

**Version No. 011**  
**Owner Drivers and Forestry Contractors Act**  
**2005**

**No. 49 of 2005**

Version incorporating amendments as at 1 July 2010

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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to regulate the relationship between persons who contract to transport goods in a vehicle, or harvest forest products using motorised equipment, supplied by them and persons who hire them, principally by—

- (a) requiring information to be given to contractors;
- (b) providing requirements for contracts;
- (c) allowing negotiating agents to be appointed;
- (d) providing a dispute-resolution mechanism;
- (e) conferring functions on the Small Business Commissioner;
- (f) establishing a Transport Industry Council and a Forestry Industry Council;
- (g) providing for codes of practice to be made;
- (h) prohibiting unconscionable conduct;
- (i) providing certain authorisations for the purposes of competition laws;
- (j) amending the **Victorian Civil and Administrative Tribunal Act 1998**.

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## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2006, it comes into operation on that day.

## 3 Definitions

In this Act—

***business day*** means a day other than a Saturday, a Sunday or a public holiday within the meaning of the **Public Holidays Act 1993**;

***code of practice*** means a code of practice made under Part 3;

***contractor*** means—

- (a) an owner driver; or
- (b) a haulage contractor; or
- (c) a harvesting contractor;

***corporation*** has the same meaning as in the Corporations Act;

***dispute*** has the meaning given by section 33;

***freight broker*** means a broker or agent in the business of procuring or arranging the engagement of contractors by hirers;

***forest products*** includes—

- (a) saw logs, pulp wood, woodchips and fuel wood; and
- (b) residual matter, such as waste bark or branches, that is processed on site for use as woodchips, boiler fuel, compost or mulch—

but does not include firewood collected for domestic use;

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*forestry contractor* means a haulage contractor or a harvesting contractor;

*Forestry Industry Council* means Forestry Industry Council of Victoria established by section 58;

*goods* includes freight and materials;

*harvesting contract* has the meaning given in section 6(2);

*harvesting contractor* has the meaning given in section 6(1);

*haulage contract* has the meaning given in section 5(2);

*haulage contractor* has the meaning given in section 5(1);

*heavy vehicle* has the same meaning as in the **Road Safety Act 1986**;

*hirer* means a person who engages a contractor under one or more regulated contracts;

*industry council* means Transport Industry Council or Forestry Industry Council;

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

*motorised equipment* means—

- (a) a wheeled or tracked machine powered by a combustion engine, such as a bulldozer, grader, excavator or skidder; or
- (b) other equipment powered by a combustion engine, such as a chainsaw, purpose-built forest harvesting machine, hydraulic loading equipment or cable logging system;

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*negotiating agent* means a person or group of persons appointed under Division 5 of Part 2;

*officer* of a corporation has the same meaning as in the Corporations Act;

*owner driver* has the meaning given in section 4(1);

*owner driver contract* has the meaning given in section 4(2);

*person* includes a partnership;

*rates and costs schedule* means a schedule published under section 15 as revised from time to time;

*regulated contract* means an owner driver contract, a haulage contract or a harvesting contract;

*Small Business Commissioner* means Small Business Commissioner appointed under the **Small Business Commissioner Act 2003**;

*Transport Industry Council* means Transport Industry Council of Victoria established by section 55;

*Tribunal* means Victorian Civil and Administrative Tribunal established by section 8 of the **Victorian Civil and Administrative Tribunal Act 1998**;

*vehicle* means—

- (a) a vehicle that is used on a highway within the meaning of the **Road Safety Act 1986** and that is built to be propelled by a motor that forms part of the vehicle; or
- (b) a bicycle.



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#### 4 Owner drivers and owner driver contracts

- (1) For the purposes of this Act, an *owner driver* is—
- (a) a natural person who carries on a business of transporting goods in one or more vehicles supplied by him or her and operated by him or her (whether solely or with the use of additional or relief operators); or
  - (b) a corporation (other than a listed public company) that carries on a business of transporting goods in one or more vehicles supplied by the corporation or an officer of the corporation and operated by an officer of the corporation (whether solely or with the use of additional or relief operators); or
  - (c) a partnership of persons referred to in paragraph (a)—
- but does not include a haulage contractor.
- (2) For the purposes of this Act, an *owner driver contract* is a contract made in the course of business by an owner driver with another person for the transport of goods by the owner driver.
- (3) It is irrelevant whether an owner driver contract provides for an owner driver to perform services other than transporting goods, as long as the services to be performed under the contract predominantly relate to the transport of goods.
- (4) For the avoidance of doubt, an owner driver contract does not include a contract that is a contract of employment.
- (5) Subsections (1) and (2) are subject to section 7.

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## 5 Haulage contractors and haulage contracts

- (1) For the purposes of this Act, a *haulage contractor* is—
  - (a) a natural person who carries on a business of transporting forest products in one or more vehicles supplied by him or her and operated by him or her (whether solely or with the use of additional or relief operators); or
  - (b) a corporation (other than a listed public company) that carries on a business of transporting forest products in one or more vehicles supplied by the corporation or an officer of the corporation and operated by an officer of the corporation (whether solely or with the use of additional or relief operators); or
  - (c) a partnership of persons referred to in paragraph (a).
- (2) For the purposes of this Act, a *haulage contract* is a contract made in the course of business by a haulage contractor with another person for the transport of forest products by the haulage contractor.
- (3) It is irrelevant whether a haulage contract provides for a haulage contractor to perform services other than transporting forest products, as long as the services to be performed under the contract predominantly relate to the transport of forest products.
- (4) For the avoidance of doubt, a haulage contract does not include a contract that is a contract of employment.
- (5) Subsections (1) and (2) are subject to section 7.

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## 6 Harvesting contractors and harvesting contracts

- (1) For the purposes of this Act, a *harvesting contractor* is—
    - (a) a natural person who carries on a business of harvesting forest products using motorised equipment supplied by him or her; or
    - (b) a corporation (other than a listed public company) that carries on a business of harvesting forest products using motorised equipment supplied by the corporation or an officer of the corporation; or
    - (c) a partnership of persons referred to in paragraph (a).
  - (2) For the purposes of this Act, a *harvesting contract* is a contract made in the course of business by a harvesting contractor with another person for the harvesting of forest products by the harvesting contractor.
  - (3) It is irrelevant whether a harvesting contract provides for a harvesting contractor to perform services other than harvesting forest products, as long as the services to be performed under the contract predominantly relate to the harvesting of forest products.
  - (4) For the avoidance of doubt, a harvesting contract does not include a contract that is a contract of employment.
  - (5) Subsections (1) and (2) are subject to section 7.
  - (6) In this section—

*harvesting* includes—

    - (a) felling or cutting trees or parts of trees;
    - (b) extracting, grading and loading forest products;
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- (c) undertaking any works, including road works, coupe rehabilitation and construction of boundary trails, ancillary to any of the activities referred to in paragraphs (a) and (b).

