

# VICTORIAN FORESTRY CONTRACTORS

Information Booklet

# Victorian Forestry Contractors Information Booklet

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This publication is published in PDF and Word formats on [www.business.vic.gov.au/ownerdrivershirers](http://www.business.vic.gov.au/ownerdrivershirers)

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## How to use this Information Booklet

This Information Booklet is a practical resource to help you, as a forestry contractor, operate a successful business and to understand your rights and obligations. This Information Booklet is divided into the following parts:

- **Part 1: Understanding the Owner Drivers and Forestry Contractors Act** – This provides an overview of the Act. It identifies who is covered by the Act and the rates and costs schedules which are published by the Minister for Industrial Relations. Information is also provided about what to include in contracts, what constitutes unconscionable conduct, how to conduct joint negotiations and the processes available to resolve disputes.
- **Part 2: Business basics and support for forestry contractors** – This provides useful tips for setting up and running a business as well as information on business and financial planning, taxation, record keeping, insurance, engaging substitute drivers and what to do if you have financial problems. Part 2 also includes information about business advice services.
- **Part 3: Forestry industry regulation and safety** – This explains the role of key organisations in the forestry industry. You will also find information on the 'Chain of Responsibility' laws as well as how to manage safety issues and fatigue.
- Use the **Contents** section of this Information Booklet to find specific topics, and check out the **More Information** sections, which contain useful web links and other references to find more detailed information on an issue.

Set out below are key terms which you will find throughout the information booklet:

<b>ADR</b>	Means alternative dispute resolution.  Alternative dispute resolution is a process where an impartial person helps people with a dispute to resolve the issues between them. It does not include any decisions made by a judge about how a dispute is to be resolved.
<b>Act</b>	Unless otherwise stated, means the <i>Owner Drivers and Forestry Contractors Act 2005 (Vic)</i> .
<b>AFCA</b>	Means the Australian Forest Contractors Association
<b>CFMMEU</b>	Means the Construction, Forestry, Maritime, Mining and Energy Union.  The CFMMEU represents employees as well as haulage and harvesting contractors in the forestry industry.
<b>Code</b>	Means the Code of Practice for Owner Drivers and Forestry Contractors prescribed in the Regulations.
<b>FIC</b>	Means the Forestry Industry Council established by the Act.  The FIC is made up of representatives from the forestry industry and government and has a number of functions under the Act.
<b>Forest Products</b>	Includes saw logs, pulp wood, woodchips and fuel wood as well as residual matter such as waste bark or branches processed on site for use as woodchips, boiler fuel, compost or mulch.  The collection of firewood for domestic use is excluded.
<b>Dispute Resolution Process</b>	Means the process for resolving disputes between forestry contractors and hirers which is set out in Part 5 of the Act and explained in section 1.9 of this information booklet.
<b>Harvesting Contractor</b>	Harvesting contractor is defined in section 6 of the Act. In summary, means a person who carries on a business of harvesting forest products using motorised equipment supplied by that person.
<b>Haulage Contractor</b>	Haulage contractor is defined in section 5 of the Act. In summary, means a person that carries on the business of transporting forest products in one or more vehicles supplied by them, where the person also operates one of those vehicles.
<b>Hirer</b>	Means a person who engages a forestry contractor either through a haulage contract or a harvesting contract.

<b>HVN Law</b>	<p>Means the Heavy Vehicle National Law.</p> <p>The HVN Law establishes a national scheme for facilitating and regulating the use of heavy vehicles on roads.</p> <p>The HVN Law is set out in the Schedule to the <i>Heavy Vehicle National Law Act 2012</i> (Qld) and applies here in Victoria pursuant to the <i>Heavy Vehicle National Law Application Act 2013</i> (Vic).</p>
<b>Information Booklet</b>	Means this information booklet.
<b>Model Contracts</b>	Means the model contracts developed by the FIC to assist parties to comply with the requirements of the Act and to promote good drafting of contracts.
<b>Model Forms</b>	Means the model forms developed by the FIC to assist parties to comply with the requirements of the Act and the Code.
<b>NHV Regulator</b>	<p>Means the National Heavy Vehicle Regulator.</p> <p>The National Heavy Vehicle Regulator administers the HVN Law and is the national independent regulator for all vehicles over 4.5 tonnes GVM.</p>
<b>OHS Act</b>	Means the <i>Occupational Health and Safety Act 2004</i> (Vic).
<b>Rates and Costs Schedules</b>	Means the rates and costs schedules for different vehicle types engaged in the haulage and harvest of forest products.
<b>Regulations</b>	Unless otherwise stated, means the <i>Owner Drivers and Forestry Contractors Regulations 2006</i> (Vic).
<b>TSS</b>	<p>Means the VicRoads Transport Safety Services.</p> <p>The TSS enforces the HVN Law on behalf of the NHV Regulator.</p>
<b>VCAT</b>	<p>Means the Victorian Civil and Administrative Tribunal.</p> <p>VCAT is an independent tribunal that seeks to provide a low-cost, accessible and efficient disputes resolution service. Under the Act, where a dispute cannot be resolved by VSBC, the dispute can be referred to VCAT for resolution.</p>
<b>VSBC</b>	<p>Means the Victorian Small Business Commission.</p> <p>The VSBC aims to promote a competitive and fair operating environment for Victorian small businesses. The VSBC performs an alternative dispute resolution function under the Act, including the mediation of disputes.</p>
<b>WorkSafe</b>	WorkSafe is a statutory agency set up to help avoid workplace injuries, enforce Victoria's occupational health and safety laws, provide workplace injury insurance for employers, manage the workers' compensation scheme and help injured workers back into the workforce.

# Part 1

## The Owner Drivers and Forestry Contractors Act 2005

### 1.1 Why is the Act important?

The Act provides protections and a framework for the resolution of disputes to improve the position of small business forestry contractors in the forestry industry, while maintaining a healthy and competitive industry.

The Act establishes the Forestry Industry Council (FIC), which is comprised of representatives from industry and employee associations and government. The FIC has specified functions, which include advising and making recommendations to the Minister on the content of Codes of Practice, the Information Booklet, and rates and costs schedules. The FIC also advises on matters relevant to forestry contractors and the commercial practices of forestry contractors generally.

Part 1 of this Information Booklet outlines the forestry contractors' framework and provides information about key aspects of the Act and the Code of Practice for Owner Drivers and Forestry Contractors (the Code).

### 1.2 Who is covered by the Act?

The Act applies to harvesting and haulage contractors and their hirers.

'Haulage contractor' means sole traders, partnerships or corporations (but not a listed public company) that provide services transporting forest products. The Act applies to haulage contractors where the owner of the business also operates one of the vehicles. All harvesting contractors (other than listed public companies) are covered by the Act. Forestry contractors are also referred to in the Act and the Code as 'contractors'.

The Code can be found at: [www.business.vic.gov.au/setting-up-a-business/owner-drivers-and-forestry-contractors](http://www.business.vic.gov.au/setting-up-a-business/owner-drivers-and-forestry-contractors)

### 1.3 Contract requirements

#### Written contracts

Written contracts, even for short-term arrangements, are good business practice and help reduce disputes and uncertainty.

For ongoing engagements of no fixed duration or for a period of at least 30 days, the contract must be in writing and specify the minimum income or hours of work (this can be zero hours or dollars if the parties agree to this), the rates to be paid, and the minimum period of notice of termination of the engagement or payment in lieu of notice.

It is good business practice for both forestry contractors and hirers to keep a copy of the written contract.



## Notice of termination

Where there is an ongoing engagement of over three months' duration, a forestry contractor is entitled to a minimum period of notice of termination of their contract (except in the case of serious and wilful misconduct). The notice period may be worked out or paid in lieu. The minimum period required to be given by either party to terminate the contract is three months' notice.

This minimum period does not apply where there has been a material breach of the contract by the hirer.

If this notice requirement does not suit, the requirement can be waived by the forestry contractor obtaining a certificate from the Victorian Small Business Commission (VSBC). An application form for a certificate to waive the notice period is available from the VSBC website [www.vsbic.vic.gov.au](http://www.vsbic.vic.gov.au).

Where a forestry contractor is engaged under a fixed-term contract, the contract will come to an end automatically on the expiry date.

## More Information

- See sections 21 and 22 of the Act. Section 22 sets out a formula for calculating payment in lieu of notice.
- Telephone the VSBC on 13 8722 or go to [www.vsbic.vic.gov.au](http://www.vsbic.vic.gov.au).
- Your industry association, union or lawyer can also assist you to draft your own contract.

## Restrictions on payments

The Act provides that a hirer must not require a forestry contractor to pay money, or make any deductions from money payable to the forestry contractor, for services or equipment provided by the hirer unless:

- the costs are specified in the contract (that is, they are agreed costs);
- the costs are a direct and proper reflection of the cost of the service or equipment provided; and
- the forestry contractor has been provided with an opportunity (if practicable) to obtain the services or equipment from an alternative supplier.

A contract also must not require forestry contractors to pay for, or allow for deductions for, insurance costs unless an insurance policy is in place and a copy of the policy has been provided to the forestry contractor.

This does not prevent a hirer from organising group discounts on services for forestry contractors (for example, for fuel, tyres or insurance), but these amounts can only be deducted where the above requirements are met.

## More Information

- See sections 23 and 24 of the Act.

## 1.4 Rates and costs schedules

Rates and costs schedules have been developed by the Minister, in consultation with FIC, to provide forestry contractors with information about the typical operating costs applying to their business depending on the type of vehicle or forestry equipment being operated. The rates and costs schedules do not set minimum rates that must be paid to forestry contractors.

The Minister, in consultation with FIC, has developed rates and costs schedules for the following categories:

- Harvesting
- Haulage – Prime Mover and B-double trailer, Slow speed 45km/h
- Haulage – Prime Mover and B-double trailer, Medium speed 55 km/h
- Haulage – Prime Mover and B-double trailer, Fast speed 55km/h
- Haulage – Prime Mover and Jinker trailer, Slow speed 45 km/h
- Haulage – Prime Mover and Jinker trailer, Medium speed 55km/h
- Haulage – Prime Mover and Jinker trailer, Fast speed 55km/h

The rates and costs schedules set out both variable operating costs and fixed operating costs.

Variable costs are incurred when your vehicle/ equipment is running, and include fuel, oil, tyres, road tolls, repairs and maintenance.

Fixed costs are expenses that stay the same whether your vehicle stays in your driveway or travels 100 or 100,000 kilometres. Fixed costs include loan repayments, insurance, administration costs and registration.

The rates and costs schedules also provide information on rates that would typically apply for a forestry contractor's own labour if he or she did the work as an employee. Having this information before entering into a contract assists forestry contractors to assess whether they should accept an offer and facilitates better-informed contract negotiations.

Every vehicle and piece of equipment is different, and every business depends upon many factors, so your own costs may be different from the rates and costs schedule. If you have a different vehicle or equipment type or additional features, you can use the rates and costs schedule for the vehicle or piece of equipment that is most like your own vehicle / equipment as a guide and add in any additional costs accordingly.

The current rates and costs schedules are available from:

<https://www.business.vic.gov.au/setting-up-a-business/owner-drivers-and-forestry-contractors/forestry-contractors-and-hirers/understanding-your-costs>.

The Minister, in consultation with FIC, is required to revise each rates and costs schedule at periods not exceeding 12 months.

## 1.5 Joint negotiations

Forestry contractors or hirers may appoint negotiating agents to act on their behalf. The Act requires the other party to recognise and deal with that agent. The agent could be an accountant, consultant, a trade union or industry association, a forestry contractor colleague or a committee of colleagues.

An agent can enter into a binding legal contract on behalf of the forestry contractor or hirer. A forestry contractor or hirer can ask to be provided with a copy of the agent's instrument of appointment before dealing with the agent.

The Act allows joint negotiations between forestry contractors engaged by a single business and their common hirer, but not industry-wide negotiations. The Act does not authorise breaches of contract, strikes or boycotts.

### More Information

- See sections 25, 26 and 64 of the Act.
- Your industry association, union or lawyer can also assist you.

## 1.6 No victimisation for exercising rights under the Act

Section 61 of the Act provides protection for forestry contractors who seek to exercise their rights under the Act, including bringing a proceeding, informing someone of a contravention of the Act or participating in joint negotiations. It is also a breach of the Act for a hirer to punish a forestry contractor for raising issues of health and safety with any person, or for seeking improvements to their rates and conditions, or proposing to do so.

