

Owner-Drivers (Contracts and Disputes) Bill 2006

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used in this Act	2
4.	Meaning of “owner-driver”	3
5.	Meaning of “owner-driver contract”	4
6.	Application of Act	5
7.	Act prevails over owner-driver contracts	5
8.	Act binds Crown	6

Part 2 — Content of owner-driver contracts

Division 1 — Prohibited provisions

9.	Prohibited: pay if paid/when paid provisions	7
10.	Prohibited: provisions requiring payment to be made after 30 days	7
11.	Prohibited: prescribed provisions	7
12.	Other provisions of contract not affected	7

Division 2 — Implied provisions

13.	Time for payment	8
14.	Interest on overdue payments	8
15.	Making payment claims	8
16.	Interpretation of implied provisions	8

Contents

Part 3 — Road Freight Transport Industry Council		
17.	Road Freight Transport Industry Council established	9
18.	Membership of Council	9
19.	Functions	10
20.	Powers	10
21.	Minister may give directions	10
22.	Minister to have access to information	11
23.	Constitution and proceedings of Council	11
24.	Remuneration and allowances	11
25.	Department to provide support services to Council	12
Part 4 — Code of conduct		
26.	Regulations may prescribe code of conduct	13
27.	Content of code of conduct	13
Part 5 — Negotiations for owner-driver contracts		
28.	Negotiating agents for owner-drivers	16
29.	Negotiating agents for hirers	16
Part 6 — Unconscionable conduct		
30.	Unconscionable conduct by hirers	18
31.	Unconscionable conduct by owner-drivers	19
Part 7 — Inspectors		
32.	Functions of inspectors	22
33.	Obstructing or hindering inspector	22
Part 8 — Rights of entry, inspection and access to records		
34.	Access to records	23
35.	Right of entry by representative to investigate breaches	24
36.	Enforcement of section 35	26

Part 9 — Road Freight Transport Industry Tribunal

37.	Terms used in this Part	27
38.	Industrial Relations Commission sitting as the Road Freight Transport Industry Tribunal	27
39.	Jurisdiction to be exercised by Commissioner with necessary qualifications	28
40.	Persons who may refer disputes and matters to the Tribunal	28
41.	Intervention in proceeding	29
42.	Representation	29
43.	Applied provisions: practice, procedure and appeals	30
44.	Conciliation	31
45.	Compulsory attendance at conciliation	32
46.	Enforcement for the purposes of sections 44 and 45	32
47.	Determination of dispute where no resolution by conciliation	33
48.	Order to prevent entering into of owner-driver contracts	35
49.	Other jurisdictions	35
50.	Enforcement of monetary order	36
51.	Enforcement of order other than conciliation or monetary order	37

Part 10 — Miscellaneous

52.	Trade Practices Act and Competition Code	38
53.	Confidentiality	39
54.	Laying documents before Parliament	39
55.	Protection from liability	40
56.	Protection for compliance with this Act	40
57.	Regulations	40
58.	Consequential amendments	41
59.	Review of Act	41

Schedule 1 — Implied provisions

Division 1 — Responding to claims for payment

1.	Responding to a payment claim	42
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Contents

	Division 2 — Interest on overdue amounts	
2.	Interest payable on overdue amounts	42
	Division 3 — Making claims for payment	
3.	Content of claim for payment	42
	Schedule 2 — Constitution and proceedings of Council	
	Division 1 — General provisions	
1.	Term of office	44
2.	Chairman and deputy chairman	44
3.	Resignation, removal, etc.	44
4.	Leave of absence	45
5.	Council member unable to act	45
6.	Savings	45
7.	Calling of meetings	45
8.	Presiding officer	45
9.	Quorum	46
10.	Voting	46
11.	Minutes	46
12.	Resolution without meeting	46
13.	Holding meetings remotely	46
14.	Committees	46
15.	Council to determine own procedures	47
	Division 2 — Disclosure of interests etc.	
16.	Disclosure of interests	47
17.	Voting by interested members	47
18.	Clause 17 may be declared inapplicable	48
19.	Quorum where clause 17 applies	48
20.	Minister may declare clauses 17 and 19 inapplicable	48
	Schedule 3 — Consequential amendments	
1.	<i>Industrial Relations Act 1979</i> amended	49
2.	<i>Constitution Acts Amendment Act 1899</i> amended	49
	Defined Terms	

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Owner-Drivers (Contracts and Disputes)
Bill 2006**

A Bill for

An Act —

- **to promote a safe and sustainable road freight transport industry by regulating the relationship between persons who enter into contracts to transport goods in heavy vehicles and persons who hire them to do so; and**
- **to establish the Road Freight Transport Industry Tribunal and the Road Freight Transport Industry Council,**
and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Owner-Drivers (Contracts and Disputes) Act 2006*.

2. Commencement

5 (1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed under subsection (1) for different provisions.

10 Note: Under section 22 of the *Interpretation Act 1984*, this section and section 1 come into operation on the day on which this Act receives the Royal Assent.

3. Terms used in this Act

In this Act, unless the contrary intention appears —

“**code of conduct**” means the code of conduct made under Part 4;

15 “**Council**” means the Road Transport Freight Industry Council established by section 17;

“**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**goods**” includes freight and materials;

20 “**gross vehicle mass**” has the same meaning as it has in the *Road Traffic Act 1974* section 103B(4);

“**guideline rates**” means rates of payment published in accordance with section 27(1)(f);

25 “**heavy vehicle**” means a vehicle, as defined in the *Road Traffic Act 1974*, with a gross vehicle mass of more than 4.5 tonnes;

“**hirer**” means a person who engages an owner-driver under an owner-driver contract;

“inspector” means an Industrial Inspector as defined in the IR Act section 7;

“IR Act” means the *Industrial Relations Act 1979*;

5 **“owner-driver”** has the meaning given to that term in section 4;

“owner-driver contract” has the meaning given to that term in section 5;

“party”, in relation to an owner-driver contract, means a party to the contract;

10 **“payment claim”** means a claim made under an owner-driver contract —

(a) by the owner-driver to the hirer for payment of an amount in relation to the performance by the owner-driver of the owner-driver’s obligations under the contract; or

15 (b) by the hirer to the owner-driver in relation to the performance or non-performance by the owner-driver of the owner-driver’s obligations under the contract;

20 **“Registrar”** has the meaning given to that term by the IR Act section 7;

“Tribunal” has the meaning given to that term in section 38(2);

“workplace” means a place, whether or not in a vehicle, building or other structure, where owner-drivers or hirers work or are likely to be in the course of their work.

