

Instrument of Appointment of Negotiating Agent: Hirers

Division 5, Part 2 of the *Owner Drivers and Forestry Contractors Act*

Background Information for Hirers

The *Owner Drivers and Forestry Contractors Act 2005 (Vic)* sets out a process that allows the hirers of forestry contractors to appoint a person to negotiate contracts on their behalf with forestry contractors. This process is set out in Division 5 of Part 2 of the Act. The person who negotiates on your behalf is called a “negotiating agent”. The agent could be an industry association, accountant or consultant.

The agent can negotiate on your behalf in relation to the making, variation or termination of a contract with a forestry contractor or a group of forestry contractors. The forestry contractors can also appoint an agent to act on their behalf either individually or as a group, to deal with their common hirer. Under section 64 of the Act, certain joint negotiations of groups of forestry contractors with their common hirer are authorised for the purposes of the *Trade Practices Act 1974*.

Under the Act, if you give a copy of this instrument of appointment to the forestry contractor, then the forestry contractor must not refuse to recognise your agent, and must (if you request) deal exclusively with the agent within the scope of the agent’s authority. If you want the forestry contractor to negotiate only with your agent, and not with you, then you need to tick the relevant box in section 3 of the instrument below.

The Act provides that a person must not coerce, or attempt to coerce, a person to appoint or not to appoint, a particular person as their negotiating agent, or to terminate the appointment of a negotiating agent. Any dispute over this provision can be dealt with by the Small Business Commissioner, and if not resolved, by the Victorian Civil and Administrative Tribunal. The Small Business Commissioner can be contacted on telephone 1800 136 034.

The form set out below is a model instrument of appointment endorsed by the Forestry Industry Council for use in the industry.

Section 1: Hirer’s details

** Set out the details of the person, company or partnership that hires the forestry contractor and is seeking to appoint a negotiating agent*

Hirer’s details

Name:

(if you trade using a company or partnership structure, use the formal registered trading name of your business)

ACN (for companies)

Main contact person at the hirer

**If you trade as a sole trader, provide your own personal contact details.*

**If you trade as a company or partnership, provide the details of the person who the hirer should contact*

Name of contact person at hirer

Telephone number (bus)

Telephone number (mobile)

Email address:

Address for correspondence

Company name

Street

Suburb

State

Postcode

Section 2: Agent's details

Name of agent(s) (Use full formal name of the agent: eg, "Australian Plantation Products and Paper Industry Council", "Victorian Employers Chamber of Commerce and Industry")

Name of contact person at the agent (Provide the details of the main person who the forestry contractor(s) will be dealing with)

Telephone number (business)

Telephone number (mobile)

Email address

Address for correspondence

Company name

Street

Suburb

State

Postcode

Section 3: Appointment of Agent

To _____ (forestry contractor's trading name)

and to the persons named in the attached document: *"If you want your agent to negotiate with a number of forestry contractors, attach a list of their trading names and ensure that a copy of this instrument is given to each forestry contractor."*

Take notice that:

Option 1: For sole trader / individual hirers

I, _____ (hirer's name)

Option 2. For hirers who are companies or partnerships

I, _____ (individual's name), a person with lawful authority on behalf of

_____ (hirer's company or partnership name)

appoint the person(s) listed in Section 2 to be the negotiating agent for the hirer named in section 1, within the meaning of the *Owner Drivers and Forestry Contractor's Act 2005 (Vic)*.

Until this appointment is terminated by me giving both the agent and the forestry contractor notice in writing, my agent is authorised to take any of the actions marked "x" as set out below on my behalf:

- To make offers to the forestry contractor on my behalf and accept on my behalf offers made by the forestry contractor, in relation to the engagement of the forestry contractor including the making, variation or termination of a contract or any terms of a contract
- To sign contracts and other binding legal documents with the forestry contractor(s) on my behalf
- To make representations on any material fact or matter to the forestry contractor(s) on my behalf
- Until and unless I advise otherwise in writing, the forestry contractor(s) is/are requested to deal exclusively with my agent

* hirer to mark applicable boxes

Signature:

Date

Section 4: Agent's agreement

I consent to act as negotiating agent within the meaning of the *Owner Drivers And Forestry Contractors Act 2005 (Vic)* on behalf of the hirer listed in section 1.

I agree to act only within the scope of the authority conferred on me through the appointment above. I agree to obtain lawful instructions and authority from the hirer prior to:

- > making or accepting any offer or otherwise entering into any legal arrangement on behalf of the hirer
- > making any representation of a material fact on behalf of the hirer upon which the forestry contractor may rely

Name (print)

on behalf of (agent's name):

Signature:

Date

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