### **7 Regulations regarding contractors and contracts**

The regulations may prescribe—

- (a) persons of a specified class to be contractors for the purposes of this Act or the regulations or specified provisions of this Act or the regulations;
- (b) persons of a specified class not to be contractors for the purposes of this Act or the regulations or specified provisions of this Act or the regulations;
- (c) contracts of a specified class to be regulated contracts for the purposes of this Act or the regulations or specified provisions of this Act or the regulations;
- (d) contracts of a specified class not to be regulated contracts for the purposes of this Act or the regulations or specified provisions of this Act or the regulations.

### **8 Application of Act**

- (1) This Act applies to owner drivers who are engaged—
  - (a) under an owner driver contract that is made in Victoria or that is subject to the law of Victoria; or
  - (b) to transport goods wholly within Victoria; or

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- (c) to transport goods from Victoria to another place or from another place to Victoria, if a substantial part of the services under the owner driver contract are performed in Victoria.
- (2) This Act applies to haulage contractors who are engaged—
- (a) under a haulage contract that is made in Victoria or that is subject to the law of Victoria; or
  - (b) to transport forest products wholly within Victoria; or
  - (c) to transport forest products from Victoria to another place or from another place to Victoria, if a substantial part of the services under the haulage contract are performed in Victoria.
- (3) This Act applies to harvesting contractors who are engaged—
- (a) under a harvesting contract that is made in Victoria or that is subject to the law of Victoria; or
  - (b) to harvest forest products within Victoria.
- (4) However, this Act does not apply to an owner driver or haulage contractor who has the benefit of, or is otherwise covered by, a contract determination made under Chapter 6 of the Industrial Relations Act 1996 of New South Wales.

**9 Act binds the Crown**

This Act binds the Crown in right of Victoria and also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

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**PART 2—CONTRACTING REQUIREMENTS**

**Division 1—Information booklet**

**10 Information booklet**

- (1) A hirer who intends to engage a contractor (otherwise than through a freight broker) must give the contractor an information booklet that complies with section 13(1) at least 3 business days before the hirer engages the contractor.
- (2) A freight broker who procures or arranges the engagement of a contractor by a hirer must give the contractor an information booklet that complies with section 13(1) at least 3 business days before the contractor is engaged.

**Note**

A failure to comply with this section may result in the Tribunal making an order under section 45 regarding payment to the contractor.

**11 Information booklet not required for short term engagements**

- (1) Section 10 does not apply if the contractor is engaged for a period of less than 30 days.
- (2) However, if a contractor is engaged by the same hirer or through the same freight broker for a total of at least 30 days in any 3 month period, the information booklet must be given to the contractor on the 30th day on which the contractor is engaged in that period.
- (3) An information booklet is not required to be given more than once under subsection (2).

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## **12 Information booklet to be given to tenderers**

- (1) This section applies to a hirer who undertakes a tender process for the purpose of engaging a contractor.
- (2) The hirer must not accept a tender from a contractor unless the hirer has given the contractor an information booklet that complies with section 13(1) at least 3 business days before the tender is lodged.

### **Note**

A failure to comply with this section may result in the Tribunal making an order under section 45 regarding payment to the contractor.

## **13 Contents and availability of information booklet**

- (1) An information booklet must contain the information, and be in the form, determined by the Minister.
- (2) The Secretary to the Department administered by the Minister must make information booklets available to hirers and freight brokers on request.
- (3) The Secretary may make the booklets available, and publish them, on the Internet or in any other manner the Secretary considers appropriate.

### **Division 2—Rates and costs schedules**

## **14 Rates and costs schedules**

- (1) The Minister, in consultation with the industry councils, must—
  - (a) develop rates and costs schedules for contractors; and



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- (b) revise each schedule at periods not exceeding 12 months.
- (2) Each schedule must—
- (a) specify the class of contractor and vehicle or motorised equipment to which it applies; and
  - (b) contain the following information—
    - (i) typical fixed and variable overhead costs for that class of contractor and vehicle or equipment; and
    - (ii) the base hourly rate and casual hourly rate that would typically apply to that class of contractor if a contractor of that class were performing substantially similar work as an employee.
- (3) For the purposes of subsection (2)(b)(i), fixed and variable overhead costs include, but are not limited to—
- (a) vehicle or equipment registration, maintenance and running costs;
  - (b) business administration and insurance costs (including any premiums payable under the **Accident Compensation (WorkCover Insurance) Act 1993**);
  - (c) self-funding of superannuation;
  - (d) finance costs;
  - (e) costs of complying with any applicable laws;
  - (f) costs of engaging additional or relief labour;
  - (g) depreciation of vehicles or equipment.
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## **15 Publication of schedules**

- (1) The Minister must publish each rates and costs schedule and each revision of those schedules in the Government Gazette.
- (2) The Secretary to the Department administered by the Minister must make the schedules and revised schedules available to hirers and freight brokers on request.
- (3) The Secretary may make the schedules and revised schedules available, and publish them, on the Internet or in any other manner the Secretary considers appropriate.

## **16 Provision of applicable schedule to contractor before engagement**

- (1) A hirer who intends to engage a contractor (other than through a freight broker) must give the contractor a copy of the most recently published rates and costs schedule applicable to that contractor and the relevant class of vehicle or motorised equipment at least 3 business days before the hirer engages the contractor.
- (2) A freight broker who procures or arranges the engagement of a contractor by a hirer must give the contractor a copy of the most recently published rates and costs schedule applicable to the contractor and the relevant class of vehicle or motorised equipment at least 3 business days before the contractor is engaged.
- (3) Subsection (1) or (2) does not apply if the contractor is engaged for a period of less than 30 days.

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- (4) However, if a contractor is engaged by the same hirer or through the same freight broker for a total of at least 30 days in any 3 month period, the most recently published applicable schedule must be given to the contractor on the 30th day on which the contractor is engaged in that period.

**Note**

A failure to comply with this section may result in the Tribunal making an order under section 45 regarding payment to the contractor.

**17 Provision of applicable schedule to tenderers**

- (1) This section applies to a hirer who undertakes a tender process for the purpose of engaging a contractor.
- (2) The hirer must not accept a tender from a contractor unless the hirer has given the contractor a copy of the most recently published rates and costs schedule applicable to that contractor and the relevant class of vehicle or motorised equipment at least 3 business days before the tender is lodged.

**Note**

A failure to comply with this section may result in the Tribunal making an order under section 45 regarding payment to the contractor.

**18 Provision of revised schedule to contractor during engagement**

- (1) A hirer who has engaged a contractor (other than through a freight broker) must, during the engagement, give the contractor a copy of each revision of the applicable rates and costs schedule as soon as practicable after the revision is published.