25 **4. Meaning of “owner-driver”**

(1) In this section —

“listed public company” has the same meaning as it has in the *Income Tax Assessment Act 1997* of the Commonwealth;

30 **“officer”**, of a body corporate, has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

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(2) For the purposes of this Act an **“owner-driver”** is —

(a) a natural person —

(i) who carries on the business of transporting goods in one or more heavy vehicles supplied by that person; and

(ii) whose principal occupation is the operation of those vehicles (whether solely or with the use of other operators); or

(b) a body corporate (other than a listed public company) that carries on the business of transporting goods in one or more heavy vehicles that are —

(i) supplied by the body corporate or an officer of the body corporate; and

(ii) operated by an officer of the body corporate (whether solely or with the use of other operators) whose principal occupation is the operation of those vehicles; or

(c) a partnership of persons, at least one of whom is a person referred to in paragraph (a).

5. Meaning of “owner-driver contract”

(1) For the purposes of this Act, an **“owner-driver contract”** is a contract (whether written or oral or partly written and partly oral) entered into in the course of business by an owner-driver with another person for the transport of goods in a heavy vehicle by the owner-driver.

(2) It does not matter that an owner-driver contract provides for an owner-driver to perform services other than transporting goods, as long as the services to be performed under the contract predominantly relate to the transport of goods.

(3) To avoid doubt, an owner-driver contract does not include a contract that is a contract of employment.

6. Application of Act

(1) This Act applies to and in relation to owner-drivers who are engaged —

- 5 (a) under an owner-driver contract that is entered into in Western Australia or that is subject to the law of Western Australia; or
- (b) to transport goods wholly within Western Australia; or
- 10 (c) to transport goods from Western Australia to another place, or from another place to Western Australia, if a substantial part of the services under the owner-driver contract are performed in Western Australia.

(2) However, this Act does not apply in relation to an owner-driver contract if the owner-driver who is a party to the contract has the benefit of, or is otherwise covered by —

- 15 (a) a contract determination made under Chapter 6 of the *Industrial Relations Act 1996* of New South Wales; or
- (b) an order made under the *Owner Drivers and Forestry Contractors Act 2005* of Victoria,

in relation to the contract.

20 7. Act prevails over owner-driver contracts

(1) A provision in an agreement or arrangement in force on, or entered into after, the coming into operation of this section, whether an owner-driver contract or not and whether in writing or not, that —

- 25 (a) purports to exclude, modify or restrict the operation of this Act or the code of conduct; or
- (b) is contrary to or inconsistent with anything in this Act, the code of conduct or an order of the Tribunal,

has no effect.

s. 8

- (2) A provision in an agreement or arrangement that has no effect because of subsection (1) does not prejudice or affect the operation of other provisions of the agreement or arrangement.
- 5 (3) Any purported waiver, whether in an owner-driver contract and whether in writing or not, of an entitlement under this Act has no effect.
- 10 (4) Despite subsection (1), during the 6 months beginning on and including the day on which this section comes into operation, a provision of an owner-driver contract that is contrary to or inconsistent with a provision of this Act or the code of conduct prevails to the extent of the inconsistency.

8. Act binds Crown

15 This Act binds the Crown in right of the State and, so far as the legislative power of Parliament permits, in all its other capacities.

Part 2 — Content of owner-driver contracts

Division 1 — Prohibited provisions

9. Prohibited: pay if paid/when paid provisions

5 A provision in an owner-driver contract has no effect if it purports to make the liability of a party (“A”) to pay money under the contract to another party contingent, whether directly or indirectly, on A being paid money by another person (whether or not a party).

10. Prohibited: provisions requiring payment to be made after 30 days

10 A provision in an owner-driver contract that purports to require a payment to be made more than 30 days after a payment claim for the payment is made is to be read as being amended to require the payment to be made within 30 days after the claim is made.

11. Prohibited: prescribed provisions

A provision in an owner-driver contract has no effect if it is a provision that is prescribed by the regulations to be a prohibited provision.

12. Other provisions of contract not affected

20 A provision in an owner-driver contract that has no effect because of section 9 or 11 or that is amended under section 10 does not prejudice or affect the operation of other provisions of the contract.

Division 2 — Implied provisions

13. Time for payment

5 The provisions in Schedule 1 Division 1 are implied in an owner-driver contract that does not have a written provision about the time by when a payment must be made.

14. Interest on overdue payments

10 The provisions in Schedule 1 Division 2 are implied in an owner-driver contract that does not have a written provision about interest to be paid on any payment that is not made within the time required by the contract.

15. Making payment claims

15 The provisions in Schedule 1 Division 3 are implied in an owner-driver contract that does not have a written provision about how a party is to make a payment claim against another party.

16. Interpretation of implied provisions

20 Despite any provision in an owner-driver contract to the contrary, the *Interpretation Act 1984* and sections 3 to 5 of this Act apply to the interpretation of a provision that is implied in an owner-driver contract under this Part.

Part 3 — Road Freight Transport Industry Council

17. Road Freight Transport Industry Council established

A body called the Road Freight Transport Industry Council is established.

5 18. Membership of Council

- (1) The Council is to consist of not more than 8 persons appointed by the Minister, having regard to the experience, skills and qualifications that the Minister considers appropriate to enable Council members to make a contribution to the work of the Council.
- 10 (2) A Council member may be appointed on a full-time or part-time basis.
- (3) The Minister shall seek nominations for appointments to the Council from —
- 15 (a) the chief executive officer of the Department; and
- (b) the Transport Forum WA Inc.; and
- (c) the Transport Workers Union of Australia, Industrial Union of Workers Western Australian Branch; and
- (d) any other person or body from which the Minister considers it appropriate to seek nominations and will specifically seek nominations from persons able to represent the interests of regional Western Australia.
- 20 (4) The Minister must consider nominations lodged under subsection (3) but may appoint a person as a Council member whether or not the person has been nominated under that subsection.
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s. 19

19. Functions

- (1) The functions of the Council are —
- (a) to provide advice and recommendations to the Minister in relation to the development and review of the code of conduct; and
 - (b) to prepare and review on a regular basis the guideline rates; and
 - (c) to promote, and to encourage compliance with, the code of conduct and the guideline rates; and
 - (d) to develop, publish and promote model owner-driver contracts; and
 - (e) to provide advice and recommendations to the Minister in relation to any other matters relevant to —
 - (i) owner-driver contracts; or
 - (ii) the commercial practices generally engaged in by owner-drivers and hirers in relation to each other.
- (2) The Council has any other function given to it under this Act or another written law.

