



## Frequently Asked Questions

# Owner-Drivers Act and Code of Conduct

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### Alternative formats

This publication is available in alternative formats upon request. Contact us to request a copy or submit an enquiry.

## Do I have to regularly drive a truck to be classified as an owner-driver?

Yes, you do. To be classified as an owner-driver under the Act, your principal occupation must be operating (driving) one or more heavy vehicles, either as the sole operator or with additional drivers.

A small fleet operator will not be covered by the legislation if the owner manages the business, but does little or no driving. See the Owner-Drivers Information Booklet on the Department's [website](#) for further details.

## Do I have to use a written contract?

No, you don't. An owner-driver contract can be written, oral or a mix of both.

Owner-drivers and hirers are encouraged to use written contracts though, because a written record provides a more secure business relationship and allows for more effective resolution of disputes. The Road Freight Transport Industry Tribunal can more easily deal with disputes where there is a written contract.

You might find the model contract helpful as a guide for understanding owner-driver contract terms. You can also modify any of the terms and conditions in the model contract to suit your own needs.

You can download the model contract and associated schedule from the Department's [website](#).

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## Can a contract contain a penalty clause?

No, it cannot. The Code of Conduct states that an owner-driver is not liable to pay any amount that is a penalty. This includes any money or property of an owner-driver being forfeited to or retained by a hirer as a penalty.

An amount is a penalty if it exceeds the amount necessary to compensate a hirer for the actual loss or damage incurred as a result of a "default" or breach of contract by an owner-driver. The owner-driver might still be liable to pay for the actual loss or damage incurred, but not more than the actual amount.

"Default" means something that is done or not done, happens or does not happen, as part of an owner-driver's responsibilities in carrying out an owner-driver contract.

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## I am contracted to carry goods to Darwin – does the WA Owner-Drivers Act cover me?

The Act applies if the whole journey to transport goods is within WA.

The Act also applies if a substantial part of the journey to transport goods is within WA. See the Owner-Drivers Information Booklet on the Department's [website](#) for further details.

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## What is the Code of Conduct and what does it mean for me?

The [Code of Conduct](#) is part of the *Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010*. The official title of the Code of Conduct is *Owner-Driver Contracts Code of Conduct 2010*.

The Code of Conduct deals with the business relationship between hirers and owner-drivers. It provides guidance on how that business relationship should function, to ensure a competitive but fair operating environment.

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## What information does a hirer have to provide to a 'new' owner-driver / sub-contractor?

It is a legal requirement of the Code of Conduct for a hirer to provide a sub-contractor / owner-driver with the following information before entering into an owner-driver contract with that owner-driver:

- A current copy of the Guideline Rates; and
- A copy of the Western Australian Owner-Drivers Information Form.

You can download the Guideline Rates and Information Form from the Department's [website](#).

They should also give the owner-driver sufficient time to read and understand the information before negotiations start. If the owner-driver already has the form and/or latest Guideline Rates, the hirer does not have to provide another copy.

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## What is “unconscionable conduct”?

Hirers and owner-drivers have the right to be tough negotiators, but they should also be honest and reasonable. What can be acceptable conduct in some situations might not be acceptable in others.

In deciding whether unconscionable conduct has occurred, these are some of the things for hirers and owner-drivers to consider:

- using coercion or unfair tactics
- not providing all relevant information
- contract terms and conditions that are not reasonably necessary to protect the business interests of the hirer or owner-driver
- not giving someone enough time to understand a contract
- withdrawing work or services at short notice
- contracts that do not allow payment increases when costs rise; or
- a how much of a higher rate or additional cost (such as a fuel levy or waiting fee) is passed on by the hirer to the owner-driver.

## How do I make a payment claim?

If your contract does not have a written provision about how to make a claim for payment, then the Act provides that the claim is to be made as follows:

For an owner-driver to make a claim for payment, the claim must:

- state the name of the owner-driver making the claim
- state the date of the claim
- itemise and describe the work that the owner-driver has done under the owner-driver contract, in sufficient detail for the other party (the hirer) to be able to assess it; and
- be given to the other party (the hirer).

For a hirer to make a payment claim, the claim must:

- state the name of the hirer making the claim
- state the date of the claim

- describe the basis for the claim, in sufficient detail for the other party (the owner-driver) to be able to assess it; and
- be given to the other party (the owner-driver).

## I have been asked to agree to a contract that will see me paid in 40 days, is this acceptable?

Under the *Owner-Drivers (Contracts and Disputes) Act 2007*, the **maximum** time for payment is 30 days from receipt of an invoice or payment claim. Any provisions for payment beyond 30 days are prohibited. If there is no agreed time for payment, the payment claim or invoice must be paid within **14 days** of receipt.

