
TRANSPORT

TN301

Owner-Drivers (Contracts and Disputes) Act 2007

Owner-Drivers (Contracts and Disputes) (Code of Conduct) Amendment Regulations 2023

SL 2023/29

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Owner-Drivers (Contracts and Disputes) (Code of Conduct) Amendment Regulations 2023*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 June 2023.

3. Regulations amended

These regulations amend the *Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010*.

4. Part 1 heading inserted

Before regulation 1 insert:

Part 1 — Preliminary**5. Regulation 1 amended**

In regulation 1 delete “(Code of Conduct)”.

6. Part 2 heading inserted

After regulation 2 insert:

Part 2 — General

7. Regulation 2A inserted

Before regulation 3 insert:

2A. Transport association prescribed (Act s. 3)

Western Roads Federation Pty Ltd
(ABN 74 622 040 322) is prescribed for the purposes
of the definition of *transport association* in section 3
of the Act.

8. Part 3 inserted

After regulation 3 insert:

Part 3 — Right of entry: authority for representatives

4. Terms used

In this Part —

approved form means a form approved by the Chief
Commissioner for the purposes of the provision in
which the term is used;

Chief Commissioner has the meaning given in the IR
Act section 7(1);

Commission has the meaning given in the IR Act
section 7(1);

Commission's website means the website maintained
by, or on behalf of, the Commission.

5. Application for issue of authority

(1) An application to the Registrar made under
section 34B(1) of the Act for the person (the
nominated person) nominated in the application to be
issued with an authority under section 34B(2) of the
Act must —

- (a) be in the approved form; and
- (b) have attached to the application a current
passport size and style photograph of the
nominated person.

- (2) For the purposes of subregulation (1)(b), the secretary making the application must certify on the back of the photograph that the person depicted in the photograph is the nominated person.

6. Form of authority

A written authority issued by the Registrar under section 34B(2) of the Act is to be in the form of a laminated card and must include —

- (a) the words, as a heading, “Authorised Representative, Right of Entry and Inspection, *Owner-Drivers (Contracts and Disputes) Act 2007* section 34B(2)”; and
- (b) the name of the authorised representative; and
- (c) the words, appropriately completed, “(full name of the authorised representative) whose photograph and signature appear below, is appointed as an Authorised Representative for the purposes of the *Owner-Drivers (Contracts and Disputes) Act 2007* Part 8 Division 3.”; and
- (d) a photograph of the authorised representative; and
- (e) the signature of, and date of issue by, the Registrar; and
- (f) the signature of the authorised representative; and
- (g) the uniform resource locator of the Commission’s website.

7. Secretary must notify Registrar of change of address

If an authority is issued under section 34B(2) of the Act, the secretary of the organisation that applied for the issue of the authority must advise the Registrar of any change to the address of the authorised representative.

8. Application to revoke an authority

- (1) An application under section 34D(1)(a) of the Act to revoke the authority of an authorised representative must be in the approved form.
- (2) An application under section 34D(3) of the Act to revoke or suspend the authority of an authorised representative must —
 - (a) be in the approved form; and
 - (b) be served on the secretary of the organisation that made the application under section 34B(1) of the Act for the issue of the authority.

9. Secretary must notify Registrar of change in status

If an authority is issued under section 34B(2) of the Act, the secretary of the organisation that applied for the issue of the authority must, within 28 days of the authorised representative ceasing to be a person to whom a new authority could be issued, notify the Registrar of that fact.

10. Register of authorised representatives

- (1) The Registrar must keep a register of authorities issued under section 34B(2) of the Act.
- (2) The Commission must publish on the Commission's website an up-to-date copy of the register of authorities.

9. Schedule 1 clause 8 amended

In Schedule 1 clause 8(3) delete "section" (1st occurrence) and insert:

clause

10. Schedule 1 clause 11 amended

In Schedule 1 clause 11(1) delete "section" (1st occurrence) and insert:

clause

11. Schedule 1 clause 12 amended

In Schedule 1 clause 12(1) delete "must, in accordance with section 13," and insert:

must

Note: The heading to amended Schedule 1 clause 12 is to read:

Information to be recorded by hirer: time for payment

12. Schedule 1 clause 12A inserted

After Schedule 1 clause 12 insert:

12A. Information to be recorded by hirer: termination of contract

- (1) A hirer must record the following information in respect of each terminated owner-driver contract to which the hirer was a party —
 - (a) the day on which the notice of termination of the contract was given;
 - (b) the day on which the termination of the contract takes effect;
 - (c) if the hirer terminated the contract by payment in lieu of notice to the owner-driver — the day on which the payment was provided to the owner-driver and the amount paid.
- (2) The information in subclause (1) must be —
 - (a) recorded as soon as is reasonably practicable after the notice of termination of the contract was given; and
 - (b) kept for a period of 6 years after the day on which the termination of the contract takes effect.