20. Powers

- The Council has all the powers it needs to perform its functions.

21. Minister may give directions

- (1) The Minister may give written directions to the Council with respect to the performance of its functions, either generally or in relation to a particular matter, and the Council must give effect to any such direction.
- (2) The Minister must cause the text of any direction given under subsection (1) to be laid before each House of Parliament, or dealt with under section 54, within 14 days after the direction is given.

- (3) The text of a direction given under subsection (1) must be included in the annual report submitted by the accountable officer of the Department under the *Financial Administration and Audit Act 1985* section 66.

5 **22. Minister to have access to information**

- (1) In this section —

“**document**” includes any tape, disk or other device or medium on which information is recorded or stored;

10 “**information**” means information specified, or of a description specified, by the Minister that relates to the functions of the Council.

- (2) The Minister is entitled —

(a) to have information in the possession of the Council; and

15 (b) if the information is in or on a document, to have, and make and retain copies of, that document.

- (3) For the purposes of subsection (2), the Minister may —

(a) request the Council to furnish information to the Minister; and

20 (b) request the Council to give the Minister access to information.

- (4) The Council must comply with a request under subsection (3).

23. Constitution and proceedings of Council

25 Schedule 2 sets out provisions as to the constitution and proceedings of the Council.

24. Remuneration and allowances

30 Each Council member is to be paid the remuneration and allowances that the Minister, on the recommendation of the Minister for Public Sector Management, determines in the case of that member.

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25. Department to provide support services to Council

The Department must provide the Council with any support services that the Council reasonably requires.

Part 4 — Code of conduct

26. Regulations may prescribe code of conduct

- 5 (1) The Governor, on the recommendation of the Minister, may make regulations prescribing a code of conduct in relation to the engagement of owner-drivers under owner-driver contracts and conduct and practice under owner-driver contracts.
- (2) Before making a recommendation under subsection (1), the Minister must consult with the Council.

27. Content of code of conduct

- 10 (1) The code of conduct may —
- (a) provide for the conduct of negotiations for owner-driver contracts, whether on an individual or joint basis; and
 - (b) require a hirer to pay an owner-driver for services provided under an owner-driver contract at a safe and sustainable rate of payment and describe how a safe and sustainable rate of payment is to be determined; and
 - 15 (c) require a hirer to adopt the standards of conduct and practice set out in the code with respect to owner-drivers; and
 - 20 (d) require a hirer to make and keep records in relation to owner-drivers, owner-driver contracts, and services provided under owner-driver contracts, in the manner and form set out in the code of conduct; and
 - 25 (e) require a hirer, at such times as are specified in the code of conduct, to provide the owner-driver with written information that is to include the current guideline rates and any other information specified in the code of conduct; and
 - 30 (f) confer power on the Council to determine, amend or revoke, by notice published in the *Gazette*, guideline

s. 27

rates for the purpose of providing guidance as to rates and costs to —

- (i) owner-drivers and hirers when negotiating owner-driver contracts; and
 - 5 (ii) the Tribunal when determining whether payments have been made at a safe and sustainable rate;
- and
- 10 (g) provide for any other matter relevant to the engagement of owner-drivers under owner-driver contracts.
- (2) The Council must obtain the approval of the chairman of the Council before determining, amending or revoking any guideline rates.
- (3) The guideline rates are to —
- 15 (a) specify the class of owner-driver, vehicle and equipment to which they apply; and
- (b) contain the following information —
- (i) typical fixed and variable overhead costs for that class of owner-driver, vehicle and equipment;
 - 20 (ii) the base hourly rate or casual hourly rate that would typically apply to that class of owner-driver if an owner-driver of that class were, as an employee, performing substantially the same work.
- 25 (4) For the purposes of subsection (3)(b)(i), **“fixed and variable overhead costs”** include, but are not limited to —
- (a) vehicle or equipment registration, maintenance and running costs; and
 - (b) business administration and insurance costs (including any premiums payable under the *Workers’ Compensation and Injury Management Act 1981*); and
 - 30 (c) self-funding of superannuation; and

- (d) finance costs; and
- (e) costs of complying with any applicable laws; and
- (f) costs of engaging additional or relief labour; and
- (g) depreciation of vehicles and equipment.

Part 5 — Negotiations for owner-driver contracts

28. Negotiating agents for owner-drivers

- 5 (1) An owner-driver or group of owner-drivers may, by instrument, appoint a person or group of persons to be the negotiating agent for the owner-driver or owner-drivers in relation to the engagement of the owner-driver or owner-drivers, including the making, variation or termination of owner-driver contracts.
- 10 (2) Subject to subsection (3), a hirer must not refuse to recognise a negotiating agent duly appointed by an owner-driver or group of owner-drivers for the purposes of subsection (1).
- (3) Subsection (2) does not apply if the hirer has not been given a copy of the agent's instrument of appointment before the refusal.
- 15 (4) If requested to do so by the negotiating agent, a hirer must deal exclusively with the agent within the scope of the agent's authority.
- (5) A person must not coerce, or attempt to coerce, an owner-driver or group of owner-drivers —
- 20 (a) to appoint, or not to appoint, a particular person or group of persons as a negotiating agent; or
- (b) to terminate the appointment of a negotiating agent.

29. Negotiating agents for hirers

- 25 (1) A hirer may, by instrument, appoint a person or group of persons to be the negotiating agent for the hirer in relation to the engagement of an owner-driver or owner-drivers, including the making, variation or termination of owner-driver contracts.
- (2) Subject to subsection (3), an owner-driver or group of owner-drivers must not refuse to recognise a negotiating agent duly appointed by a hirer for the purposes of subsection (1).

- (3) Subsection (2) does not apply if the owner-driver, or a representative of the group, refusing has not been given a copy of the agent's instrument of appointment before the refusal.
- 5 (4) If requested to do so by the negotiating agent, an owner-driver or group of owner-drivers must deal exclusively with the agent within the scope of the agent's authority.
- (5) A person must not coerce, or attempt to coerce, a hirer —
 - (a) to appoint, or not to appoint, a particular person or group of persons as a negotiating agent; or
 - 10 (b) to terminate the appointment of a negotiating agent.