## My prime contractor has told me that the firm’s biggest customer has delayed payment to 60 days, so I will have to wait to be paid. Is that correct?

“Pay when paid” provisions are prohibited under the Owner-Drivers Act.

A person or company that owes money to another person or company under an owner-driver contract must pay the money owed – and pay it within the required time (maximum of 30 days). They cannot delay paying until they receive money from a third person (or company). Nor can they refuse to pay because they have not been paid money owed to them.

A hirer should make financial arrangements to pay an owner-driver according to the agreed payment provisions, which cannot exceed 30 days.

## Does the WA owner-driver legislation deal with fuel levies?

Yes, it does. The Code of Conduct requires that where a prime contractor / hirer receive an additional payment or higher rate (such as a fuel levy), a fair and reasonable amount of that payment or rate must be paid to the owner-driver.

Note that this requirement applies whether or not there is a relevant provision in the contract.

## What is a “safe and sustainable rate”?

A safe and sustainable rate is a rate high enough for an efficient and competent owner-driver to maintain a viable business. The rate of payment should provide the owner-driver with a reasonable income after covering the costs of running and maintaining the vehicle/s and the business.

A rate of payment is a safe and sustainable rate if it is calculated to provide:

- a fair return for the owner-driver’s labour, including driving, loading, unloading and performing other services and associated activities
- recovery of the fixed and variable operating costs reasonably incurred by the owner- driver in providing the services; and
- a reasonable return on the owner-driver’s investment in the business.

Because every business will have a different cost structure, it is important that owner-drivers know their costs and the “sustainable” rate that they need to maintain a viable business. The rate will vary for different freight tasks.

It is called a “safe and sustainable” rate because low rates of payment can cause financial pressures – which can tempt owner-drivers to compromise on safety. Safety compromises can include driving over the speed limit, overloading vehicles, driving too many hours each day, and/or cutting back on vehicle maintenance. A “safe and sustainable” rate means that owner-drivers do not have to bend or break the rules to avoid going broke.

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## How can I work out what is a “safe and sustainable rate”?

To work out a suitable rate of payment, owner-drivers first need to have a good understanding of their business costs. The Road Freight Transport Industry Council has developed an interactive MS Excel program: the Owner-Drivers’ Cost Calculator. The Cost Calculator enables users to change more than one hundred different business costs and provides a set of base figures for comparison. The Cost Calculator can be downloaded from the Department’s [website](#).

## I had agreed to cart for a rate below my “safe and sustainable” rate and now want the hirer to adjust the contract and pay me more – backdated to the start of the contract

If there is an issue of unconscionable conduct with you being induced to cart below a “safe and sustainable” rate, you could take your concerns to the Road Freight Transport Industry Tribunal. The Tribunal can determine a rate for your specific operation. It may not be considered unconscionable conduct if you agreed to a rate without having appropriately considered the costs of your business.

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## What if I am offered a “back load” rate?

All rates are subject to negotiation. If you believe that the rate being offered is insufficient and unsustainable, you should not carry the load. Operators also need to assess the possibility of a return load when assessing their rate for the forward load.

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## I have a new prime mover – can I demand a higher rate?

It might be that a hirer is prepared to pay a higher rate, if they had requested a new vehicle to be provided, but that is an issue of negotiation between the parties.

Owner-drivers should be wary of over-specifying prime movers, trailers and other equipment. Any vehicle or equipment features that go beyond what is reasonably required for the task do not automatically have to be considered in the rate negotiations.

The **Guideline Rates** are based on standard, flatbed vehicles.

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## What are “Guideline Rates”?

The Guideline Rates are a series of pre-calculated rates in both per kilometre and per hour dollar amounts. The Guideline Rates deal with both metropolitan and regional driving environments, covering a range of vehicle types.

The Guideline Rates can be downloaded from the Department’s [website](#).

The vehicle types are:

- 5 tonne GVM (rigid truck, 2 axles)
- 8 tonne GVM (rigid truck, 2 axles)
- 15 tonne GVM (rigid truck, 2 axles)
- 22.5 tonne GVM (rigid truck, 3 axles)
- Prime Mover (haulier - 1 trailer) (2 axles, 31.5 tonne GCM)
- Prime Mover (haulier - 1 trailer) (3 axles, 42.5 tonne GCM)
- Prime Mover (haulier - 2 trailers) (3 axles, 79 tonne GCM)
- Prime Mover (haulier - 3 trailers) (3 axles, 122.5 tonne GCM)
- Prime Mover + one trailer (42.5 tonne GCM)
- Prime Mover + two trailers (79 tonne GCM)
- Prime Mover + three trailers (122.5 tonne GCM)
- B-Double (3 axles, 62.5 tonne GCM); and
- Pocket Road Train (haulier - 2 trailers) (79 tonne GCM)

The Guideline Rates do not set a minimum or maximum rate, but provide a good starting point for negotiations. The Road Freight Transport Industry Tribunal can also refer to them to determine whether payments are being made at a safe and sustainable rate.

