

Owner Drivers and Forestry Contractors Bill

Introduction Print

EXPLANATORY MEMORANDUM

General

This Bill is introduced to improve the position of persons who contract to transport goods in a vehicle, or harvest forest products using motorised equipment, supplied by them and for other purposes.

Clause Notes

PART 1—PRELIMINARY

- Clause 1 sets out the purpose of the Bill, which is to regulate the relationship between persons who contract to transport goods (including forest products) in a vehicle, or harvest forest products using motorised equipment, supplied by them, principally by the means specified in the clause.
- Clause 2 provides for commencement arrangements.
- Sub-clause (1) states that the Act will come into operation on a day or days to be proclaimed.
- Sub-clause (2) states that if a provision of this Act does not come into operation before 1 December 2006 it comes into operation on that day. This means that the Act will come into force on the earlier of the proclaimed day or days or 1 December 2006.
- Clause 3 sets out the definition of a number of terms used in the Act. The term "contractor" is used to encompass owner drivers and forestry contractors. "Forestry contractor" is defined to include harvesting contractors and haulage contractors.

Clause 4 sets out the definition of owner drivers and owner driver contracts.

Sub-clause (1) defines owner-drivers as—

- a natural person who personally carries on a business of transporting goods in a vehicle supplied and operated (whether solely or with the use of additional or relief operators) by the natural person; or
- a corporation (other than a listed public company) that carries on a business of transporting goods where the business is carried out using a vehicle or vehicles supplied by the corporation and operated by an officer of the corporation (whether solely or with the use of additional or relief operators); or
- a partnership of persons referred to in the first dot-point;
- but does not include a haulage contractor (haulage contractors are defined in clause 5).

Owner driver therefore means a business using any of these trading entities in the business of transporting goods, where a proprietor or office holder of the company running the business is also the operator of a vehicle used in the business. That person need not be the exclusive operator of a vehicle used in the business. Further, a business may use more than one vehicle in the course of carrying on the business and fall within the definition of owner driver, provided that the proprietor or office holder operates a vehicle supplied by the business to transport goods.

Sub-clause (2) defines an owner-driver contract to be a contract between the owner driver and another person for the owner driver's business of transporting goods. Goods are defined in clause 3 to include freight and materials. For example, an owner driver contract includes a contract to transport manufactured goods, household goods and furniture, components of goods, agricultural or chemical products, documents or parcels, a contract to remove waste materials and any other contract where the services required under the contract are the transporting of freight or materials.

Sub-clause (3) provides that the owner driver contract can involve the provision of other services, provided the predominant services to be performed relate to the transport of goods. For example, a person who transports good or materials merely ancillary to providing another service (such as supplying and

installing household goods, or providing maintenance or building services) is not an owner driver within the meaning of the Act. However, an owner driver contract does include a contract that requires services that are ancillary to the main task of transporting goods, such as loading and unloading goods, preparing the goods ready for transport or preparing paperwork associated with the transport task.

Sub-clause (4) provides that owner driver contracts do not include a contract of employment between an owner driver and another person for the transport of goods.

Sub-clause (5) provides that the definitions of owner drivers and owner driver contracts in sub-clauses (1) and (2) are subject to clause 7 (see below).

Clause 5 defines haulage contractors and haulage contracts in the same way as clause 4 defines owner drivers and owner driver contracts except that the businesses and contracts involved are for the transporting of forest products. "Forest products" is defined in clause 3.

Clause 6 defines harvesting contractors and harvesting contracts in the same way as clause 4 defines owner drivers and owner driver contracts, except that the businesses and contracts involved are for the harvesting of forest products using motorised equipment supplied by the business ("motorised equipment" is defined in clause 3). In the case of harvesting contractors, there is no requirement that the proprietor of the business or an officer of the company carrying on the business operates the equipment supplied. Sub-clause (6) inserts a definition of harvesting, describing the tasks associated with felling and extracting forest products.

Clause 7 provides a power to make regulations prescribing classes of persons to be or not to be contractors, and for specified classes of contracts to be or not to be owner driver contracts, haulage contracts or harvesting contracts. Such contracts and contractors can therefore be removed from or included within the operation of the Act.

Clause 8 sets out the territorial application of the Act.

Sub-clauses (1) and (2) provide that the Act applies to owner drivers and haulage contractors where the relevant contracts are subject to the laws of Victoria, where the transport of the relevant goods occurs wholly in Victoria, or where a substantial part of the services provided under the contract are performed in

Victoria. "Substantial part" need not be the majority of the services provided.

Sub-clause (3) provides that the Act applies to harvesting contracts where the contracts are subject to the laws of Victoria or where the harvesting of the forest products occurs in Victoria.

Sub-clause (4) excludes from the operation of the Act any owner driver or haulage contractor who has the benefit of a contract determination made under Part 6 of the Industrial Relations Act 1996 of New South Wales.

