

Frequently Asked Questions

Owner-Driver's Act

What is a "safe and sustainable rate"?

A safe and sustainable rate is a rate high enough for an efficient and competent owner-driver to maintain a viable business. The rate of payment should provide the owner-driver with a reasonable income, after covering the costs of running and maintaining the vehicle/s and the business.

A rate of payment is a safe and sustainable rate if it is calculated to provide:

- A fair return for the owner-driver's labour, including driving, loading, unloading and performing other services and associated activities;
- Recovery of the fixed and variable operating costs reasonably incurred by the owner-driver in providing the services; and
- A reasonable return on the owner-driver's investment in the business.

Because every business will have a different cost structure, it is important that owner-drivers know their costs and the "sustainable" rate they need to maintain a viable business. The rate will vary for different freight tasks.

It is called a "safe and sustainable" rate because low rates of payment can cause financial pressures - which can tempt owner-drivers to compromise on safety. Safety compromises can include driving over the speed limit, overloading vehicles, driving too many hours each day, and/or cutting back on vehicle maintenance. A "safe and sustainable" rate means that owner-drivers do not have to bend or break the rules to avoid going broke.

How can I work out what is a "safe and sustainable rate"?

To work out a suitable rate of payment, owner-drivers first need to have a good understanding of their business costs. The Department of Transport has developed a guide to help owner-drivers do this: [Running a trucking business in Western Australia: A guide for owner-drivers](#) (pdf 300kb). The guide is available online and on compact disc. If you would like a copy of the guide, please [contact us](#).

In addition to the guide, the Road Freight Transport Industry Council has developed an interactive **MS Excel** program: the '[Owner-Drivers Cost Calculator](#)'. The Cost Calculator enables users to change more than one hundred different business costs and provides a set of base figures for comparison.

The Cost Calculator is available on compact disc, free of charge, from the Department . It can also be downloaded from the Department's website. However, it is a big file (over 4.5MB), so you might prefer to have a copy of the compact disc mailed out to you. The compact disc contains a range of other information, including the owner-drivers guide mentioned above.

What if I am offered a "back load" rate?

All rates are subject to negotiation. If you believe that the rate being offered is insufficient and unsustainable, you should not carry the load. Operators also need to assess the possibility of a return load when assessing their rate for the forward load.

What are Guideline Rates?

The Guideline Rates are a set of pre-calculated rates in both per kilometre and per hour dollar amounts. The Guideline Rates deal with both metropolitan and regional driving environments. They cover eight vehicle types; five of those for both one-driver and two-driver operations.

The eight vehicle types are:

- 5 tonne GVM (rigid truck, 2 axles)
- 15 tonne GVM (rigid truck, 2 axles)
- 22.5 tonne GVM (rigid truck, 3 axles)

Available for both 1-driver and 2-driver operations :

- Prime Mover (3 axles)
- Prime Mover + 1 Trailer (42.5 tonne GCM)
- Prime Mover + 2 Trailers (79 tonne GCM)
- Prime Mover + 3 Trailers (122.5 tonne GCM)
- B-Double (62.5 tonne GCM)

Why are there not more vehicle types / Guideline Rates?

It is not practical to develop a Guideline Rate for every type of heavy vehicle and vehicle combination. Even within a type there can be many variations, with different types of trailers and ancillary equipment, like container hoists or refrigeration units.

An owner-driver needs to find the Guideline vehicle that most closely matches their truck type and business, then adjust the cost data to work out the rate required for their operation.

How frequently will the Guideline Rates be reviewed / updated?

The Road Freight Transport Industry Council will review and update the [Guideline Rates](#) (pdf) on a regular basis; most likely every six months.

Am I obliged to be paid the Guideline Rates?

No, you aren't. The Guideline Rates are not compulsory as such, so they do not set a minimum or maximum rate that a hirer must pay. However, the Road Freight Transport Industry Tribunal can refer to them to determine whether payments have been made at a safe and sustainable rate.

Use the [Guideline Rates](#) (pdf) as a starting point for working out a safe and sustainable rate.

How do the Guideline Rates deal with fuel increases?

The published Guideline Rates do not factor in rapidly changing fuel price increases. The Guideline Rates do incorporate a per litre fuel cost, but you need to update this figure regularly in your rate calculations, to ensure that you are recovering your costs.

The FuelWatch website provides average fuel prices for both metro and country areas: www.fuelwatch.wa.gov.au/

See also the Frequently Asked Question about [fuel levies](#).

Do I have to use a written contract?

