

Terms of reference

Background

The *Owner Drivers and Forestry Contractors Act 2005* (**ODFC Act**) aims to improve the position of small businesses in the transport and forestry industries by providing them with information and support to operate successfully. It also provides a framework for resolving disputes in a timely and cost effective manner. The ODFC Act does not apply to employee drivers, or set mandatory minimum rates of pay.

The *Owner Drivers and Forestry Contractors Regulations 2006* (**Regulations**) specify the persons who are not contractors for the purposes of the ODFC Act, and prescribes the *Owner Drivers and Forestry Contractors Code of Practice* (**Code**). The Code contains some mandatory requirements concerning the engagement of contractors, and provides guidance on conduct that is likely to be unconscionable and contract terms that are likely to be unjust for the purposes of the ODFC Act. The Code also provides guidance to promote fair and equitable business relationships between contractors and their hirers.

Since the introduction of the ODFC Act and Regulations there have been substantive developments at the Commonwealth level in relation to the regulation of the road transport industry. In 2012, the Commonwealth Road Safety Remuneration System was established, but was subsequently abolished in April 2016.

The ODFC Act was a response to the recommendations of the Inquiry into Owner Drivers and Forestry Contractors, which found many contractors had low financial returns resulting in high rates of business failure. There was also evidence of long working hours and high ongoing business costs. The research that supported the Inquiry is now dated, it is timely to undertake a comprehensive Review.

Terms of Reference

The Review will consider changes within the Victorian transport and forestry industries and at the national level, since the introduction of the ODFC Act and Regulations. It will identify whether any changes could be made to the ODFC Act and Regulations to improve the position of owner drivers and forestry contractors, while ensuring a competitive and fair operating environment for small businesses in Victoria.

The Review will include an examination of the following:

- the objectives of the ODFC Act and Regulations
- the coverage of the ODFC Act
- the contracting requirements
- the disputes resolution mechanisms
- the governance, membership and functions of the Forestry Industry Council and Transport Industry Council
- the mandatory requirements, guidance material and best practice information within the Code
- any systematic avoidance of responsibilities and rights under the ODFC Act and Regulations, and ways to address these matters
- the introduction of compliance and enforcement arrangements
- the regulatory burden imposed by the ODFC Act and Regulations
- the national legislative and regulatory developments; and
- changes that have occurred within the Victorian transport and forestry industries.

The Review will also consider the following recommendations of the Victorian Inquiry into the Labour Hire Industry and Insecure Work, which relate to the ODFC Act and Regulations:

- the Transport Industry Council give consideration to developing a comprehensive, industry based rates and costs schedule and/or code,

which would apply to the tip truck industry. This schedule should be primarily facilitative, and not mandatory in nature; and

- the threshold requirements upon hirers to provide the applicable rates and costs schedules to owner drivers be reviewed, to ensure that the requirement is triggered based on the usual hiring practices in the tip truck industry.

Managed by Industrial Relations Victoria under the industrial relations portfolio, the Review is being undertaken on the basis that contractors operate as small businesses within a framework of commercial laws.

The Review of the ODFC Act and Regulations will involve consultation with key stakeholders in the national and Victorian transport and forestry industries.

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