- Clause 9 provides that the Act binds the Crown in right of the State of Victoria, and, so far as the legislative power of the Victorian Parliament permits, the Crown all its other capacities.

PART 2—CONTRACTING REQUIREMENTS

Division 1—Information Booklet

- Clause 10 introduces a requirement for various persons to provide an information booklet (in a form specified by the Minister and published—see clause 13) to a potential contractor before engaging the contractor.

Part 10 of the Act (transitional arrangements) requires all existing contractors to be given the booklet no later than 45 days after commencement of this Division.

Sub-clause (1) provides that at least 3 business days before a hirer engages a contractor (other than through a freight broker) the hirer must give the contractor an information booklet.

Sub-clause (2) provides that at least 3 business days before a contractor is engaged by a hirer under a contract procured or organised through a freight broker, the freight broker must give the contractor an information booklet.

If the required information booklets are not provided in the manner specified, then pursuant to clause 45, the Tribunal may make an order requiring the hirer to make a payment to the contractor of an amount considered appropriate for services performed under the contract.

- Clause 11 provides that the requirements to provide information booklets set out in clause 10 do not apply to short term engagements, namely, engagements of less than 30 days.

Sub-clause (1) provides that clause 10 does not apply to contractor engagements of less than 30 days duration.

Sub-clause (2) provides that if a contractor is engaged by the same hirer or through the same freight broker for a total of 30 days or more in any 3 month period, the contractor must be given the information booklet on the 30th day. This means that if a hirer engages a contractor for 30 days or more in a 3 month period, the hirer must give the contractor the information booklet on the 30th day in the 3 month period. Similarly, the obligation applies to a freight broker where the same freight broker procures or arranges a contractor to be engaged for 30 days or more in a 3 month period (regardless of whether the contracts involve one or more hirers).

Sub-clause (3) provides that sub-clause (2) does not require an information booklet to be given to a contractor more than once.

Clause 12 Sub-clause (1) provides that this clause applies where a hirer undertakes a tender process for the purpose of engaging a contractor.

Sub-clause (2) provides that the hirer must not accept a tender from a potential contractor who has not been given a complying information booklet at least 3 business days before the tender is accepted. This means, for example, that a hirer should give a copy of the information booklet to prospective contractors who register an interest in tendering for work. Where a potential contractor submits a tender without having been given a copy of the relevant information booklet, then the hirer must give the tenderer a copy of the information booklet and not accept the bid that was tendered until at least 3 business days after the information booklet is given. This gives the prospective contractor an opportunity to revise or withdraw their tender after receiving the information booklet.

If an information booklet is not provided in the manner required by the clause, then pursuant to clause 45 the Tribunal can make an order requiring the hirer to make a payment to the contractor of an amount considered appropriate for any services performed under the contract. Such an order can only be sought by the successful tenderer where services have been provided; that is, an order for payment cannot be sought by an unsuccessful tenderer.

Clause 13 provides that the information booklets must contain the information and be in the form determined by the Minister from time to time. Note that the Transport Industry Council (established under clause 55) and the Forestry Industry Council (established under clause 58) are required to advise the Minister on the content of the information booklets. The information booklets are to be made available by the relevant Departmental

Secretary to hirers and freight brokers on request and may be published through various means, including the Internet.

Division 2—Rates and Costs Schedules

Clause 14 deals with the development and revision of rates and costs schedules.

Sub-clause (1) requires the Minister to develop rates and costs schedules and to revise all such schedules at least once every 12 months. The schedules must be developed and revised in consultation with the Transport Industry Council and the Forestry Industry Council. Any number of schedules may be made, and each schedule may apply to one or more different classes of contractors, and may provide for different information depending upon the nature of the services provided, the type of vehicle provided, or both.

Note that Part 10 of the Act (transitional arrangements) requires all existing contractors to be given the most recent applicable schedule no later than 45 days after commencement of this Division.

Sub-clause (2) sets out the requirements of each rates and costs schedule. Each schedule must specify the class or classes of contractors and vehicles or equipment to whom it applies and must contain the information specified in paragraph (b). The first category of specified information is the typical fixed and variable overhead costs for that class of contractor and vehicle or equipment. This is the typical or indicative business overhead costs of that particular type of small business. The schedule will set out the business overhead costs that are typical of the type of contractor to whom the schedule applies. Sub-clause (3) provides detail on what constitutes fixed and variable overhead costs.

The second category of information that must be specified in the rates and costs schedule is the base hourly rate and casual hourly rate that would typically apply to that class of contractor if a contractor of that class were performing substantially the same work as an employee. Base hourly rate means the hourly rate of pay typically provided to such employees, and would include as appropriate a base hourly rate for shift or night work. Casual hourly rate means the rate of pay that typically applies to employees who are engaged in casual employment, which is the rate that includes an additional loading in compensation for leave entitlements, public holidays and other benefits that are not provided to casual employees.