## 1.7 The Owner Drivers and Forestry Contractors Code of Practice

The Owner Drivers and Forestry Contractors Code of Practice (the Code) promotes fair and equitable business relationships between forestry contractors and their hirers.

The Code describes conduct that is likely to be unconscionable, and contract terms that are likely to be unjust contract terms. The Code provides examples within the context of the forestry industry to assist contractors and hirers to avoid such conduct. The Code also contains some mandatory requirements with which hirers and contractors must comply. The Code sets out requirements and guidance for the industry and is arranged as follows:

**Part 1 – Introductory:** This part sets out the objectives of the Code, defines some terms used in the Code and describes who it applies to.

**Part 2 – Conduct during negotiations:** This part deals with a range of matters concerning the fair conduct of negotiations, including:

- unconscionable conduct during negotiations (**Section 4**).
- best practice in negotiations (**Section 5**).
- parties must not claim to exclude the Act or other laws or the Code (**Section 6**).
- disclosure of information (**Section 7**).

- best practice for dispute resolution (**Section 8**).
- misleading advertising (**Section 9**).
- new vehicles or motorised equipment (**Section 10**).
- principles for setting and reviewing rates (**Sections 11, 12 and 13**).
- period for payment of invoices (**Section 14**).

**Part 3 – Deductions and statements:** This deals with deductions from remuneration, deductions for the use of the hirer’s equipment and technology, and deductions in the nature of penalties.

**Part 4 – Allocation of work, working arrangements and absences:** This deals with the fair allocation of work, working arrangements and absences due to illness or family responsibility.

**Part 5 – Additional Provisions for forestry contractors and hirers:** This sets out some alternative and additional provisions for the forestry industry and some additional examples in the context of the forestry industry.

## More Information

- The Code is printed as part of the Regulations and may be found at [legislation.vic.gov.au](http://legislation.vic.gov.au) or on the Business Victoria website at [www.business.vic.gov.au/setting-up-a-business/owner-drivers-and-forestry-contractors](http://www.business.vic.gov.au/setting-up-a-business/owner-drivers-and-forestry-contractors). You may also obtain a copy by emailing Industrial Relations Victoria on [irv.info@dpc.vic.gov.au](mailto:irv.info@dpc.vic.gov.au) or by telephoning the VSBC information line on 13 22 15.
- If you believe your hirer has breached the Code, follow the dispute resolution process set out in section 1.9 below.
- See section 1.10 (Victorian Small Business Commission) in this Information Booklet.
- Seek advice from your industry association, union or lawyer.
- Telephone the VSBC on 13 8722 or go to [www.vsbv.vic.gov.au](http://www.vsbv.vic.gov.au).

## 1.8 The Code and unconscionable conduct

Part 4 of the Act prohibits ‘unconscionable conduct’ by hirers towards forestry contractors and by forestry contractors towards hirers. The Act sets out the factors that the VCAT may examine when deciding if conduct is unconscionable.

The Code established under Part 3 of the Act provides further guidance on appropriate standards of conduct to be maintained when engaging forestry contractors.

The Code does not prevent hirers or forestry contractors from acting vigorously in their commercial interests. However, each party should deal with the other party, or parties, fairly and in good faith when negotiating a new contract or a variation to a contract.

The Code provides guidance on what might constitute unconscionable conduct during negotiations. It states that in the absence of any special circumstances, where a hirer or a forestry contractor engages in the type of conduct described below, it is likely to be unconscionable within the meaning of the Act:

- where a party, by themselves or through an agent:

- does not provide a reasonable opportunity to discuss an offer, or makes offers on a "take it or leave it" basis, suggesting a party must accept an offer and refuses to consider any alternative offer; or
  - does not genuinely consider offers made to them; or
  - does not provide a reasonable opportunity for another party to properly examine and consider offers; or
  - does not provide a reasonable opportunity for another party to obtain legal, financial or other advice, including in the party's preferred language; or
  - disguises the terms of a contract by using fine print, unnecessarily difficult language, or deceptive layout or headings; or
  - summarises the meaning of a document to another party, but omits to mention important terms in a way that is misleading; or
  - fails to correct another party's misunderstanding, where they knew, or reasonably ought to have known, that the other party was under a serious misapprehension about the terms of the agreement or any other relevant matter; or
- where a party builds up reasonable commercial expectations in another party for the renewal of an agreement, and then exploits those expectations to extract a harsh or one-sided deal from the other party; or
  - where a party attempts to pressure another party into accepting an offer by acting in breach of contract, or otherwise acting unlawfully or threatening to do so.

Claims of unconscionable conduct by a hirer or a forestry contractor may be dealt with by the Dispute Resolution Process set out in the Act and explained in section 1.9 of this Information Booklet.

### More Information

- See section 1.11 (Victorian Small Business Commission) in this Information Booklet.
- See section 31 of the Act and clause 4 of the Code.
- Seek advice from your industry association, union or lawyer.
- Telephone the VSBC on 13 8722 or go to [www.vsbcc.vic.gov.au](http://www.vsbcc.vic.gov.au).

## 1.9 Dispute resolution process

Where a dispute is unable to be resolved between the parties, the Act provides a two-stage process for the resolution of disputes:

Stage 1 – A referral to the VSBC

Stage 2 – An application to Victorian Civil and Administrative Appeals Tribunal (VCAT)

## 1.10 Victorian Small Business Commission

The VSBC is an independent office established by the Victorian Government to assist small businesses. The VSBC provides an independent, fast and low-cost ADR service for forestry contractors and their hirers. The VSBC offers preliminary assistance and advice to ensure forestry contractors and hirers are fully aware of their rights and obligations. The VSBC also provides a confidential mediation service.

In general, a dispute must be referred to the VSBC before it may be the subject of an application to VCAT. However, where a party seeks an injunction (which is an order to stop another party from doing something), that party may apply directly to VCAT.

If a party refuses to take part in, or withdraws from, the VSBC process, VCAT may make an order for costs against that party.

### Referring a dispute to the VSBC

A forestry contractor or their hirer may refer a dispute to the VSBC for ADR. Before lodging a dispute, you should consider discussing the matter with your solicitor or association or contact the VSBC by telephoning 13 8722.

If you would like to refer a dispute to the VSBC, you should complete the online application form or download a hardcopy form at [www.vsbv.vic.gov.au](http://www.vsbv.vic.gov.au). There is no application fee.

### Preliminary assistance

Upon receiving an application, the VSBC will attempt to resolve the dispute by working through the issues with the parties by email or letter. This preliminary assistance is free of charge for the parties and is the step before mediation.

In the event that preliminary assistance does not resolve the dispute, the VSBC may invite the parties to attend mediation.

### The mediation process

Mediation is a process of negotiation that assists the parties involved in a dispute to identify and explore options to resolve the dispute. It aims to resolve all the issues between the parties to keep the relationship going and allow everyone to 'get on with business'.

The role of a mediator is to help the parties communicate openly and evaluate their options to reach their own agreement. Mediators are not judges; they do not determine binding outcomes and they do not give either party advice.

As part of the VSBC's mediation process, you will be brought together at an agreed time and location with an experienced and independent mediator appointed by the VSBC to discuss your dispute. This usually happens within 6–8 weeks, but if your dispute is urgent, a mediation can be arranged earlier. A mediation session is generally conducted over a 3–4-hour period and can be arranged in regional Victoria.

In the event the dispute proceeds to mediation, there is a fee payable by each party (rates are published on the VSBC website). The VSBC pays the remainder of the mediator's fees.

If a dispute is not able to be resolved by mediation, you may refer the dispute to VCAT for a hearing and a binding decision. For this to occur, the VSBC must first certify that ADR has failed, or is unlikely, to resolve the dispute.

### **1.11 The Victorian Civil and Administrative Tribunal**

VCAT is an independent tribunal that seeks to provide a low-cost, accessible and efficient dispute resolution service. Where there is an allegation of unlawful termination of the engagement of a forestry contractor, the application must be made within 12 months of the date on which the termination is alleged to have occurred. In all other disputes, the time limit is six years after the date on which the dispute arose. After hearing and deciding a dispute, VCAT may make a range of orders, including:

- an order for a party to do, or refrain from doing, something;
- an order for a refund, compensation or damages; and
- any other order it considers fair, including varying or voiding a contract term to avoid injustice.

#### **More Information**

- Telephone the VSBC 13 8722 or go to [www.vsbv.vic.gov.au](http://www.vsbv.vic.gov.au).
- Go to [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).
- Contact your industry association, union or lawyer.

# Part 2

## Small business resources

### 2.1 Accountants and financial advisers

#### Accountants

It is important to have an independent view of your business situation. Securing the assistance of a qualified and reliable accountant or other financial adviser can be of great benefit to you and your business. Most accounting firms or small business advice firms provide services in:

- All aspects of taxation (for example, GST, BAS, PAYG, capital gains).
- Setting up a business.
- Business planning and cost analysis.
- Business structures and company formation.
- Record systems, bookkeeping.
- Estate planning.
- Finance advice.
- Planning for future expansion.
- Problems with debtors and creditors.
- Superannuation and investment services.

#### How to choose an accountant

Qualified accountants usually have the words 'chartered' or 'certified' attached to their title. They also usually belong to one of the professional associations for accountancy.

Many businesses find accountants through personal recommendation. It can be helpful to ask your union or industry association, forestry contractor colleagues, friends and family if they can recommend a good accountant who understands small businesses in the forestry industry.

However, what is right for one business is not necessarily right for yours. If you can, shop around, and meet with several firms. Find someone you feel comfortable with, and discuss your needs and the fees to be charged.

- A list of important questions to ask when choosing an accountant has been developed by Business Victoria at [www.business.vic.gov.au/money-profit-and-accounting/setting-up-your-finances/checklist-find-a-good-accountant](http://www.business.vic.gov.au/money-profit-and-accounting/setting-up-your-finances/checklist-find-a-good-accountant)

Take with you to the first interview:

- a written list of the questions you want to ask; and
- an overview of your business – if you have a business plan give the accountant a copy. If you do not have a business plan, provide the accountant with a written summary of your plans.



Importantly, it is not the best time to start looking for an accountant just before you need to use one, especially around tax time. You need to allow plenty of time for preparation of end of financial year accounts.

## Bookkeepers

If you want assistance with keeping your accounts and preparing your Business Activity Statements (BAS), you may wish to engage a bookkeeper rather than a qualified accountant.

A bookkeeper generally does not provide strategic business advice but should keep your financial and tax records in good order and is generally cheaper than a qualified accountant. Talk to your bookkeeper about how you should keep your records to make their job easier, especially if you are paying them an hourly rate. A local bookkeeper is a good idea, as you will be visiting them frequently.

## More Information

The following associations have websites that allow you to search for a qualified professional in your area:

- Chartered Accountants Australia and New Zealand (CA ANZ) website at [www.charteredaccountantsanz.com](http://www.charteredaccountantsanz.com) or telephone 1300 137 322.
- Certified Practising Accountants (CPA) Australia website at [www.cpaaustralia.com.au](http://www.cpaaustralia.com.au) or telephone 1300 73 73 73.
- The Institute of Public Accountants at [www.publicaccountants.org.au](http://www.publicaccountants.org.au) or telephone 03 8665 3100/ 1800 625 625.
- The Institute of Certified Bookkeepers (ICB) website at [www.icb.org.au](http://www.icb.org.au) or telephone 1300 856 181

## 2.2 Business advice services

There is help available to help plan your business and to turn things around if you get into trouble. Both government and non-government agencies conduct a range of business support and mentoring services.

### Business Victoria

Business Victoria is a 'one-stop-shop' to access all small business focussed government resources. The Business Victoria website provides assistance and information on:

- buying, starting or selling a business.
- business development, training programs and support services.
- managing and improving your business.
- employing staff.
- tax matters.
- financial management.
- licences, regulations and taxation.

## More Information

- Go to the website at [www.business.vic.gov.au](http://www.business.vic.gov.au) or contact Business Victoria on 13 22 15.

## Victorian Government Business Offices

Victorian Government Business Offices (VBGOs) are conveniently located in Melbourne and regional locations and provide face-to-face services for small businesses, including:

- how to find the business information you need.
- information about small business training and support programs and resources.
- referrals to specialists.
- Business-related workshops and seminars.