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- (2) A freight broker who has procured or arranged the engagement of a contractor by a hirer must, during the engagement, give the contractor a copy of each revision of the applicable rates and costs schedule as soon as practicable after the revision is published.
  - (3) Subsection (1) or (2) does not apply if the contractor is engaged for a period of less than 30 days.
  - (4) However, if a contractor is engaged by the same hirer or through the same freight broker for a total of at least 30 days in any 3 month period, the most recently published applicable schedule must be given to the contractor on the 30th day on which the contractor is engaged in that period.
  - (5) Subsection (4) does not apply if the contractor has been given a copy of the most recently published applicable schedule under section 16(4).

**Note**

A failure to comply with this section may result in the Tribunal making an order under section 45 regarding payment to the contractor.

**Division 3—Requirements for ongoing engagements**

**19 Application of Division**

- (1) This Division applies to any ongoing engagement of a contractor that is—
    - (a) of no fixed duration; or
    - (b) for a period of at least 30 days.
  - (2) A contractor's engagement is to be regarded as ongoing—
    - (a) despite any interruption or ending of the engagement by the hirer if the interruption or ending is made or done with the intention of avoiding obligations under this Division; and
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- (b) irrespective of the number of regulated contracts under which the contractor is engaged during the engagement.

## 20 Requirements for regulated contracts

A regulated contract under which a contractor is engaged must—

- (a) be in writing; and
- (b) state the guaranteed minimum number of hours of work or income level that the contractor will receive; and
- (c) set out the rates to be paid to the contractor; and
- (d) set out the minimum period of notice of termination of the engagement, or payment in lieu of notice, in accordance with sections 21 and 22.

### Note

There is no minimum period of notice for ongoing engagements of less than 3 months—see section 21(4)(c).

## 21 Notice of termination

- (1) The minimum period of notice of termination of an engagement is as set out in the following table.

<i>Category of contractor</i>	<i>Minimum notice period</i>
Forestry contractor	3 months
Owner driver of heavy vehicle	3 months
Other owner driver	1 month

- (2) Subsection (1) does not apply to an engagement if—
  - (a) at the contractor's request, the Small Business Commissioner certifies in writing that he or she, or a person acting on his or her behalf, has explained to the contractor—

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- (i) the effect of subsection (1); and
    - (ii) that the giving of the certificate and the giving by the contractor of a notice under paragraph (b) will result in subsection (1) not applying to the engagement; and
  - (b) after having been given a certificate under paragraph (a), the contractor gives the hirer a written notice waiving the application of subsection (1) to the engagement.
  - (3) The Small Business Commissioner must issue a certificate under subsection (2)(a) within 21 days after being requested to do so by the contractor, but a certificate issued later than that is not invalid only because of that fact.
  - (4) Subsection (1) does not apply to—
    - (a) termination of the engagement by the hirer on the ground of serious and wilful misconduct; or
    - (b) termination of the engagement by the contractor on the ground of a material breach of contract by the hirer; or
    - (c) an ongoing engagement for a period of less than 3 months.
  - (5) Nothing in this section prevents persons entering a regulated contract under which notice of termination may not be given before a specified date.

## **22 Payment in lieu of notice**

- (1) A hirer may, in lieu of the notice period required by section 21, pay a contractor an amount calculated in accordance with this section.
  - (2) The amount is the gross amount less the deductible amount.
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- (3) The **gross amount** is the higher of—
- (a) the amount that would be paid under the regulated contract for the minimum number of hours specified in the contract over the minimum required period of notice;
  - (b) the monthly average of the amount paid to the contractor by the hirer over the period of 6 months immediately before the termination multiplied by the number of months of the minimum required period of notice.
- (4) The **deductible amount** is—
- (a) if the relevant vehicle or motorised equipment is subject to finance arrangements at the time of termination, the amount of variable overhead costs as provided in the most recent applicable rates and costs schedule that would be payable over the minimum required period of notice; or
  - (b) if the relevant vehicle or motorised equipment is not subject to finance arrangements at the time of termination, the amount of—
    - (i) overhead costs for finance arrangements for a vehicle or motorised equipment; and
    - (ii) variable overhead costs—  
as provided in the most recent applicable rates and costs schedule that would be payable over the minimum required period of notice.

S. 22(4)(a)  
amended by  
No. 40/2007  
s. 5(a).

S. 22(4)(b)  
substituted by  
No. 40/2007  
s. 5(b).

(5) In this section—

*finance arrangements* includes any fees, interest, charges or expenses incurred by a contractor in respect of the purchase, hire purchase or lease of a vehicle or motorised equipment used to provide services under the regulated contract.

#### **Division 4—Further contractual requirements**

##### **23 Costs of insurance**

A hirer must not require a contractor to pay any amount, or make any deductions from money payable to a contractor, in respect of insurance unless—

- (a) an insurance policy is in force; and
- (b) the hirer has provided a copy of the policy to the contractor.

##### **24 Amounts for provision of services or equipment by hirer or other persons**

A hirer must not require a contractor to pay any amount, or make any deductions from money payable to a contractor, in respect of the provision of any services or equipment by the hirer or any other person to the contractor unless—

- (a) the amounts are specified in the regulated contract; and
- (b) the amounts are a direct and proper reflection of the actual cost of the services or equipment in respect of which the costs are charged; and
- (c) if practicable, the hirer has given the contractor an opportunity to obtain the services or equipment from another supplier.



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**Division 5—Joint negotiations**

**25 Negotiating agents for contractors**

- (1) A contractor or a group of contractors may, by instrument, appoint a person or group of persons to be the negotiating agent for the contractor or contractors in relation to the engagement of the contractor or contractors, including the making, variation or termination of regulated contracts.
- (2) Subject to subsection (3), a hirer must not refuse to recognise a negotiating agent duly appointed by a contractor or group of contractors for the purposes of subsection (1).
- (3) Subsection (2) does not apply if the hirer has not been given a copy of the agent's instrument of appointment before the refusal.
- (4) If requested to do so by the negotiating agent, a hirer must deal exclusively with the agent within the scope of the agent's authority.
- (5) A person must not coerce, or attempt to coerce, a contractor or group of contractors—
  - (a) to appoint, or not to appoint, a particular person or group of persons as a negotiating agent; or
  - (b) to terminate the appointment of a negotiating agent.

**26 Negotiating agents for hirers**

- (1) A hirer may, by instrument, appoint a person or group of persons to be the negotiating agent for the hirer in relation to the engagement of a contractor or contractors, including the making, variation or termination of regulated contracts.

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- (2) Subject to subsection (3), a contractor or group of contractors must not refuse to recognise a negotiating agent duly appointed by a hirer for the purposes of subsection (1).
  - (3) Subsection (2) does not apply if the person, or a representative of the group, refusing has not been given a copy of the agent's instrument of appointment before the refusal.
  - (4) If requested to do so by the negotiating agent, a contractor or group of contractors must deal exclusively with the agent within the scope of the agent's authority.
  - (5) A person must not coerce, or attempt to coerce, a hirer—
    - (a) to appoint, or not to appoint, a particular person or group of persons as a negotiating agent; or
    - (b) to terminate the appointment of a negotiating agent.
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**PART 3—CODES OF PRACTICE**

**27 Prescribing codes of practice**

- (1) The Governor in Council, on the recommendation of the Minister, may make regulations prescribing codes of practice in relation to the engagement of contractors.
- (2) A code of practice may require hirers to adopt the standards of conduct and practice set out in the code with respect to contractors or classes of contractors.