Sub-clause (3) sets out some of the matters that are included in identifying typical fixed and variable overhead costs for the purposes of sub-clause (2)(b)(i). These include—

- the vehicle/equipment registration and running costs (such as fuel, servicing, parts, maintenance);
- business administration and insurance costs;
- self-funding of superannuation;
- finance costs;
- costs of complying with applicable laws such as legislation relating to occupational health and safety and environmental management;
- costs of engaging additional or relief labour; and
- depreciation of vehicles or equipment.

Clause 15 provides that the Minister must publish each new and revised version of the rates and costs schedules in the Government Gazette, and that the Secretary must make them available on request by publishing them in a manner considered appropriate, including on the Internet.

Clause 16 imposes obligations on various persons to provide copies of any applicable rates and costs schedule. Note that if the required schedule is not provided as specified, then pursuant to clause 45 of the Act the Tribunal can make an order requiring the hirer to make a payment to the contractor of an amount considered appropriate for the services performed under the contract.

Sub-clause (1) provides that at least 3 business days before a hirer engages a contractor (other than through a freight broker), the hirer must give the contractor a copy of the most recently published rates and costs schedule that applies to that contractor and the contractor's class of vehicle or motorised equipment.

Sub-clause (2) provides that at least 3 business days before a contractor is engaged by a hirer procured or organised through a freight broker, the freight broker must give the contractor a copy of the most recently published rates and costs schedule that applies to that contractor and the contractor's class of vehicle or motorised equipment.

Sub-clause (3) provides that the requirements to provide the relevant rates and costs schedules set out in sub-clauses (1) and (2) do not apply to short term engagements, namely, engagements of less than 30 days.

Sub-clause (4) provides that if a contractor is engaged by the same hirer or through the same freight broker for a total of 30 days or more in any 3 month period, the contractor must be given a copy of the most recently published rates and costs schedule that applies to that contractor and to the relevant class of vehicle or motorised equipment on the 30th day of the engagement.

Clause 17 applies where a hirer undertakes a tender process to engage a contractor. Sub-clause (2) provides that the hirer must not accept a tender from a contractor who has not been given a complying information booklet at least 3 business days before the tender is accepted. This means for example that a potential hirer should give a copy of the most recent applicable rates and costs schedule to prospective contractors who register an interest in tendering for work. If a contractor submits a tender without having been given a copy of the relevant schedule, the hirer must give the tenderer a copy of the schedule and not accept the bid that was tendered until at least 3 business days after the schedule is given. This gives the prospective tenderer an opportunity to revise or withdraw their tender after receiving the schedule.

Note that if the required schedule is not provided as specified, then pursuant to clause 45 of the Act the Tribunal can make an order requiring the hirer to make a payment to the contractor of an amount considered appropriate for the services performed under the contract.

Clause 18 deals with the provision to contractors of any revisions of the applicable rates and costs schedules during an engagement. Note that if a revised rates and costs schedule is not provided in the manner specified, then pursuant to clause 45 the Tribunal can make an order requiring the hirer to make a payment to the contractor of an amount considered appropriate for the services performed under the contract.

Sub-clause (1) provides that, during the period of any engagement of a contractor, a hirer must provide the contractor with a copy of any revision of a rates and costs schedule that applies to the engagement as soon as practicable after a revision is published in the Government Gazette. This provision does not apply to hirers who engage a contractor through a freight broker.

Sub-clause (2) provides that a freight broker who has procured or arranged the engagement of a contractor must provide the contractor with a copy of any revision of a rates and costs schedule that applies to the engagement as soon as practicable after a revision is published in the Government Gazette.

Sub-clause (3) provides that the requirements to provide the relevant rates and costs schedules set out in sub-clauses (1) and (2) do not apply to short term engagements, namely, engagements of less than 30 days.

Sub-clause (4) provides that if a contractor is engaged by the same hirer or through the same freight broker (regardless of whether the work is with more than one hirer) for a total of 30 days or more in any 3 month period, the contractor must be given a copy of the most recently published rates and costs schedule that applies to that contractor and to the relevant class of vehicle or motorised equipment.

Sub-clause (5) provides that sub-clause (4) does not apply if the contractor has been given a copy of the most recently published rates and costs schedule.

Division 3—Requirements for Ongoing Engagements

Clause 19 sets out the application of this Division. The Division applies to ongoing engagements, being engagements that are either—

- of no fixed duration. That is, to any contract for ongoing services that does not have a specified end date; or
- for a period of at least 30 days.