No, you don't. Owner-drivers and hirers are encouraged to use written contracts though, because a written record provides a more secure business relationship and allows for more effective resolution of disputes. The Road Freight Transport Industry Tribunal can more easily deal with disputes where there is a written contract.

To assist owner-drivers and hirers, the Road Freight Transport Industry Council has developed a model owner-driver contract. The model contract represents a fair industry benchmark for typical owner-driver contract terms and conditions. You might find the model contract helpful as a guide for understanding owner-driver contract terms. You can also modify any of the terms and conditions in the model contract to suit your own needs.

You can download the [model contract and associated schedule](#) from our website, or contact the Department to have copies mailed out to you.

Do I have to regularly drive a truck to be classified as an owner-driver?

Yes, you do. To be classified as an owner-driver under the Act, your principal occupation must be operating one or more heavy vehicles, either as the sole operator or with additional drivers. A small fleet operator is not covered by the legislation where the owner manages the business, but does little or no driving. See the [definitions](#) for further details.

I am contracted to carry goods to Darwin - does the Act cover me?

Yes, it does. Where a substantial part of a journey is conducted in WA, the Act applies. See the [definitions](#) for further details.

What is unconscionable conduct?

Hirers and owner-drivers have the right to be tough negotiators, but they should also be honest and reasonable. What can be acceptable conduct in some situations might not be acceptable in others.

In deciding whether unconscionable conduct has occurred, these are some of the things for hirers and owner-drivers to consider:

- Using coercion or unfair tactics
- Not providing all relevant information
- Contract terms and conditions that are not reasonably necessary to protect the business interests of the hirer or owner-driver
- Not giving someone enough time to understand a contract
- Withdrawing work or services at short notice
- Contracts that do not allow payment increases when costs rise
- How much of a higher rate or additional cost (such as a fuel levy or waiting fee) is passed on by the hirer to the owner-driver

How come owner-drivers can collectively bargain, but hirers can't?

Owner-drivers usually have less bargaining power and less business information than the hirers they deal with. If hirers were allowed to collectively bargain, they would have even more bargaining power than they already do. Besides, if hirers started offering the same rates and conditions, there wouldn't be much incentive for an owner-driver to stay with one hirer or to put in any extra effort.

With collective bargaining, does that mean that all the drivers in a group end up getting the same terms and conditions?

Not necessarily. You do not have to collectively negotiate all of the terms and conditions. A group of owner-drivers could negotiate for some of the terms and conditions, then work out the rest one-on-one with the hirer.

What does "negotiate in good faith" mean?

The Code of Conduct requires parties to "negotiate in good faith". Among other things, this can include:

- Meeting at reasonable times, intervals and locations for negotiations
- Stating and explaining your position on matters at issue
- Not adding or withdrawing bargaining elements at whim
- Being genuine, honest and open
- Honouring agreed outcomes and commitments

Note that, depending on the circumstances, engaging in industrial action can sometimes be a breach of the duty to negotiate in good faith.

Who can I ask to negotiate on my behalf?

An individual or group of owner-drivers does not have to negotiate directly with a hirer. They are free to choose any person or group (their "negotiating agent") to negotiate on their behalf. Examples include an accountant, the TWU or another owner-driver. The same applies to a hirer, who may appoint any person or group to be their negotiating agent.

A negotiating agent must be appointed in writing by the hirer, the owner-driver or the group of owner-drivers that they represent. A copy of the written appointment must be provided to the other party before negotiations start.

Note that negotiating agents are bound by the Act and Code of Conduct in the same way as the party that they represent.

I have a new prime mover - can I demand a higher rate?

No, you can't. An owner-driver with a new prime mover cannot demand a higher rate. It might be that a hirer is prepared to pay a higher rate, if they had requested a new vehicle to be provided, but that is an issue of negotiation between the parties.

Owner-drivers should be wary of over-specifying prime movers, trailers and other equipment. [Guideline Rates](#) (pdf) are based on standard trucks, so any additional feature that goes beyond what is required for the task does not automatically have to be considered.

Can a contract contain a penalty clause?

No. The Code of Conduct states that an owner-driver is not liable to pay any amount that is a penalty. This includes any money or property of an owner-driver being forfeited to or retained by a hirer as a penalty.

An amount is a penalty if it exceeds the amount necessary to compensate a hirer for the actual loss or damage incurred as a result of a "default" or breach of contract by an owner-driver. The owner-driver might still be liable to pay for the actual loss or damage incurred, but not more than the actual amount.

