and assist commercial negotiations.

5.2.4 Submissions

ANF and Leigh Mardon considered that where a complaint is deemed justified, or there is evidence of a cross-subsidy between reserved and non-reserved services, it is in the public interest to disclose confidential information.

POAAL submitted that if Australia Post is misusing its right to provide reserved services and refuses to undertake remedial action, the ACCC should report this publicly. However, it submitted that the principles of misuse should be revealed rather than the specific companies or arrangements, unless there have been breaches of the law.

Australia Post originally submitted that '[i]t is difficult to envisage a circumstance in which the publication of confidential RAF data is justified'.⁴¹ However, in its submission of 2 October 2006 Australia Post submitted that the level of disclosure should be sufficient for the purpose of the report.⁴² In doing so it accepted that information (such as the service receiving a subsidy and the size of that subsidy) should be disclosed.

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5.2.5 ACCC view

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The ACCC considers that, even if satisfied that a claim of confidentiality is justified, it may be necessary to publish that information if it is satisfied that the public interest in doing so will outweigh the detriment to Australia Post. In deciding whether or not to disclose confidential information, the ACCC will first consider the policy objective of its relevant regulatory roles and the purpose of the report.

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⁴⁰ Explanatory memorandum to the Postal Services Legislation Amendment Bill 2003, p. 28.

⁴¹ Australia Post submission dated 1 December 2005.

⁴² Australia Post submission dated 2 October 2006.