Sub-clause (2) provides that a contractor's engagement is to be regarded as ongoing under sub-clause (1) despite any interruption or ending of the engagement by the hirer with the intention of avoiding the obligations under the Division, and irrespective of the number of separate contracts within the period specified. That is, the Division applies where a contractor is engaged under a contract or a series of contracts for more than 30 days.

Note that clause 65 provides that a regulated contract that is inconsistent with this Division is void to the extent of the inconsistency. However, for a period of 6 months from the commencement of this Division, the regulated contract prevails over the Act. That is, parties have 6 months from the commencement of this Division to bring their arrangements into line with the Act. Thereafter, this Division prevails and any terms of contracts that do not comply with this Division are void to the extent of any inconsistency.

Clause 20 sets out the requirements for regulated contracts. A regulated contract is defined in section 3 to mean an owner driver contract, a harvesting contract or a haulage contract. The requirements are that—

- the contract must be in writing;
- the contract must state the guaranteed number of hours of work or income level that the contractor will receive. The quantum of this minimum is not mandated (that is, it can be zero hours or dollars if this is what the parties agree to), but a minimum must be specified. For example, the contract could specify that at least 40 hours of work will be provided by the hirer, or in the case of forestry contract, a specified volume of forest products at a specified rate. The period of time over which the minimum income or hours of work is to be guaranteed is also a matter to be agreed by the parties. For example, the contract could provide for provision of 40 hours of work per week, or 160 hours per month, or \$1000 guaranteed income per week or \$12 000 in any 3 month period). Payment for the minimum hours specified in the contract, or for the income level specified, can be made conditional upon the contractor being ready, willing and able to perform the applicable services;
- the contract must specify the rates to be paid. Subject to anything that may be in a code of practice, the form of the rate is a matter to be agreed by the parties. For example, the rate could be calculated by hours worked, kilometres driven, a fixed rate per particular trip or, in the case of forestry contracts, a rate for volume of forestry products harvested or transported;
- the contract must specify the minimum notice period that must be given by either party to the contract for the termination of the engagement, or the payment to be made in lieu of such notice. The notice period must not be less than the period specified in clause 21.

Clause 21 sets out the minimum periods of notice of termination of an engagement of a contractor with which a contract must comply. The periods are minima only and the parties may agree upon any longer period of notice.

Sub-clause (1) sets out the minimum period of notice of termination for various categories of contractors. For the engagement of owner drivers of heavy vehicles (as defined in clause 3) and forestry contractors, the minimum period is 3 months, and for other owner drivers, the minimum period is one month.

Sub-clause (2) sets out a mechanism that can be initiated by a contractor to obtain a certificate from the Small Business Commissioner waiving the minimum notice periods in sub-clause (1).

Sub-clause (3) provides that, where a contractor has sought a certificate under sub-clause (2), the Small Business Commissioner must issue a certificate within 21 days of the request. However a certificate that is issued later is not invalid simply because of its late issue.

Sub-clause (4) provides that the prescribed minimum periods of notice do not apply in the circumstances set out in the sub-clause, which are—

- termination of the engagement by a hirer on the ground of serious and willful misconduct by the contractor; or
- termination of the engagement by a contractor on the ground of a material breach of the relevant regulated contract by a hirer; or
- an ongoing engagement of less than 3 months.

Sub-clause (5) provides that the prescription in clause 21 of minimum notice periods does not prevent hirers and contractors from entering into regulated contracts which provide that notice of termination must not be given before a specified date. For example, a 2-year contract could provide that neither party may give notice of termination prior to a specified date.

Note that if a regulated contract contains a period of notice that does not comply with the minimum prescribed periods, either party may refer the matter as a dispute to the Small Business Commissioner under Part 5 of this Act.

Clause 22 provides a mechanism for a hirer to pay a contractor an amount in lieu of the minimum notice period prescribed in the Act.

Sub-clause (1) provides that a hirer may pay a contractor an amount in lieu of the notice period.

Sub-clause (2) provides that the payment in lieu must be no less than the gross amount less the deductible amount.

Sub-clause (3) sets out how to determine the gross amount.

Sub-clause (4) sets out how to determine the deductible amount. The deductible amount is based on the applicable rates and costs schedule. The effect of this sub-clause is that—

- the rate at which notice is paid does not include the component of the rate that is for the running costs of the vehicle or motorised equipment (such as fuel, tyres, servicing);
- contractors whose vehicles or motorised equipment are subject to finance arrangements receive payment in lieu of notice at a rate that covers the labour and profit component of the rates under the contract together with the fixed overhead costs (including typical finance costs); and
- contractors whose vehicles or equipment are not under finance receive payment in lieu of notice at a rate reflecting the payment for labour and profit under the contract only.

Sub-clause (5) sets out the meaning of finance arrangements for the purposes of the clause.

