

Western Australian Owner Drivers *Information Booklet*



TRANSPORT WORKERS UNION (WA BRANCH)



 **1800 657 477**

www.twuwa.org.au

Western Australian Owner-Drivers Information Booklet

INFORMATION PAMPHLET AND INFORMATION BOOKLET

It is a legal requirement of the *Owner-Driver Contracts Code of Conduct 2010* for a hirer to provide an owner-driver with the following information before entering into an owner-driver contract with that owner-driver:

1. a current copy of the Guideline Rates; and
2. a copy of the *Western Australian Owner-Drivers Information Pamphlet*.

Where an owner-driver advises the hirer that they already have one or both items, the hirer is not required to provide additional copies.

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

The *Information Pamphlet* provides a brief overview of some of the changes. This booklet is a more detailed version and provides a range of additional information.

The Guideline Rates, Information Pamphlet and an Information Booklet are available, free of charge, in both printed and electronic formats. Download from the Department of Transport website, or contact the Department to have copies mailed out to you:

Department of Transport
441 Murray Street
Perth WA 6000
Tel: 9216 8000
Email: ownerdriver@transport.wa.gov.au
Website: www.transport.wa.gov.au/freight



or, CONTACT THE TWU ON ☎ 1800 657 477 or www.twuwa.org.au



FOREWORD

WA's owner driver laws are now in full operation

by TWU State Secretary **JIM MCGIVERON**

After years of hard work and determined lobbying we now have a set of laws in place to protect the interests of WA owner-drivers. The laws grew from **major protest campaigns** including a blockade of the Fremantle Wharf during which nothing moved on or off the docks for four days.

The laws will change forever the way owner-driver rates are negotiated in this state.

The Owner Drivers (Contracts & Disputes) Act became fully operable on 1st July 2010.

The Act and a Code of Conduct will regulate owner-driver contracts and dealings between owner-drivers and hirers.

A key element of the laws is the publication of a set of Guideline Rates.

These rates will be used by:

- Owner drivers and hirers when they are negotiating owner drivers' contracts.
- The Owner Drivers Tribunal when it is determining whether payments have been made at a **safe sustainable rate**.

The Guideline Rates are designed to be changed to suit a variety of operations.

They take into account **ALL possible costings** involved in the running of a heavy vehicle.

The TWU has worked hard to ensure that these costings are **VERY COMPREHENSIVE**. No cost has been overlooked.

The Guideline Rates come with a **computerised cost calculator** which will make future rate negotiations very interesting indeed.

The laws give owner-drivers the **right to negotiate collectively** and to **appoint the TWU as a bargaining agent**.

The laws will apply to those operating all heavy vehicles over 4.5 tonnes (GVM).

They add to and complement already introduced laws which give owner drivers the right to **take disputes to a Tribunal** and **maximum waiting times for payments**.

The latest changes introduce a number of new legal requirements including:

- An owner-driver contract **cannot bargain away any of the rights** under the new laws.
- A hirer **cannot impose a 'Penalty'** on an owner-driver.
- **'If paid, when paid' Banned!** If a contract includes such a condition it will have no effect.
- **Interest payable** on Overdue Accounts.
- Hirer **cannot deduct from money payable** to an owner driver.
- Negotiations to be in **good faith**.
- **Unconscionable conduct banned** including the use of undue influence, pressure or unfair tactics.

The new laws have certainly been worth fighting for and I thank everyone who has been part of our long-running campaign. It was certainly worth the effort.

The following information in this guide comes from a comprehensive booklet compiled by the Department of Transport.

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Part A - The Act and Code of Conduct

The Act and Code of Conduct seek to promote a safer and more sustainable road freight transport industry, by providing a framework to guide the business relationship between owner-drivers of heavy freight vehicles and those who hire them.

Owner-Drivers (Contracts and Disputes) Act 2007

The Act came into effect on 1st August 2008.

Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010

The Regulations have been made under the Act.

The Regulations contain a Code of Conduct.

The official title of the Code of Conduct is :

Owner-Driver Contracts Code of Conduct 2010

The Code of Conduct came into effect on 1st July 2010.

WHO IS AFFECTED BY THE ACT AND CODE OF CONDUCT?

The Act and Code of Conduct apply to:

- Owner-drivers (sometimes known as “Contractors” or “Sub-contractors”).
- Hirers of owner-drivers (sometimes known as “Prime Contractors”).
- Owner-driver contracts.