Where a term of an owner-driver contract provides for the payment of less than the guideline rate, the onus is on the hirer to prove that the contract term is not an unfair contract term.

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### Why are there not more vehicle types in the Guideline Rates?

It is not practical to develop a Guideline Rate for every type of heavy vehicle. Even within a type there will be variations, with different types of trailers and ancillary equipment – like container hoists and refrigeration units.

An owner-driver needs to find the Guideline Rate that most closely matches their truck type and business then adapt the cost data to work out the rate required for their operation.

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### Do the Guideline Rates deal with fuel increases?

The published Guideline Rates state the average price for diesel at the time that the Guideline Rates were calculated, but cannot factor in any subsequent or rapid changes in the fuel price. The Guideline Rates do incorporate a per litre fuel cost, but you will need to update this figure regularly in your rate calculations, to ensure that you are recovering your costs.

The FuelWatch website provides average fuel prices for both metropolitan and country areas: [fuelwatch.wa.gov.au](http://fuelwatch.wa.gov.au)

See also the Frequently Asked Questions about fuel levies which can be downloaded from the Department's [website](#).

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### Am I obliged to be paid the Guideline Rate?

No, you aren't. The Guideline Rates are not compulsory as such, so they do not set a minimum or maximum rate that a hire must pay. However, the Road Freight Transport Industry Tribunal can refer to them to determine whether payments are being made at a safe and sustainable rate.

Use the Guideline Rates as a starting point to work out a safe and sustainable rate for a freight task.

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### Can a hirer / prime contractor make deductions from money payable to an owner-driver?

Yes, but only under certain conditions that are specified in the Code of Conduct. The Code of Conduct states that a hirer must not deduct any amount from money payable to an owner-driver unless:

- The amount is payment that the owner-driver is liable to make under the owner-driver contract for loss or damage incurred by the hirer as the result of a breach of contract or default by the owner-driver – and the amount is not a penalty (see also the Frequently Asked Questions about penalty clauses which can be downloaded from the Department's [website](#)); or

- The amount is for the reasonable value of any service, benefit or thing that the hirer has provided (or arranged to be provided) to the owner-driver. “Service, benefit or thing” could include in-house vehicle servicing, insurance cover, or GPS tracking equipment provided by the hirer for an owner-driver.

Before any deduction can be made, a hirer must give written notice to the owner-driver, at least 14 days before the deduction is made. The written notice must:

- Describe the liability, service, benefit or thing; and
- State the amount to be deducted, when or from what money payable the deduction will be made, and the basis on which the deduction has been calculated.

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### Am I able to recover payment for demurrage (waiting time) from my prime contractor?

If your contract has a provision for an additional payment when you experience unreasonable delays in loading or unloading, you can claim and recover this additional cost. If you do not have a contract provision for this, it would not be something that you can readily claim.

If a prime contractor has demurrage provisions with a customer, it is reasonable for the owner-driver to be similarly compensated. Failure to do so could be considered a breach of the Code of Conduct (Division 8 – Provision for particular payment to owner-driver).

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### How do I claim interest on an outstanding account?

Interest can be claimed for the period from the day after a payment becomes due, up to and including the day when it is finally paid. If someone has paid you some of the amount by the due date, you can claim interest on the overdue balance.

You can claim interest by submitting an invoice or payment claim to the person or company that owes you the outstanding money. If your contract does not have a provision for the interest rate payable, the rate of interest can be found in the *Civil Judgments Enforcement Act 2004*, section 8(1)(a).

Note that the Code of Conduct requires that contracts must not specify an interest rate that is lower than the rate specified by the *Civil Judgments Enforcement Act 2004*. The interest rate in August 2013 was 6% per year. To find out what the current interest rate is, you will need to check regulation 4(1) of the [Civil Judgments Enforcement Regulations 2005](#).

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### What does “negotiate in good faith” mean?

The Code of Conduct requires parties to “negotiate in good faith”. Among other things, this can include:

- Meeting at reasonable times, intervals and locations for negotiations
- Stating and explaining your position on matters at issue
- Not adding or withdrawing bargaining elements at whim
- Being genuine, honest and open
- Honouring agreed outcomes and commitments.

Note that, depending on the circumstances, engaging in industrial action can sometimes be a breach of the duty to negotiate in good faith.

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### Negotiating agents – who can I ask to negotiate on my behalf?

An individual or a group of owner-drivers does not have to negotiate directly with a hirer. They are free to choose any person or group (their “negotiating agent”) to negotiate on their behalf. Examples include an accountant, the TWU or another owner-driver. The same applies to hirers, who may appoint any person or group to be their negotiating agent.