## More Information

- Further information about the services offered by VGBOs as well as the location of VGBOs can be found at [www.business.vic.gov.au/victorian-government-business-offices](http://www.business.vic.gov.au/victorian-government-business-offices).

## Small Business Mentoring Service

The Small Business Mentoring Service (SBMS) is an independent, not-for-profit organisation, which provides advice and mentoring services to small businesses throughout Victoria. SBMS counsellors have practical business experience, and can assist small businesses to grow and be successful.

The SBMS charges a small fee to cover administration costs and counsellors' out-of-pocket expenses. Sessions run for one to two hours.

To find a counsellor, visit the SBMS website and submit a request online. You may wish to search for a counsellor with expertise in accounting, risk management, insurance or cash flow management.

## More Information

- Go to [www.sbms.org.au](http://www.sbms.org.au) or by phone on 1300 816 817

## Business Enterprise Centres

Business Enterprise Centres (BECs) provide advice to new and existing small businesses. BECs are located throughout metropolitan and regional Victoria. They are community-based organisations and their services are free. BECs also offer a broad range of training programs through TAFE Institutes. BECs can assist small businesses with:

- practical business assistance.
- referral to specialist advisers.
- obtaining an understanding of government departments and regulations.
- problem solving.
- preparing business plans.

- accessing business information.
- networking.

### More Information

- Contact details for all metropolitan and regional BECs can be found on the Business Enterprise Centres website at [www.becaustalia.org.au](http://www.becaustalia.org.au).

## Forestry Better Business Program

ForestWorks is an industry owned not-for-profit organisation offering skills development and recognition within the forestry industry.

ForestWorks, in collaboration with industry, the Australian Forest Contractors Association (AFCA) and forest managers/growers, has developed the Forestry Better Business Program. The Forestry Better Business Program recognises professional businesses operating to high standards in the forest industry.

The online program helps forest managers and forestry contracting businesses, by clearly describing and documenting industry standards under four key areas:

- Safety
- Economic
- Environment
- Social

### More Information

- Telephone ForestWorks on 03 9321 3500 or go to [www.forestworks.com.au/services/forestry-better-business-program/](http://www.forestworks.com.au/services/forestry-better-business-program/)

## 2.3 Legal advisers

You may need the services of a lawyer to advise and negotiate contracts or act for you in a dispute.

Your union or association may be able to help you with legal problems or refer you to a lawyer. The Law Institute of Victoria (LIV) is the professional organisation for lawyers in Victoria. Its website provides information on a broad range of legal issues. The Law Institute's website provides guidance on choosing a lawyer and offers a referral service and a free 30-minute consultation.

### More Information

- Contact the Law Institute of Victoria at [www.liv.asn.au](http://www.liv.asn.au) or on (03) 9607 9311.

## 2.4 Business planning and risk

A business plan is a record of how you will run your business, and how you intend to identify and manage opportunities and challenges. This provides a roadmap that can help improve and even expand your business and can help secure your finance needs.

A business plan should include the following:

- an overview and vision of your business;
- an analysis of your market, including present and future sources of work;
- what business structure to use;
- how your business will be managed;
- an estimate of establishment and running costs, including financing your vehicle;
- possible changes to things such as fuel costs and interest rates;
- expected cash flow;
- your projected profit and loss;
- a balance sheet (which brings together the results from your profit and loss and cash flow statements);
- your margin, mark-up and break-even point;
- expected return on investment;
- a risk management plan; and
- an action plan to implement your identified goals.

Having a risk management plan will help if you run into problems, such as having an accident which leaves you unable to work. When writing your risk management plan, you should be able to answer the following questions:

- What risks am I facing?
- What level of financial risk should I accept?
- What is the likelihood of each risk?
- What will I do if things do not go according to plan?
- What consequences could be caused by each risk?
- What can I do to minimise the risks to my business?

### Your vehicle or equipment

Choosing the right vehicle or equipment is vital, as it can mean the difference between making a profit or loss. Make sure your vehicle/equipment is suited to the type of work you plan to carry out, as restrictions apply to some vehicles/equipment. For example, if you transport dangerous goods, special vehicles and equipment are required. There are also restrictions on the use of some vehicles such as B-doubles, which have a greater mass limit and can move more goods but are only allowed to operate on specific routes.

## More Information on Business Planning

- Go to [www.business.vic.gov.au](http://www.business.vic.gov.au) and search for 'business planning'. You will find a sample business plan document and a guide on how to prepare a business plan.
- Go to the VicRoads website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au).
- Go to the WorkSafe website at [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au).

## 2.5 Business structures

There are several ways of operating a business. The legal structure you choose will affect your tax liability, how your business can be sold, and whether your personal assets are protected. To pay your business taxes, claim deductions for business expenses, open accounts and trade legally, you need to choose the right business structure for you. Below is a general summary of different business structures you could consider, but you must obtain your own independent advice before establishing your preferred business structure:

- **Sole trader** – a sole trader is an individual who carries on a business as the only owner or under a registered business name. The structure is inexpensive to set up because there are few legal and tax formalities. However, liability for business debts is unlimited. This means that if the business fails, liability for debts extends not only to the business assets, but also to the sole trader's total personal assets.
- **Partnership** – a partnership is formed when between two and 20 people go into business. A partnership is inexpensive to set up and operate. A partnership agreement is common, but not essential. However, liability for business debts is unlimited, meaning it extends to each partner's total personal assets.
- **Company** – an incorporated company is a separate legal entity, regulated by the Australian Securities and Investments Commission (ASIC). It has members (shareholders) who own the company, and directors who run it. However, if you are an independent contractor you can set up a 'one-person company', as the sole director and member. Running your business as a company has higher set-up costs and administrative costs because of additional reporting requirements. A company provides some asset protection, but directors can be legally liable for their actions and, in some cases, the debts of a company.
- **Trading trust** – under a trading trust, the trustee manages property or income for beneficiaries. A trust deed outlines how the trust is to operate. Setting up a trust can be expensive, as a formal deed is required, and there are formal yearly administrative tasks for the trustee to undertake. If you operate your business as a trust, the trustee is legally responsible for its operations. A trustee of a trust can be a company.

## More Information

- Go to the ASIC website [www.asic.gov.au](http://www.asic.gov.au) for detailed information about the establishment of company structures and business name registration.
- Go to the Business Victoria website [www.business.vic.gov.au](http://www.business.vic.gov.au) for an overview of different business structures.

- Seek advice from your lawyer, accountant, business or financial adviser.

## 2.6 Buying into an existing franchise

### Goodwill or entry payments

Goodwill payments create a higher entry price into an industry, meaning margins are tighter and it is harder to make a profit. They have also been the cause of unfairness and disputes. For example:

- New contractors paying goodwill for a vehicle that is under an existing contract, in the expectation they will get the work, but then not being taken on by the hirer and losing the money they paid as goodwill.
- Contractors paying a goodwill payment to get into the work, but then not being able to recover that payment when they decide to leave the business later.

'Goodwill' means a payment that is over and above the market price of a vehicle that you are buying from another person. It is a payment for the value of the business and is usually paid in the expectation that the equipment will be sold as 'in work', under an existing contract.

### Franchise fees

Paying for the rights to run a business with an established name, marketing and operating procedures offers a new business owner guidance and assistance. However, it also means you need to follow the franchisor's system of running and marketing the business, which may not suit you.

Franchise fees are sometimes requested as a condition for the right to operate as a driver in a geographical area for a business.

### More Information

- Seek advice from your union, lawyer, accountant or financial adviser.

## 2.7 Customer service

The forestry industry has become more efficient and professional, with customers expecting a higher level of service. It is therefore important that hirers and forestry contractors understand and agree on how customer service standards are to be met as disputes may arise where a party considers that there is a breakdown of customer service standards.

## 2.8 Negotiating a contract

When starting with a hirer, you need to consider the arrangements for work and income you will receive. Carefully read any contract you are offered and ask questions if you are not sure of anything. Refer to sections 1.3 and 1.5 for more information about contracts and joint negotiations.

Plan your approach when negotiating contract terms with a new or existing hirer. Before you discuss a new job with a potential hirer, write yourself a list of questions you want to ask such as:

## Rates and payment

- How are they calculated?
- Does the customer pay a fuel levy to cover any rises in fuel costs?
- How often is it varied and is 100 per cent of the fuel increase passed on?
- When are your invoices paid?
- Are there a guaranteed number of hours or guaranteed earnings?
- Will you be guaranteed enough work to cover your outgoing expenses?
- Note that the agreed minimum must be reflected in your written contract: See section 20 of the Act.
- What do other forestry contractors with the same Hirer typically earn each week and year?
- Who raises the invoice?
- For example, does the hirer work on a reverse billing arrangement and how will you reconcile the account?
- What are the paperwork and documentation requirements to support the payments?
- What information and communications equipment or technology do you need to perform the work, and who provides, maintains and pays for it?
- Are there any deductions from the payments for goods or services (e.g. insurance, administration charges)? How much? *Note hirers' obligations in relation to deductions: see sections 23 and 24 of the Act.*
- From what times do the task and related payments start and finish?
- Are you paid for training?

## Hours of work

- What are the usual hours of work?
- Are you required to work on weekends, nights or public holidays?
- Can you refuse an offer of work if it does not suit you?
- Where do you park your vehicle?
- Does the hirer or customer provide parking? If not, how are overnight/stick-up loads kept secure?

## Security and contract terms

- Are there any close down periods?
- Do you need to have the hirer or customer's livery or logo on your vehicle, and who provides, maintains and pays for this?
- Are there quiet periods during the year? What factors cause work to drop off or increase?
- Are you permitted to work for another business?
- What are the arrangements if you are ill or need a break?

- Can you use a replacement driver?
- Is the business's work and client base secure?
- What are the contract arrangements? (Note that sections 19 and 20 of the Act require ongoing contracts of no fixed duration or for a period of at least 30 days to be in writing).

## Safety

- What are the safety management system reporting requirements?
- Is the company accredited under the National Heavy Vehicle Accreditation Scheme (or another relevant scheme)?
- What is the company's safety record and approach to chain of responsibility requirements?
- Do you have to attend or pass any customer related inductions or training to perform the work?

## More Information

- Section 1.3 of this Information Booklet provides information on 'Contract requirements'.
- Section 1.5 of this Information Booklet provides information on 'Joint negotiations'.
- Clause 5 and Part 5 of the Code provides more details on 'Best practice in negotiations'.
- Section 3.11 of this Information Booklet provides further information on 'Chain of responsibility'.
- Section 1.9 of this Information Booklet provides information on the dispute resolution process.
- Seek advice from your lawyer, accountant or financial adviser.

## 2.9 Understanding your business costs

You will need to have a good understanding of how much it costs to run your vehicle and your business. It is important to have a well-prepared budget to understand your business costs, for the following reasons:

- It will assist you to manage your finances and cash flow and provide an easy way of setting goals and working out budgets and forecasts.
- You can make decisions on what rates of pay are reasonable – this will help you negotiate with your hirer and compare the benefits of different jobs.
- Whether you are paid by the load, the hour or the kilometre, you need to know your costs and be able to convert them from a per-hour to a per-kilometre or per-load figure and vice versa.
- Information about your costs is essential when borrowing money to update your vehicle or expand your business. When planning to change vehicles, you need to know how your costs will change and make sure that you can make a reasonable profit.



## Preparing financial statements

Financial statements should be prepared regularly and give key information to help you improve your business.

Financial statements should include the following:

- **Establishment costs** – this is a list of the expenses incurred to set up a business until it becomes established and starts to make a profit. Establishment costs are ‘one-off’ costs that are not repeated.
- **Profit and loss statement** – this is a summary of income and expenses for your business over a period. It is prepared at regular intervals, usually monthly and at the end of the financial year. New businesses should calculate profit-and-loss statements monthly and include establishment costs. It is important not to overestimate your revenue and not to underestimate your establishment costs and ongoing expenses.
- **Cash flow statement** – a cash flow statement is an important part of the business plan. Regardless of normal business ‘ups and downs’, it is critical that you do not run out of cash. The cash flow statement is a record of when all income is received and when all payments are made by the business for ongoing essentials, such as taxation payments.
- **Balance sheet** – the balance sheet is a snapshot of the financial health of a business on a given day. You would normally complete a balance sheet at the end of a month or financial year.

## More Information

- Seek advice from your industry association, union, lawyer, accountant or financial adviser.