"Default" means something that is done or not done, happens or does not happen, as part of an owner-driver's responsibilities in carrying out an owner-driver contract.

Can a hirer / prime contractor make deductions from money payable to an owner-driver?

Yes, but only under certain conditions that are specified in the Code of Conduct. The Code of Conduct states that a hirer must not deduct any amount from money payable to an owner-driver, unless:

- The amount is payment that the owner-driver is liable to make under the owner-driver contract for loss or damage incurred by the hirer as the result of a breach of contract or default by the owner-driver - and the amount is not a penalty (see the Frequently Asked Question about penalty clauses). Or
- The amount is for the reasonable value of any service, benefit or thing that the hirer has provided (or arranged to be provided) to the owner- driver. "Service, benefit or thing" could include in-house vehicle servicing, insurance cover, or GPS tracking equipment provided by the hirer for an owner-driver.
- Before any deduction can be made, a hirer must give written notice to the owner-driver, at least 14 days before the deduction is made. The written notice must:
 - Describe the liability, service, benefit or thing. And
 - State the amount to be deducted, when or from what money payable the deduction will be made, and the basis on which the deduction has been calculated.

I have been asked to agree to a contract that will see me paid in 40 days.

The maximum time for payment is 30 days from receipt of invoice / payment claim. Any provisions for payment beyond 30 days are prohibited. If there is no agreed time for payment, the payment claim / invoice must be paid within 14 days of receipt.

My prime contractor has told me that the firm's biggest customer has delayed payment to 60 days, so I will have to wait to be paid.

"Pay when paid" provisions are prohibited under the Act. A person or company that owes money to another person or company under an owner-driver contract must pay the money owed - and pay it within the required time. They cannot delay paying until they receive money from a third person (or company). Nor can they refuse to pay because they have not been paid money owed to them.

A hirer should make financial arrangements to pay an owner-driver according to the agreed payment provisions, which cannot exceed 30 days.

I had agreed to cart for a rate below my "safe and sustainable" rate and now want the hirer to adjust the contract and pay me more - backdated to the start of the contract.

If there is an issue of unconscionable conduct, with you being induced to cart below a "safe and sustainable rate", you could take your concerns to the Tribunal. The Tribunal can determine whether or not the rate for that particular task was safe and sustainable. If you have failed to be careful and agreed to a rate that you were okay with at the time, then you might not have a strong case.

What information does a hirer have to provide to a "new" owner-driver / sub-contractor?

It is a legal requirement of the Owner-Driver Contracts Code of Conduct 2010 for a hirer to provide an owner-driver / sub-contractor with the following information before entering into an owner-driver contract with that owner-driver:

- A current copy of the Guideline Rates (pdf); and
- A copy of the Western Australian Owner-Drivers Information Pamphlet (pdf). This document has a distinctive red cover.

They should also give the sub-contractor time to read and understand the information before negotiations start. If the sub-contractor already has the book and/or Guideline Rates, the hirer does not have to provide another copy.

Am I able to recover payment for demurrage (waiting time) from my prime contractor?

If your contract has a provision for an additional payment when you experience unreasonable delays in loading or unloading, you can claim and recover this additional cost. If you do not have a contract provision for this, there are some situations where you might still be able to claim and recover the cost.

The Code of Conduct requires that where a prime contractor / hirer receives an additional payment or higher rate (such as a demurrage fee), a fair and reasonable amount of that payment or rate must be paid to the owner-driver. Note that this requirement applies whether or not there is a relevant provision in your contract.

Does the legislation deal with fuel levies?

Yes, it does. The Code of Conduct requires that where a prime contractor / hirer receives an additional payment or higher rate (such as a fuel levy), a fair and reasonable amount of that payment or rate must be paid to the owner-driver. Note that this requirement applies whether or not there is a relevant provision in your contract.

What sort of records does a hirer have to keep and for how long?

The owner-driver legislation requires a hirer to make and keep some records for a minimum of 6 years - because 6 years is the limit for the Tribunal. The Code of Conduct sets out the record-keeping requirements. A hirer must ensure that the following information is recorded in relation to each owner-driver contract to which the hirer is a party:

- The name of the owner-driver
- A description of the services provided under the contract
- The name of the person (or people) who drove the vehicle/s with which the services were provided (to the best of the hirer's knowledge)
- The date or dates on which the services were provided
- The amount of payment due for the services and how the amount was calculated
- If any deduction was made from the amount due, the reason for the deduction, the basis on which the deduction was calculated and the date on which the deduction was made
- The actual amount paid in respect of the services

The Code of Conduct also sets out how the information is to be recorded and stored.

