TIP TRUCK

CODE OF

PRACTICE

# FOREWoRD

The Tip Truck Code of Practice (**the Code**) provides best practice guidance about terms and conditions of engagement of tip truck owner drivers working on building and construction sites in Victoria.

It was developed by the Victorian Transport Industry Council and endorsed by the Victorian Minister for Industrial Relations. The Council is established under the *Owner Drivers and Forestry Contractors Act 2005* (**ODFC Act**) and includes representatives from the following organisations:

* Australian Industry Group
* Victorian Chamber of Commerce and Industry
* VicRoads
* Victorian Trades Hall Council
* Victorian Transport Association

The ODFC Act aims to improve the position of owner driver small businesses in the transport industry by providing them with information and support essential to operate a successful business and access to a low-cost dispute resolution service.

The Code has been developed in response to Recommendation 30 of the Victorian Inquiry into the Labour Hire Industry and Insecure Work, which states that the Transport Industry Council should consider developing a facilitative, industry-based Code of Practice for the tip truck industry.

While the guidance provided in the Code is not mandatory, hirers who pay tip truck owner drivers in accordance with the Code can be confident they will be paying rates that will enable owner drivers to operate their businesses safely and sustainably.

# Objective

The objective of the Code is to ensure tip truck owner drivers working on building and construction sites are paid rates that enable them to operate their businesses safely and sustainably.

# Application

1. The Code applies to tip truck owner drivers engaged in the removal of soil, rock or debris from excavation work on building and construction projects (building, infrastructure, civil engineering or other capital works projects) in Victoria.
2. The Code applies to tip truck owner drivers and hirers within the scope of the ODFC Act.
3. The ODFC Act applies to owner driver businesses that operate up to three vehicles in the transportation of goods. The ODFC Act only applies where the owner of the business, or an officer of the body corporate, drives one of the vehicles. The party engaging the tip truck owner driver to transport goods is regarded as the hirer under the ODFC Act.

# Best Practice Guidance

1. The Code sets out best practice guidance for hirers and owner drivers relating to engagement terms and conditions specific to tip truck drivers in the building and construction sector.
2. Hirers that pay tip truck owner drivers in accordance with the best practice guidance can be confident they will be paying tip truck owner drivers rates that will enable them to operate their businesses safely and sustainably.
3. Having information about the typical operating costs of a tip truck business will assist tip truck owner drivers to assess whether they should accept the rate being offered by hirers, before entering into a contract. It will also allow better-informed negotiations.

## Rates/Payments

1. Hirers should pay owner drivers a rate that:

* covers their vehicle operating costs; and
* provides a return for their labour; and
* delivers a return on their business investment.

1. Hirers and owner drivers should negotiate the terms of their engagements in good faith.

### Hourly Rates

1. The Transport Industry Council has developed [six advisory rates and costs schedules](https://www.business.vic.gov.au/.../tip-truck-rates-and-cost-schedules) (Schedules) for the tip truck sector that can be used as the basis for negotiating hourly payments. The Schedules set out indicative costs of owner driver tip truck businesses including:

* variable costs – including fuel and tyres;
* fixed costs – including registration and finance;
* rates for the driver’s labour; and
* return on business investment.

1. The Tip Truck Schedules can be accessed from the following link:

<https://www.business.vic.gov.au/setting-up-a-business/owner-drivers-and-forestry-contractors/owner-drivers-and-hirers/tip-truck-rates-and-cost-schedules>

1. Using the Schedules during payment negotiations ensures hirers and owner drivers have considered the full range of costs.

### Per-load Daily Rates

1. The use of per-load payment structures can result in owner drivers being paid a rate that may not fully cover their operating costs. Events beyond a driver’s control, such as traffic conditions or delays at construction sites, could result in a driver being unable to complete the number of loads needed to operate profitably.
2. These factors need to be considered by hirers and owner drivers when negotiating a realistic and fair per-load daily rate.

## Payment of Substitute Drivers

### Employee Drivers

1. Substitute drivers engaged as employees must be paid in accordance with the relevant modern award, enterprise agreement or employment contract.

### Contractor Drivers

1. Owner drivers that lawfully engage substitute drivers as contractors are not legally required to pay a minimum wage. However, the labour rates set out in the Schedules should be used to determine the labour rate to be paid to contractors engaged to drive an owner driver’s tip truck.

## Citylink, Eastlink and Westgate Tolls

1. Hirers should reimburse owner drivers for toll costs incurred if:

* the hirer directs the owner driver to take a toll road; or
* the owner driver needs to take a toll road to complete their trip.

1. If hirers do not reimburse the toll costs, owner drivers should include these costs as part of their cost calculation. The price of the trip will depend on the following factors:

* distance travelled;
* the type of vehicle used;
* whether travel is during peak or off-peak times; and
* the account or pass selected.