## Your cost structures

Clause 11 of the Code establishes principles for forestry contractors and hirers to set and review rates to be paid under a contract.

In summary, hirers should offer and pay forestry contractors remuneration that, considering the contract as a whole, the services to be performed, and the general market for the services, supports each of the elements of remuneration which are:

- an amount that represents the recovery of fixed and variable costs incurred in performing the services required;
- an amount that represents a fair return for the forestry contractor’s labour; and
- an amount that represents a return on the forestry contractor’s investment.

The Code describes the factors that influence what you can expect as a return on investment, such as:

- the amount of the capital investment in the vehicle or equipment;
- the level of commercial risk assumed by the forestry contractor;
- the security and certainty of the arrangements;

- whether the vehicle or equipment provided by the forestry contractor can readily be used to provide services to other persons;
- whether the vehicle or equipment is also used for personal use;
- the efficiency and productivity of the forestry contractor; and
- the market for the services.

The amount that is a reasonable return on investment will vary widely in all the circumstances and may vary over time as market conditions change.

## Reducing your overhead costs

Several websites and 'apps' provide information on where to find the cheapest fuel each day. Plan on where and when you are going to fill up and you could make savings in the end.

You may also want to consider a group-buying scheme for major purchases. By coordinating with other forestry contractors or with your hirer, you might be able to get significant group discounts on the purchase of new vehicles or equipment, maintenance and servicing, tyres, oil and other costs.

## More Information

- Go to the RACV website [www.racv.com.au](http://www.racv.com.au) to find the cheapest fuel prices in your area.

## Your terms for payment

The terms for payment of your invoices are critical, especially if you are carrying your fuel costs on an overdraft or on credit.

The Code notes that payment terms of more than 30 days are likely to be considered unjust, unless unusual circumstances apply. If you believe your payment terms are unfair, you can notify a dispute to the VSBC (see section 1.9 of this Information Booklet for more information on the dispute resolution process).

If you are not paid or are short-paid, first speak with your hirer and seek a commitment to the payment. Tell your hirer upfront that you require payment in accordance with your contract terms. Keep a diary note about who you spoke to, what they undertook to do and by when.

If your hirer continues not to pay you, you may wish to reconsider whether you continue to offer services, as this may indicate business failure and you may never get paid or not for a very long time. If you find yourself in this situation seek urgent advice from your union, lawyer, accountant or other business adviser. Under the Act, you are entitled to raise a dispute.

## Insurance

An insurance policy that is right for your business needs can protect you against a range of risks or events, such as theft of equipment. Adequate insurance is essential for all businesses, as it reduces the risk of an accident or illness resulting in you losing your business. The following overview sets out of the main types of insurance policies to consider for your business:

## **WorkSafe insurance**

WorkSafe insurance is a compulsory insurance for Victorian employers that is funded by their contributions. It provides employers with insurance cover for the cost of benefits if their workers are injured or become ill because of their work. It does not cover conditions that are not work-related (such as sporting injuries or general ill health).

Employers are required to take out WorkSafe insurance for their employees. Hirers may also be required to pay WorkSafe premiums in relation to forestry contractors (even incorporated forestry contractors) where the forestry contractor generally works for the one hirer.

You must take out a WorkSafe insurance policy if you:

- expect to pay more than \$7,500 in a financial year in rateable remuneration (includes wages and other benefits, contact WorkSafe for more information); or
- have any apprentices or trainees. This applies even if you are a small business with only one worker.

If you trade using a company structure or a trading trust and are an employee of your own business, then your business may be required to take out a policy on your behalf.

The obligations under WorkSafe will vary depending on the individual circumstances of your business. You should seek expert advice from your accountant, industry association or union, and WorkSafe.

## **Comprehensive vehicle and equipment insurance**

Comprehensive vehicle and equipment insurance covers damage to your vehicle/ equipment or someone else's property.

While a Transport Accident Commission charge is a compulsory insurance paid as part of your vehicle registration, which covers you from potential liability for personal injury to another person in a road accident, it does not cover any property damage.

## **Trailer in control insurance**

Trailer in control insurance refers to Non-Owned Trailers which are towed by prime mover operators. Trailer in control insurance covers you against any potential damage to the Non-Owned Trailer because of the prime-mover operators' negligence.

## **Public liability insurance**

Public liability insurance covers your potential liability to third parties for personal injury or property damage if you or your business is found to be negligent. This protects you if any of your actions (including off-road actions) cause injury to another person or damage to property.

## Goods in transit insurance

Depending on your individual contract arrangements, you should consider insuring against property loss or damage while it is in transit from one place to another or being stored during a journey.

## Income protection insurance

Income protection insurance is designed to provide replacement income to individuals who are unable to work due to illness or injury.

## More Information

- Contact WorkSafe on 1800 136 089 or go to [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au) and search under the Insurance section for premium rulings applying to the forestry or transport industry.
- Go to the Business Victoria website at [www.business.vic.gov.au](http://www.business.vic.gov.au) for information on different types of insurance for small businesses.

## Taxation

A range of taxes may apply to your business operations, depending on the business size and location. Understanding taxes and the deductions and exemptions you may be able to claim can save you money. You do not want to pay too much tax or be penalised for late payment.

Contact the Australian Taxation Office (ATO) to find out about:

- personal services income (PSI);
- business income tax;
- fringe benefits tax (FBT);
- goods and services tax (GST);
- capital gains tax (CGT);
- Pay as You Go (PAYG) withholding;
- super guarantee contributions;
- business activity statements (BAS), including dates for lodgement and payment; and
- accounts and business registration, including Australian Business Numbers (ABNs) and Tax File Numbers (TFNs).

## More Information

Go to the ATO website [www.ato.gov.au](http://www.ato.gov.au) for information about taxation requirements or telephone 13 28 66 for further information and details for your local tax basics seminar coordinator.

- Go to the Business Victoria website at [www.business.vic.gov.au](http://www.business.vic.gov.au).
- Seek advice from your lawyer, accountant, business or financial adviser.

## Financial problems

Help is available if you get into financial difficulty. Banks, the ATO and other creditors may be able to help. Do not ignore creditors and your situation.

If you cannot pay your debts, ask your accountant or financial adviser for advice straight away. Your adviser can help you prepare a written business survival plan to give to your bank and to negotiate alternative payment arrangements with creditors. There are accountants who specialise in turning around struggling businesses. If the business cannot be saved, they may be able to advise on the various forms of insolvency administration.

## 2.10 Record keeping

It is essential to keep proper business records to satisfy a range of legal requirements, such as for taxation purposes. Retaining appropriate records can also show the hirer that you have met your contractual requirements.

It is good business practice to keep the types of records set out below. This list is not intended to be an exhaustive statement of your legal record-keeping obligations.

### Financial records

- copies of invoices and receipts you have provided;
- invoices for goods or services purchased;
- payments to employees and to other organisations on behalf of employees, for example superannuation and PAYG tax;
- financial statements including the profit-and-loss statement and a balance sheet;
- tax returns and supporting information;
- bank account and credit card statements; and
- lists of debtors and creditors.

### Business records

- contracts, lease agreements, insurance agreements and other legal documents;
- licences and permits;
- daily job and trip records for invoicing;
- written time and wages records for employees, which should include pay, hours of work, leave and superannuation contributions;
- safety records;
- full details of warranties for vehicles and equipment; and
- any other records which are 'business activity' specific and which are required by law for the operation of your business.

## Other types of records

- file notes of conversations with hirers;
- vehicle maintenance and service records; and
- work diaries and other records as required by heavy vehicle fatigue management laws (see section 3.11 of this Information Booklet for more information).

## More Information

- Telephone the ATO on 13 28 66 or go to [www.ato.gov.au](http://www.ato.gov.au).
- Go to the Business Victoria website at [www.business.vic.gov.au](http://www.business.vic.gov.au) for information on record keeping for small businesses.
- Go to the Fair Work Ombudsman's website at [www.fairwork.gov.au](http://www.fairwork.gov.au) for information on records that an employer must keep in relation to employees.
- Seek advice from your lawyer, accountant or financial adviser.

## 2.11 Engaging substitute drivers or operators

You may need to hire a substitute driver or operator to run a second shift or if you are ill.

You should discuss the use of a substitute driver or operator with your hirer. If you need help finding a substitute driver or operator, your hirer or another forestry contractor may be able to recommend someone. Alternatively, a labour hire agency may be able to supply you with a driver. A substitute driver could be engaged in one of the following ways:

As an employee, employees:

- receive payment as wages or salary;
- have their tax taken out by their employer;
- can be engaged on an ongoing or fixed-term basis, and can be full-time, part-time or casual; and
- can be directed when, what and how to do a task.

As a contractor, contractors:

- invoice for their work instead of receiving wages;
- run their own business;
- have their own insurance;
- are engaged to perform set tasks, such as driving a vehicle to Sydney; and
- may work for more than one hirer.

It is important to note that if you engage a contractor who provides their own vehicle, you are now a hirer of that forestry contractor under the Act and the Code and must meet all the obligations as a hirer.

As a labour hire worker through an agency, the agency:

- employs the worker and then on-hires them to you;
- pays the worker's wages and other entitlements; and
- charges you a commission, agency or finder's fee for the worker's services.

## More Information

Go to the Business Victoria website at [www.business.vic.gov.au](http://www.business.vic.gov.au) for a guide to employing people.

- For information on your taxation obligations, contact the ATO on 13 28 66 or go to [www.ato.gov.au](http://www.ato.gov.au).
- For information on WorkSafe obligations call 1800 136 089 or go to [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au).
- For information on workplace relations laws go to the Fair Work Ombudsman website [www.fairwork.gov.au](http://www.fairwork.gov.au)

## 2.12 Industry associations and unions

There are several organisations who play a role in the forestry industry.

**Australian Forest Contractors Association (AFCA):** AFCA's primary purpose is to advocate on behalf of members to improve business outcomes and conditions for Forestry Contracting Businesses.

**Australian Forest Products Association (AFPA):** AFPA is the peak national industry body representing the resources, processing, and pulp and paper industries covering the forest products value chain.

**Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU):** The CFMMEU is Australia's main trade union in building and construction, forestry and furnishing products, the maritime industry, mining and energy production.

**Forest & Wood Products Australia (FWPA):** The FWPA is a not-for-profit company that provides national, integrated research and development services to the Australian forest and wood products industry.

**ForestWorks:** ForestWorks is an industry owned not-for-profit organisation offering skills development services for industry.

**Victorian Association of Forest Industries (VAFI):** VAFI is the peak body for the Victorian forest and wood products industry.

**VicForests:** VicForests is a government business enterprise responsible for the harvesting and sale of commercial timber resources in State forests in Eastern Victoria.

## More Information

For more information on:

- AFCA call 03 6343 3398 or go to [www.afca.asn.au](http://www.afca.asn.au)
- AFPA call 02 6285 3833 or go to [ausfpa.com.au](http://ausfpa.com.au)

- CFMMEU call 1800 060 556 or go to [www.cfmmeu.org.au](http://www.cfmmeu.org.au)
- FWPA call 03 9927 3200 or go to [www.fwpa.com.au](http://www.fwpa.com.au)
- ForestWorks call 03 9321 3500 or go to [www.forestworks.com.au](http://www.forestworks.com.au)
- VAFI call 03 9611 9000 or go to [www.vafi.org.au](http://www.vafi.org.au)
- VicForests call 03 9608 9500 or go to [www.vicforests.com.au](http://www.vicforests.com.au)

## 2.13 Learning resources and tools

### Skills standards and qualification resources

ForestWorks has several resources to assist training delivery in the forest, wood, paper and timber products industry. These resources align to specific skills standards and qualifications.

### Workplace learning tools

ForestWorks has developed workplace learning tools to help enterprises identify the different foundation skills gaps that exist in their workplace and how they may be impacting the day-to-day operations of their business.

### More Information

- Telephone ForestWorks on 03 9321 3500 or go to [www.forestworks.com.au/services/learning-resources-and-tools/workplace-learning-tools/](http://www.forestworks.com.au/services/learning-resources-and-tools/workplace-learning-tools/)

## 2.14 Industrial relations and human resource management

### General protections

The general protections of the *Fair Work Act 2009* are intended to:

- protect workplace rights;
- protect freedom of association;
- provide protection from workplace discrimination; and
- provide effective relief for persons who have been discriminated against, victimised, or have experienced other unfair treatment.