Part 6 — Unconscionable conduct

30. Unconscionable conduct by hirers

- 5 (1) A hirer must not engage in conduct that is, in all the circumstances, unconscionable with respect to an owner-driver in relation to the acquisition or possible acquisition by the hirer of services from the owner-driver under an owner-driver contract.
- 10 (2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether a hirer has contravened subsection (1), the Tribunal may have regard to the following —
- (a) the relative strengths of the negotiating positions of the hirer and owner-driver;
 - 15 (b) whether, as a result of conduct engaged in by the hirer, the owner-driver was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the hirer;
 - 20 (c) whether the owner-driver was able to understand any documents relating to the acquisition or possible acquisition by the hirer of services from the owner-driver under an owner-driver contract;
 - 25 (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the owner-driver (or a person acting on behalf of the owner-driver) by the hirer or a person acting on behalf of the hirer in relation to the acquisition or possible acquisition by the hirer of services from the owner-driver under an owner-driver contract;
 - 30 (e) the amount for which, and the circumstances under which, the owner-driver could have provided identical or equivalent services to a person other than the hirer, including as an employee;

- 5 (f) the extent to which the hirer's conduct towards the owner-driver was consistent with the hirer's conduct in similar transactions between the hirer and other similar owner-drivers;
- (g) the requirements of the code of conduct;
- (h) the extent to which the hirer unreasonably failed to disclose to the owner-driver —
- 10 (i) any intended conduct of the hirer that might affect the interests of the owner-driver; and
- (ii) any risks to the owner-driver arising from the hirer's intended conduct that are risks that the hirer should have foreseen would not be apparent to the owner-driver;
- 15 (i) the extent to which the hirer was willing to negotiate the terms and conditions of the acquisition or possible acquisition by the hirer of services from the owner-driver under an owner-driver contract;
- (j) the extent to which the hirer acted in good faith;
- 20 (k) whether or not the owner-driver contract provides for the payment of any increases in the owner-driver's fixed and variable overhead costs (as defined in section 27(4)).

31. Unconscionable conduct by owner-drivers

- 25 (1) An owner-driver must not engage in conduct that is, in all the circumstances, unconscionable with respect to a hirer in relation to the provision or possible provision by the owner-driver of services to the hirer under an owner-driver contract.
- (2) Without in any way limiting the matters to which the Tribunal may have regard for the purpose of determining whether an owner-driver has contravened subsection (1), the Tribunal may
- 30 have regard to the following —
- (a) the relative strengths of the negotiating positions of the owner-driver and hirer;

s. 31

- 5 (b) whether, as a result of conduct engaged in by the owner-driver, the hirer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the owner-driver;
- (c) whether the hirer was able to understand any documents relating to the provision or possible provision by the owner-driver of services to the hirer under an owner-driver contract;
- 10 (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the hirer (or a person acting on behalf of the hirer) by the owner-driver or a person acting on behalf of the owner-driver in relation to the provision or possible provision by the owner-driver of services to the hirer under an owner-driver contract;
- 15 (e) the amount for which, and the circumstances under which, the hirer could have acquired identical or equivalent services from a person other than the owner-driver, including from an employee;
- 20 (f) the extent to which the owner-driver's conduct towards the hirer was consistent with the owner-driver's conduct in similar transactions between the owner-driver and other similar hirers;
- (g) the requirements of the code of conduct;
- 25 (h) the extent to which the owner-driver unreasonably failed to disclose to the hirer —
- (i) any intended conduct of the owner-driver that might affect the interests of the hirer; and
- (ii) any risks to the hirer arising from the owner-driver's intended conduct that are risks that the owner-driver should have foreseen would not be apparent to the hirer;
- 30 (i) the extent to which the owner-driver was willing to negotiate the terms and conditions of the provision or

possible provision by the owner-driver of services to the hirer under an owner-driver contract;

- (j) the extent to which the owner-driver acted in good faith.

Part 7 — Inspectors

32. Functions of inspectors

- 5 (1) An inspector may, for the purposes of investigating whether or not this Act, the code of conduct or an owner-driver contract is being complied with, exercise any of the powers that an Industrial Inspector has under the IR Act section 98(3) and, for that purpose, a reference in that provision to —
- 10 (a) that Act is to be read as a reference to this Act or the code of conduct; and
- (b) an instrument is to be read as a reference to an owner-driver contract; and
- (c) industrial location is to be read as a reference to workplace.
- 15 (2) The IR Act section 98(4) and (5) apply in relation to the exercise of powers under this section as if the powers were exercised under that Act.

33. Obstructing or hindering inspector

- 20 (1) A person must not obstruct or hinder an inspector in the exercise of an inspector's powers under section 32.
- (2) A person must not fail to —
- (a) comply with a lawful requirement of an inspector; or
- (b) refuse or fail to answer a question lawfully put to the person by an inspector.
- 25 (3) A person must not give an inspector information that is false or misleading in a material particular.
- (4) A contravention of subsection (1), (2) or (3) is not an offence but those subsections are civil penalty provisions for the purposes of the IR Act section 83E.

Part 8 — Rights of entry, inspection and access to records

34. Access to records

(1) In this section —

5 **“relevant person”** means —

- (a) the owner-driver concerned; or
- (b) a person authorised in writing by the owner-driver to act on behalf of the owner-driver for the purposes of this section.

10 (2) A hirer, on written request by a relevant person, must —

- (a) produce to the relevant person the records relating to the owner-driver concerned that are required to be kept by the hirer under the code of conduct; and
- (b) let the relevant person inspect the records.

15 (3) The duty placed on a hirer under subsection (2) —

- (a) continues for so long as the records are required to be kept under the code of conduct; and
- (b) is not affected by the fact that an owner-driver contract is no longer in force; and

20 (c) includes the further duties —

- (i) to let the relevant person enter premises of the hirer for the purpose of inspecting the records; and
- (ii) to let the relevant person take copies of or

25 extracts from the records;

and

- (d) must be complied with not later than the seventh day after the day on which the request was made to the hirer.

30 (4) Nothing in this section limits or otherwise affects the powers of an inspector under this Act.

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- (5) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.

