



Road Freight Transport Industry Council

Council members will represent owner-drivers, hirers, the community and government.

Major tasks for the Council include assisting in development and review of the Code of Conduct, Guideline Rates and model contracts.

Road Freight Transport Industry Tribunal

The Tribunal Commissioner has relevant knowledge of the freight transport industry.

The Tribunal:

- gives you access to a low-cost dispute resolution process
- can deal with disputes under the Act, Code of Conduct or a contract, including payment disputes
- can resolve disputes through conciliation (helping you to work it out together) or by making a determination
- can allow a party to be represented by an agent or legal practitioner.

Guideline Rates

Guideline Rates:

- specify the type of owner-driver, vehicle and other equipment to which they apply
- include typical fixed and variable overhead costs
- indicate the hourly rate that would typically be paid to an employee
- will be reviewed regularly, so that they are reliable and up-to-date.

Further information

We recommend you read the two information booklets:

***Owner-Drivers (Contracts and Disputes) Act 2007
– Information for owner-drivers***

***Owner-Drivers (Contracts and Disputes) Act 2007
– Information for hirers***

These are available from:

Department for Planning and Infrastructure
441 Murray Street, Perth 6000

Tel: 9216 8000

Fax: 9216 8734

Email: <ownerdriver@dpi.wa.gov.au>

Website: <www.dpi.wa.gov.au/freight>

Disclaimer:

This pamphlet has been prepared by the Department for Planning and Infrastructure as a guide only. You should not act solely on the basis of the information in this pamphlet. None of the comments in this pamphlet are intended to be advice, whether legal, financial or professional. Before you act on the information in this pamphlet, first get specific independent advice about your particular circumstances.

AUGUST 2008

Western Australian

Owner-Drivers (Contracts and Disputes) Act 2007



Commences on 1 August 2008

Affecting:

Owner-drivers of freight vehicles
(of more than 4.5 tonnes GVM)

and

people and companies that hire
owner-drivers of freight vehicles



The Act comes into effect in two stages:

1 August 2008 and 1 February 2009

The Act affects contracts that involve transporting goods entirely (or substantially) within Western Australia. To be covered by the Act, contracts must relate mainly to transporting goods, but may include other services.

Those contracts may be written, oral, or a mix of both.

Contracts cannot exclude, modify or restrict the operation of the Act.

The Act introduces a number of changes that affect your rights and responsibilities. We recommend that you seek independent advice on how those changes affect you.

Definition of owner-driver

An owner-driver is **not** an employee.

- An owner-driver is a person, partnership* or body corporate (but not a listed public company).
- The owner-driver's business is transporting goods in one or more freight vehicles (of more than 4.5 tonnes gross vehicle mass)
- The owner-driver's business uses one or more vehicles supplied by that person, the partnership or body corporate (whether or not the person, partnership or body corporate owns the vehicle/s).
- The owner-driver's sole (or main) business is operating one or more of those vehicles (whether by themselves or with one or more people).

* Note: For a partnership, at least one of the partners must be a person who meets all of the above requirements.

From 1 August 2008

Contracts should not contain conditions or terms that are not allowed under the Act. Hirers and owner-drivers have until 1 February 2009 to ensure that all contracts comply fully with the Act. More information is available in the information booklets:

Owner-Drivers (Contracts and Disputes) Act 2007 – Information for owner-drivers and

Owner-Drivers (Contracts and Disputes) Act 2007 – Information for hirers.

- The Road Freight Transport Industry Council commences operation.
- The Road Freight Transport Industry Tribunal commences operation.
- The 'Unconscionable Conduct' rule applies – hirers and owner-drivers must negotiate and operate in a fair and reasonable manner.
- Hirers, owner-drivers and groups of owner-drivers may appoint a person or group to be their negotiating agent.

From 1 February 2009

- Contracts must not contain conditions or terms that are not allowed under the Act. Terms that are not allowed will have **no effect.**
- An owner-driver (or authorised representative) will be able to access and inspect records held by a hirer that relate to that owner-driver.
- 'If paid / when paid' contract conditions are prohibited. A person or company who owes money for services under a contract is not allowed to delay payment until they receive money from a third person or company.
- If a time limit for payment is not written in the contract, payments must be made within 14 days of a claim for payment being received (written contracts cannot specify more than 30 days for payment). *(cont.)*

From 1 February 2009 (cont.)

- Interest will be payable on overdue amounts.
- New Regulations containing a Code of Conduct come into effect.
- Guideline Rates and model contracts will be available as a guide during negotiations.
- Hirers will need to provide owner-drivers with current written information, such as the Guideline Rates.

Code of Conduct

The Code of Conduct deals with the business relationship between hirers and owner-drivers; it:

- establishes compulsory requirements
- provides guidance on how hirers and owner-drivers can deal with one another in a positive and professional way
- provides examples to help you understand how the Code applies in day-to-day life.

Unconscionable conduct

In determining if unconscionable conduct has occurred, the Tribunal may consider, among other things:

- the relative bargaining power of the parties
- any use of undue influence, pressure or unfair tactics
- whether the conduct of one or both parties is consistent with how they deal with others in similar transactions
- whether the contract terms and conditions are reasonable
- whether the rates and conditions offered are consistent with those that might be offered by or to others in similar transactions
- whether all relevant information was provided – and the ability of a party to understand the information received
- whether the parties acted in good faith and were willing to negotiate (rather than having a 'take it or leave it' approach).