Division 4—Further Contractual Requirements

Clause 23 provides that a hirer must not require a contractor to make any payment in respect of insurance, or to make any deductions from payments to a contractor in respect of insurance, unless the hirer has an insurance policy in force and has provided a copy of the policy to the contractor. Insurance is also a service within the meaning of clause 24 and the obligations of that clause also apply.

Clause 24 provides that a hirer must not require a contractor to make any payment, or to make any deductions from payments to a contractor, for services or equipment provided by the hirer or by any other person to the contractor, unless—

- the amounts to be paid or deducted are specified in the regulated contract; and
- the amounts reflect the actual costs of the services or equipment; and

- if practicable, the hirer has given the contractor an opportunity to obtain the services or equipment from another supplier.

Division 5—Joint Negotiations

Clause 25 provides that an individual or group of contractors can appoint a person or group of persons to be their negotiating agent in relation to regulated contracts. This means that contractors can individually or together appoint a person or association to negotiate on their behalf. Negotiations includes all matters relating to the engagement of the contractor or contractors under a contract including the entering into, variation or termination of contracts.

Sub-clause (1) provides that a contractor or group of contractors can appoint a negotiating agent in relation to regulated contracts by an instrument in writing. Regulations to be made under the Act may specify a form of appointment to be used.

Sub-clauses (2) and (3) provide that, if the hirer has been given a copy of the written instrument appointing the negotiating agent by the contractor or contractors concerned or by the appointed negotiating agent, the hirer must not refuse to recognise a negotiating agent duly appointed. This means that the hirer must accept the authority of the agent to negotiate on behalf of the agent's principal or principals.

Sub-clause (4) provides that, if requested to do so by the negotiating agent, the hirer must deal exclusively with the agent within the scope of the agent's authority. This means that where such a request is made, the hirer cannot directly negotiate with the contractor or group of contractors but must deal with the agent within the scope of the agent's authority.

Sub-clause (5) provides that a person must not coerce or attempt to coerce a contractor or group of contractors in relation to the appointment or termination of a negotiating agent. An alleged breach of this provision can be dealt with as a dispute under Part 5 of the Act. If the dispute is not resolved by alternative dispute resolution and proceeds to the Tribunal for determination, the Tribunal may exercise any of its powers under clause 44 in resolving the dispute, including ordering a party to refrain from doing something, or awarding damages, including exemplary damages.

Clause 26 provides that individual hirers can appoint a person or group of persons to be their negotiating agent in relation to regulated contracts. This means that a hirer can appoint a person or association to negotiate on their behalf. Such negotiations could include all matters relating to the regulated contract including the entering into, variation or termination of existing contracts.

Sub-clause (1) provides that a hirer can appoint a negotiating agent in relation to regulated contracts by an instrument in writing.

Sub-clauses (2) and (3) provide that, if the contractor or group of contractors has been given a copy of the written instrument appointing the negotiating agent by the hirer concerned or by the appointed negotiating agent, the contractor or group of contractors must not refuse to negotiate with a negotiating agent duly appointed.

Sub-clause (4) provides that, if requested to do so by the negotiating agent, the contractor or group of contractors must deal exclusively with the agent within the scope of the agent's authority. This means that where such a request is made, the contractor or group of contractors cannot directly negotiate with the hirer but must deal with the agent within the scope of the agent's authority.

Sub-clause (5) means that a person must not coerce or attempt to coerce a hirer in relation to the appointment or termination of a negotiating agent. If the dispute is not resolved through alternative dispute resolution, and proceeds to the Victorian Civil and Administrative Tribunal for determination, the Tribunal may exercise any of its powers under clause 44 in resolving the dispute, including ordering a party to do or refrain from doing something and awarding damages, including exemplary damages.

PART 3—CODES OF PRACTICE

Clause 27 Sub-clause (1) enables regulations to be made prescribing codes of practice in relation to the engagement of contractors (being owner drivers, haulage contractors or harvesting contractors) or a class of those contractors (for example, courier drivers).

Sub-clause (2) provides that any such codes of practice may require parties who engage contractors to comply with standards of conduct and practice set out in the codes.

Clause 28 Sub-clause (1) provides that, before recommending to the Governor in Council that regulations be made prescribing codes of practice in respect of owner drivers or a class of owner drivers, the Minister is obliged to consult with the Transport Industry Council.

Sub-clause (2) provides that, before recommending to the Governor in Council that regulations be made prescribing codes of practice in respect of forestry contractors or a class of forestry contractors, the Minister is obliged to consult with the Forestry Industry Council.

Clause 29 provides that a code of practice must specify the classes of hirers and contractors to which it applies.

Clause 30 provides that a person or entity to whom a code applies must comply with the code. Note that any allegation of breach of a code can be dealt with as a dispute under Part 5 of the Act. If the dispute is not resolved by alternative dispute resolution and proceeds to the Tribunal for determination, the Tribunal may exercise any of its powers under clause 44 in resolving the dispute, including ordering a party to refrain from doing something, or awarding damages, including exemplary damages.