A person (such as an employer) must not take any 'adverse action' against another person (such as an employee or independent contractor), because that person has a workplace right, has exercised a workplace right or proposes to exercise that workplace right.

Adverse actions that can be taken against an employee/independent contractor or potential employee/independent contractor might include:

- dismissing them
- not giving them their legal entitlements
- changing their job to their disadvantage
- treating them differently than others
- not hiring them



- offering them different (and unfair) terms and conditions, compared to other employees.

## Who do general protections laws apply to?

General protections laws apply to:

- employees and prospective employees
- employers and prospective employers
- independent contractors and prospective independent contractors
- a person who has entered into or who has proposed to enter into a contract for services with an independent contractor
- an industrial association, including an officer or member of an industrial association.

### More Information

- For more information, see the Fair Work Commission's General Protections Guide available from [www.fwc.gov.au/documents/documents/factsheets/gp-guide\\_1.pdf](http://www.fwc.gov.au/documents/documents/factsheets/gp-guide_1.pdf)

## 2.15 Managing staff

Business Victoria provides a range of support materials and tools to assist you hire and manage your staff your staff, including:

- employment types and hiring options;
- staff recruitment;
- employer responsibilities and staff leave;
- long service leave in Victoria;
- staff management;
- employing children; and
- ending employment.

### More Information

- For information on hiring and managing staff go to <https://www.business.vic.gov.au/hiring-and-managing-staff>
- Information on long service leave in Victoria is available on the Wage Inspectorate Victoria website at [www.vic.gov.au/wage-inspectorate-victoria](http://www.vic.gov.au/wage-inspectorate-victoria). Alternatively, the Inspectorate can be contacted on 1800 287 287 or by email at [irv.info@dpc.vic.gov.au](mailto:irv.info@dpc.vic.gov.au).

## 2.16 Managing investments/succession planning

Business Victoria provides a range of support materials and tools to assist you with managing investments and succession planning, including:

- Raising funds for your business;
- Six steps to increase your business value before selling;

- Find a buyer or successor for your business; and
- Financial and legal preparation before selling your business.

### More Information

- For more information on managing investments go to [www.business.vic.gov.au/#1007702](http://www.business.vic.gov.au/#1007702).
- For information on succession planning go to [www.business.vic.gov.au/#1007743](http://www.business.vic.gov.au/#1007743).

## 2.17 Contract assignment/transfer to another party

One pathway to work as a harvest or haulage contractor is to secure a contract by assignment from an existing contractor who has an agreement with a hirer to provide harvest and/or haulage services.

Often contractors with longer term agreements wish to cease providing their contracted services several years before their agreement is due to run out. In these instances, they will often seek to assign the agreement to another party. In many cases a hirer will need to endorse or approve the assignment and, provided you are able to provide the same level of service as the assignor (the party wishing to assign the contract), there should be no problems with the hirer approving the arrangement. Most contracts will include details regarding whether an agreement can be assigned or not and what conditions a hirer may require as part of the assignment process. It is important to seek legal advice prior to considering an assignment.

If you have your own equipment, you may not wish to buy the equipment of the assignor as part of the assignment. However, some contractors who do not have the equipment will often purchase equipment of the assignor to ensure they are able to provide the required services under the agreement.

Most assignments require a Deed of Assignment to be executed by the three parties involved: the assignor (the party wanting to assign the agreement), the assignee (the party wishing to take over the requirements of the agreement) and the hirer.

It is important that you do not pay any money as part of this process until after such time as a Deed of Assignment has been executed. It is not wise to buy equipment until you are guaranteed that work for the equipment is secured through the Deed of Assignment.

## 2.18 Certification requirements

Many forest owners/managers or mill operators will have their management and environmental systems certified to a range of standards so that they can guarantee to their customers that they are conducting harvesting operations to a certifiable standard.

It is important that you are aware of what standard your hirer is working under and understand the requirements of that standard because compliance auditors will often visit forest operations to ensure that standards are being maintained.

There are a range of standards which managing entities seek to achieve. The principle ones are:

## Responsible Wood

Responsible Wood oversees the operation of the Responsible Wood Certification Scheme that applies to forest management and chain of custody certification in Australia. This Scheme includes Standards, Rulings, Scheme Rules and Directives, which collectively provide the mandatory requirements for certification bodies and scheme participants.

Certification of compliance with the Australian Standard for Sustainable Forest Management (AS4708) and the Australian Standard for Chain of Custody of Forest Products (AS4707) is not carried out by Responsible Wood itself, but by independent third-parties known as accredited certification bodies.

Certification bodies also perform annual surveillance audits and periodic re-assessment audits to verify proactively that a certified forest manager or chain of custody certified company maintains compliance with Responsible Wood requirements.

The Responsible Wood Certification Scheme is recognised under the Programme for the Endorsement of Forest Certification (PEFC).

## Forest Stewardship Council (FSC)

FSC is an independent not-for-profit organization. FSC has a global forest certification system that has two key components:

- Forest Management (FM) certification; and
- Chain of Custody (CoC) certification about the production and source of FSC-certified products, which is for businesses manufacturing or trading forest products.

## More Information

- For more information on Responsible Wood call 07 3359 1758 or go to [www.responsiblewood.org.au](http://www.responsiblewood.org.au).
- For information on FSC call 03 9329 9984 (voicemail only service) or go to <https://au.fsc.org/en-au>.
- For more information on PEFC go to [www.pefc.org](http://www.pefc.org).

## 2.19 Skills verification

FOLS is the national skills verification program for industry. It is an industry-led system that supports the professionalism and safety of industry through a national electronic system of recording and verifying the training and currency of workers' skills.

## More Information

- For more information on FOLS Skills Verification Program go to [www.forestworks.com.au/services/fols-skills-verification-program](http://www.forestworks.com.au/services/fols-skills-verification-program).

## **2.20 Contract management**

When entering a contract, forestry contractors need to be satisfied that the contract enables them to operate sustainably. The FIC's rates and costs schedules have been developed to assist you when entering negotiations with a hirer. For further information regarding contract negotiations, see section 2.8 of this Information Booklet.

# Part 3

## Regulations and safety

### Section A – overview

#### 3.1 Who's who in the regulation and safety of the forestry industry

There are several organisations who play a role in the regulation of the forestry industry and who provide advice and assistance in relation to safety matters.

#### WorkSafe

WorkSafe manages occupational health and safety in Victorian workplaces.

WorkSafe is broadly responsible for:

- helping to avoid workplace injuries from occurring;
- enforcing Victoria's occupational health and safety laws;
- providing workplace injury insurance for employers and managing the workers' compensation scheme; and
- helping injured workers back into the workforce.

#### More Information

- To report concerns about your workplace and for general enquiries about workplace safety, injury prevention and workplace health and safety, call WorkSafe Victoria's Advisory Service, telephone: 1800 136 089 or check its website at [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au)

#### Department of Environment, Land, Water and Planning (DELWP)

DELWP is responsible for promoting and managing the sustainability of Victoria's natural and built environment. DELWP's most significant responsibility in relation to forestry contractors is directing VicForests' staff and timber harvesters in relation to fire prevention and suppression.

#### More Information

- Call DELWP's customer service centre on 136 186 or check its website at [www2.delwp.vic.gov.au](http://www2.delwp.vic.gov.au)

#### VicRoads

VicRoads manages the road system and handles vehicle regulation, driver licensing and providing road user information. VicRoads also plays an important regulatory and education role in relation to heavy vehicle safety.

#### More Information

- Call VicRoads on 13 11 71 or 03 9854 2666 or check its website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au).

## 3.2 Laws and regulations related to the forestry industry

All those involved in the forestry industry need to be aware of and comply with relevant legislation, including occupational health and safety requirements.

### ***Forests Act 1958 (Vic)***

The *Forests Act 1958* outlines that all forest produce in State forest is the property of the Crown. The Act also prohibits the removal of produce from State forest except in accordance with the regulations.

Provisions are also made in relation to the development and implementation of working plans for State forest with respect to control, maintenance, protection and taking of produce; fire management in State forests; and offences in State forests.

The *Forests Act 1958 (Vic)* gives the Secretary of the DELWP power to protect State forests. The Secretary has power to construct and maintain roads for the transportation of timber resources and can enter into agreements with others to prevent and suppress fires. The Secretary can also develop and implement plans to protect forests from fire or other damage.

### ***Sustainable Forests (Timber) Act 2004 (Vic)***

The *Sustainable Forests (Timber) Act 2004 (Vic)* provides the framework for sustainable forest management and sustainable timber harvesting in Victorian State forests. It provided for the creation of VicForests and provides for the granting of long-term access to timber resources in State forests.

Under this Act, VicForests is required to comply with any conditions in the Allocation Order and Timber Release Plans. The Allocation Order allocates specified timber in State forests to VicForests for the purposes of harvesting and selling. The Timber Release Plan includes: a schedule of areas selected for timber harvesting; the location and approximate timing of timber harvesting in the proposed harvest areas; and the location of any associated access roads. VicForests' Timber Release Plans must be prepared for a period not exceeding five years.

This Act also requires VicForests to comply with the Code of Practice for Timber Production and gives the Minister for Energy, Environment and Climate Change the authority to conduct audits of VicForests to ensure it is complying with the Code.

## **Code of Practice for Timber Production**

The Code of Practice for Timber Production 2014 (the Timber Production Code) is a key regulatory instrument that applies to commercial timber production in both public and private native forests and plantations in Victoria.

The purpose of the Timber Production Code is to provide direction and guidance to forest managers and operators to carry out sound environmental performance when growing and harvesting commercial timber in such a way that is economically viable, compatible with environmental values and enhances public confidence in the management of Victoria's forests and plantations for timber production.

Forest management operations are planned and conducted to achieve sustainable forest management, using all relevant laws, regulations, government policies and local government requirements. Timber harvesting and associated operations are planned to meet all relevant requirements of the Timber Production Code.

### ***Occupational Health and Safety Act 2004 (Vic)***

This is the most significant occupational health and safety legislation in Victoria. The Act requires health and safety risks to be reduced as far as practicable. Key principles which should be applied include:

- all people should be protected as far as practicable against risks to their health and safety;
- any person who manages, owns or controls the workplace is responsible for eliminating or reducing risks as far as practicable;
- employers and self-employed persons are required to implement measures which promote health and safety;
- employers and employees should exchange information and ideas about risks to health and safety and the measures that can be taken to eliminate or reduce those risks; and
- workers (including contractors) are entitled and should be encouraged to be represented on health and safety issues.

## **3.3 Emergency procedures, fire and protest management**

### **Emergency procedures**

Forestry contractors must have a health and safety plan with documented emergency procedures to cover serious injury to personnel working in remote areas, vehicle accidents in remote areas, fire, protestors and environmental emergencies such as fuel spills.

Visitors to a coupe need to be advised of the emergency procedures which apply to that coupe.

### **Fire management**

Fire is a serious risk to forestry contractors. Risk factors such as temperature, wind, and the number of days since it last rained should be regularly assessed. Work should be conducted in a way which minimises the chance of a fire being started from ignition sources. Forestry contractors should be trained in what to do if a fire breaks out, and on emergency and evacuation procedures. All trucks and mobile plant should be fitted with basic firefighting tools such as fire extinguishers.

### **More Information**

- Call WorkSafe Victoria Advisory Service on 1800 136 089 or check its website at [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au).
- The Emergency Management Victoria website at <http://emergency.vic.gov.au/respond/> provides Victoria-wide, up-to-date information on all emergency situations (including bushfires).

## Protest management

Forestry contractors may be confronted by protesters who may try and prevent harvesting and haulage operations from occurring.

Forestry contractors should be aware of any procedures that the land owner (or manager) has established in consultation with industry. This may include additional coupe marking measures, increased warning signage, closure of access roads and appropriate non-violent responses to situations which may arise.

All visitors to a harvesting coupe need to be inducted into the site by the harvesting team leader. Visitors and unauthorised personnel are often unaware of the hazards associated with forest operations.

All forestry contractors have a duty to regularly check if there are unauthorised people in their working areas. If they are found, all activities must stop, and the circumstances must be reported at once. Forestry contractors are under a duty not to place any person in their work area at risk – this includes protesters.

Landowners (or managers), principal contractors and subcontractors are all responsible for ensuring the safety of forestry contractors when protests occur. The police may need to be contacted if protesters pose a threat to occupational health and safety and the matter cannot be resolved.