The Act and Code of Conduct regulate owner-driver contracts and dealings between hirers and owner-drivers.

The Act and Code of Conduct affect owner-drivers and people or companies that hire owner-drivers (‘hirers’) whenever all of the following four points apply:

1. The owner-driver fits the definition given below.
2. The owner-driver contract fits the definition given below.
3. The owner-driver contract is for the transport of goods entirely (or substantially) within Western Australia.
4. The owner-driver contract is not affected by an order or determination made under either:

The *Owner Drivers and Forestry Contractors Act 2005* (Vic)
or
Chapter 6 of the *Industrial Relations Act 1996* (NSW).



Definition of owner-driver

You are an owner-driver if:

- You are not an employee, but you are a person, partnership* or body corporate (but not a listed public company) and your business is transporting goods in one or more vehicles (**of more than 4.5 tonnes gross vehicle mass**).
- You, the partnership* or body corporate supply the vehicle/s (whether or not you own the vehicle/s) and your sole or main business is driving one or more of those vehicles (whether by yourself or with one or more other people).
 - * For a partnership, at least one of the partners must be a person who meets all of the above requirements.

Definition of hirer

You are a hirer if you engage an owner-driver under an owner-driver contract.

Definition of owner-driver contract

An owner-driver contract is not a contract of employment.

An owner-driver contract is a contract between an owner-driver and another person or company (the hirer) to transport goods in a vehicle (of more than 4.5 tonnes gross vehicle mass).

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

‘The laws regulate owner-driver contracts and dealings between hirers and owner drivers.’

CONTRACTS AND OTHER AGREEMENTS CANNOT EXCLUDE, MODIFY OR RESTRICT OPERATION OF THE ACT OR CODE OF CONDUCT

The Act applies to all owner-driver contracts that are in force on or after 1 August 2008. This includes owner-driver contracts entered into before 1 August 2008 and still in force on or after that date.

The Code of Conduct applies to owner-drivers, hirers and owner-driver contracts from 1 July 2010.

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



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

- Claim that all or parts of the Act or Code of Conduct do not apply, or apply in a different way.
- Contain anything else that is contrary to or inconsistent with the Act, Code of Conduct or an order made by the Road Freight Transport Industry Tribunal.

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

Owner-drivers and hirers should ensure that owner-driver contracts fully comply with the Act and Code of Conduct - terms and conditions that do not comply will have no effect.

Note: In most cases, an owner-driver contract that contains non-compliant terms and conditions will remain in force, because its other terms and conditions will still have effect.

The *Owner-Drivers Act* and *Code of Conduct* introduce a number of changes that affect the rights and obligations of owner-drivers and hirers. It is recommended that you seek independent legal and financial advice on how those changes affect you.

ROAD FREIGHT TRANSPORT INDUSTRY TRIBUNAL

A Commissioner assigned from the WA Industrial Relations Commission sits as the Tribunal. The Tribunal is a formal system, but not as formal as a court with a judge and jury.



The Tribunal gives owner-drivers and hirers access to a low-cost dispute resolution process.

- It can deal with disputes under the Act, Code of Conduct or an owner-driver contract, including payment disputes;
- It can resolve disputes through conciliation (helping you to work it out together);
- It can resolve them by making a determination, including:
 - Declaring that a debt is, or is not, owing;
 - Ordering payment or refunding of money; or
 - Ordering a party to do something, or to stop doing something.

The Tribunal can allow a party to be represented by an agent or a legal practitioner.

Conciliation options

The Tribunal can arrange conciliation conferences between the parties in dispute, with or without the Tribunal also attending. The Tribunal can make it compulsory for parties to attend a conciliation conference.

To aid resolution of a dispute, the Tribunal can encourage or order parties to exchange information or take other specific actions.

How to refer a dispute

To refer a matter to the Tribunal, you will need to fill out a form (Form 7A) then lodge it in person, by mail or via the Commission's website www.wairc.wa.gov.au

You will then need to serve a copy of your application on the other party to the dispute and allow them 21 days to respond (the response is made on a Form 5).

Forms are available from the:

Transport Workers Union ☎ 1800 657 477

‘The TWU can represent financial members at the Tribunal.’