PART 4—UNCONSCIONABLE CONDUCT

Clause 31 Sub-clause (1) provides that a hirer must not engage in unconscionable conduct with respect to a contractor.

Sub-clause (2) sets out the matters to which the Victorian Civil and Administrative Tribunal may have regard for the purpose of determining whether a hirer has engaged in unconscionable conduct. These matters are—

- the relative strengths of the bargaining positions of the parties;
- whether, as a result of the hirer's conduct, the contractor had to comply with conditions that were not reasonably necessary to protect the legitimate interests of the hirer;
- whether the contractor was able to understand the contractual documentation;
- whether the hirer or a person acting on behalf of the hirer exerted any undue influence or pressure on, or used any unfair tactics against, the contractor or person acting on behalf of the contractor;

- the cost and circumstances in which the contractor could have supplied the services to another person or entity, including as an employee;
- consistency of the hirer's conduct in similar transactions;
- the requirements of any code of practice that applies;
- whether the hirer unreasonably failed to disclose various matters to the contractor;
- the willingness of the hirer to negotiate terms and conditions with the contractor;
- the extent to which the parties acted in good faith;
- whether the contract permits regular and systematic increases in fixed and variable running costs to be made.

Clause 32 Sub-clause (1) provides that a contractor must not engage in unconscionable conduct with respect to a hirer.

Sub-clause (2) sets out the matters to which the Victorian Civil and Administrative Tribunal may have regard for the purpose of determining whether a contractor has engaged in unconscionable conduct. These matters are—

- the relative strengths of the bargaining positions of the parties;
- whether, as a result of the contractor's conduct, the hirer had to comply with conditions that were not reasonably necessary to protect the legitimate interests of the contractor;
- whether the hirer was able to understand the contractual documentation;
- whether the contractor or a person acting on behalf of the contractor exerted any undue influence or pressure on, or used any unfair tactics against, the hirer or person acting on behalf of the hirer;
- the cost and circumstances in which the hirer could have acquired the services from another person or entity, including from an employee;
- consistency of the contractor's conduct in similar transactions;

- the requirements of any code of practice that applies;
- whether the contractor unreasonably failed to disclose various matters to the hirer;
- the willingness of the contractor to negotiate terms and conditions with the hirer;
- the extent to which the parties acted in good faith.

PART 5—DISPUTE RESOLUTION

Division 1—Introduction

Clause 33 introduces a definition of dispute. A dispute may be between one or more contractors and one or more hirers. For example, a dispute may involve a number of contractors employed by one or more hirers, where there are issues in common. A dispute means—

- a dispute arising under or in relation to this Act, the regulations or a code of practice; or
- a dispute arising under or in relation to a regulated contract; or
- a dispute involving an allegation that any person has breached the Act, the regulations, a code of practice or a regulated contract.

Sub-clause (2) provides that in this Part, contractor includes a former contractor, and hirer includes a former hirer. This means that parties can utilise the disputes procedure even where the relevant engagement has ended.

Division 2—Alternative Dispute Resolution

Clause 34 sets out what is meant by alternative dispute resolution.

Sub-clause (1) provides that alternative dispute resolution extends to preliminary assistance to ensure that the parties are aware of their rights and obligations and that there is full and open communication between the parties concerning the matter in dispute. This preliminary assistance can take different forms, including the giving of advice to one or both parties.

Sub-clause (2) provides that alternative dispute resolution includes mediation and that the person conducting alternative dispute resolution includes a mediator.

Clause 35 sets out the manner in which disputes can be referred to the Small Business Commissioner for alternative dispute resolution (including preliminary assistance).

Sub-clause (1) provides that either the hirer or the contractor may unilaterally refer a dispute, or the parties can jointly refer a dispute, for alternative dispute resolution (including preliminary assistance).

Sub-clause (2) provides that the referral must be accompanied by the application fee (if any) set by the Small Business Commissioner, which cannot be more than the fee prescribed in the regulations. Note that parties can seek preliminary assistance before lodging a dispute and incurring any such fee (see clause 34(1)).

Sub-clause (3) provides that when a dispute has been referred to the Small Business Commissioner, the Commissioner must arrange for mediation or another form of alternative dispute resolution by a suitably qualified person.

Clause 36 provides for representation of parties to alternative dispute resolution.

Sub-clause (1) provides that a party may be legally represented or represented by an association, including a trade union, that represents either contractors or hirers, or by any other person that the person conducting the alternative dispute resolution considers appropriate (such as a business adviser, accountant, or family member).

Sub-clause (2) provides that despite the fact that a party is represented, the person conducting the alternative dispute resolution may meet with one or both parties alone or together without the representative or representatives being present.

Clause 37 sets out the arrangements for costs of alternative dispute resolution.