Note that all businesses, including owner-driver businesses, are required to keep business records for a minimum of 5 years - this is a Taxation Office requirement.

How do I make a payment claim?

If your contract does not have a written provision about how to make a claim for payment, then the Act provides that the claim is to be made as follows:

For an owner-driver to make a claim for payment, the claim must:

- State the name of the owner-driver making the claim
- State the date of the claim
- Itemise and describe the work that the owner-driver has done under that owner-driver contract, in sufficient detail for the other party (the hirer) to be able to assess it, and
- Be given to the other party (the hirer).

For a hirer to make a claim for payment, the claim must:

- State the name of the hirer making the claim
- State the date of the claim

- Describe the basis for the claim, in sufficient detail for the other party (the owner-driver) to be able to assess it, and
- Be given to the other party.

How do I claim interest on an outstanding account?

Interest can be claimed for the period from the day after a payment becomes due, up to and including the day when it is finally paid. If someone has paid you some of the amount by the due date, you can claim interest on the overdue balance.

You can claim interest by submitting an invoice or payment claim to the person or company that owes you the outstanding money. If your contract does not have a provision for the interest rate payable, the rate of interest can be found by referring to the Civil Judgments Enforcement Act 2004, section 8(1)(a).

Note that the Code of Conduct requires that contracts must not specify an interest rate that is lower than the rate specified in the Civil Judgments Enforcement Act 2004. The rate in July 2010 was 6% per year. To find out what the current interest rate is, you will need to check regulation 4(1) of the [Civil Judgments Enforcement Regulations 2005](#).

To calculate the amount of interest owing, use the following formula (if your interest rate is other than 6%, then substitute that rate where the 6 appears in the formula below):

$$\frac{\text{Number of Days Payable} \times \text{Total Amount Payable}}{365.25} \times \frac{6}{100}$$

How do I lodge a dispute with the Tribunal and how long does it take to organise?

To refer a dispute with the Tribunal, you need to fill in a Form 7A then lodge it with the Tribunal. You can get the form by going to the website: www.wairc.wa.gov.au, or by going to the WA Industrial Relations Commission on 111 St Georges Terrace, Perth. You can lodge the form via the same website, by going to the Commission office, or you can post it in. There is no fee for doing this.

Once the form has been received and filed by the Tribunal, you need to serve a copy of it on the other party to the dispute. You will also need to fill out a statutory declaration that you have done this. The statutory declaration is done on a Form 4.

The other party then has 21 days to respond, which they do using a Form 5. They also need to send a copy of the Form 5 to you and fill out a Form 4 statutory declaration that they have done so.

The Tribunal will list the matter for hearing as soon as it reasonably can - usually a matter of weeks.

The Tribunal has made an order in my favour, but the company still won't pay me.

There is a two step process to recovering your money. You will need a certified copy of your order from the Tribunal and you will need to attend the Industrial Magistrate's Court as part of the claim process.

The first step is to make a claim in the Industrial Magistrate's Court. The Court is located at 111 St Georges Terrace, Perth (the same building as the Tribunal and the Industrial Relations Commission).

The second step is to ask the Industrial Magistrate's Court to enforce the order from the Tribunal. To do this, you will need to file a certified copy of the Tribunal's order and an affidavit in the Industrial Magistrate's Court. Note that there is a fee for this, but the Court may order the other party to repay your portion of the fee.

It is very important that you use the proper legal name of the person or company that you are making the claim against. Do not use abbreviations or nicknames when filling out the forms. The forms that you need to complete are available from the Court registry, or you can telephone the Court on 9420 4467, or download the forms from the website: www.imc.wa.gov.au/.

If you go to the Court registry, staff can help you to fill out the paperwork. Otherwise, you can ask them to post the forms to you, including samples that show how to complete the forms. However, you do not have to come to Perth to do this, because the Industrial Magistrate's Court has six metropolitan locations, in addition to regional court houses.

What is the Code of Conduct - what does it mean for me?

The [Code of Conduct](#) is part of the Owner-Divers (Contracts and Disputes) (Code of Conduct) Regulations 2010. The official title of the Code of Conduct is Owner-Driver Contracts Code of Conduct 2010.

The Code of Conduct deals with the business relationship between hirers and owner-drivers. It provides guidance on how that business relationship should function, to ensure a competitive but fair operating environment. Some of the requirements in the Code are mandatory, while others are for guidance.

The Code of Conduct came into effect from 1 July 2010.