**28 Consultation**

- (1) Before making a recommendation under section 27(1) for a code of practice in respect of owner drivers or a class of owner drivers, the Minister must consult with the Transport Industry Council.
- (2) Before making a recommendation under section 27(1) for a code of practice in respect of forestry contractors or a class of forestry contractors, the Minister must consult with the Forestry Industry Council.

**29 Application of codes of practice**

A code of practice must specify the classes of hirers and contractors to which it applies.

**30 Compliance with codes of practice**

A person to whom a code of practice applies must comply with the code of practice to the extent that it imposes duties or obligations on the person or prohibits the person from engaging in certain conduct.

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**PART 4—UNCONSCIONABLE CONDUCT**

**31 Unconscionable conduct by hirers**

- (1) A hirer must not engage in unconscionable conduct with respect to a contractor.
- (2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a hirer has contravened subsection (1), the Tribunal may have regard to any one or more of the following—
  - (a) the relative strengths of the bargaining positions of the hirer and the contractor;
  - (b) whether, as a result of conduct engaged in by the hirer, the contractor was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the hirer;
  - (c) whether the contractor was able to understand any documents relating to the acquisition or possible acquisition by the hirer of services from the contractor;
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the contractor or a person acting on behalf of the contractor by the hirer or a person acting on behalf of the hirer in relation to the acquisition or possible acquisition of the services from the contractor;
  - (e) the amount for which, and the circumstances in which, the contractor could have supplied identical or equivalent services to a person other than the hirer, including as an employee;

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- (f) the extent to which the hirer's conduct towards the contractor was consistent with the hirer's conduct in similar transactions between the hirer and other like contractors;
  - (g) the requirements of any applicable code of practice;
  - (h) the extent to which the hirer unreasonably failed to disclose to the contractor—
    - (i) any intended conduct of the hirer that might affect the interests of the contractor;
    - (ii) any risks to the contractor arising from the hirer's intended conduct being risks that the hirer should have foreseen would not be apparent to the contractor;
  - (i) the extent to which the hirer was willing to negotiate the terms and conditions of any contract for the acquisition or possible acquisition of services from the contractor;
  - (j) the extent to which the hirer and the contractor acted in good faith;
  - (k) whether or not the regulated contract allows for the payment of any increases in fixed and variable overhead costs on a regular and systematic basis.

### **32 Unconscionable conduct by contractors**

- (1) A contractor must not engage in unconscionable conduct with respect to a hirer.
- (2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a contractor has contravened subsection (1), the Tribunal may have regard to any one or more of the following—

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- (a) the relative strengths of the bargaining positions of the contractor and the hirer;
  - (b) whether, as a result of conduct engaged in by the contractor, the hirer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the contractor;
  - (c) whether the hirer was able to understand any documents relating to the provision or possible provision by the contractor of services to the hirer;
  - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the hirer or a person acting on behalf of the hirer by the contractor or a person acting on behalf of the contractor in relation to the provision or possible provision by the contractor of services to the hirer;
  - (e) the amount for which, and the circumstances in which, the hirer could have acquired identical or equivalent services from a person other than the contractor, including from an employee;
  - (f) the extent to which the contractor's conduct towards the hirer was consistent with the contractor's conduct in similar transactions between the contractor and other like hirers;
  - (g) the requirements of any applicable code of practice;
  - (h) the extent to which the contractor unreasonably failed to disclose to the hirer—
    - (i) any intended conduct of the contractor that might affect the interests of the hirer;
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- (ii) any risks to the hirer arising from the contractor's intended conduct, being risks that the contractor should have foreseen would not be apparent to the hirer;
  - (i) the extent to which the contractor was willing to negotiate the terms and conditions of any contract for the provision or possible provision of services by the contractor;
  - (j) the extent to which the contractor and the hirer acted in good faith.
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**PART 5—DISPUTE RESOLUTION**

**Division 1—Introduction**

**33 Meaning of *dispute***

- (1) In this Part, *dispute* means a dispute between one or more contractors and one or more hirers arising under or in relation to this Act, a code of practice or a regulated contract, and includes an allegation that a person has contravened this Act, the regulations, a code of practice or a regulated contract.
- (2) In this Part—  
*contractor* includes a former contractor;  
*hirer* includes a former hirer.

**Division 2—Alternative dispute resolution**

**34 What alternative dispute resolution includes**

- (1) Alternative dispute resolution under this Part extends to preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that—
  - (a) the parties are fully aware of their rights and obligations; and
  - (b) there is full and open communication between the parties concerning the dispute.
- (2) In this Part—
  - (a) a reference to alternative dispute resolution includes a reference to mediation; and
  - (b) a reference to a person conducting alternative dispute resolution includes a reference to a mediator conducting mediation.



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### **35 Referral of disputes for alternative dispute resolution**

- (1) A contractor or a hirer (or both) may refer a dispute to the Small Business Commissioner for alternative dispute resolution.
- (2) The referral must be accompanied by the application fee (if any) set by the Small Business Commissioner, which must not be more than the maximum fee (if any) prescribed by the regulations.

**Note**

The parties may ask the Commissioner for preliminary assistance before referring the dispute (see section 34).

- (3) The Commissioner must arrange for each dispute referred in accordance with this section to be the subject of—
  - (a) mediation by a mediator; or
  - (b) another appropriate form of alternative dispute resolution by a suitably qualified person.

### **36 Representation at alternative dispute resolution**

- (1) A party to alternative dispute resolution may be represented by—
  - (a) an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**); or
  - (b) in the case of a party that is a contractor—an association, including a trade union, that represents contractors or a class of contractors; or
  - (c) in the case of a party that is a hirer—an association that represents hirers or a class of hirers; or

(d) any other person considered appropriate by the person conducting the alternative dispute resolution.

(2) Despite subsection (1), the person conducting the alternative dispute resolution may meet with the party (alone or together with any other party) without the party's representative being present.

### **37 Costs of alternative dispute resolution**

(1) The costs of alternative dispute resolution are to be paid by the parties as follows—

(a) in the proportions that the parties agree among themselves; or

(b) if the parties cannot agree, in equal shares.

(2) In this section—

*costs* of alternative dispute resolution means the fees and expenses of the person conducting the alternative dispute resolution.

### **38 Statements made during alternative dispute resolution not admissible**

A statement or admission made in the course of alternative dispute resolution under this Part is not admissible in any legal proceedings.

