



Department of
Transport

Western Australian Owners-Drivers Information Form



(CONTRACTS AND DISPUTES) ACT 2007

WESTERN AUSTRALIAN OWNER-DRIVERS INFORMATION FORM

It is a requirement of the *Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010* (“the Code of Conduct”) for a hirer to provide an owner-driver with a copy of this form and any current guideline rates before entering into an owner-driver contract with the owner-driver.

Where an owner-driver advises the hirer that they already have current copies of the documents, the hirer is not required to provide additional copies.

In some circumstances, it might not be reasonably practical for the hirer to provide the documents before entering into a contract with the owner-driver. In those cases, the hirer should advise the owner-driver where the documents can be obtained.

THE ACT AND CODE OF CONDUCT

The *Owner-Drivers (Contracts and Disputes) Act 2007* (“the Act”), but for sections 35 and 36, came into effect on or before 1st August 2008. The Code of Conduct has been made under the Act. The Code of Conduct complements the provisions in the Act.

The Act and Code of Conduct regulate owner-driver contracts and dealings between owner-drivers and hirers. The Act and Code of Conduct apply to an owner-driver who is engaged:

- under an owner-driver contract that is entered into in Western Australia or is subject to the law of Western Australia;
- to transport goods wholly within Western Australia; or
- to transport goods to or from a place in Western Australia, if a substantial part of the services to be performed under the owner-driver contract are to be performed in Western Australia.

Some owner-driver contracts that deal with East-West freight might be affected by similar legislation in New South Wales or Victoria. For those contracts, the WA legislation might not apply.

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

The Western Australian Industrial Relations Commission (“the WA IRC”) has jurisdiction under the Act to hear and determine certain kinds of disputes between owner-drivers and hirers that relate to owner-driver contracts. When hearing those disputes, the WA IRC sits as the Road Freight Transport Industry Tribunal (“the Tribunal”). The Tribunal can also enquire into and deal with any other matter relating to the negotiation of owner-driver contracts that may be referred to it under the Act. It can deal with disputes under the Act, Code of Conduct or an owner-driver contract, including payment disputes.

The Tribunal gives owner-drivers and hirers access to a low-cost dispute resolution process. For further details relating to the Tribunal’s jurisdiction, owner-drivers should refer to the Act.

Note: It is good business practice to put agreed contract terms and conditions in writing; doing so can prevent disputes and can help the Tribunal when dealing with disputes.

To contact the Tribunal:

Website: www.wairc.wa.gov.au

OWNER-DRIVER CONTRACTS

An owner-driver contract is a contract entered into in the course of business by an owner-driver and another person (“the hirer”) for the transport of goods in a heavy vehicle (that is, of more than 4.5 tonnes gross vehicle mass) by the owner-driver.

An owner-driver contract can be written, oral or a combination of both. An owner-driver contract can include other services for the owner-driver to perform, so long as the services predominantly relate to the transport of goods.

For the purpose of the Act and Code of Conduct, an owner-driver is -

(a) a natural person -

(i) who carries on the business of transporting goods in one or more heavy vehicles supplied by that person; and

(ii) whose principal occupation is the operation of those vehicles (whether solely or with the use of other operators);

or

(b) a body corporate (other than a listed public company) that carries on the business of transporting goods in one or more heavy vehicles that are -

(i) supplied by the body corporate or an officer of the body corporate; and

(ii) operated by an officer of the body corporate (whether solely or with the use of other operators) whose principal occupation is the operation of those vehicles;

or

(c) a partnership of persons, at least one of whom is a person referred to in paragraph (a).

Where: **listed public company** has the same meaning as it has in the *Income Tax Assessment Act 1997* of the Commonwealth; and

officer, of a body corporate, has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

RIGHTS AND OBLIGATIONS

The Act and Code of Conduct introduce a number of new legal requirements that affect the rights and obligations of owner-drivers and hirers in relation to owner-driver contracts and the negotiation of those contracts. It is recommended that those affected seek independent legal and financial advice about the requirements.

A party to an owner-driver contract cannot give away or bargain away any of the rights or obligations that the Act or Code of Conduct gives or imposes on them.

An owner-driver contract or any other kind of agreement cannot:

- Provide that all or any of the Act or Code of Conduct does not apply, or applies in a different way.
- Contain anything else that is contrary to or inconsistent with the Act, Code of Conduct or an order made by the Tribunal.

Any terms or conditions that attempt to do either of these things will have no effect.

BREACHES OF THE ACT, CODE OF CONDUCT OR A CONTRACT

Industrial Inspectors from the Labour Relations Division of the Department of Mines, Industry Relation and Safety can investigate alleged breaches of the Act, of the Code of Conduct, or of an owner-driver contract.

