

INSTRUMENT OF APPOINTMENT OF NEGOTIATING AGENT – OWNER DRIVER

Owner Drivers and Forestry Contractors Act 2005

Background Information for Owner Drivers

Division 5 of Part 2 of the *Owner Drivers and Forestry Contractors Act 2005* (Vic) (the Act) sets out a process that allows owner drivers to appoint a person or a group of persons to negotiate on their behalf with a hirer. Your “negotiating agent” could be an accountant or consultant, a trade union or industry association, or an owner driver colleague or a negotiating committee of colleagues.

The agent can negotiate on your behalf with a hirer in relation to the making, variation or termination of your contract including your conditions and rates. A group of owner drivers can appoint an agent to act for all of them to deal with their common hirer. If a group of owner drivers want to appoint the same agent, each owner driver needs to fill out their own instrument of appointment. Under section 64 of the Act, certain joint negotiations of groups of owner drivers with their common hirer are authorised for the purposes of the *Competition and Consumer Act 2010* (Cth).

Under section 26 of the Act, if you give a copy of this instrument of appointment to your hirer, then the hirer must not refuse to recognise your agent, and the hirer must (if you request) deal exclusively with the agent within the scope of the agent’s authority. If you want the hirer to negotiate only with your agent, and not with you, then you need to tick the relevant box in section 3 of the instrument below.

The Act provides that a person must not coerce, or attempt to coerce, a person to appoint or not to appoint, a particular person as their negotiating agent, or to terminate the appointment of a negotiating agent.

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

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

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Section 1: Owner Driver's details

*Each owner driver appointing an agent should complete a separate instrument of appointment

Owner Driver's details

Name

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

ACN (for companies)

Main contact person

- If you trade as a sole trader, provide your own personal contact details
- If you trade as a company or partnership, provide the details of the person who the hirer should contact

Name of contact person

Telephone number (business)

Telephone number (mobile)

Email address

Address for correspondence

Company name

Street

Suburb

State

Postcode

Section 2: Agent's details

Name of agent(s)

(Use full formal name of the agent:
for example, Transport Workers' Union of Australia" or, "Smith and Beech Solicitors")

Name

Contact person at the agent

(Provide the details of the person who the hirer will mainly be dealing with)

Name of contact person

Telephone number
(business)

Telephone number
(mobile)

Email address

Address for correspondence

Company name

Street

Suburb

State

Postcode

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Section 3: Appointment of Agent

To _____ (hiring company's name)

Take notice that:

Option 1: For sole trader/individual owner drivers

I, _____ (owner driver's name)

Option 2: For owner drivers using companies or partnerships

I, _____ (individual's name), a person with lawful authority on behalf of
_____ (owner driver's company or partnership name)

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

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

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

*owner driver r to mark applicable boxes

Signature _____

Date _____

Section 4: Agent's agreement

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

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

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

Name (print) _____ on behalf of (agent's name) _____

Signature _____

Date _____