35. Right of entry by representative to investigate breaches

- 5 (1) In this section —
“**occupier**”, of a workplace, includes a person in charge of the workplace;
“**records**” means records required to be kept under a code of conduct;
10 “**representative**”, in relation to an owner-driver, means a person authorised in writing by the owner-driver to act on behalf of the owner-driver for the purposes of this section.
- (2) A representative of an owner-driver may enter, during working hours, any workplace where the owner-driver works, for the purpose of investigating any suspected breach of this Act, the code of conduct or an owner-driver contract to which the owner-driver is a party.
- 15 (3) If —
20 (a) a representative proposes to enter, or is in, a workplace in accordance with subsection (2); and
(b) the occupier requests the representative to show the representative’s written authorisation to act on behalf of the owner-driver,
the representative is not entitled under subsection (2) to enter or remain in the workplace unless the representative shows the occupier the written authorisation.
- 25 (4) For the purpose of investigating a suspected breach referred to in subsection (2), the representative may —
30 (a) subject to subsection (5), require the hirer to produce for the representative’s inspection, during working hours at the workplace or at any mutually convenient time and

- place, any records or other documents kept by the hirer that are related to the suspected breach; and
- (b) make copies of the entries in the records or documents related to the suspected breach; and
- 5 (c) during working hours, inspect or view any work, material, machinery or appliance, that is relevant to the suspected breach.
- (5) A representative is not entitled to require the production of records or other documents unless, before exercising the power, the representative has given the hirer concerned —
- 10 (a) if the records or other documents are kept at the workplace concerned, at least 24 hours' written notice of the requirement; or
- (b) if the records or other documents are kept elsewhere, at least 48 hours' written notice of the requirement.
- 15 (6) The Tribunal may, on the ex parte application of the representative, waive the requirement under subsection (5) to give the hirer concerned notice of an intended exercise of a power if the Tribunal is satisfied that to give such notice would defeat the purpose for which the power is intended to be exercised.
- 20 (7) If the requirement for notice is waived under subsection (6) —
- (a) the Tribunal must give the representative a certificate authorising the exercise of the power without notice; and
- 25 (b) the representative must, after entering the workplace and before requiring the production of the records or documents, give the person who is apparently in charge of the workplace the certificate or a copy of the certificate.
- 30 (8) Nothing in this section limits or otherwise affects the powers of an inspector under this Act.

s. 36

36. Enforcement of section 35

- (1) An occupier of a workplace must not refuse, or intentionally and unduly delay, entry to a workplace by a person entitled to enter the workplace under section 35(2).
- 5 (2) A person must not intentionally and unduly hinder or obstruct a representative in the exercise of the powers conferred by section 35.
- (3) A contravention of subsection (1) or (2) is not an offence but
10 those subsections are civil penalty provisions for the purposes of the IR Act section 83E.

Part 9 — Road Freight Transport Industry Tribunal

37. Terms used in this Part

(1) In this Part —

5 **“Chief Commissioner”** has the meaning given to that term in the IR Act section 7(1);

“Commission” has the meaning given to that term in the IR Act section 7(1);

“Commissioner” has the meaning given to that term in the IR Act section 7(1);

10 **“dispute”** means a dispute between one or more owner-drivers and one or more hirers arising under or in relation to this Act, the code of conduct or an owner-driver contract (including a payment dispute) and includes an allegation that a person has contravened this Act, the code of conduct
15 or an owner-driver contract;

“transport association” means —

 (a) the Transport Forum WA Inc.; or

 (b) the Transport Workers Union of Australia, Industrial Union of Workers Western Australian Branch.

20 (2) For the purposes of this Act, a **“payment dispute”** arises if, by the time the amount claimed in a payment claim is due to be paid under an owner-driver contract, the amount has not been paid in full, or the claim has been rejected or wholly or partly disputed.

25 **38. Industrial Relations Commission sitting as the Road Freight Transport Industry Tribunal**

(1) By this section the Commission has jurisdiction to —

 (a) hear and determine disputes that may be referred to the Commission under this Part; and

s. 39

- (b) enquire into and deal with any other matter in relation to the negotiation of owner-driver contracts that may be referred to the Commission under this Part.
- 5 (2) When sitting in exercise of the jurisdiction conferred by subsection (1) or under section 46, the Commission is to be known as the Road Freight Transport Industry Tribunal (the “**Tribunal**”).
- 10 (3) A determination of the Tribunal on a dispute or matter mentioned in subsection (1) has effect according to its substance.

39. Jurisdiction to be exercised by Commissioner with necessary qualifications

- 15 (1) The jurisdiction conferred by section 38 in respect of any dispute or matter is to be exercised by the Commission constituted by a Commissioner.
- (2) In allocating a dispute or matter for the purposes of subsection (1), the Chief Commissioner must have regard to the desirability of the Commissioner concerned having relevant knowledge of this Act and in the field of road freight transport.

20 **40. Persons who may refer disputes and matters to the Tribunal**

A dispute or matter may be referred to the Tribunal —

- (a) in the case of a dispute arising under or in relation to an owner-driver contract, by —
- 25 (i) a person who is a party to the owner-driver contract; or
- (ii) a transport association in which a party to the owner-driver contract is eligible to be enrolled as a member; or
- (iii) an inspector; or
- 30 (iv) the Minister;
- and

- (b) in the case of a dispute arising under or in relation to this Act or the code of conduct, or involving an allegation that a person has contravened this Act or the code of conduct, by —
- 5 (i) an owner-driver or hirer with a sufficient interest in the dispute; or
- (ii) a transport association; or
- (iii) except in a case involving an allegation that a person has contravened Part 6 — an inspector; or
- 10 (iv) the Minister;
- and
- (c) in the case of a matter arising in relation to the conduct of joint negotiations for an owner-driver contract by —
- 15 (i) an owner-driver or hirer with a sufficient interest in the matter; or
- (ii) a transport association; or
- (iii) the Minister.

41. Intervention in proceeding

20 The Minister may, on behalf of the State and by leave of the Tribunal, intervene in a proceeding of the Tribunal in which the State has an interest.

