

**Victorian Small Business Commission**

***Owner Drivers & Forestry Contractors Act 2005 –* Arbitration Rules**

Under the *Owner Drivers & Forestry Contractors Act 2005* (the Act) the Victorian Small Business Commission (VSBC) has the function to provide alternative dispute resolution (ADR) including arbitration.

The parties to a dispute under the Act may agree to apply for arbitration under the Act whether mediation has or has not occurred.

* 1. **Application**
		1. Where parties to a dispute agree in writing under the Arbitration Agreement that the dispute shall be referred to arbitration under s 35 of the Act (Arbitration), the dispute will be resolved in accordance with these Rules as in effect on the date of the commencement of the Arbitration.
	2. **Commencement of Arbitration**
		1. Either party to a dispute may apply to have the dispute referred to arbitration by completing an Application for Arbitration and submitting it to the VSBC. The Application must contain the following:
			1. the name, role and contact details of the applicant party (the Applicant);
			2. if applicable, the name of the Applicant’s representative and their role;
			3. the name, role and contact details of the other party to the dispute (the Respondent);
			4. if known, the name and role of any representative of the Respondent; and
			5. a brief statement of no more than **one page in length** summarising the Applicant’s claim.
		2. The VSBC must provide a copy of the Application and the Arbitration Agreement to the Respondent to the dispute, who must, within ten business days:
			1. advise the VSBC whether it agrees to participate in the Arbitration; and
			2. if the Respondent agrees to participate in the Arbitration, return a signed copy of the Arbitration Agreement to the VSBC; and
			3. pay to the VSBC the arbitration fee of $295.
		3. If the Respondent agrees to Arbitration, the VSBC must notify the Applicant, who must, within ten business days:
			1. return a signed copy of the Arbitration Agreement to the VSBC;
			2. pay to the VSBC the arbitration fee of $295; and
			3. provide to the VSBC the Applicant's written submission **of no more than ten pages in length**. The submission must set out the statement of facts supporting the Applicant’s claim, the points at issue and the remedy sought (including any monetary claim). The Applicant must attach to their submission any documents that support their claim (including, for example, the contract to which the dispute relates).
	3. **Exchange of submissions**
		1. The VSBC will provide the Applicant’s submission to the Respondent, who must, within ten business days, provide a written submission in response of **no more than ten pages in length**.
		2. The VSBC will provide the Respondent's submission to the Applicant, and the Applicant must provide to the VSBC,within ten business days, any submission in reply to the Respondent's submission, which may be **no more than** **three pages in length**. The VSBC will provide any reply submission made by the Applicant to the Respondent.
	4. **Appointment of Arbitrator**
		1. After submissions have been completed by the parties, the VSBC must nominate an Arbitrator and advise the parties of the Arbitrator’s details.
		2. If any party considers that the Arbitrator should not act as the Arbitrator of the dispute due to a conflict of interest or inability to arbitrate impartially, after being advised of the Arbitrator’s details or throughout the process, they must notify the VSBC. The VSBC must decide whether to appoint a different arbitrator.
		3. If no notification under Rule 4.2 concerning the Arbitrator’s initial appointment is received by the VSBC within five days of the parties being notified of the Arbitrator’s details, the Arbitrator will be appointed and will sign the Arbitration Agreement. A copy of the fully signed Arbitration Agreement will be provided to the parties.
		4. The VSBC will provide the parties’ submissions to the Arbitrator. Within five business days the Arbitrator will advise the parties and the VSBC if further information, material or documents is required from the parties. The Arbitrator may set time limits and give directions to the parties for the provision of any such further information, or documents or evidence.
	5. **Time limits, form of documents**
		1. Page limits stipulated in these Rules are to be completed in 12-point font and do not include any evidence (including the contract relating to the dispute) provided in support of the parties' submissions.
		2. The VSBC may extend time for compliance with deadlines for the exchange of submissions and the Arbitrator may similarly do so for provision of further information, documents or evidence under these Rules.
	6. **Hearing**
		1. Within five business days of receiving all submissions or any further information or documents requested by the Arbitrator under Rule 4.4, the Arbitrator will decide and advise the parties and the VSBC if it is necessary to hold a hearing requiring attendance and or oral submissions by the parties. If a hearing is required, the VSBC will contact the parties to make the necessary arrangements.
		2. A party may request a hearing with the other party and the Arbitrator. The Arbitrator has discretion to agree to a request for a hearing and to give directions and set conditions as to how evidence or information is to be received. The Arbitrator has discretion to require or disallow parties or witnesses to attend to answer questions asked by the Arbitrator and provide evidence under oath or affirmation. The rules of evidence will not apply to the Arbitration and cross-examination of witnesses is not permitted, unless the Arbitrator considers it necessary to give the parties natural justice.
	7. **Representation**
		1. The parties may be represented throughout the Arbitration including any hearing by one of more of the following:
			1. an Australian legal practitioner;
			2. in the case of a party that is a contractor (within the meaning of that term under the Act) - an association, including a trade union, that represents contractors or a class of contractors;
			3. in the case of a party that is a hirer (within the meaning of that term under the Act) - an association that represents hirers or a class of hirers; and
			4. any other person considered appropriate by the Arbitrator.
		2. A party may be accompanied by a support person at any hearing conducted as part of the Arbitration.
	8. **Refusal to participate or undue delay**
		1. Without limiting the VSBC's powers under s 40 of the Act, if either party has not met the timeframes for the provision of information or does not co-operate or act in good faith during the Arbitration, the Arbitrator may terminate the Arbitration by giving written notice to the Parties and advising the VSBC.
		2. The VSBC may issue a certificate under s 40 of the Act if the Arbitration does not proceed, including where the Arbitrator has terminated the Arbitration in accordance with Rule 8.1. The VSBC may request, and have regard to, a report from the Arbitrator in determining whether to issue a certificate.
	9. **Decision**
		1. The Arbitrator will determine the dispute and provide the decision (the Award), including reasons for the Award, in writing to the parties and VSBC within 20 business days of receiving all facts, submissions, documents, information or evidence provided by the parties or conducting a hearing, whichever occurs last. Subject to the approval of the VSBC, the Arbitrator may extend the time allowed for the making of the Award.
	10. **Cost of Arbitration**
		1. The parties will pay $295 each for the Arbitration.

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