To contact the Department: Website: www.commerce.wa.gov.au/LabourRelations

REQUIREMENTS OF THE ACT AND CODE OF CONDUCT

Among the new requirements in the Act and Code of Conduct relating to owner-driver contracts are the following:

Making Payment Claims

If an owner-driver contract does not have a written provision about how to make a claim for payment, then the Act implies into the contract a requirement that a payment claim must:

- state the name of the claimant and date of the claim;
- in the case of a claim by an owner-driver itemise and describe the services provided by the owner-driver in enough detail to allow the hirer to assess the claim;
- in the case of a claim made by a hirer describe the basis for the claim in enough detail to allow the owner-driver to assess the claim; and
- be given to the other party.

14-day / 30-day Payment Time Limits

Where an owner-driver contract contains a provision that purports to require a payment to be made more than 30 days after a payment claim is made, the Act provides that the contract is to be read as being amended to require payment within 30 days after the claim is made.

Where an owner-driver contract does not have a written provision about the time by when a payment must be made, the Act implies the following terms into the contract:

Within 14 days after receiving a payment claim, the party receiving the claim must:

- pay the whole amount of the claim; or
- where part of the claim is in dispute, pay the part of the claim not in dispute.

'If paid / when paid' Banned

The Act bans the use of 'if paid / when paid' conditions in owner-driver contracts. If an owner-driver contract includes such a condition, that condition will have no effect.

Penalty Cannot be Imposed

The Code of Conduct provides that an owner-driver is not liable to pay a hirer any amount that is a *penalty*. A penalty is the payment of an amount to the extent that it exceeds the amount necessary to compensate a hirer for actual loss or damage suffered by the hirer due to the default of an owner-driver, or breach by an owner-driver, of an owner-driver contract. A penalty might include any money or property of an owner-driver being forfeited to or retained by a hirer as a penalty.

Interest Payable on Overdue Amounts

Where an owner-driver contract does not have a written provision about interest to be paid on overdue amounts, the Act implies the following terms into the contract:

- interest is payable from the day after the amount was due through to and including the day that the amount is paid; and
- the rate of interest payable is the rate prescribed at that time under section 8(1)(a) of the *Civil Judgments Enforcement Act 2004*.

If payment of part of an amount claimed is in dispute, the amount not in dispute should be paid, and the parties should try to resolve any issues about the remaining balance.

Deductions from Remuneration

The Code of Conduct provides that a hirer must not deduct any amount from money payable under an owner-driver contract to an owner-driver, except in the specific circumstances set out in the Code or where authorised by the contract.

Joint Negotiations

The Act provides a right for a group of owner-drivers to jointly negotiate an owner-driver contract with a hirer.

Negotiating Agents

The Act allows an owner-driver to appoint a negotiating agent to deal with their owner-driver contracts. Also, a hirer may appoint a negotiating agent for dealing with owner-driver contracts. In each case, the appointment of an agent has to be in writing.

Owner-drivers may group together to make an appointment and the agent for an owner-driver or a hirer may be a group of persons. Owner-drivers, hirers and persons acting as negotiating agents should obtain a copy of the Act and Code of Conduct to familiarise themselves with provisions about negotiating agents.

Negotiations to be in Good Faith

During negotiations for owner-driver contracts, the parties have a duty to negotiate fairly and in good faith. Parties have the right to act in their own commercial interests, but should also act fairly, honestly and reasonably towards one another. The requirement to negotiate fairly and in good faith also applies to a negotiating agent acting for an owner-driver, for a group of owner-drivers, or for a hirer.

Unconscionable Conduct Banned

The Act prohibits hirers and owner-drivers from engaging in unconscionable conduct towards each other during the negotiation of owner-driver contracts. The Act sets out a number of matters to which the Tribunal may have regard in determining whether a party has engaged in unconscionable conduct towards the other party. The matters listed in the Act include:

- Any use of undue influence, pressure or unfair tactics.
- Whether all relevant information was provided.
- Whether the parties acted in good faith and were willing to negotiate (rather than having a 'take it or leave it' approach).

The matters listed in the Act are not exhaustive and the Tribunal will consider all the circumstances of a case when determining whether a hirer or owner-driver has engaged in unconscionable conduct. Where an owner-driver, group of owner-drivers or hirer is represented by a negotiating agent, the prohibition against unconscionable conduct will also apply to the negotiating agent.

If an owner-driver believes that someone has engaged in unconscionable conduct towards them and has not been able to resolve the situation, they can refer the matter to the Tribunal.



Disclaimer: This information has been prepared as a guide only.

None of the information in this form is intended to constitute advice, whether legal, financial or professional. Before you act on the information in this form, you should first get specific independent advice about your particular circumstances. You should not act solely on the basis of the information in this form.

This form provides a brief overview of some of the changes affecting rights and obligations. A more detailed booklet and a range of other information for owner-drivers are available, free of charge, from the Department of Transport.

CONTACT

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