1. Heavy Commercial Vehicles are subject to tolls for travel on Citylink, Eastlink and the Westgate Freeway. The following websites can be used to ascertain current toll rates:

[www.linkt.com.au/melbourne](http://www.linkt.com.au/melbourne)

[eastlink.com.au/toll-calculator](file:///C:\Users\viche8a\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\6QGDU06N\eastlink.com.au\toll-calculator)

<http://westgatetunnelproject.vic.gov.au/about/keytopics/tolls>

## Loading and Waiting Time

1. As loading and waiting time is largely beyond the control of owner drivers, hirers should pay the drivers from the time they arrive on site to the time they depart from site.
2. Owner drivers should be paid for the time they spend on site at the hirer’s instruction.
3. The payment of an hourly rate provides a predictable way of determining the amount owner drivers should receive for loading and waiting time.
4. If per-load payment structures are in place, hirers should agree how owner drivers will be paid for loading and waiting times.

## Minimum Hire and Cancellation

1. Owner drivers should be paid a minimum hire rate if they have been engaged by a hirer and the work is then cancelled at the hirer’s instruction with less than 24 hours’ notice.
2. The minimum hire rate if work is cancelled with less than 24 hours’ notice is a period of four hours calculated on the hourly fixed rate and labour costs in the applicable Schedule.
3. If hirers provide alternative paid work to owner drivers, the minimum hire rate for cancellation should not be applied.
4. The minimum hire rate does not apply to the cancellation of work if the hirer has cancelled work with less than 24 hours’ notice due to events outside their control.

## Wet Weather and Cancellation

1. Owner drivers should be paid a minimum hire rate if they have attended site but are prevented from working due to wet weather and the work is cancelled.
2. The minimum hire rate if work is cancelled (detailed above) after site attendance should be applied plus one hour calculated on the hourly fixed rate and labour costs in the applicable Schedule. This will compensate the owner driver for their travelling time.

## Payment Terms

1. Hirers should pay owner drivers’ invoices within 30 days of receipt of an invoice unless there is a dispute over the amount payable.
2. Hirers and owner drivers can agree on alternative payment arrangements that are fair to both parties.

## The Heavy Vehicle National Law (HVNL)

1. Owner drivers and hirers must comply with their legal obligations under the HVNL in relation to:

* fatigue management for vehicles over 12 tonne Gross Vehicle Mass (GVM);
* mass, dimension and loading for vehicles over 12 tonne GVM;
* vehicle maintenance and standards for vehicles over 4 tonnes GVM; and
* chain of responsibility for vehicles over 4.5 tonne GVM.

### National Heavy Vehicle Accreditation Scheme (NHVAS)

1. Operated by the National Heavy Vehicle Regulator, the NHVAS is a compliance scheme for the operation of heavy vehicles. The NVHAS recognises those operators who have robust safety and other management systems in place.

### Monitoring Weight

1. Hirers and owner drivers should have systems in place to monitor load weights to ensure compliance with legal requirements relating to gross and axle weights.
2. To reduce the risk of owner drivers exceeding mass limits, on-board mass monitoring systems can be used.

### Vehicle Standards

1. Owner drivers should ensure their vehicles are maintained in good mechanical condition, as heavy vehicles on public roads must be of a roadworthy standard and maintained in a condition that prevents or minimises safety risks.
2. Vehicle defects have a significant negative impact on the safe operation of heavy vehicles. Defects in critical components such as brakes, steering, suspension, wheels, tyres and hubs can contribute to the likelihood of drivers losing control of their vehicle.
3. Owner drivers should ensure mechanical faults are identified, diagnosed and fixed as they arise. Accurate maintenance records should be kept to provide evidence that vehicles have been properly maintained.

### Licensing and Vehicle Registration

1. Owner drivers must:

* hold a valid driver’s licence for the category of vehicle they are operating; and
* ensure their vehicle is registered in the correct category to drive on public roads in Victoria.

1. Victoria has a graduated licensing system, meaning classes of heavy vehicle licences are only available to people who meet the minimum age requirements and have the required experience in the licensing category.
2. Hirers should validate the owner driver’s registration, licence category and experience to satisfy themselves the owner driver can legally drive the category of vehicle.
3. Owner drivers should immediately notify hirers if the status or conditions of their driver’s licence or registration change.

### Further Information about HVNL

1. Further information about legal requirements under the HVNL can be found at: [www.nhvr.gov.au](file:///C:\Users\viche8a\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\6QGDU06N\www.nhvr.gov.au)

# Help and Support

For further information about or assistance with the application of the Code contact:

Industrial Relations Victoria: irv.info@dpc.vic.gov.au

Transport Workers Union - Vic Branch: info@twu.asn.au

Victorian Transport Association: reception@vta.com.au