NEGOTIATIONS

Negotiations to be in Good Faith

During negotiations for owner-driver contracts, the parties have a duty to negotiate fairly and in good faith. Parties have the right to act in their own commercial interests, but should also act fairly, honestly and reasonably towards one another.

The parties should provide each other with a reasonable opportunity to:

- Meet and discuss proposed terms and conditions;
- Present alternative offers that suit their own business needs;
- Properly examine and consider offers;
- Consult with business partners; and
- Seek legal, financial or other advice and assistance to properly understand terms and conditions.

The parties should be clear, open and certain about the circumstances in which an owner-driver contract is likely to be renewed or not renewed in the future.

Negotiating Agents

The Act allows a hirer, an owner-driver, or a group of owner-drivers to appoint a negotiating agent to deal with owner-driver contracts. This includes the making, varying or termination of those contracts.

A negotiating agent is a person or a group of people appointed to negotiate on behalf of a hirer, an owner-driver or a group of owner-drivers.

The agent must be appointed in writing by the party that they act for and a copy of the appointment should be given to the other party before negotiations start. The other party cannot refuse to deal with the agent, unless they have not been given a copy of the appointment before negotiations commence.



An agent can request that the other party deals exclusively with the agent (within the scope of the agent's authority).

A negotiating agent is subject to the same duties and obligations as the party that they act for. Where a negotiating agent is a group of people, the duties and obligations apply to each member of the group individually.

It is unlawful for anyone to pressure a party to:

- Appoint or not to appoint a particular person or group to be the negotiating agent.
- Terminate appointment of a negotiating agent.

Negotiations for an owner-driver contract

Negotiations for an owner-driver contract may be conducted between:

- A hirer or the negotiating agent for a hirer; and
- An owner-driver or the negotiating agent for an owner-driver.

Negotiations for more than one contract - collective bargaining

The Act provides the right for a group of owner-drivers to jointly negotiate (collectively bargain) with a hirer when negotiating the making, varying or termination of owner-driver contracts.

Collective negotiations for two or more owner-driver contracts may be conducted between:

- A hirer or the negotiating agent for a hirer; and
- A group of owner-drivers or the negotiating agent for a group of owner-drivers.

Negotiations for two or more owner-driver contracts may:

- Deal with all of the terms and conditions of those contracts by way of collective negotiations; or
- Deal with some of the terms and conditions of those contracts by way of collective negotiations, with the remaining terms and conditions of each contract to be negotiated individually.

Note:

- Collective negotiations do not have to result in a group of owner-drivers all getting the same terms and conditions.
- The Act does not grant hirers a right to collectively bargain with one or more owner-drivers.

‘The TWU often acts as the Negotiation Agent for groups of owner-drivers’

PAYMENT ISSUES

If an owner-driver contract does not have a written provision dealing with one or more of the following three payment issues, the Act will imply standard provisions for them:

- How to make a payment claim.
- A time limit for when payment must be made.
- Interest payable on overdue amounts.



How to make a payment claim

If an owner-driver contract does not have a written provision about how to make a claim for payment, then 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 that owner-driver contract, in sufficient detail for the other party to be able to assess it; and
- Be given to the other party.

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

- State the name of the claimant;
- State the date of the claim;
- Describe the basis for the claim, in sufficient detail for the other party to be able to assess it; and
- Be given to the other party.

Ensure your Invoices are presented on time and include full details of work done

14-day / 30-day Payment time limits

The Act sets time limits on when payments must be made. If an owner-driver contract does not have a written provision about the time by when a payment must be made, the Act implies the following terms into that contract:

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

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

A written provision in an owner-driver contract should not specify longer than 30 days for payment. If an owner-driver contract (whether written, oral or a mix of both) states longer than 30 days for payment, then it is to be taken as meaning payment within 30 days.

Interest payable on overdue amounts

Interest is payable on overdue amounts. If payment is in dispute, the amount not in dispute should be paid; the parties should then try to resolve any issues about the remaining balance.

If an owner-driver contract does not have a written provision about the interest to be paid on a late payment, then that interest must be paid on outstanding amounts as follows:

- Interest is payable beginning from the day after the amount was due, including the day on which the overdue payment is made; and
- The rate of interest is the same rate that applies to debts due as a result of a judgment made by a court. (Note that the rate of interest can change.)