Details of any incidents involving protesters which pose risks to health and safety should be recorded. These incident reports may include photographic records.

### More Information

- Call VicForests' Melbourne office on 9608 5000 or check its website [www.vicforests.com.au](http://www.vicforests.com.au).

## 3.4 Key government organisations in the forestry industry

### VicForests

VicForests is a government business enterprise responsible for the harvesting and sale of commercial timber resources in State forests in Eastern Victoria.

### More Information

- Call VicForests' Melbourne office on 9608 5000 or check its website [www.vicforests.com.au](http://www.vicforests.com.au).

### VicRoads

VicRoads' purpose is to manage a safe, reliable and sustainable arterial road system as part of an integrated transport network. This means keeping the road network in good condition, providing registration and licensing services, and implementing road safety strategies.

VicRoads also enforces heavy vehicle offences under the Heavy Vehicle National Law (HVN Law) on behalf of the NHV Regulator and the Victorian Road Safety Road Rules 2009.



Drivers of heavy vehicles must obey the same road rules as other drivers. There are also some road rules that apply just to heavy vehicles, such as speed limits. Other road users must also follow certain rules when sharing the road with heavy vehicles, relating to truck lanes and not overtaking turning vehicles.

### More Information

- Telephone 13 11 74 or 03 9854 2666 or go to [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au).

## National Heavy Vehicle Regulator

The NHV Regulator is the national independent regulator for all vehicles over 4.5 tonnes GVM and administers the HVN Law. Its objectives include improving safety and productivity for the industry, and making it easier for businesses to operate across state and territory borders.

The NHV Regulator is responsible for:

- the National Heavy Vehicle Accreditation Scheme;
- the Performance-Based Standards Scheme;
- heavy vehicle access permit applications;
- heavy vehicle standards, modifications and exemption permits; and
- the work diary and risk classification system for advanced fatigue management.

### More Information

- Telephone 1300 696 478 or go to [www.nhvr.gov.au](http://www.nhvr.gov.au).

## National Transport Commission

The National Transport Commission (NTC) is an inter-governmental agency that is responsible for developing national reforms to improve productivity, safety and the environmental performance of Australia's road, rail and intermodal transport systems.

### More Information

- Telephone 03 9236 5000 or go to [www.ntc.gov.au](http://www.ntc.gov.au).

## 3.5 Rural Financial Counselling Service (RFCS)

The RFCS Program is funded by the Australian, State and Northern Territory Governments. The Commonwealth website for the RFCS is available at: [www.agriculture.gov.au/ag-farm-food/drought/assistance/rural-financial-counselling-service](http://www.agriculture.gov.au/ag-farm-food/drought/assistance/rural-financial-counselling-service)

Forestry businesses and contractors (harvesters and growers) are eligible to access the RFCS if they meet certain conditions, such as: financial hardship, their business is a commercial concern and they contribute a significant part of their labour and capital to the enterprise. An employee of a company or business is not eligible for the service, nor are haulage or transport businesses. Given many forest contractors are both harvest and haul oriented, a case could be made for their access to RFCS services.

The RFCS provides free, independent and confidential support to eligible forestry businesses and can provide:

- Help to identify financial and business options
- Help to negotiate lenders
- Help to develop an action plan
- Information about government and other assistance schemes
- Referral of businesses to accountants, agricultural advisers and educational services
- Referral of businesses to the Department of Human Services and to professionals for succession planning, family mediation and personal, emotional counselling

### More Information

- Telephone 1800 686 175 to find your nearest RFCS office or go to <http://www.agriculture.gov.au/ag-farm-food/drought/assistance/rural-financial-counselling-service>

## Section B – Health and safety: Forestry contractors

### 3.6 How to deal with safety problems

If you become aware of a workplace safety problem, then:

- discuss the matter with your hirer and see if the matter can be resolved;
- if your hirer is unwilling to fix the problem, raise the matter with your workplace health and safety representative;
- if the matter remains unresolved, seek advice from your union or association, WorkSafe or VicRoads; and
- if you witness a serious workplace incident or a 'near miss', report the matter to WorkSafe by telephoning 13 23 60.

If your hirer threatens you with termination of your contract or with any other detriment because you have drawn attention to a safety problem or you have reported an incident, your hirer will be in breach of section 61 of the Act. You should seek advice from your union or association, a lawyer or the VSBC in these circumstances (see section 1.10 of this information booklet for information about the dispute resolution process).

The general protections of the *Fair Work Act 2009* are intended to protect your workplace rights, such as drawing attention to safety problems or reporting an incident without threats of termination (see Section 2.14).

### More Information

- VicRoads: telephone 13 11 71 or via their website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au).
- WorkSafe Victoria Advisory Service: telephone 1800 136 089 or via their website at [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au). To report a safety incident telephone WorkSafe on 13 23 60.

### 3.6 General principles

All forestry industry participants (landowners/land managers, principal contractors, subcontractors and employees) are responsible for contributing to the safe operation of the industry and to comply with state and federal laws. Forestry operations are hazardous, and it is essential for all participants to understand their health and safety responsibilities.

Landowners/land managers are responsible for:

- managing access and egress to the workplace;
- providing information to principal contractors to ensure safety issues are dealt with in the coupe plan;
- scheduling harvesting; and
- incident management.

Principal contractors are responsible for:

- engaging subcontractors who can do work safely and having a verifiable safety management system;
- ensuring the scope of work can be undertaken safely; and
- setting up consultation arrangements with health and safety representatives and ensuring information about site hazards is passed on to subcontractors, health and safety representatives and employees.

Subcontractors are responsible for:

- taking control of specific work activities;
- ensuring activities do not place anyone at risk.

Employees are responsible for:

- following safe work procedures;
- ensuring co-workers are not wilfully placed at risk;
- if they are a health and safety representative, advising hirers of any issues.

### 3.7 WorkSafe Victoria publications

WorkSafe in Victoria publishes helpful guides dealing with safety issues that arise in the forestry industry, including:

**Fatigue management guidelines for the forestry industry:** How to identify, manage, reduce or eliminate risk factors for fatigue in forestry workers. See:

<https://www.worksafe.vic.gov.au/resources/fatigue-management-guidelines-forestry-industry>

**Safety in forestry operations: Harvesting and haulage:** How to identify, reduce, manage or eliminate the risks of harvesting and haulage for Victorian forestry workers. See:

<https://www.worksafe.vic.gov.au/resources/safety-forestry-operations-harvesting-and-haulage>

### More Information

- You can download the publications from [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au) or email your request to [publications@workcover.vic.gov.au](mailto:publications@workcover.vic.gov.au). Contact WorkCover publications on 03 9641 1444.

### 3.8 Documenting health and safety systems

Forestry contractors must have a safety management system.

Paperwork that must be kept includes:

- notification to WorkSafe of any death, injury, illness or serious incident;
- register of injury or illness, containing a record of any workplace illness or injury);
- material safety data sheets, containing safety information on working with chemicals – these data sheets should be current and easily accessed by all those involved in their use;
- records of hearing tests; and
- records of occupational health and safety risk assessments.

Procedures that must be documented include:

- risk assessments;
- training;
- personal protective clothing issued and replaced;
- equipment maintenance; and
- tree falling procedures and safety and exclusion zones.

#### More Information

- Worksafe Victoria Advisory Service on telephone: 1800 136 089.

### 3.9 Managing safety issues

#### Workplace safety

In Victoria, workplace health and safety are governed by a system of laws, regulations and compliance codes, which set out the responsibilities of employers and workers to ensure that safety is maintained at work, including in the Victorian road transport industry.

The OHS Act sets out the key principles, duties and rights in relation to occupational health and safety in Victoria. The OHS Act obliges employers to ensure, as far as is reasonably practicable, that the working environment is safe and without risks to health. The OHS Act also requires that, as far as is reasonably practicable, a workplace and the means of entering and leaving it must be safe and without risks to health.

The physical work of a forestry contractor may include loading, unloading, packing, assembling, sorting and using equipment. Hazardous manual handling can lead to injuries or disorders. You may be exposed to the risk of falling from vehicles, loading docks and other elevated areas when loading or unloading.

Employers are legally required to notify WorkSafe about incidents involving workplace health and safety, dangerous goods and explosives. If you become aware of a workplace safety issue, firstly discuss the matter with your hirer to see if the safety problem can be resolved. If the issue remains unresolved, you could seek advice from WorkSafe, your industry association or your union.

If you witness a serious workplace incident or a 'near miss', WorkSafe must be notified immediately by calling 132 360, and then in writing within 48 hours. To access the relevant forms for reporting an incident go to [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au).

Under section 61 of the Act, your hirer cannot subject you to a detriment because you have drawn attention to a safety problem or you have reported an incident. Refer to section 1.6 of this Information Booklet for more details about your rights under the Act. You may also have rights under other State or Commonwealth laws.

WorkSafe or your industry association or union could also provide information on reducing manual handling and other safety risks.

## **Dangerous goods and hazardous substances**

Under the Dangerous Goods (Transport by Road or Rail) Regulations 2018 (Vic), you need a Dangerous Goods Driver Licence as well as a Dangerous Goods Vehicle Licence if you are transporting:

- dangerous goods that are in a container with a capacity of more than 500 litres; or
- more than 500 kilograms of dangerous goods in a container.

Dangerous goods include substances that may be corrosive, flammable, spontaneously combustible, toxic, oxidising or water-reactive.

Drivers are prohibited from transporting some classes of dangerous goods through the Melbourne CBD (and surrounds) as well as tollway tunnels. The WorkSafe website provides advice on prohibited routes and has links to publications, which provide guidance on the transportation of dangerous goods.

The Application for a Dangerous Goods Driver Licence is only available in hard copy form. The form can be obtained through authorised registered training organisations, all WorkSafe offices and the Worksafe Advisory Service on 1800 136 089.

For more information about the application process, including lodgement, contact Worksafe's licensing branch on 1300 852 562 or email [licensing@worksafe.vic.gov.au](mailto:licensing@worksafe.vic.gov.au).

The Occupational Health and Safety Regulations 2007 also regulate hazardous substances (which are classified based on their immediate and long-term health effects). Many substances may be both hazardous substances and dangerous goods, in which case both sets of laws apply.

## **VicRoads' requirements**

VicRoads' Transport Safety Services (TSS) Authorised Officers aim to improve road safety for all road users, and protect roads and bridges from damage by ensuring that heavy vehicles comply with legislation including the Road Safety Act 1986, NHV Law, Accident Towing Services Act 2007, Transport (Compliance and Miscellaneous) Act 1983, Road Management Act 2004, Environment Protection Act 1970, road rules and regulations.

TSS Authorised Officers conduct enforcement operations, provide industry liaison and education and act as escorts, where required, of over-mass or over-dimension loads.

TSS officers intercept heavy vehicles to check them primarily for compliance with weight, load security, dimensions, roadworthiness, registration standards, impaired driving and other safety related issues such as speed and fatigue. Drivers will also be checked for licence category and to make sure they are compliant with heavy vehicle work and rest requirements.

All vehicles, when requested to, must pull over for a TSS officer. TSS have the same interception powers on Victorian roads as Victoria Police, therefore you must follow their direct instructions.

TSS Authorised Officers also enforce the HVN Law on behalf of the NHV Regulator. You should make sure your vehicle is safe for its intended use and conduct regular inspections to ensure it is roadworthy. Keeping your vehicle in good running order is not only important for the safety of road users but helps with the efficient operation of your business. You may also be subject to penalties for failing to keep your vehicle in a roadworthy condition.

### **3.10 Chain of Responsibility laws under the HVN Law**

Chain of Responsibility laws (CoR) work to ensure that all parties with control or influence over the operation of a heavy vehicle are held accountable for ensuring the safe operation of that heavy vehicle. CoR recognises that a party, despite not being directly engaged in driving, loading or hiring arrangements relating to a heavy vehicle, may be in a position to substantially impact the manner in which these tasks are undertaken.

Generally, CoR laws cover:

- driving hours;
- speeding and dangerous goods regulations;
- mass and dimension limits; and
- load restraint requirements.