42. Representation

25 Any party to proceedings before the Tribunal, and any other person or body permitted by or under this Act to intervene or be heard in proceedings before the Tribunal, may appear —

- (a) in person; or
- (b) with the leave of the Tribunal, or in accordance with the regulations, by a legal practitioner or agent.

s. 43

43. Applied provisions: practice, procedure and appeals

- 5 (1) The following provisions (the “**applied provisions**”) of the IR Act that apply to and in relation to the exercise of the jurisdiction of the Commission constituted by a Commissioner apply to the exercise of the jurisdiction conferred by section 38(1) —
- (a) section 22B;
 - (b) section 26(1)(a) and (b), (2) and (3);
 - (c) section 27;
 - 10 (d) section 28;
 - (e) section 29B;
 - (f) section 32A;
 - (g) section 33;
 - (h) section 34(1), (3) and (4);
 - 15 (i) section 36;
 - (j) section 49;
 - (k) section 90;
 - (l) section 91;
 - (m) section 92.
- 20 (2) The applied provisions have effect —
- (a) with such modifications as may be prescribed under the IR Act section 113; and
 - (b) with such other modifications as the Tribunal determines may be necessary or appropriate.
- 25 (3) For the purposes of subsection (1), the IR Act section 90(1) applies as if paragraph (a) were deleted and the following paragraph were inserted instead —
- “
- (a) on the ground that the decision is in excess of
- 30 jurisdiction;
- ”.

44. Conciliation

- (1) This section applies where a dispute or matter has been referred to the Tribunal under this Part.
- (2) If the Tribunal considers that the issues involved may be resolved by conciliation —
- (a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and
- (b) for that purpose the Tribunal may —
- (i) arrange conferences of the parties or their representatives presided over by the Tribunal; and
- (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and
- (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.
- (3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this section.
- (4) If the Tribunal gives or makes a direction, order or declaration under subsection (3) the Tribunal must —
- (a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and
- (b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.
- (5) If the Tribunal —
- (a) takes action under subsection (2)(a); and

s. 45

- (b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination by order for the purposes of section 38 in terms of that agreement.

45. Compulsory attendance at conciliation

- (1) Subject to this section, the Tribunal may summon any person to attend, at a time and place specified in the summons, at conciliation proceedings under section 44.

- (2) A summons under this section —

- (a) may be given in the manner prescribed by the regulations; and
- (b) when so given, is to be taken, in any proceedings relating to the summons, to have been served on the person to whom it is directed unless that person, in those proceedings, satisfies the Tribunal or the Full Bench, as the case may be, that he or she did not receive the summons.

- (3) Any person so summoned must, except for good cause, proof of which is on that person, attend the conciliation proceedings at the time and place specified in the summons and continue to attend at that place as directed by the Tribunal.

46. Enforcement for the purposes of sections 44 and 45

- (1) If a person contravenes section 45(3), or a direction, order or declaration given or made under section 44(3) or section 45, the Tribunal —

- (a) on its own initiative; or
- (b) on the application of —
- (i) a person who is a party to the proceeding in relation to which the contravention arises; or

- (ii) a transport association in which a party to the proceeding in relation to which the contravention arises is eligible to be enrolled as a member; or
- (iii) the Minister,

5 may enforce that provision, direction, order or declaration as specified in subsection (4).

10 (2) An application for the enforcement of section 45(3), or a direction, order or declaration given or made under section 44(3) or section 45, must not be made otherwise than to the Tribunal.

 (3) The jurisdiction conferred by this section is to be exercised by the Commission constituted by a Commissioner.

15 (4) For the purposes of subsection (1) the Tribunal has all of the powers and duties of the Full Bench under the IR Act section 84A(4) to (8), and those provisions apply accordingly.

 (5) For the purposes of this section, the IR Act sections 82A and 103 apply as if references in those sections to section 84A were references to this section.

47. Determination of dispute where no resolution by conciliation

20 (1) If —

- (a) a dispute is referred to the Tribunal; and
- (b) the Tribunal takes action under section 44(2)(a); and
- (c) section 44(5)(b) does not apply,

25 the Tribunal may hear and determine the dispute for the purposes of section 38(1)(a).

 (2) The Tribunal does not have jurisdiction to make a determination under this section in respect of a matter arising in relation to the conduct of joint negotiations for an owner-driver contract.

s. 47

- (3) In making a determination mentioned in subsection (1), the Tribunal must endeavour to ensure that the matter is resolved —
- (a) taking into account any agreement reached by the parties on any particular issue; and
 - 5 (b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.
- (4) In making a determination mentioned in subsection (1), the Tribunal may do one or more of the following —
- 10 (a) order the payment of a sum of money —
 - (i) found by the Tribunal to be owing by one party to another party; or
 - (ii) by way of damages (including exemplary damages and damages in the nature of interest);
 - 15 or
 - (iii) by way of restitution;
 - (b) order the refund of any money paid under an owner-driver contract;
 - 20 (c) make an order in the nature of an order for specific performance of an owner-driver contract;
 - (d) declare that a debt is, or is not, owing;
 - (e) order a party to do, or to refrain from doing, something;
 - (f) make any other order it considers fair, including
 - 25 declaring void any unjust term of an owner-driver contract.
- (5) In making an order under subsection (4), the Tribunal cannot —
- (a) insert a term into; or
 - (b) subject to subsection (4)(f), otherwise vary,
- an owner-driver contract.

48. Order to prevent entering into of owner-driver contracts

- 5 (1) The Tribunal, when making an order under section 47 or at a later time, may make any further order the Tribunal considers appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions) a relevant person from —
- (a) entering into any specified kind of owner-driver contract; or
- (b) doing any act (whether by advertising or otherwise) that
10 may reasonably be construed as being intended to induce other persons to enter into any such contract.
- (2) An order under this section must identify the person or persons bound by the order and takes effect in respect of each of those persons on service of a copy of the order on the person.
- 15 (3) In this section —
- “relevant person”** means —
- (a) a party to the proceedings; or
- (b) any other person who is, in any way considered relevant by the Tribunal, associated with a party to
20 the proceedings.

49. Other jurisdictions

- (1) Where —
- (a) a dispute has been referred to the Tribunal; and
- (b) at the time the dispute was referred no issue arising
25 under the referral was the subject of civil proceedings before a court,
- a court has no jurisdiction to hear or determine such an issue in civil proceedings unless subsection (2) applies.
- 30 (2) This subsection applies if the dispute, or the part of the dispute to which the issue referred to in subsection (1) relates, is withdrawn or is dismissed for want of jurisdiction.

s. 50

(3) Where —

- (a) a dispute has been referred to the Tribunal; and
- (b) at the time the dispute was referred an issue arising under the referral was the subject of civil proceedings before a court,

5

the Tribunal, on becoming aware of those proceedings, ceases to have jurisdiction to hear or determine the issue unless subsection (4) applies.