If an owner-driver contract specifies a rate of interest that is less than the rate that a court would have applied at that time, then it will be taken to mean the rate that a court would have applied.

The rate of interest can be found in the *Civil Judgments Enforcement Act 2004*, section 8(1)(a). The interest can be claimed by submitting an invoice or payment claim to the person or company that owes the outstanding money.



“If paid / when paid” banned

‘I’ll pay you the money I owe you if and when this other bloke pays me.’

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

A person or company who owes money to another person under an owner-driver contract must pay the money owed.

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 by a third person (or company).

Penalty cannot be imposed

The Code of Conduct states that an owner-driver is not liable to pay a hirer 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.

Deductions from remuneration

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;
- 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:

- Describing the liability, service, benefit or thing; and
- Stating 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.



‘Always ensure you get things in writing BEFORE the work commences’

RATES OF PAYMENT

To stay in business, an owner-driver needs to recover the costs incurred in running that business.

Safe and sustainable rates

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 and the business. However, this does not amount to a requirement to prop up an ailing 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.

A fair return for the owner-driver's labour can be determined by considering the hourly rate that would typically apply for an employee driver performing similar work.

Typical fixed and variable operating costs include:

- Vehicle and equipment registration costs;
- Vehicle and equipment maintenance and running costs;
- Business administration and insurance costs (including premiums payable for workers' compensation);
- Self-funding of superannuation;
- Finance costs (bank fees, interest etc);
- Costs of complying with legal requirements (permits etc);
- Costs of hiring additional or relief labour; and
- Depreciation of vehicles and equipment.

A reasonable return on the owner-driver's investment takes into account matters such as:

- The amount of capital investment by the owner-driver in vehicles and equipment;
- Whether any vehicle or equipment:

- Is also used for personal use; or
- Can readily be used by the owner-driver to provide services to other people or companies;
- The level of commercial risk assumed by the owner-driver;
- The security and certainty of the arrangements between the hirer and the owner-driver;
- The efficiency and productivity of the owner-driver; and
- The market for the services provided by the owner-driver.

It is to be taken that an owner-driver cannot readily use their vehicle/s or equipment to provide services to other people or companies, if doing so:

- Would be a breach of contract; or
- Is not reasonably possible because of something stated in the contract.

The safe and sustainable rate may vary from one freight task to the next, because there are so many different types of vehicles, vehicle combinations and freight tasks.



Owner-drivers need to have a good understanding of their fixed and variable business costs - including the costs that they will incur to perform each freight task.

Additional information about rates and costs is available in Part B of this booklet.

‘The TWU can demonstrate the cost calculator and ensure all your costs are included in assessing your rate’

Guideline Rates

In working out a safe and sustainable rate for a particular freight task, hirers are not expected to calculate the actual operating costs and levels of investment for each and every owner-driver that they hire (or consider hiring).

However, hirers do need to consider the costs and investment levels that would typically apply for an owner-driver operating the type of vehicle and equipment required for that freight task.

The Road Freight Transport Industry Council has developed Guideline Rates for a range of eight heavy vehicle types. The Council will review and update the published Guideline Rates on a regular basis.

The Guideline Rates provide pre-calculated rates in both per kilometre and per hour dollar amounts. They deal with both Metropolitan and Regional driving environments:

- Metropolitan (for owner-drivers operating within 200 km of Perth CBD); and
- Regional (operating beyond 200 km of Perth CBD).

The Guideline Rates do not set a minimum or maximum rate, but the Road Freight Transport Industry Tribunal can refer to them to determine whether payments have been made at a safe and sustainable rate.

It is not practical to develop a Guideline Rate for every type of vehicle and vehicle combination, so owner-drivers should use the published Guideline Rate that most closely relates to their vehicle type, then adapt the information to suit the circumstances.

Copies of the Guideline Rates are available, free of charge, in both printed and electronic formats. Download from the Department of Transport website, or contact the Department to have copies mailed out to you:

Department of Transport
441 Murray Street
Perth WA 6000
Tel: 9216 8000
Email: ownerdriver@transport.wa.gov.au
Website: www.transport.wa.gov.au/freight

Please note that the vehicle types are given in GVM (Gross Vehicle Mass) or GCM (Gross Combination Mass). So, for example, the nearest match for a vehicle with a 12 tonne load capacity would be 22.5 tonne GVM - not 15 tonne GVM.