### **39 Immunity of person conducting alternative dispute resolution**

(1) A person conducting alternative dispute resolution under this Part is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or performance of a function under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or performance of a function under this Act.

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- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a person attaches instead to the State.

### **Division 3—The Tribunal**

#### **40 Disputes must first be referred for alternative dispute resolution before proceeding to the Tribunal**

- (1) A dispute may be the subject of proceedings before the Tribunal only if the Small Business Commissioner has certified in writing that alternative dispute resolution under this Part has failed, or is unlikely, to resolve it.
- (2) This section does not apply to proceedings for an order in the nature of an injunction.
- (3) This section does not affect the validity of any decision made by the Tribunal.

#### **41 Jurisdiction of the Tribunal**

- (1) The Tribunal has jurisdiction to hear and determine an application by one or more contractors or hirers seeking resolution of a dispute.
- (2) The Tribunal also has jurisdiction to hear and determine any other application that may be made to it under this Act.

#### **42 Time limit for applications**

- (1) An application under section 41(1) involving an allegation of unlawful termination of the engagement of a contractor must be made within 12 months after the date on which the engagement is alleged to have been terminated.
- (2) An application under section 41(1) in any other case must be made within 6 years after the date on which the dispute arose.

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### **43 Parties**

The parties to a proceeding before the Tribunal on an application under section 41(1) are—

- (a) the applicant or applicants; and
- (b) the other party or parties to the dispute; and
- (c) any other person the Tribunal considers it appropriate to join as a party to the proceeding.

### **44 Powers of the Tribunal**

- (1) The Tribunal may do any one or more of the following in relation to a dispute—
    - (a) refer the dispute to a mediator appointed by the Tribunal;
    - (b) order the payment of a sum of money—
      - (i) found to be owing by one party to another party;
      - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
      - (iii) by way of restitution;
    - (c) order the refund of any money paid under a regulated contract or under a void contract;
    - (d) make an order in the nature of an order for specific performance of a regulated contract;
    - (e) declare that a debt is, or is not, owing;
    - (f) order a party to do or refrain from doing something;
    - (g) make any other order it considers fair, including declaring void any unjust term of a regulated contract, inserting a term into a regulated contract or otherwise varying a regulated contract to avoid injustice.
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- (2) In determining whether a term of a regulated contract is unjust, the Tribunal may have regard to—
- (a) the intelligibility of the contract generally, and of the term in particular;
  - (b) the extent to which the term, and its legal and practical effect, were accurately explained to the relevant party before the term was agreed to and the extent to which the relevant party understood the term and its effect;
  - (c) the relative bargaining power of the parties to the contract;
  - (d) the consequences to the parties to the contract if the term is complied with or not complied with and the relative hardship of those consequences to each party;
  - (e) whether or not it was reasonably practicable for the relevant party to reject, or negotiate for a change to, the term before it was agreed to;
  - (f) the relationship of the term to the other terms of the contract;
  - (g) whether the relevant party obtained independent legal or other expert advice before agreeing to the term;
  - (h) whether unfair pressure, undue influence or unfair tactics were used to obtain the relevant party's consent to the contract or the term;
  - (i) whether at the time the term was agreed to the relevant party knew, or could probably have found out by asking, that the term would cause any other relevant party hardship;
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- (j) the conduct of the parties to the contract after the term was agreed to;
  - (k) whether the term is usually found in regulated contracts of that kind;
  - (l) the justification for the term;
  - (m) whether the term is unconscionable, harsh or oppressive;
  - (n) whether the term is inconsistent with any part of a relevant code of practice, whether or not that part of the code imposes duties or obligations on a person or prohibits a person from engaging in certain conduct;
  - (o) any other factor the Tribunal thinks is relevant.
- (3) Despite anything to the contrary in this section, in determining whether a term of a regulated contract is unjust, the Tribunal must not have regard to any injustice arising from circumstances that were not reasonably foreseeable when the term was agreed to.
- (4) In awarding damages in the nature of interest, the Tribunal may base the amount awarded on the interest rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or on any lesser rate it thinks appropriate.

**45 Additional power of Tribunal where failure to give information booklet or rates and costs schedule**

- (1) This section applies to a dispute involving an allegation that a hirer or freight broker failed to give a contractor an information booklet or a copy of a rates and costs schedule in accordance with Division 1 or 2 of Part 2.

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- (2) Despite any provision in the relevant regulated contract, the Tribunal may make an order that the contractor is to be paid an amount specified by the Tribunal for the contractor's services under the contract.
  - (3) In deciding what amount to specify in the order, the Tribunal must have regard to the following—
    - (a) the terms of the relevant regulated contract;
    - (b) the amount to which the contractor would have been entitled if the contractor had provided the services as an employee;
    - (c) any applicable rates and costs schedule;
    - (d) what is a fair and reasonable amount in the circumstances.

#### **46 Orders to prevent the entering into of contracts**

- (1) The Tribunal, when making an order in relation to a dispute or at a later time, may make any further order the Tribunal considers appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions) a relevant person from—
    - (a) entering into any specified kind of regulated contract; or
    - (b) doing any act (whether by way of advertising or otherwise) that may reasonably be construed as being intended to induce other persons to enter into any such contract.
  - (2) An order under this section must identify the person or persons bound by the order and takes effect in respect of each of those persons on service of a copy of the order on the person.
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(3) In this section—

*relevant person* means—

- (a) a party to the proceeding; or
- (b) any other person who is, in any way considered relevant by the Tribunal, associated with a party to the proceeding.

#### **Division 4—Extension of contract variation orders**

##### **47 Application of Division**

- (1) This Division applies if, in a proceeding in relation to a dispute, the Tribunal makes an order—
  - (a) declaring void a term of a regulated contract; or
  - (b) inserting a term into a regulated contract; or
  - (c) otherwise varying a regulated contract.
- (2) In this Division, an order referred to in subsection (1) is called a *contract variation order*.

##### **48 What is the extension of a contract variation order?**

- (1) The extension of a contract variation order is an order made by the Tribunal declaring that a contract variation order is, subject to any conditions, exceptions or limitations that are specified in the order, extended generally to regulated contracts of a specified class.
- (2) An order extending a contract variation order has the effect of binding all hirers and contractors who enter, or have entered, into regulated contracts of the specified class.



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- (3) If an order extending a contract variation order is made, subject to any conditions, exceptions and limitations that are specified in the order—
- (a) if the contract variation order declared a term of a regulated contract void—any equivalent term in a regulated contract in the specified class is void;
  - (b) if the contract variation order inserted a term into a regulated contract—that term is inserted into each regulated contract in the specified class that does not contain the term;
  - (c) if the contract variation order otherwise varied a regulated contract—each regulated contract in the specified class is taken to be varied accordingly.

#### **49 Application for extension of contract variation order**

An application for an order extending a contract variation order may be made by—

- (a) an association, including a trade union, that represents contractors or a class of contractors; or
- (b) an association that represents hirers or a class of hirers.