(4) This subsection applies if —

10

- (a) the proceedings referred to in subsection (3) are, or the part of the proceedings relating to the issue referred to in that subsection is, transferred to the Tribunal by the court concerned; or

15

- (b) those proceedings are, or that part of those proceedings is, withdrawn or dismissed by the court or by another court on appeal in those proceedings, for want of jurisdiction or without deciding the issue on its merits; or

20

- (c) as a result of judicial review, a court quashes or declares invalid those proceedings or that part of those proceedings or any order, judgment or decision made in those proceedings in relation to the issue, on the ground that the court concerned had no jurisdiction to hear and determine the issue.

25 **50. Enforcement of monetary order**

(1) In this section —

“monetary order” means an order of the Tribunal requiring the payment or refund of money (including an order as to costs).

- (2) A person to whom a payment or refund is to be made under a monetary order may enforce the order by filing in a court of competent jurisdiction —
- 5 (a) a copy of the order that the Registrar has certified to be a true copy; and
- (b) the person's affidavit as to the amount not paid under the order and, if the order is to take effect upon any default, as to the making of that default.
- 10 (3) No charge is to be made for filing a copy of an order or an affidavit under this section.
- (4) On filing, the order is taken to be an order of the court, and may be enforced accordingly.

51. Enforcement of order other than conciliation or monetary order

- 15 (1) This section applies to an order of the Tribunal to the extent that the decision is not —
- (a) an order referred to in section 44(3); or
- (b) a monetary order (as defined in section 50(1)).
- 20 (2) A person who fails to comply with an order to which this section applies is to be taken to commit a contempt of the Industrial Appeal Court and is punishable by that court under the IR Act section 92.

Part 10 — Miscellaneous

52. Trade Practices Act and Competition Code

- (1) For the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code the following things
5 are authorised by this Act —
- (a) the making of a code of conduct; and
 - (b) anything done by a person in order to comply with this Act or a code of conduct; and
 - 10 (c) anything done by an owner-driver or group of owner-drivers preparatory to entering into, or in anticipation of, joint negotiations with a single business, including the appointment of a negotiating agent to conduct those joint negotiations; and
 - 15 (d) anything done by a negotiating agent, as authorised by this Act and in accordance with the agent's terms of appointment, in conducting joint negotiations with a single business; and
 - 20 (e) any dealings by an owner-driver or group of owner-drivers with their negotiating agent for the purposes of conducting joint negotiations with a single business.
- (2) For the purposes of this section —
- (a) a “**single business**” is a business, project or undertaking that is carried on by one hirer; and
 - 25 (b) if 2 or more hirers carry on a business, project or undertaking as a joint venture or common enterprise, the hirers are taken to be one hirer; and
 - (c) if 2 or more corporations that are related to each other for the purposes of the *Corporations Act 2001* of the
30 Commonwealth each carry on a single business —
 - (i) the corporations are to be treated as one hirer; and

- (ii) the single businesses are to be treated as one single business.

53. Confidentiality

5 A person who performs any function under this Act must not, directly or indirectly, disclose or make use of any information obtained in the course of duty except —

- 10 (a) in the performance of functions under this Act; or
(b) as required or allowed by any other law; or
(c) for the purpose of any legal proceedings arising out of the administration of this Act; or
(d) with the written consent of the Minister or the person to whom the information relates; or
(e) in other circumstances prescribed by the regulations.

Penalty: a fine of \$12 000 and imprisonment for 12 months.

15 **54. Laying documents before Parliament**

- (1) If —

- 20 (a) at the commencement of the period referred to in section 21(2) or Schedule 2 clause 20(2) in respect of a document a House of Parliament is not sitting; and
(b) the Minister is of the opinion that that House will not sit during that period,

the Minister must transmit a copy of the document to the Clerk of that House.

- 25 (2) A copy of a document transmitted to the Clerk of a House is to be taken to have been laid before that House.

- (3) The laying of a copy of a document that is taken to have occurred under subsection (2) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

s. 55

55. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- 5 (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been
- 10 capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

56. Protection for compliance with this Act

- (1) No civil or criminal liability attaches to a person for
- 15 compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produced a document or other material as required under this Act, no civil liability attaches to the person for producing the document or material, whether the
- 20 liability would arise under a contract or otherwise.

57. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the
- 25 purposes of this Act.
- (2) Without limiting the application of the *Interpretation Act 1984* section 43, regulations made under this Act may adopt wholly or partly any standards, rules, code or other provisions published by some other body and may adopt them —
- 30 (a) with or without amendment or modification; and

- (b) as in force at the time of adoption or as amended from time to time.

58. Consequential amendments

5 The Acts mentioned in Schedule 3 are amended as set out in that Schedule.

59. Review of Act

- 10 (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from the commencement of this section and, in the course of that review, the Minister must consider and have regard to —
 - (a) the effectiveness of the operations of the Council and the Tribunal; and
 - 15 (b) the need for the continuation of the functions of the Council and the Tribunal; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- 20 (2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, and in any event not more than 12 months after the expiry of the 5 year period referred to in subsection (1), must cause it to be laid before each House of Parliament.

Schedule 1 — Implied provisions

[s. 13, 14, 15, 16]

Division 1 — Responding to claims for payment

1. Responding to a payment claim

5 Within 14 days after a party receives a payment claim, the party must do one of the following —

- (a) pay the part of the amount of the claim that is not disputed;
- (b) pay the whole of the amount of the claim.

Division 2 — Interest on overdue amounts

10 2. Interest payable on overdue amounts

(1) Interest is payable on so much of an amount that —

- (a) is payable under this contract by a party to another party on or before a certain date; and
- (b) is unpaid after that date.

15 (2) The interest must be paid for the period beginning on the day after the date on which the amount is due and ending on and including the date on which the amount payable is paid.

(3) The rate of interest at any time is equal to that prescribed for that time under the *Civil Judgments Enforcement Act 2004* section 8(1)(a).

20 Division 3 — Making claims for payment

3. Content of claim for payment

A payment claim must —

- (a) state the name of the claimant; and
- (b) state the date of the claim; and
- 25 (c) in the case of a claim by the owner-driver — itemise and describe the obligations under this contract that the owner-driver has performed and to which the claim relates in sufficient detail for the hirer to assess the claim; and

- (d) in the case of a claim by the hirer — describe the basis for the claim in sufficient detail for the owner-driver to assess the claim; and
- (e) be given to the party against which the claim is made.

Schedule 2 — Constitution and proceedings of Council

[s. 23]

Division 1 — General provisions

1. Term of office

- 5 A Council member holds office for the term, not exceeding 3 years, that is specified in the instrument of his or her appointment, but may from time to time be re-appointed.