The eight vehicle types are:

- 5 tonne GVM (rigid truck, 2 axles)
- 15 tonne GVM (rigid truck, 2 axles)
- 22.5 tonne GVM (rigid truck, 3 axles)
- Prime Mover (3 axles)
- Prime Mover + 1 trailer (42.5 tonne GCM) available for both 1-driver
- Prime Mover + 2 trailers (79 tonne GCM) and 2-driver operations
- Prime Mover + 3 trailers (122.5 tonne GCM)
- B-Double (62.5 tonne GCM)

The Guideline Rates provide information for hirers and owner-drivers to consider when deciding a rate that is appropriate for a particular freight task.

Each Guideline Rate:

- Provides a dollar amount per kilometre and per hour;
- Specifies the class of vehicle to which it applies; and
- Specifies the cost of fuel used in the calculations.



‘There are two sets of guideline rates for metro and regional’

Payment Rates and the Tribunal

Under the Act, disputes about payment rates can be referred to the Road Freight Transport Industry Tribunal (see page 7). The Tribunal can determine whether a rate is a safe and sustainable rate.

In deciding whether a rate is safe and sustainable, these are some of the things that the Tribunal might consider:

- The costs incurred by an owner-driver in providing the services;
- Whether or not those costs were reasonable;
- Whether a hirer should be financially liable for part or all of an owner-driver's unloaded travel;
- What amount of money would represent a reasonable return on investment for the owner-driver;
- What amount of money would provide a fair return for the owner-driver's labour; and
- Whether any of the parties engaged in unconscionable conduct.



Cost might include money to cover an owner-drivers meals – but probably not the cost of the most expensive dish at the most expensive restaurant in town.

Maintaining a Safe and Sustainable Rate

Hirers are not automatically liable to pay for every expense incurred and every kilometre travelled. Owner-drivers need to keep this in mind when calculating their rates and costs.

All reasonable costs should be included.

For instance, a safe and sustainable rate:

- Might include enough money to cover an owner-driver's meals;
- But probably not the cost of the most expensive dish at the most expensive restaurant in town.
- Might include enough money to cover an owner-driver's accommodation;
- But probably not the cost of an overnight stay at a five star resort.
- Might cover the cost of some unloaded travel;
- Might even cover the cost of an owner-driver's return travel;
- But not the cost of an extra 290 km that an owner-driver travels to visit their grandmother (or favourite fishing spot).
- Would not include the cost of a speeding fine incurred by an owner-driver.
- Would not include the cost for a game of golf played during a rest break.
- Would not need to provide a return on an owner-driver's investment in a top-of-the-line stereo system for the truck.

Unpaid Travel

Being paid a safe and sustainable rate for each owner-driver contract performed does not automatically mean that an owner-driver will recover all of the costs that they have incurred.

Owner-drivers also need to consider the financial impact of unpaid travel:

- Those segments of travel where an owner-driver contract is not in effect;
- That is to say, nobody is paying the owner-driver to drive those kilometres.

This can include unloaded travel between contracts, or travelling between home and base.

Unpaid travel needs to be considered during rate calculations, because the kilometres travelled still represent a cost to the owner-driver - a cost that contract payments might not fully cover.

UNCONSCIONABLE CONDUCT

You have the right to be a tough business person, but you 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:

- 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 owner-driver contract terms and conditions are reasonably necessary to protect the business interests of the hirer or owner-driver;
- 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;
- Whether an owner-driver contract provides for payment of increases in an owner-driver's costs;
- Where a hirer charges customers a higher rate or additional cost (such as a fuel levy, waiting fee or similar) - how much of that money is passed on to the owner-driver concerned;
- Whether the parties acted in good faith and were willing to negotiate (rather than having a 'take it or leave it' approach); and
- The ability of a party to understand information provided to them;

This can include taking unfair advantage when you know that a person has difficulty with written or spoken English or with business language.

Therefore, not giving someone enough time to understand, or using owner-driver contracts that are confusing or excessively complex, could be unconscionable conduct.

If you believe that someone is not dealing with you in an honest and reasonable manner, and have not been able to resolve the situation, you can refer the matter to the Road Freight Transport Industry Tribunal:

Tel: (08) 9420 4444
 Freecall 1800 624 263
 Website: www.wairc.wa.gov.au

‘Negotiations must be conducted in an honest and reasonable manner’

DEALING WITH A DISPUTE

A dispute can arise under the Act, the Code of Conduct, or an owner-driver contract.