#### **50 Procedure on application**

- (1) An applicant for an order extending a contract variation order must publish, as required by the rules, a notice—
- (a) specifying the class of regulated contracts in relation to which the order is sought; and
  - (b) specifying the terms of the contract variation order; and

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- (c) inviting any association or person interested and wanting to be heard or make a written submission to appear before the Tribunal or make a written submission to the Tribunal as specified in the notice.
  - (2) Before making an order extending a contract variation order, the Tribunal must hear all associations and persons appearing.
  - (3) In this section—  
*rules* mean rules made by the Rules Committee under section 157 of the **Victorian Civil and Administrative Tribunal Act 1998**.

#### **51 Making and publicising order**

- (1) The Tribunal may make an order extending a contract variation order if satisfied that it is appropriate to do so.
- (2) An applicant for the order must publish the order—
  - (a) in the Government Gazette and in a daily newspaper circulating generally throughout Victoria; and
  - (b) in any other manner directed by the Tribunal.
- (3) Nothing in this section takes away from section 116 of the **Victorian Civil and Administrative Tribunal Act 1998**.

#### **52 When does order take effect?**

An order extending a contract variation order takes effect when it is published in the Government Gazette or at any later time specified in the order.

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**53 Variation and revocation of order**

The Tribunal may vary or revoke an order extending a contract variation order at any time on its own initiative or on application by an association that represents contractors or hirers or by any person affected by the order.

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**PART 6—THE SMALL BUSINESS COMMISSIONER**

**54 Functions of the Small Business Commissioner  
under this Act**

- (1) The Small Business Commissioner has the following functions under this Act—
  - (a) to make arrangements to facilitate the resolution by mediation, or by another appropriate form of alternative dispute resolution, of disputes (whether or not any particular dispute has been formally referred under this Act to the Commissioner);
  - (b) any other functions that are given to the Commissioner by or under this Act.
- (2) In arranging for the resolution of disputes, the Commissioner must have regard to the need for the mediation or other form of alternative dispute resolution to be conducted by persons who are experienced in the field of regulated contracts.
- (3) The Commissioner may personally conduct a mediation or other form of alternative dispute resolution and is entitled to be paid his or her fees and expenses for doing so, which must not be more than the maximum amount (if any) prescribed by the regulations.
- (4) The Commissioner is not subject to the Minister's control or direction in exercising his or her function under subsection (1)(a) or (3).

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**PART 7—INDUSTRY COUNCILS**

**Division 1—Transport Industry Council of Victoria**

**55 Establishment and functions**

- (1) The Transport Industry Council of Victoria is established.
  - (2) The Transport Industry Council has the functions conferred on it by or under this Act or any other Act.
  - (3) Without limiting subsection (2), the Transport Industry Council has the following functions—
    - (a) to advise and make recommendations to the Minister on the content of—
      - (i) codes of practice in respect of owner drivers; and
      - (ii) the information booklet for owner drivers;
    - (b) to advise and make recommendations to the Minister on rates and costs schedules for owner drivers;
    - (c) to develop, publish and promote model owner driver contracts;
    - (d) to advise the Minister on any other matters relevant to—
      - (i) owner driver contracts; and
      - (ii) the commercial practices generally engaged in by owner drivers and hirers in relation to each other.
  - (4) The Transport Industry Council may provide advice, and make recommendations, to the Minister even if the Minister has not requested it to do so.
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- (5) In performing its functions, the Transport Industry Council is subject to the control and direction of the Minister.
  - (6) Without limiting the matters on which the Minister may direct the Transport Industry Council, the Minister may impose deadlines on the Council for the provision of advice and recommendations.

### **56 Membership**

- (1) The Transport Industry Council consists of the following 10 members appointed by the Minister—
  - (a) a chairperson;
  - (b) 1 part-time member nominated by the Roads Corporation;

#### **Note**

The part-time member nominated by the Roads Corporation does not have any voting rights on the Council: see clause 7(4) of Schedule 1.

- (c) the following 8 part-time members—
  - (i) 1 person nominated by the Victorian Employers' Chamber of Commerce and Industry;
  - (ii) 1 person nominated by the Australian Industry Group;
  - (iii) 2 persons nominated by the Victorian Transport Association Inc.;
  - (iv) 2 persons nominated by the Victorian Trades Hall Council;
  - (v) 2 persons nominated by the Transport Workers' Union of Australia.

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- (2) If, for the purposes of section (1)(b) or (c)—
- (a) a nomination is not submitted within the time or in the manner directed by the Minister; or
  - (b) a person nominated is considered by the Minister to be unsuitable or inappropriate for membership of the Transport Industry Council—
- the Minister may instead—
- (c) appoint a person who in the Minister's opinion is suitably representative of the persons represented by the body referred to in those paragraphs to be a member; or
  - (d) call for a further nomination from the relevant body.

- (3) In this section—

***Roads Corporation*** means the Roads Corporation within the meaning of section 3 of the **Transport Integration Act 2010**.

S. 56(3) def. of *Roads Corporation* amended by No. 6/2010 s. 203(1) (Sch. 6 item 33).

## **57 Constitution and procedure**

Schedule 1 has effect with respect to the Transport Industry Council.

### **Division 2—Forestry Industry Council of Victoria**

## **58 Establishment and functions**

- (1) The Forestry Industry Council of Victoria is established.
- (2) The Forestry Industry Council has the functions conferred on it by or under this Act or any other Act.

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- (3) Without limiting subsection (2), the Forestry Industry Council has the following functions—
- (a) to advise and make recommendations to the Minister on the content of—
    - (i) codes of practice in respect of forestry contractors; and
    - (ii) the information booklet for forestry contractors;
  - (b) to advise and make recommendations to the Minister on rates and costs schedules for forestry contractors;
  - (c) to develop, publish and promote model haulage contracts and model harvesting contracts;
  - (d) to advise the Minister on any other matters relevant to—
    - (i) haulage or harvesting contracts; and
    - (ii) the commercial practices generally engaged in by forestry contractors and hirers in relation to each other.
- (4) The Forestry Industry Council may provide advice, and make recommendations, to the Minister even if the Minister has not requested it to do so.
- (5) In performing its functions, the Forestry Industry Council is subject to the control and direction of the Minister.
- (6) Without limiting the matters on which the Minister may direct the Forestry Industry Council, the Minister may impose deadlines on the Council for the provision of advice and recommendations.
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## 59 Membership

(1) The Forestry Industry Council consists of the following 10 members appointed by the Minister—

- (a) a chairperson;
- (b) 1 part-time member nominated by the Secretary to the Department of Primary Industries;

### Note

The part-time member nominated by the Secretary does not have any voting rights on the Council: see clause 7(4) of Schedule 1.