### **A 'positive duty' to reduce risks to safety**

Changes to CoR provisions of the HVN Law were introduced on 1 October 2018 amending the primary duty of parties within the chain of responsibility for the operation of a heavy vehicle. The expanded duty require parties to take positive steps that ensure "so far as is reasonably practicable" that their conduct firstly, does not cause or encourage the driver or any other party to breach any CoR laws, and secondly, their actions or systems actively contribute to the reduction or elimination of known safety issues concerning heavy vehicle operation.

This means that all parties with control or influence over the operation of a heavy vehicle are now under a 'positive duty' to actively reduce known risks to the safe operation of heavy vehicles.

## **Registered Codes of practice under the HVN Law and the 'positive duty'**

The development of registered codes of practice under the HVN Law identifies known safety risks within transport operations. In addition, the codes of practice identify what systems of risk reduction, management and compliance meet the standard required by a 'positive duty' to reduce the known risks. Compliance with a registered code of practice under the HVN Law can provide certainty for those influencing the operation of a heavy vehicle that their actions have discharged their duty to actively minimise safety risks under CoR laws.

On 1 November 2019 the Master Industry Code of Practice applying to parties within the chain of responsibility for all heavy vehicles was registered under the HVN Law.

Heavy vehicles in the forest industry will following its development and registration as an industry specific code of practice be subject to the National Log Haulage registered code of practice being developed by AFCA.

Information on Chain of Responsibility and The Master Industry Code of Practice can be found at [www.nhvr.gov.au](http://www.nhvr.gov.au).

## **Fatigue management – regulated heavy vehicles**

Under the HVN Law a person must not ask, direct or require (directly or indirectly) the driver of a heavy vehicle to drive a heavy vehicle while impaired by fatigue. Similarly the HVN Law prohibits a person from driving a fatigue-regulated heavy vehicle on a road while the person is impaired by fatigue.

A fatigue-regulated heavy vehicle is a vehicle with a GVM of more than 12 tonnes. This includes a vehicle combination of a total GVM of more than 12 tonnes

Broadly, the heavy vehicle fatigue laws cover work and rest requirements, work diaries, fatigue management exemptions and chain of responsibility obligations.

## **Compliance**

All parties should implement a risk-based approach to prevent drivers from being impaired by fatigue when operating a heavy vehicle.

## **Hirer or prime contractor**

In regard to fatigue management, a hirer or prime contractor must ensure that;

- business practices do not cause a driver to drive while fatigued or breach their work and rest hours option;
- demands by other parties do not result in a driver driving while impaired by fatigue;
- driver fitness for duty is assessed and the fatigue of a driver is managed;

- accurate records are kept for the driver of a fatigue-regulated heavy vehicle by the driver;
- driver fatigue levels are monitored, work and rest times are recorded and reviewed.

## Haulage Contractor

To demonstrate compliance with CoR laws, a forestry contractor must:

- comply with driving hours regulations – do not exceed the regulated hours for driving and working;
- take the required rest breaks – you should rest when you are tired and make sure you get adequate sleep;
- record your driving hours as required;
- make sure your vehicle does not exceed mass limits;
- make sure your vehicle and load do not exceed dimension limits;
- make sure your load is appropriately restrained;
- not exceed the speed limit;
- not tamper with any equipment required to be fitted to your vehicle; and
- make sure the vehicle is appropriately maintained.

## More Information

Telephone NHV Regulator on 1300 696 or go to [www.nhvr.gov.au](http://www.nhvr.gov.au).

The Master Industry Code of Practice is available at [www.nhvr.gov.au/safety-accreditation-compliance/industry-codes-of-practice/master-industry-code-of-practice](http://www.nhvr.gov.au/safety-accreditation-compliance/industry-codes-of-practice/master-industry-code-of-practice)

## Work and rest requirements

In addition to the general duty to not drive a fatigue-regulated heavy vehicle on a road while fatigued, drivers must comply with certain maximum work limits and minimum rest limits. Parties in the supply chain are required to take all reasonable steps to prevent drivers from exceeding these limits. This is similar to occupational health and safety laws and means that drivers must stop if they are at risk of exceeding the limits and make alternative arrangements.

The HVN Law provides for three work and rest arrangements: standard hours and, through the National Heavy Vehicle Accreditation Scheme, Basic Fatigue Management or Advanced Fatigue Management modules. These optional accreditations give operators more flexibility on when a driver can work and rest, if they have a compliant fatigue management system that properly manages the risks of driver fatigue.

## Work diaries

Law requires most drivers of a fatigue-regulated heavy vehicle to create a record of time spent working (including driving time) and resting daily. A work diary is evidence that a driver's work and rest hours are compliant with the law and that their fatigue is being managed.

The HVN Law names the circumstances where a work diary must be used – namely, when drivers of fatigue-regulated heavy vehicles:



- drive more than 100km from their home base; or
- operate under Basic Fatigue Management or Advanced Fatigue Management.

This applies unless the driver has a work diary exemption through either a notice or permit.

## Fatigue management exemptions

Drivers and hirers may apply to the NHV Regulator for an exemption from the work and rest requirements as well as the obligation to keep a work diary where they cannot reasonably work with those requirements. These exemptions are referred to as ‘fatigue management exemptions’. The NHV Regulator has strict approval criteria for fatigue management exemption applications.

Fatigue management exemptions provide hirers and drivers an opportunity to use alternative methods to comply with the objectives of the HVN Law, while at the same time maintaining a high level of driver safety.

### More Information

- Go to the NHV Regulator’s website at [www.nhvr.gov.au](http://www.nhvr.gov.au) or telephone 1300 778 478.

## 3.11 New technologies

New and emerging technologies have the potential to significantly improve safety and efficiency in the transport industry.

You may adopt a range of electronic work diaries and speed and mass monitoring devices to improve your productivity and record-keeping. Some systems can even monitor tyre and engine condition to allow for efficient fleet management. Staying up to date with new technologies can assist you as a forestry contractor to achieve administrative and safety improvements.

With the introduction of Cooperative Intelligent Transport Systems (C-ITS) in Australia, vehicles and surrounding infrastructure will be able to exchange information about the location, speed and direction of other road users. This will improve road safety and has the potential to reduce road congestion and allow for the more efficient movement of road freight.

### More Information

- Go to the NTC website at [www.ntc.gov.au](http://www.ntc.gov.au) for more information about emerging technologies and legal obligations.

## 3.12 Tree Faller’s Manual

The Tree Faller’s Manual is an essential handbook for forest operators and others who need to fell trees manually using a hand-held chainsaw.

The manual is based on the national competency standards for the forest and forest products industry where tree felling is covered using three categories: basic, intermediate and advanced.

1. **Basic** tree felling applies to trees that are relatively small, with a single stem and no defects.

2. **Intermediate** tree felling covers trees with single or multiple stems, limited defects, and lean and weight distribution that can be adapted to felling direction
3. **Advanced** tree felling applies to larger and more complex trees and includes trees deemed to be more hazardous.

Workplace safety, risk assessment and site preparation are included along with the theory, techniques and tools for each of the tree-felling categories.

### More Information

- Go to the ForestWorks website at [www.forestworks.com.au/services/learning-resources-and-tools/skills-standards-and-qualification-resources/](http://www.forestworks.com.au/services/learning-resources-and-tools/skills-standards-and-qualification-resources/) for more information about the Tree Faller's Manual.
- To purchase a copy of the Tree Faller's Manual, go to CSIRO publishing at [www.publish.csiro.au/book/6657](http://www.publish.csiro.au/book/6657).

## 3.13 Generic/industry-specific codes of practice

In addition to existing legislation and regulations, as a business operator you need to be aware of a range of generic and industry-specific codes of practice and guides that would need to be adhered to and followed.

## Section C – Haulage contractors

### 3.14 Important safety information

The *Transport Industry Safety Group: Occupational Health and Safety Guide* is one of the most important and comprehensive publications on health and safety issues for the transport (haulage) industry. It was developed by the Transport Industry Safety Group (TISG). The guide provides information on risk management, incident reporting and investigation, fatigue management, health and safety priorities, and where to go for training.

### More Information

Copies can be obtained from:

- the Transport Workers Union, telephone: 1300 727 614 or go to [www.twu.asn.au](http://www.twu.asn.au).
- the Victorian Transport Association on telephone: 03 9646 8590 or go to [www.vta.com.au](http://www.vta.com.au)
- VicRoads at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au). Follow the link to Heavy Vehicles – Information Bulletins.

## Transport Safety Pack

Workplace accidents have a devastating impact on staff morale, families and productivity.

The Transport Industry Safety Group has recently produced a safety pack DVD with the aim of improving safety in the transport industry. The DVD contains fact sheets, video clips and other materials to assist in training sessions.

### More Information

- The Safety Pack can be obtained from the Victorian Transport Association on telephone: 03 9646 8590.

Information on the NHVR website provides guidance on the responsibilities and includes helpful Chain of Responsibility fact sheets and material. Including:

- Container weight declarations;
- Measurement adjustment;
- Reasonable steps defence;
- Risk-based categorisation of offences; and
- Roles and responsibilities of parties in the supply chain.

### 3.15 Loading and unloading and maintaining logs

Haulage contractors are required to restrain their load in accordance with the HVN Law.

Contractors have obligations under the *Road Safety Act 1986 (Vic)* and a duty of care to ensure that when they are unloading their vehicle they do not expose other road users to death or injury.

Heavy mobile plant, machines and people are involved in loading, restraining and unloading. The way in which the logs are loaded and restrained has a big impact on safety during transportation as well as unloading.

When loading, logs should be restrained by stanchions. Mixed loads (short and long logs) can become loose and fall on someone. Extra care should be taken, with longer logs placed to the outside against the stanchions. Operators of plant and haulage vehicles should ensure that the ground is firm and level so that loading machinery and haulage vehicles remain stable during loading. Plant and equipment needs to be regularly inspected and maintained.

Restraints should be appropriate for the type and species of logs and should be used in sufficient number to adequately secure the load. Binders and lashings should be inspected regularly to see that they are in good condition. Binders should be secured to prevent the load from shifting during transport. When leaving the forest and before entering public roads, loads should be inspected, and restraints adjusted to ensure the logs have not shifted and will not pose a threat to persons or other vehicles.

One of the big risks when unloading logs is that the load may shift or move. Prior to unloading the load should be assessed and it should be restrained and secured to prevent log movement when the restraints are released. Skilled operators who have had proper training and who are following mill procedures should only use unloading machines. Contractors not involved in unloading, should remain in full view of the unloader operator – the best position is the front of the truck.

The AFCA is leading the development of an industry and national Log Haulage Registered Code of Practice.

ForestWorks has produced a Log Haulage Manual that is designed primarily for use by workers in forest coupes, plantations and log yards, but is also a valuable reference for people involved with planning and supervising haulage operations. The scope of the manual is designed to include all activities related to moving forest produce from a landing or roadside dump in the forest to a wood yard at a processing or export facility.

The manual also gives an overview of the requirements of Heavy Vehicle National Law and provides practical information to help drivers understand their obligations under regulations dealing with fatigue, mass and dimensions, and load restraint.

### More Information

- You can access the Load Restraint Guide 2018 from the National Transport Commission's website at [www.ntc.gov.au/heavy-vehicles/safety/load-restraint-guide/](http://www.ntc.gov.au/heavy-vehicles/safety/load-restraint-guide/).
- See VicRoads website at [www.vicroads.vic.gov.au/safety-and-road-rules/vehicle-safety/securing-your-load](http://www.vicroads.vic.gov.au/safety-and-road-rules/vehicle-safety/securing-your-load).
- Information on the Log Haulage Registered Code of Practice is available from AFCA's website at [www.afca.asn.au/news-projects-2/log-haulage-registered-code-of-practice](http://www.afca.asn.au/news-projects-2/log-haulage-registered-code-of-practice)
- ForestWorks' Log Haulage Manual is available at [http://www.forestworks.com.au/wp-content/uploads/2016/09/LogHaulageManual.Web\\_.pdf](http://www.forestworks.com.au/wp-content/uploads/2016/09/LogHaulageManual.Web_.pdf)

### 3.16 Licence requirements

Drivers who wish to drive a vehicle greater than 4.5 tonnes GVM must have a heavy vehicle endorsement on their licence. There are now five categories of heavy vehicle licences and these are as follows:

Licence Categories	Description and Eligibility
Light Rigid (LR)	You may drive any rigid vehicle, including bus and truck, greater than 4.5 tonnes GVM but equal to or less than 8 tonnes GVM or a vehicle that seats more than 12 adults including the driver that has a GVM not greater than 8 tonnes GVM. <i>To apply for this category, you must have held a car driver licence for at least 12 months.</i>
Medium Rigid (MR)	You may drive any 2-axle rigid vehicle, including bus and truck, greater than 8 tonnes GVM. <i>To apply for this category, you must have held a car driver licence for at least 12 months.</i>
Heavy Rigid (HR)	You may drive any rigid vehicle with three or more axles, including bus or truck, greater than 8 tonnes GVM. <i>To apply for this category, you must have held a car driver licence for at least 24 months.</i>
Heavy Combination (HC)	You may drive a prime mover or single semi-trailer exceeding 9 tonnes, or rigid vehicle plus trailer greater than 9 tonnes GVM.