A negotiating agent must be appointed in writing by the hirer, owner-driver or the group of owner-drivers that they represent. A copy of that written appointment must be provided to the other party before negotiations start. The other party cannot refuse to negotiate with a duly appointed negotiating agent.

Note that negotiating agents are bound by the Act and Code of Conduct in the same way as the party that they represent.

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## With collective bargaining, does that mean that all the drivers in a group end up getting the same terms and conditions?

Not necessarily. You do not have to collectively negotiate all of the terms and conditions.

A group of owner-drivers could negotiate for some of the terms and conditions then work out the rest individually with the hirer.

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## What sorts of records does a hirer have to keep and for how long?

The Code of Conduct requires a hirer to make and keep certain records for a minimum of six years. The Code of Conduct sets out the record keeping requirements.

A hirer must ensure that the following information is recorded in relation to each owner-driver contract to which the hirer is a party:

- The name of the owner-driver
- A description of the services provided under the owner-driver contract
- The name of the person (or people) who drove the vehicle/s with which the services were provided (to the best of the hirer's knowledge)
- The date or dates on which the services were provided
- The amount of payment due for the services and how the amount was calculated
- If any deduction was made from the amount due, the reason for the deduction, the basis on which the deduction was calculated and the date on which the deduction was made
- The actual amount paid in respect of the owner-driver services

The Code of Conduct also sets out how the information is to be recorded and stored. Note that all businesses, including owner-driver businesses, are already required to keep business records for a minimum of five years – this is a Taxation Office requirement.

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## How do I lodge a dispute with the Tribunal and how long does it take?

To refer a dispute to the Road Freight Transport Industry Tribunal, you will need to fill in a Form 7A then lodge it with the Tribunal. You can get the form by going to the Tribunal's website: [www.wairc.wa.gov.au](http://www.wairc.wa.gov.au), or by going to the WA Industrial Relations Commission office. You can lodge the form via the same website, by going to the Commission office, or you can post it in. There is no fee for doing this.

Once the form has been received and filed by the Tribunal, you will need to serve a copy of it on the other party to the dispute. You will also need to fill out a statutory declaration that you have done this. The statutory declaration is done on a Form 4.

The other party then has 21 days to respond, which they do by filling out a Form 5. They will also need to send a copy of the Form 5 to you and fill out a Form 4 statutory declaration that they have done so.

The Tribunal will list the matter for hearing as soon as it reasonably can – usually a matter of weeks.

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## The Tribunal has made an order in my favour, but the company still hasn't paid me.

There is a two-step process to recovering your money. First you will need to get a certified copy of your order from the Tribunal. Next you will need to file a claim for enforcement of that order.

To file a claim for enforcement, you will need to file the certified copy of the Tribunal's order and an affidavit in the Industrial Magistrate's Court. Note that there might be a fee for this, but the Court may order the other party to reimburse you for that fee.

On filing, the Tribunal's order is taken to be an order of the Industrial Magistrate's Court and may be enforced accordingly. The Court's enforcement process may then be used to recover the money, without the need for you to attend a hearing.

It is very important that you use the proper name of the person or company that you are making the claim against. Do not use abbreviations or nicknames when filling out the forms.

The forms that you need to complete are available from the Industrial Magistrates Court of Western Australia or can be downloaded at their website [www.imc.wa.gov.au](http://www.imc.wa.gov.au).

If you go to the Court registry, staff can help you to fill out the paperwork. Otherwise, you can ask them to post the forms to you, including samples that show how to complete the forms. However, you do not have to come to Perth to do this, because the Industrial Magistrate's Court has six metropolitan locations, in addition to regional court houses.

The Industrial Magistrate's Court is located at the same building as the Tribunal and the Industrial Relations Commission.

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### How many days notice must be given prior to a contract being terminated?

The minimum notice period for contract termination is 90 days, unless a contract is less than 90 days in duration in which case the minimum notice period is 7 days.

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### What minimum notice period applies for a series of rolling contracts?

The minimum notice period that must be given for a series of consecutive contracts between the same two parties containing substantially terms and conditions is 90 days, if the aggregate term of the original contract and any series of successive contracts is greater than 90 days or 7 days if the aggregate of the successive contracts is less than 90 days.

### Can payment be made in lieu of the minimum notice period for contract termination?

Yes, a contract termination can take effect immediately if the hirer pays an owner-driver the amount that would be payable under the contract for the equivalent of the minimum notice period minus 25%.

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### Can partial notice of termination be given?

If partial notice of termination is given, the hirer can terminate the contract immediately by paying an owner-driver the amount in lieu of the remainder of the minimum notice period to make up the remainder of the required minimum notice period minus 25%.

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## Contact

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