(c) the following 8 part-time members—

- (i) 1 person nominated by the Victorian Association of Forest Industries;
- (ii) 1 person nominated by the Australian Plantation Products and Paper Industry Council Ltd (A.C.N. 005 904 898);
- (iii) 2 persons nominated by the Construction, Forestry, Mining and Energy Union;
- (iv) 2 persons nominated by the Victorian Harvesting and Cartage Council;
- (v) 2 persons nominated by VicForests.

(2) If, for the purposes of section (1)(b) or (c)—

- (a) a nomination is not submitted within the time or in the manner directed by the Minister; or

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(b) a person nominated is considered by the Minister to be unsuitable or inappropriate for membership of the Forestry Industry Council—

the Minister may instead—

(c) appoint a person who in the Minister's opinion is suitably representative of the persons represented by the body referred to in those paragraphs to be a member; or

(d) call for a further nomination from the relevant body.

(3) In this section—

*VicForests* has the same meaning as in the **Conservation, Forests and Lands Act 1987**.

## **60 Constitution and procedure**

Schedule 1 has effect with respect to the Forestry Industry Council.

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**PART 8—GENERAL**

**61 Subjecting contractors or others to detriment**

- (1) A person must not subject or threaten to subject another person to any detriment for the reason, or for reasons including the reason, that the other person, or a person associated with the other person, has—
- (a) claimed, or proposes to claim, a benefit or exercised, or proposes to exercise, a power or right that the other person or associate is entitled to claim or exercise under this Act or a code of practice; or
  - (b) brought, or proposes to bring, or otherwise participated in, a proceeding under this Act; or
  - (c) informed, or proposes to inform, any person of an alleged contravention of this Act, the regulations, a code of practice or an order of the Tribunal under this Act; or
  - (d) participated, or proposes to participate, in joint negotiations relating to regulated contracts or the engagement of contractors.
- (2) A hirer must not subject or threaten to subject a contractor to any detriment because the contractor, or a person associated with the contractor, has—
- (a) raised, or proposes to raise, issues of health and safety in relation to the performance of services under a regulated contract; or
  - (b) sought, or proposes to seek, to—
    - (i) negotiate a proposed engagement or regulated contract; or
    - (ii) renegotiate an existing engagement or regulated contract.

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- (3) For the purposes of this section, subjecting a contractor or other person to detriment includes doing any one or more of the following—
- (a) terminating the contractor's or other person's engagement;
  - (b) injuring the contractor or other person in relation to the terms and conditions of a regulated contract to which the contractor or person is a party;
  - (c) altering the position of a contractor or other person so as to prejudice their interests under a regulated contract;
  - (d) refusing to engage a person as a contractor;
  - (e) discriminating against a person in the terms or conditions on which the person is to be engaged as a contractor.

## **62 Conduct of partnerships**

If a partnership, or any partner on behalf of a partnership, engages in any conduct, that conduct is, for the purposes of this Act, taken to have been engaged in by each partner.

## **63 Conduct of agents imputed to corporations**

For the purposes of this Act, any conduct engaged in on behalf of a corporation—

- (a) by an officer, employee or agent of the corporation acting within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction, or with the consent (express or implied) of such an officer, employee or agent—

is also conduct engaged in by the corporation.

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#### 64 Trade Practices Act and Competition Code

- (1) For the purposes of the Trade Practices Act 1974 of the Commonwealth and the Competition Code, the following things are authorised by this Act—
- (a) the making of a code of practice;
  - (b) anything done by a person in order to comply with this Act, the regulations or a code of practice;
  - (c) anything done by a contractor or group of contractors preparatory to entering into, or in anticipation of, joint negotiations with a single business, including the appointment of a negotiating agent to conduct those joint negotiations;
  - (d) anything done by a negotiating agent, as authorised by this Act and in accordance with the agent's terms of appointment, in conducting joint negotiations with a single business;
  - (e) any dealings by a contractor or group of contractors with their negotiating agent for the purposes of conducting joint negotiations with a single business.
- (2) For the purposes of this section—
- (a) a *single business* is a business, project or undertaking that is carried on by one hirer;
  - (b) if 2 or more hirers carry on a business, project or undertaking as a joint venture or common enterprise, the hirers are taken to be one hirer;

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- (c) if 2 or more corporations that are related to each other for the purposes of the Corporations Act each carry on a single business—
- (i) the corporations are to be treated as one hirer; and
  - (ii) the single businesses are to be treated as one single business.

### **65 Act prevails over regulated contracts**

- (1) A provision of a regulated contract or any other agreement is void to the extent that—
- (a) it is contrary to or inconsistent with anything in this Act, the regulations, a code of practice or an order made by the Tribunal under Division 4 of Part 5; or
  - (b) it purports to exclude the application of provisions of this Act or the regulations.
- (2) Despite subsection (1), during the period of 6 months beginning on and including the commencement day, a provision of a regulated contract that is contrary to or inconsistent with a provision of Division 3 or 4 of Part 2 prevails to the extent of the inconsistency.
- (3) In subsection (2), *commencement day* means the day on which Division 3 of Part 2 comes into operation.

### **66 Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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- (2) Regulations made under this Act—
- (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;
  - (c) may apply, adopt or incorporate any matter contained in any document, whether—
    - (i) wholly or partially or as amended by the regulations;
    - (ii) as in force at a particular time or as in force from time to time.

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**Pt 9 (Heading and s. 67) repealed by No. 28/2007 s. 3(Sch. item 49).**

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**PART 10—TRANSITIONAL**

**68 Contracting requirements**

- (1) Division 1 of Part 2 applies in relation to contractors who are engaged on or after the commencement of that Division.
  - (2) In addition, if a contractor who is engaged before that commencement continues to be engaged by the same hirer, or through the same freight broker, during the period of 45 days after that commencement, Division 1 of Part 2 applies in relation to the contractor as if the contractor had been engaged on the first day after the end of that period.
  - (3) Division 2 of Part 2 applies in relation to contractors who are engaged on or after the commencement of that Division.
  - (4) In addition, if a contractor who is engaged before that commencement continues to be engaged by the same hirer, or through the same freight broker, during the period of 45 days after that commencement, Division 2 of Part 2 applies in relation to the contractor as if the contractor had been engaged on the first day after the end of that period.
  - (5) Divisions 3 and 4 of Part 2 apply in relation to contractors who are engaged on or after the commencement of that Division.
  - (6) In addition, if a contractor who is engaged before that commencement continues to be engaged by the same hirer, or through the same freight broker, during the period of 6 months after that commencement, Divisions 3 and 4 of Part 2 apply in relation to the contractor as if the contractor had been engaged on the first day after the end of that period.
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**69 Transitional provisions for unconscionable conduct and disputes**

- (1) Part 4 applies to conduct whether occurring before or after the commencement of that Part.
  - (2) A dispute may be resolved under Part 5 whether the conduct giving rise to the dispute occurred before or after the commencement of section 33.
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**SCHEDULE 1**

Sections 57 and 60

**CONSTITUTION AND PROCEDURE OF INDUSTRY  
COUNCILS**

**PART 1—CONSTITUTION**

**1 Definition**

In this Schedule—

*Council* means the Transport Industry Council or the Forestry Industry Council.