Sub-clause (1) provides that the costs of the alternative dispute resolution are to be shared equally between the parties or in the proportions the parties have agreed between themselves. For example, if the parties consent to arbitration of their dispute rather than mediation, the parties may agree to the arbitrator determining the apportionment of the costs.

Sub-clause (2) provides that the costs to be apportioned are the fees and expenses of the person conducting the alternative dispute resolution. That is, it does not include the parties own legal costs.

Clause 38 provides that statements or admissions made by any participant during the course of the alternative dispute resolution, including preliminary assistance, are not admissible in any other proceeding, whether related to the dispute or not.

Clause 39 provides for a personal immunity for persons conducting alternative dispute resolution.

Sub-clause (1) confers a personal immunity upon the person conducting alternative dispute resolution. The immunity is from any liability arising from anything done or omitted to be done in good faith in the exercise of the person's powers or functions, or done in the reasonable belief the act or omission was done in exercise of such power or function.

Sub-clause (2) provides that any liability resulting from such an act or omission attaches to the State.

Division 3—The Tribunal

Clause 40 provides that a dispute may not be the subject of proceedings before the Tribunal unless the Small Business Commissioner has certified that alternative dispute resolution has failed or is unlikely to resolve the dispute. This means that before a dispute can be dealt with by the Tribunal, it must be referred to the Small Business Commissioner and be the subject of alternative dispute resolution under the Act. However, where parties have attempted to resolve a dispute through private means, the Commissioner may nonetheless grant the certificate if he or she is satisfied that further attempts under Division 2 would be unlikely to resolve it.

Sub-clause (1) provides that the Small Business Commissioner must certify that alternative dispute resolution has failed or is unlikely to resolve a dispute before the dispute may be the subject of proceedings before the Tribunal.

Sub-clause (2) provides that a certificate under sub-clause (1) is not necessary in respect of applications to the Tribunal for injunctive relief.

Sub-clause (3) provides that the clause does not affect the validity of any decision made by the Tribunal.

Clause 41 sets out the jurisdiction of the Tribunal.

Sub-clause (1) provides that the Tribunal can hear and determine an application by one or more contractors or hirers seeking the resolution of a dispute (as defined in clause 33).

Sub-clause (2) provides that the Tribunal also has jurisdiction to hear any other application that may be made under this Act.

Clause 42 sets out time limits for applications to the Tribunal.

Sub-clause (1) provides that applications under clause 41(1) to resolve a dispute that involves an allegation that a contractor or group of contractors has been unlawfully terminated must be made within 12 months of the date the engagement is alleged to have been terminated.

Sub-clause (2) provides that other applications under clause 41(1) must be made within 6 years after the date on which the dispute arose.

Clause 43 sets out that the parties to a proceeding before the Tribunal are the applicant or applicants, the other party or parties to the dispute, and any other person the Tribunal considers it appropriate to join as a party.

Clause 44 sets out the powers of the Tribunal with respect to a dispute.

Sub-clause (1) sets out the particular powers of the Tribunal in relation to a dispute. Paragraphs (a) to (f) set out the Tribunal's general powers. These are the powers to: refer a matter for mediation, order payments of sums of money that are found to be owing by one party to another, order payment by way of damages, exemplary damages, interest or by way of restitution, order the refund of money paid, make orders in the nature of an order for specific performance of a regulated contract, declare debts to be owing or not owing and orders that a party refrain from doing something.

Sub-clause (1)(g) sets out particular powers that the Tribunal can exercise in relation to regulated contracts in defined circumstances. The Tribunal can make any order it considers fair, including declaring void any unjust term, inserting a term, or otherwise varying a regulated contract to avoid injustice.

Sub-clause (2) sets out the matters the Tribunal may have regard to in determining whether a term of a regulated contract is unjust.

Sub-clause (3) provides that in determining whether a term of a contract is unjust, the Tribunal must not have regard to any injustice arising from matters that were not reasonably foreseeable when the term was agreed to.

Sub-clause (4) deals with the interest rate that may be applied when awarding damages in the nature of interest.

Clause 45 sets out additional powers of the Tribunal when dealing with a failure to give information booklets or rates and costs schedules in the manner required under the Act.

Sub-clause (1) sets out the application of this clause.

Sub-clause (2) gives the Tribunal the power to order that a hirer pay a contractor a specified amount for the contractor's services under the contract, irrespective of the amount set out in the relevant regulated contract. This is in addition to the Tribunal's power under clause 44 to vary the rate of pay in the contract on an ongoing basis or to declare void a term of the contract to avoid injustice.

Sub-clause (3) sets out the matters the Tribunal must have regard to when deciding what amount to specify in any such order.

Clause 46 provides additional powers to the Tribunal to prevent further contracts being entered into of the type which are or are to be subject to an order under clauses 44 or 45.