This can include a payment dispute or a belief that someone has breached a requirement of the Act, the Code of Conduct or a contract.

Maintaining a good business relationship is important. If a dispute arises, remember the following steps:

- Advise the other party of your concerns promptly;
- Tell the other party what you would like to happen to resolve the dispute;
- Work together to find a solution;
- Allow sufficient time to resolve the issue/s;
- Act in a calm and professional manner at all times; and
- Continue working as normal while the dispute is being resolved.

If you cannot resolve the dispute by following these steps, you can:

Call the TWU ☎ 1800 657 477

Note that some contracts include a process to follow if a dispute arises.



BREACHES OF THE ACT, CODE OF CONDUCT OR A CONTRACT

It is unlawful for any party to breach the requirements of the Act, Code of Conduct, or an owner-driver contract.

Industrial Inspectors from the Labour Relations Division of the Department of Commerce can investigate suspected breaches of the Act, Code of Conduct or a contract (but cannot deal with cases of alleged unconscionable conduct - only the Tribunal can deal with those cases).

How do I make a complaint?

Owner-drivers or hirers who believe that another party has breached the Act, Code of Conduct or a contract should:

Contact the TWU on ☎ 1800 657 477

What can I expect if I make a complaint?

Complaints alleging breaches of the Act, the Code of Conduct or a contract are assigned to an Industrial Inspector, who will contact you soon after your complaint has been lodged. Note that you cannot lodge complaints anonymously.

The Industrial Inspector assigned to your case will need to interview you, to get further information about your complaint. The Industrial Inspector will also ask you to provide any documents that might be related to your complaint.

During the investigation, the Industrial Inspector will contact the party you are making the complaint against and get all relevant documents from them. Additionally, the Industrial Inspector will provide that party with an opportunity to present any evidence that they consider relevant.

In some circumstances, the Industrial Inspector might need to interview third party witnesses.

It is important to note that the role of Industrial Inspectors is to investigate if a breach has occurred, and not to represent the interests of either party.

Part B - Staying in Business

As an owner-driver, you will want to ensure a regular supply of work. Companies you deal with will also want to secure drivers to meet their requirements.

When seeking work as an owner-driver, you might be presented with a contract or similar document and be asked to sign it before commencing work. This is the time to exercise caution.

- You should not sign until:
- You have fully read the document;
- You have received independent legal advice (if needed);
- You have received financial advice (if needed);
- You have understood the document and its implications; and
- All of your questions have been satisfactorily answered by the hirer.



QUESTIONS AND ISSUES TO CONSIDER BEFORE SIGNING A CONTRACT

The term of the agreement

You need to know how long the contract will run. Do not rely on what

you are told, but check what is specified in the contract. This is especially important if you intend to purchase or upgrade a vehicle.

You will also want to check that there is a clause permitting you to renew the contract for a further term, if you wish to do so.

How may the agreement be terminated?

Having satisfied yourself that the contract term is appropriate, watch out for any clause that states something like the following: "Either party may terminate this contract upon providing 14 days' notice to the other party."

Usually, the contract may only be terminated early upon the happening of some extraordinary event such as bankruptcy, criminal conduct, extended ill health, breach of a fundamental term of the contract, etc. However, it might be in your interests to have some flexibility regarding termination of the contract, so it is best to see your lawyer for advice on this.

Does the agreement guarantee a minimum amount of work?

The contract is of no value to you if it does not assure you of work.

***Are you obliged to perform all work allocated to you?***

Too much work can be almost as bad as too little. If you are obliged to personally perform all of the work, your failure to do so might be a breach of contract that results in termination of that contract.

You should check whether the contract gives you the ability to engage a sub-contractor to perform extra work or to do your work if you are unavailable.

Are there periods where earnings can be affected?

There are times during each year when the demand for transport services can be quiet, such as after Christmas.

How is the rate of pay calculated and paid?

This is often stated vaguely and in such a way that it might not be capable of enforcement, eg. "Payment shall be made in accordance with the company manual as varied from time to time" would be unacceptable. The rate of payment must be clear.

The manner of payment is also important, eg. payment three months in arrears would cause cash flow problems at the outset and would be in breach of the Act (see payment issues).