13. Schedule 1 clause 13 amended

- (1) In Schedule 1 clause 13(1):
 - (a) delete “section 12” and insert:

clauses 12 and 12A
 - (b) in paragraph (a) delete “specifically” and insert:

exclusively
- (2) In Schedule 1 clause 13(2) delete “section 12” and insert:

clauses 12 and 12A

14. Schedule 1 Appendix 1 amended

- (1) Delete the reference after the heading to Schedule 1 Appendix 1 and insert:

[cl. 7(2)(b)]

- (2) In Schedule 1 Appendix 1 under the heading “***The Act and Code of Conduct***” delete the 1st paragraph and insert:

The Code of Conduct has been made under the *Owner-Drivers (Contracts and Disputes) Act 2007* (“the Act”) Part 4. The Code of Conduct complements the provisions in the Act.

- (3) In Schedule 1 Appendix 1 under the heading “***Rights and Obligations***” delete “introduce a number of new” and insert:

impose

- (4) In Schedule 1 Appendix 1 before the heading “***If paid/when paid’ Banned***” insert:

Minimum notice period

Where an owner-driver contract contains a provision that purports to allow a party to terminate the contract by giving notice of less than the minimum notice period, the Act provides that the provision has no effect.

The notice period is the period beginning on the day on which one party gives the other party written notice of termination of the contract and ending on the day on which the termination of the contract is to take effect.

The minimum notice period is 90 days. However, the minimum notice period of 90 days does not apply where the aggregate term of the original contract and any consecutive series of successive contracts between the same parties that contain substantially similar terms and conditions is less than 90 days. In that case the minimum notice period is 7 days.

Where an owner-driver contract does not have a valid provision about the notice period, the Act implies the following terms into the contract.

A party may terminate the contract by giving the other party written notice of the termination that states the day on which notice is given and the day on which the termination of the contract is to take effect. The notice has no effect if the notice period is less than the minimum notice period unless one of the following applies:

- The contract is terminated due to —
 - a material breach of the contract; or
 - the serious and wilful misconduct of the owner-driver; or
 - exceptional circumstances beyond the control of the terminating party that were not reasonably foreseeable at the time of entering into the contract.

- The hirer terminates the contract immediately by paying the owner-driver the total amount that would be payable under the contract in respect of the minimum notice period, less 25%.
 - The hirer terminates the contract and gives a period of notice that is less than the minimum notice period and pays the owner-driver both —
 - the amount payable for work performed by the owner-driver during the notice period; and
 - the amount that would be payable under the contract in respect of the balance of the minimum notice period, less 25%.
- (5) In Schedule 1 Appendix 1 under the heading “**Unconscionable Conduct Banned**” after the 3rd bullet point insert:
- Whether any term of the owner-driver contract is an unfair term, including the following —
 - whether the term causes a significant imbalance in the parties’ rights and obligations arising under the contract;
 - whether the term is reasonably necessary in order to protect the legitimate interests of a party;
 - whether the term would cause significant detriment (financial or otherwise) to a party if it were to be applied or relied on;
 - whether the term provides for the payment by the hirer to the owner-driver of the guideline rate.

- (6) In Schedule 1 Appendix 1 before “**Disclaimer:**” insert:

Misleading or Deceptive Conduct Banned

The Act prohibits hirers and owner-drivers from engaging in conduct that is misleading or deceptive, or is likely to mislead or deceive, during the negotiation of owner-driver contracts.

Discrimination Banned

The Act prohibits a hirer from causing detriment to an owner-driver for the reasons set out in the Act. The reasons include:

- The owner-driver has claimed, or proposes to claim, a benefit or exercised, or proposes to exercise, a power or right that the owner-driver or a person associated with the owner-driver is entitled to claim or exercise under the Act or the Code of Conduct.
- The owner-driver has brought, or proposes to bring, or has otherwise participated in, a proceeding under the Act.

- The owner-driver has informed, or proposes to inform, any person of an alleged contravention of this Act, the Code of Conduct or an order of the Tribunal under the Act.
- The owner-driver has participated, or proposes to participate, in joint negotiations relating to owner-driver contracts or the engagement of an owner-driver.
- The owner-driver has raised, or proposes to raise, issues of health and safety in relation to the performance of services under an owner-driver contract.
- The owner-driver has sought, or proposes to seek, to —
 - negotiate a proposed owner-driver contract; or
 - renegotiate an existing owner-driver contract.

15. Various references to “section” amended

In the provisions listed in the Table delete “section” (each occurrence) and insert:

clause

Table

Sch. 1 cl. 5(2)(b)	Sch. 1 cl. 6(3)
Sch. 1 cl. 7(1)	Sch. 1 cl. 9(1), (2), (3), (6) and (7)
Sch. 1 cl. 10(1)(b) and (2)	

Note: The heading to Schedule 1 clause 10 is to read:

Deductions must be authorised by the contract or this clause

16. Various references to “subsection” amended

In the provisions listed in the Table:

- (a) delete “subsection” and insert:

subclause

(b) delete “Subsection” and insert:

Subclause

Table

Sch. 1 cl. 4(2)	Sch. 1 cl. 6(2)
Sch. 1 cl. 7(3), (4) and (5)	Sch. 1 cl. 8(2)
Sch. 1 cl. 11(2)	Sch. 1 cl. 12(2)
Sch. 1 cl. 14(2)	

Note: The heading to regulation 3 is to read:

Code of Conduct prescribed (Act s. 26)

K. COLLERAN, Clerk of the Executive Council.