2. Chairman and deputy chairman

- (1) The Minister is to appoint one Council member to be the chairman.
- 10 (2) The Council is to elect one Council member to be the deputy chairman.
- (3) If the chairman is unable to act by reason of sickness, absence or other cause, or during any vacancy in that office, the deputy chairman is to perform the functions of the chairman.

3. Resignation, removal, etc.

- 15 (1) The office of a Council member becomes vacant if he or she —
- (a) resigns the office by written notice addressed to the Minister; or
- 20 (b) is an insolvent under administration as defined in the *Corporations Act 2001* of the Commonwealth; or
- (c) is removed from office by the Minister under subclause (2).
- (2) The Minister may remove a Council member from office if the Minister is satisfied that the member —
- 25 (a) has neglected his or her duty; or
- (b) has misbehaved; or
- (c) is incompetent; or
- (d) is suffering from mental or physical incapacity impairing the performance of his or her functions; or

- (e) has been absent, without leave and reasonable excuse, from 3 consecutive meetings of the Council of which the member has had notice.

4. Leave of absence

5 The Council may grant leave of absence to a Council member on the terms and conditions that it thinks fit.

5. Council member unable to act

- (1) If a Council member, other than the chairman, is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while acting in accordance with the appointment, that other person is taken to be a Council member.
- (2) If the Council member who is deputy chairman is performing the functions of the chairman, the Minister may, under subclause (1), appoint another person to act in his or her place as a Council member.
- (3) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

6. Savings

20 No act or omission of a person acting in place of another person under clause 5 is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

7. Calling of meetings

- (1) Subject to subclause (2), meetings are to be held at the times and places that the Council determines.
- 25 (2) A special meeting of the Council may at any time be convened by the chairman.
- (3) The first meeting of the Council is to be convened by the chairman.

8. Presiding officer

- 30 (1) The chairman is to preside at all meetings of the Council at which he or she is present.

- (2) If both the chairman and the deputy chairman are absent from a meeting, the Council members present are to appoint one of their number to preside.

9. Quorum

- 5 A quorum for a meeting of the Council is at least one half of the number of Council members.

10. Voting

- (1) At any meeting of the Council each Council member present has a deliberative vote.
- 10 (2) If the votes cast on a question are equally divided, the person presiding has a casting vote on the question.

11. Minutes

The Council is to cause accurate minutes to be kept of the proceedings at its meetings.

15 **12. Resolution without meeting**

- (1) A resolution of the Council in writing signed by each Council member, or assented to by each Council member by letter, telegram, telex, facsimile transmission, email or other similar means, has the same effect as if it had been passed at a meeting.
- 20 (2) The Council must cause a record to be kept of each resolution under subclause (1).

13. Holding meetings remotely

- 25 The presence of a Council member at a meeting of the Council need not be by attendance in person but may be by that member and each other Council member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

14. Committees

- (1) The Council may appoint committees to assist it in the performance of its functions, and may discharge or alter any committee so appointed.

- (2) A committee may include persons who are not members of the Council.
- (3) Subject to the directions of the Council, a committee may determine its own procedures.

5 **15. Council to determine own procedures**

Subject to this Act, the Council is to determine its own procedures.

Division 2 — Disclosure of interests etc.

16. Disclosure of interests

- 10 (1) A Council member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

Penalty: A fine of \$10 000.

- 15 (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

17. Voting by interested members

- (1) A Council member who has a material personal interest in a matter that is being considered by the Council —

- 20 (a) must not vote whether at a meeting or otherwise —

(i) on the matter; or

(ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different Council member;

25 and

- (b) must not be present while —

(i) the matter; or

(ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

30 is being considered at a meeting.

18. Clause 17 may be declared inapplicable

Clause 17 does not apply if the Council has at any time passed a resolution that —

- 5 (a) specifies the Council member, the interest and the matter; and
 (b) states that the Council members voting for the resolution are satisfied that the interest should not disqualify the Council member from considering or voting on the matter.

19. Quorum where clause 17 applies

- 10 (1) Despite clause 9, if a Council member is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 Council members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- 15 (2) The Minister may deal with a matter insofar as the Council cannot deal with it because of subclause (1).

20. Minister may declare clauses 17 and 19 inapplicable

- (1) The Minister may by writing declare that clause 17 or 19 does not apply, or both of them do not apply, in relation to a specified matter either generally or in voting on particular resolutions.
- 20 (2) The Minister must cause a copy of a declaration under subclause (1) to be laid before each House of Parliament, or dealt with under section 54, within 14 days after the declaration is made.

Schedule 3 — Consequential amendments

[s. 58]

1. *Industrial Relations Act 1979* amended

- 5 (1) The amendments in this clause are to the *Industrial Relations Act 1979**.

[* *Reprint 10 as at 8 July 2005.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1 and Acts Nos. 34 of 2004 and 36 of 2006 .]

- 10 (2) Section 113(1)(d)(ii) is amended after item (II) by inserting —

“

and

- (III) the *Owner-Drivers (Contracts and Disputes) Act 2006*;

”

2. *Constitution Acts Amendment Act 1899* amended

- (1) The amendment in this clause is to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 14 as at 21 April 2006.*

For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1 and Acts Nos. 5, 28 and 43 of 2006.]

- (2) Schedule V Part 3 is amended by inserting after the item relating to the Road Safety Council the following item —

“

The Road Freight Transport Industry Council established under the *Owner-Drivers (Contracts and Disputes) Act 2006*.

”

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
A.....	9
applied provisions	43(1)
Chief Commissioner.....	37(1)
code of conduct	3
Commission	37(1)
Commissioner	37(1)
Council	3
Department	3
dispute	37(1)
document	22(1)
fixed and variable overhead costs.....	27(4)
goods	3
gross vehicle mass.....	3
guideline rates	3
heavy vehicle	3
hirer	3
information	22(1)
inspector	3
IR Act	3
listed public company.....	4(1)
monetary order.....	50(1)
occupier	35(1)
officer	4(1)
owner-driver.....	3, 4(2)
owner-driver contract	3, 5(1)
party	3
payment claim.....	3
payment dispute	37(2)
records	35(1)
Registrar	3
relevant person.....	34(1), 48(3)
representative	35(1)
single business	52(2)
transport association.....	37(1)
Tribunal	3, 38(2)
workplace.....	3