Are there provisions (in writing) for a price increase?

Remember that there are costs that can affect your financial return. What if the price of fuel goes up suddenly? Are there provisions in the contract to allow rate adjustments for you to cover this increased operating cost?

What provisions are there for future rate changes?

A five-year contract that fixes the pay rate is unacceptable, because all costs will rise over time - especially fuel. You will need to carefully examine any provisions for pay increases, because these can often cause future conflict.

Can you perform work for anyone else?

Are you intending to contract your services exclusively to one company, or do you intend to perform additional work, either on your own behalf or for another company? Make sure that your contract matches your intention.

If the assurance of a specific quantity of work is not stated in the contract, it is even more important to preserve the right to perform work for others.

Are you restricted from operating your vehicle after the contract ends?

Often a contract will contain a "restraint of trade" clause, preventing the driver from working within a particular area or for particular customers for a specified period of time.

If the restraint is too broad, the courts will strike it out of the contract, but you will not want to go to court to find out. If you do, you will find out that there are many shades of grey, plus the exercise will be stressful and expensive.

A better way is to negotiate acceptable terms before signing the contract. Don't rely just on what is said - if the hirer says that a particular clause will not be enforced, then it should be deleted. If they say that they will change an unacceptable clause, make sure that they put the change into the contract - before you sign it!

If in any doubt about a restraint of trade clause, seek legal advice.

What if one of the hirer's customers asks you to work for them?

There are likely to be confidentiality clauses, plus the restraint of trade clause, which will all need to be considered.

What happens if you want to sell your truck?

Can the benefit of a contract you are entering into be transferred into the name of the purchaser of your truck? Do you need the consent of the company? If so, in what circumstances can that consent be refused? Do reasons for refusal have to be given?

OWNER-DRIVER CHECKLIST

You can use the checklist on the next page to record information about a hirer or company that you are considering working with.

The list is general in nature, so you should ask your accountant or lawyer about other issues that might be relevant for your circumstances.

You can also download the checklist from the Department of Transport website: www.transport.wa.gov.au/freight.



‘Knowing all your costs is absolutely vital’

VEHICLE AND ADMINISTRATION COSTS

You need to know what your costs are before you can work out how much you will need to charge your customers. You also need to work out the amount that you will pay yourself. In addition, it is important to set aside money for major repairs and vehicle replacement.

However you are paid - by the load, by the hour or by the kilometre - knowing your costs and being able to convert them from a per-hour to per-kilometre figure and vice versa will help you to compare different jobs and plans.

Knowing your costs will also help you with making choices, such as changing your truck or other equipment. Information about your costs will be vital if you want to borrow money to update your truck or expand your business.

Monitoring your costs will help you manage your finances better, particularly your cash flow, and will give you an easy way of setting goals and working out budgets and forecasts. If you know that your costs will change, you will be able to work out what you will have to do to stay in business.

Fixed and Variable Costs

There are two types of costs you need to keep track of: fixed costs and variable costs.

Fixed costs stay the same whether your truck stays in your driveway, travels one hundred kilometres or one hundred thousand kilometres. Fixed vehicle costs include your loan repayments, vehicle insurance, registration and depreciation.

Many of your administration expenses fall into the same category, because they have to be paid whether your truck is working or not, eg. your phone, accounting and bank fees, subscriptions, health and accident insurance, public liability insurance and superannuation.

On the other hand, there are some things that you only have to pay for when your truck is running. Generally, the farther your truck travels, the more you will have to pay. These are variable costs.

Variable vehicle costs include fuel, oil, tyres, repairs and services, even loading equipment. If you employ another driver, wages will be another variable cost to consider. The largest of your variable costs will be fuel.



