

INSTRUMENT OF APPOINTMENT OF NEGOTIATING AGENT - HIRER

Owner Drivers and Forestry Contractors Act 2005

Background Information for Hirers

Division 5 of Part 2 of the *Owner Drivers and Forestry Contractors Act 2005* (Vic) (the Act) sets out a process that allows a hirer to appoint a person or group of persons to negotiate on their behalf, when engaging an owner driver or group of owner drivers. Your “negotiating agent” could be an industry association, accountant or consultant. The agent must comply with all contracting requirements set out in the Act.

The agent can negotiate on your behalf in relation to the making, variation or termination of a contract with an owner driver or a group of owner drivers, including owner driver conditions and rates. The owner drivers 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 owner drivers with their common hirer are authorised for the purposes of the *Competition and Consumer Act 2010* (Cth).

Under section 26 of the Act, if you give a copy of this instrument of appointment to the owner driver, then the owner driver 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 owner driver 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.

Disputes between a hirer and an owner driver can be dealt with by the Victorian Small Business Commissioner (VSBC), and if not resolved, by the Victorian Civil and Administrative Tribunal. This process is set out in Parts 5 and 6 of the Act. The VSBC can be contacted by telephone at 13 VSBC (13 8722). The application form for a referral of a dispute is available on the VSBC website at:

<http://www.vsbcc.vic.gov.au/applications-forms/>

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

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Section 1: Hirer's details

Set out the details of the person, company or partnership that hires owner drivers 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 (business)

Telephone number (mobile)

Email address

Address for correspondence

Company name

Street

Suburb

State

Postcode

Section 2: Agent's details

Name of agent(s) for example, "Victorian Transport Association", "Victorian Employers Chamber of Commerce and Industry" (Use full formal name of the agent:)

Name

Contact person at the agent (Provide the details of the main person who the owner driver(s) will be dealing with)

Name of contact person

Telephone number (business)

Telephone number (mobile)

Email address

Address for correspondence

Company name

Street

Suburb

State

Postcode

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Section 3: Appointment of Agent

To _____ (owner driver's trading name)

and to the persons named in the attached document:

*If you want your agent to negotiate with a number of owner drivers, attach a list of their trading names and ensure that a copy of this instrument is given to each owner driver.

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 owner driver(s) 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 owner driver on my behalf and accept on my behalf offers made by the owner driver, in relation to the engagement of the owner driver 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 owner driver(s) on my behalf
- To make representations on any material fact or matter to the owner driver(s) on my behalf
- Until and unless I advise otherwise in writing, the owner driver(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 owner driver may rely

Name (print)

on behalf of (agent's name)

Signature

Date