	<i>To apply for this category, you must have held a car driver licence for at least 24 months, including Medium Rigid or Heavy Rigid licence for at least 12 months.</i>
Multi Combination (MC)	You may drive a heavy combination vehicle with one or more added trailers. <i>To apply for this category, you must have held a Heavy Combination, Heavy Rigid or a combination of Heavy Rigid and a Heavy Combination vehicle licence for at least 12 months, plus the completion of an approved course.</i>

You can drive any class of vehicle listed above your licence category in the above table.

### More Information

- Check VicRoads website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) by following the links to Business & Industry – Heavy vehicle industry.
- See also the Victorian Bus and Truck Drivers Handbook. You can purchase the Victorian Bus and Truck Drivers Handbook from the VicRoads Bookshop (phone 03 9854 2782) or download it at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) (follow the links to: Business & Industry - Heavy vehicle industry – Heavy vehicle road safety -Bus and truck driver handbook).

### Heavy vehicle driving tests

To prepare for heavy vehicle driving and knowledge tests, drivers should refer to the Victorian Bus and Truck Drivers Handbook. This contains the legal and road safety requirements that must be followed by bus and truck drivers. For example, it provides information on:

- what is required by industry to operate trucks;
- the laws that apply to heavy vehicles; and
- the requirements necessary to gain a truck licence.

Applicants for a heavy vehicle driving licence must be familiar with the information contained in the Handbook. Driving tests are designed to test low speed manoeuvring, control of the vehicle, loading, trailer use and driving on the road. Heavy vehicle driver training and tests are provided by VicRoads' accredited heavy vehicle training and test providers. A list of these accredited organisations can be found on VicRoads' website.

### More Information

- See Victorian Bus and Truck Drivers Handbook (see above).
- A list of heavy vehicle accredited test and training providers can be found on VicRoads website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) and follow the links to Licences – Licence and permit types – Heavy vehicle Licence – Accredited heavy vehicle training and test providers. A sample test is also available from this website.

### Heavy vehicle driving restrictions

Drivers of heavy vehicles must comply with the following conditions:

- If tested in a vehicle fitted with synchromesh transmission, drivers may only drive a vehicle fitted with synchromesh transmission (B restriction) or an automatic transmission.
- If tested in a vehicle fitted with non-synchromesh transmission, drivers may drive a vehicle fitted with any type of transmission.
- Drivers must have a zero-blood alcohol limit when driving any bus or any truck that exceeds 15 tonnes gross vehicle mass.
- Drivers must carry a licence always while driving if the truck is greater than 15 tonnes gross vehicle mass. In accordance with National Heavy Vehicle Law drivers of fatigue-regulated heavy vehicles who drive 100km or more from their home base or operate under Basic Fatigue Management or Advanced Fatigue Management must complete a work diary to record their work and rest times.

### More Information

- VicRoads website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) and follow the links to Licenses – Licence and permit types – Heavy vehicle Licence – How to get a heavy vehicle licence. See also the Victorian Bus and Truck Drivers Handbook (see above).

### 3.17 Accreditation

Accreditation is a certification process which allows a transport operator to show that they have safe and responsible work practices, well-maintained vehicles, healthy and trained drivers, and good management systems. The two main accreditation schemes are the National Heavy Vehicle Accreditation Scheme and TruckSafe.

#### National Heavy Vehicle Accreditation Scheme

The National Heavy Vehicle Accreditation Scheme (NHVAS) allows for operators of heavy vehicles to demonstrate that they comply with mass and/or maintenance requirements. The scheme ensures safe and correct loading practices and increased life of vehicle and lower maintenance costs. Accredited operators gain exemption from time-consuming annual vehicle inspections and can carry heavier loads on approved roads, as properly maintained suspensions cause less road damage. Another advantage is that accredited operators will get a greater say in when drivers can drive and rest under fatigue management laws. To become accredited, operators need to:

- develop an in-house Quality Assurance System;
- document the procedures that staff must follow to achieve compliance;
- produce sets of documents that prove compliance; and
- undergo internal and independent external audits from time to time.

#### TruckSafe

TruckSafe Pty Ltd is a business and risk management system that aims to improve the safety and professionalism of transport companies and truck drivers. TruckSafe focuses on seven standards.

## Concessional Mass Limits Program

Transport operators in Victoria, New South Wales, Queensland and South Australia can access Concessional Mass Limits (CML) subject to certain conditions. CML provides additional mass benefits for the operation of some general access vehicles accredited under the NHVAS, Mass Management module. CML provides an incentive for accreditation by effectively retaining the former National Association of Australian State Road Authorities tolerance levels for general access vehicles.

For forestry contractors who are paid by the tonne, these developments are significant. Being able to carry a greater mass may increase your profitability. It could be well worth your while talking to your hirer about participating in these schemes.

### More Information

- National Heavy Vehicle Regulation website at <https://www.nhvr.gov.au/>
- VicRoads website at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au).
- Australian Trucking Association: telephone 02 6253 6900 or go to <https://www.trucksafe.com.au/>
- For information on intelligent access programs, see Transport Certification Australia's website at [www.tca.gov.au](http://www.tca.gov.au) or telephone 03 8601 4600.

## 3.18 Mass, dimensions, oversize and rear overhang limits

The HVN Law provides General Mass Limits (GML), Concessional Mass Limits (CML) and Higher Mass Limits (HML) for heavy vehicles operating on the national road network.

It is an offence to drive on a highway:

- a vehicle which is overloaded;
- a vehicle exceeding permitted dimensions; and
- a vehicle exceeding rear overhang limits.

The owner and driver of the vehicle must be aware of the vehicle's mass, dimension and rear overhang limits. These limits can be calculated in a variety of ways depending on the type and size of the vehicle.

When mass, dimension or rear overhang dimensions are exceeded to ease the movement of large indivisible loads, i.e. large harvesting equipment, permission must be obtained by seeking a permit from VicRoads.

### More Information

- National heavy vehicle mass and dimension limits available from NHVR at [www.nhvr.gov.au/files/201607-0116-mass-and-dimension-limits.pdf](http://www.nhvr.gov.au/files/201607-0116-mass-and-dimension-limits.pdf).

### 3.19 Route and planning information

Certain load or height limits apply to bridges and sections of roads. It is essential for you to understand which bridges and sections of roads you can travel on, as heavy penalties may be imposed for non-compliance. You may also be required to pay for damage caused to roads or bridges that could not take the weight or height of your vehicle.

Drivers must not drive their vehicles beneath a bridge 'LOW CLEARANCE' or 'CLEARANCE' if the height of their vehicle, including the load, is equal to or greater than the height shown on the sign. Many roads carry warning signs and drivers should look out for these, so they can take alternative routes.

### B-doubles and higher mass limit vehicles

B-doubles and higher mass limit vehicles are only allowed to operate where they can do so safely in relation to other traffic and where the roads are suitable. Drivers of these vehicles must carry the following VicRoads' information bulletins in the driver's compartment:

- B-doubles and Higher Mass Limit Trucks, May 2004.
- Local Roads Approved for B-doubles and Higher Mass Limits Trucks, May 2006.
- 26 metre B-doubles, November 2005, for vehicles longer than 25 metres and up to 26 metres long.
- Height Clearance on Roads, January 2000, for vehicles that can exceed 4.5 metres in height.

In addition, operators must carry any permits for B-doubles to travel on specific roads.

### More Information

- VicRoads website: [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) and follow the links to Business & Industry - Heavy vehicle industry.
- Call VicRoads Permit Officers: 03 9881 8853.

### Load limits for Victorian bridges

A list of the load limits for Victorian bridges can be found on the VicRoads' website.

### More Information

- VicRoads website: [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) by following the links to Business & Industry - Heavy vehicle industry.
- VicRoads Permit Officers: 9881 8853.

### Truck curfews and brake noise

Some residential areas are subject to truck curfews, or have signage asking drivers not to use engine brakes in the area. The VicRoads' website contains information about where truck curfews operate, and how to reduce engine brake noise.



## More Information

- VicRoads website: [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au) by following the links to Business & Industry - Heavy vehicle industry– Registration, permits, curfews and compliance– Truck Curfews.
- Contact VicRoads Permit Officers: 9881 8853.

### 3.20 Codes of behaviour

Some haulage contractors have developed their own code of behaviour after extensive consultation, for example the Ash Salvage Carters. A code of behaviour is not legally enforceable, but it is expected that most haulage contractors will follow. Examples of the issues covered are:

- load security;
- mass limits;
- allowing traffic to pass;
- travelling on the correct side of the road;
- travelling through roadworks;
- load height;
- use of engine brakes in towns;
- dropping of dust;
- driver inexperience;
- fatigue management;
- travelling through towns and school crossings; and
- use of CB radios.

It is important for all those involved in the industry to work in accordance with this and any other similar codes of behaviour.

## More Information

- Ash Salvage Carters and Drivers Self-Regulating Code of Behaviour:  
<http://www.vicforests.com.au/static/uploads/files/ash-salvage-revised-code-of-behaviour-draft-3-wfbtlnhpjisp.pdf>
- VicForests website: [www.vicforests.com.au](http://www.vicforests.com.au).

### 3.21 Your health and wellbeing

Looking after your health is like looking after your vehicle – regular care and maintenance pays off in the long run.

Being fit and healthy is not only a good thing for your personal wellbeing but will also help make you a safer and more alert driver.

## More Information

- VicHealth: [www.vichealth.vic.gov.au/be-healthy](http://www.vichealth.vic.gov.au/be-healthy).

## Stress

Stress is a critical issue for all workplaces. Feeling stressed can affect your safety on the road and your family and relationship.

As well as personal issues, causes of stress for drivers include communication difficulties, bullying, workplace changes, traffic, unresolved health and safety issues, excessive performance monitoring, poor work organisation and difficulties dealing with clients or the public.

Signs that stress has become a problem include, feelings of anger or frustration, loss of concentration, poor memory, prolonged sleeplessness and disturbing dreams, anti-social behaviour, indecisiveness, absenteeism, reduced performance, demand for more precise instructions, increased smoking or alcohol consumption, or drug taking, and ill-health such as frequent headaches, gastro-intestinal disturbance.

## More Information

On health, stress and wellbeing

- Lifeline Suicide Prevention: telephone 13 11 14
- Suicide Helpline Victoria: telephone 1300 651 251
- Mental Health Services: telephone 1300 767 299
- SANE Mental Health Infoline: telephone 1800 187 263
- Gamblers Help: telephone 1800 156 789
- Quitline: telephone 13 78 48
- Turning Point Drug and Alcohol: telephone 1800 888 236
- Mensline Australia: telephone 1300 789 978

## Workplace bullying and violence

Workplace bullying is repeated, unreasonable behaviour directed towards workers that creates a risk to health and safety. Some examples of behaviour that may constitute bullying, especially where that behaviour occurs repeatedly are:

- verbal abuse;
- excluding or isolating employees;
- psychological harassment;
- intimidation;
- assigning employees meaningless tasks unrelated to the job;
- deliberately changing work rosters to inconvenience employees; and
- deliberately withholding information that is vital for effective work performance.

Workplace violence occurs where a worker is physically attacked or threatened. A threat occurs where behaviour or a statement causes another person to believe they are in danger of being physically attacked.

If you experience workplace bullying or violence or you are aware of it occurring, report it to your hirer or to your workplace health and safety representative and to WorkSafe advisory staff or inspectors. Seek advice from your union or professional association.

### More Information

- You can contact WorkSafe Victoria advisory staff or inspectors for advice on 1800 136 089 (Toll Free).
- Fair Work Commission: <https://www.fwc.gov.au/disputes-at-work/anti-bullying>