‘Knowing all your costs is vital’

OWNER-DRIVER CHECKLIST

Name of company		
Name of representative		
Telephone number		
Date		
What is the rate being paid?	\$.....	per hour / km / tonne / trip
Does the rate meet my safe and sustainable rate (SSR)	Yes / No	My SSR = \$.....
Are there provisions for a rate increase?		Yes / No
Am I guaranteed a minimum amount per week?	Yes / No	If yes, how much?
Are they prepared to put this in writing?		Yes / No
Am I paid a waiting time allowance?	Yes / No	If yes, how much?
Are there periods when earnings can be affected?	Yes / No	If yes, when and why?
Does the company take fees out of the gross payment?	Yes / No	If yes, for what and how much?
Radio	Y / N	\$.....
Uniform	Y / N	\$.....
Comprehensive Insurance	Y / N	\$.....
Public Liability Insurance	Y / N	\$.....
Load Transit Insurance	Y / N	\$.....
Sickness & Accident Insurance	Y / N	\$.....
Other	Y / N	\$.....
How soon are accounts settled?		(14 / 30 days)
Is the company advertising for owner-drivers on a regular basis?	Yes / No	If yes, why?
Does the company provide maintenance facilities?	Yes / No	If yes, is there a charge?
What are the provisions if either party wishes to terminate the contract before the term runs out?		

Calculating Vehicle and Administration Costs

The best way of calculating your costs is to keep records for a period of six months. You will need to keep track of the kilometres you have travelled, the hours you have been on the road, or both.

If you are just starting out in business on your own, you will be able to estimate some of your costs from previous records (as an employee driver) such as tax returns, or predict them from your experience and a little research (such as talking with some other drivers).

Keep accurate records and do the calculations on a regular basis, so that you can monitor what is happening in your business and take action if something starts going off track.

Once you have collected enough information, use a "Cost of Operations" worksheet to record the totals. You can download a worksheet from the Department of Transport website: www.transport.wa.gov.au/freight. The worksheet is set up to do the calculations automatically.

The Cost of Operations worksheet includes many of the expenses that you will have in your business. However, your business will not be exactly the same, so you should adapt the worksheet before using it.

OWNER-DRIVERS COST CALCULATOR

As an alternative to using the Cost of Operations worksheet, the Council has developed an interactive Excel program: the Owner-Drivers Cost Calculator. It covers the same range of vehicles as the Guideline Rates (see pages 16-17).

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 is available on compact disc, free of charge, from the Department of Transport. It can also be downloaded from the Department's website. However, it is a big file (over 4.5MB), so you might prefer to have a copy of the compact disc mailed out to you.

The compact disc contains a range of other information, including this Information Booklet.

MODEL CONTRACT

The Act and Code of Conduct allow for owner-driver contracts to be written, oral or a mix of both. Written contracts are not compulsory, but they can be very useful.

It is good business practice to put in writing the most important aspects of your agreed terms and conditions. Written owner-driver contracts can help to prevent disputes and uncertainties about what was (and was not) agreed to.

Written owner-driver contracts can also help the Tribunal to determine what was agreed to - rather than trying to decide which disputing party has the better memory!

To assist owner-drivers and hirers, the Road Freight Transport Industry Council has developed a model owner-driver contract. The model contract represents a fair industry benchmark for typical owner-driver contract terms and conditions.

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.

‘The TWU can help you with all your cost calculations’



ROAD FREIGHT TRANSPORT INDUSTRY COUNCIL

The Code of Conduct and this booklet were developed after extensive consultation with the Road Freight Transport Industry Council.

The Council was established under Part 3 of the *Owner-Drivers (Contracts and Disputes) Act 2007*.

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

The role of the Council includes:

- Assisting in development and review of the Code of Conduct;
- Preparing and regularly reviewing the Guideline Rates;
- Developing and promoting model owner-driver contracts;
- Promoting and encouraging compliance with the Code of Conduct and Guideline Rates; and
- Providing advice and recommendations to the Minister about owner-driver contracts and the business practices generally in use by hirers and owner-drivers.

WHERE TO GET FURTHER INFORMATION:

For general information and assistance

Transport Workers Union

Level 3, 82 Beaufort Street, Perth

Tel: (08) 9328 7477

Free Call: 1800 657 477

Email: info@twuwa.org.au

Website: www.twuwa.org.au



For general enquiries about the Act, Code of Conduct, Guideline Rates, Model Contract, Cost Calculator, Information Disc and the Council, contact:

Department of Transport

441 Murray Street, Perth WA 6000

Tel: (08) 9216 8000

Fax: (08) 9216 8001

Email: ownerdriver@transport.wa.gov.au

Website: www.transport.wa.gov.au/freight

DISCLAIMER

The information has been prepared as a guide only.

None of the information is intended to constitute advice, whether legal, financial or professional.

Before you act on the information in this booklet, you should first get specific independent advice about your circumstances.

You should not act solely on the basis of the information in this booklet.