**2 Period of office of members**

Subject to this Part, a member of a Council holds office for the period (not exceeding 3 years) specified in his or her instrument of appointment, and is eligible for re-appointment.

**3 Payment of members**

A member of a Council (other than a member who is an employee within the meaning of the **Public Administration Act 2004**) is entitled to be paid the fees and allowances (if any) that are fixed from time to time by the Minister.

**4 Acting members**

- (1) The Minister may appoint an eligible person to act as member—
- (a) during a vacancy in the office of a member; or
  - (b) during an absence (for any reason) from office of a member; or
  - (c) during a period in which a member is unable (for any reason) to perform the duties of office.
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- (2) In the case of an acting member appointed for a member who was appointed from an organisation mentioned in sections 56(1)(b) or (c) or 59(1)(b) or (c), the acting member must, if possible, be appointed from the same organisation or another organisation nominated by it.
  - (3) The Minister may—
    - (a) determine the terms and conditions of appointment of an acting member; and
    - (b) terminate the appointment at any time.
  - (4) While acting in a member's place, the acting member—
    - (a) has all the powers and must perform all the duties of the member; and
    - (b) is entitled to be paid the fees and allowances (if any) to which the member would have been entitled.
  - (5) An acting member is eligible for re-appointment.

## **5 Resignation and removal**

- (1) A member may resign from the office of member by writing signed by the member and delivered to the Minister.
- (2) The Minister may remove a member from office at any time.
- (3) The office of a member also becomes vacant if the member—
  - (a) becomes an insolvent under administration;  
or

Sch. 1  
cl. 5(3)(a)  
amended by  
No. 4/2008  
s. 32(Sch.  
item 23).

- (b) is convicted in Victoria of an offence punishable by imprisonment for 12 months or more or elsewhere of an offence that, if committed in Victoria, would be punishable by imprisonment for 12 months or more; or
- (c) becomes incapable of performing the duties of a member; or
- (d) is absent, without leave first being granted by the relevant Council, for 4 consecutive meetings of that Council of which reasonable notice has been given to the member personally or by post, fax or e-mail.

#### **6 Effect of other Acts**

- (1) The **Public Administration Act 2004** does not apply to a member in respect of the office of member.
- (2) If by or under any Act provision is made—
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
  - (b) prohibiting the person from engaging in employment outside the duties of that office—

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

- (3) For the avoidance of doubt, the office of member is not to be taken to be an office or place of profit under the Crown for the purposes of section 55(d), 80A(5A)(a) or 83(4) of the **Constitution Act 1975** or section 13A(5A)(a) or (5C) of the **County Court Act 1958**.

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**PART 2—PROCEDURE**

**7 General procedure**

- (1) The chairperson, or in his or her absence, the acting chairperson, or in the absence of both of them, a member elected by the members present, must preside at a meeting of the relevant Council.
- (2) The quorum of a Council is 5 members.
- (3) Subject to subclause (4), a question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (4) The Council members appointed under sections 56(1)(b) and 59(1)(b) do not have voting rights.
- (5) A Council must ensure that accurate minutes are kept of each meeting.
- (6) A Council may transact any of its business at a meeting at which the members or any of them participate by telephone, closed-circuit television or in any similar way.
- (7) Subject to this Act, a Council may regulate its own procedure.

**8 Conflicts of interest**

- (1) If—
  - (a) a member of a Council has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council; and

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- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter—
- the member, as soon as practicable after becoming aware of the relevant facts, must disclose the nature of the interest at a meeting of the Council.
- (2) A disclosure under subclause (1) must be recorded in the minutes of the meeting and, unless the Council otherwise determines, the member—
- (a) must not be present during any deliberation of the Council in relation to the matter; and
- (b) must not take part in any decision of the Council in relation to the matter.
- (3) For the purpose of the making of a determination of the Council under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates—
- (a) must not be present during any deliberation of the Council in relation to the matter; and
- (b) must not take part in any decision of the Council in relation to the matter.
- (4) Subclauses (1) and (2) do not apply in relation to a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

## **9 Resolutions without meetings**

- (1) If—
- (a) a Council has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and

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- (b) at least 5 of the members sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the Council held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign on the same day, on the day on which the last of those members signs the document.

- (2) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
- (3) If a resolution is deemed by this clause to have been passed at a meeting of the Council, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
- (4) The members referred to in subclause (1)(b) must not include a member who, because of clause 7(4) or 8, is not entitled to vote on the resolution.

#### **10 Effect of a vacancy or defect**

An act or decision of a Council is not invalid only because—

- (a) of a vacancy in its membership; or
- (b) of a defect or irregularity in the appointment of any of its members (acting or otherwise);  
or
- (c) in the case of an acting member, the occasion for the member so acting had not arisen or had ceased.
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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 21 April 2005*

*Legislative Council: 9 August 2005*

The long title for the Bill for this Act was "to regulate the relationship between persons who contract to transport goods in a vehicle, or harvest forest products using motorised equipment, supplied by them and persons who hire them, to amend the **Victorian Civil and Administrative Tribunal Act 1998** and for other purposes."

The **Owner Drivers and Forestry Contractors Act 2005** was assented to on 24 August 2005 and came into operation as follows:

Sections 1–9, 25–29, 55–64, 66 and Schedule 1 on 1 February 2006:  
Government Gazette 19 January 2006 page 70; rest of Act on 1 December 2006: section 2(2).



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## 2. Table of Amendments

This Version incorporates amendments made to the **Owner Drivers and Forestry Contractors Act 2005** by Acts and subordinate instruments.

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### **Statute Law Revision Act 2007, No. 28/2007**

*Assent Date:* 26.6.07  
*Commencement Date:* S. 3(Sch. item 49) on 27.6.07: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Owner Drivers and Forestry Contractors Act 2005**

### **Outworkers and Contractors Legislation Amendment Act 2007, No. 40/2007**

*Assent Date:* 28.8.07  
*Commencement Date:* S. 5 on 1.1.08: s. 2(4)  
*Current State:* This information relates only to the provision/s amending the **Owner Drivers and Forestry Contractors Act 2005**

### **Motor Car Traders Amendment Act 2008, No. 4/2008**

*Assent Date:* 4.3.08  
*Commencement Date:* S. 32(Sch. item 23) on 1.12.08: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Owner Drivers and Forestry Contractors Act 2005**

### **Transport Integration Act 2010, No. 6/2010**

*Assent Date:* 2.3.10  
*Commencement Date:* S. 203(1)(Sch. 6 item 33) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1  
*Current State:* This information relates only to the provision/s amending the **Owner Drivers and Forestry Contractors Act 2005**

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**3. Explanatory Details**

No entries at date of publication.