Sub-clause (1) provides that the Tribunal has an additional power to make orders—

- binding relevant persons (defined in sub-clause (3)) from entering further contracts of the type prohibited in the order; and
- preventing a party to the proceeding or a relevant person bound by such an order from inducing, or attempting to induce, any other person to enter a contract of the prohibited type.

The Tribunal can make these orders as an absolute prohibition, or on certain conditions. The orders can be made at the same time as the making of an order in relation to a dispute or at a later time.

Sub-clause (2) provides that the order must identify the person or persons who are bound by the order and that the order takes effect when served on the person or persons.

Sub-clause (3) defines "relevant person" for the purposes of the clause as including a party to the proceeding, or any other person who is associated with a party to the proceeding and is in any way considered relevant by the Tribunal.

For example, an order under this clause could be made to prohibit directors in a company that is a party to the proceeding from engaging in the same prohibited conduct but through another trading entity, or the order could be made to bind a number of related companies.

Division 4—Extension of Contract Variation Orders

- Clause 47 provides that the Division applies where the Tribunal makes an order to declare a term in an existing regulated contract void, or inserting a new term into a regulated contract or otherwise varying a regulated contract.
- Sub-clause (2) defines such an order as a "contract variation order".
- Clause 48 deals with orders that extend a contract variation order to all contracts in a specified class of regulated contracts.
- Sub-clause (1) sets out the meaning of an order extending a contract variation order.
- Sub-clause (2) sets out the effect of an order extending a contract variation order. The order has the effect of binding all hirers and contractors who enter, or have entered, into regulated contracts of the specified class.
- Sub-clause (3) sets out the effect upon terms in regulated contracts if an order extending a contract variation order is made. Subject to the terms of the order, and in respect of regulated contracts of the class specified in the order—
- any equivalent terms in a regulated contract are void;
 - if the order inserts a term—that term is taken to be inserted into each regulated contract in the specified class that does not already contain the term;
 - if the order varies a term of a contract, each regulated contract is taken to be varied accordingly.
- Clause 49 provides that applications to the Tribunal for an order extending a contract variation order may be made by associations that represent contractors or classes of contractors or hirers or classes of hirers. This means that only persons that represent either hirers or contractors can apply for these orders. An individual hirer or contractor is not able to apply to have an order relating to a single hirer or contractor apply more broadly.

- Clause 50 sets out the procedure to be followed in relation to applications for orders extending contract variation orders.
- Sub-clause (1) requires an applicant for an order to publish a notice containing various matters in the manner required by the rules of the Tribunal.
- Sub-clause (2) requires the Tribunal to hear from all persons (including associations) that appear.
- Sub-clause (3) defines "rules" for the purposes of the clause.
- Clause 51 deals with the making and publicising of orders extending contract variation orders.
- Sub-clause (1) empowers the Tribunal to make an order extending a contract variation order if it is satisfied that it is appropriate to do so.
- Sub-clause (2) requires an applicant for the order to publish the order in the manner specified in the sub-clause.
- Sub-clause (3) provides that the clause does not affect section 116 of the **Victorian Civil and Administrative Tribunal Act 1998**.
- Clause 52 provides that an order made by the Tribunal extending a contract variation order takes effect on the latter of the date the order is published in the Government Gazette or a date specified in the order.
- Clause 53 provides that the Tribunal may vary or revoke an order extending a contract variation order of its own initiative or on application by an association representing contractors or hirers or by any person affected by the order.

PART 6—THE SMALL BUSINESS COMMISSIONER

- Clause 54 Sub-clause (1) sets out the functions of the Small Business Commissioner under the Act.
- Sub-clause (2) requires the Commissioner when making arrangements for alternative dispute resolution to have regard to the need for alternative dispute resolution to be conducted by persons with experience in one or more of owner driver contracts, harvesting contracts or haulage contracts.
- Sub-clause (3) authorises the Commissioner to personally conduct a mediation and to be paid his fees for doing so, being fees not more than the maximum (if any) prescribed in regulations.

Sub-clause (4) provides that the Commissioner is not subject to the Minister's control or direction when either making arrangements to facilitate alternative dispute resolution of disputes or personally conducting alternative dispute resolution.

PART 7—INDUSTRY COUNCILS

Division 1—Transport Industry Council of Victoria

Clause 55 Sub-clause (1) establishes the Transport Industry Council of Victoria.

Sub-clauses (2) and (3) set out the functions of the Council. The exercise of any of the functions, including making recommendations on codes of practice or other matters, must relate to the objects of the Act and could not, for example, deal with matters such as the regulation of health and safety or road rules.

Sub-clause (4) provides that the Council is not confined to providing advice and making recommendations to the Minister only when requested by the Minister to do so.

Sub-clauses (5) and (6) provide that the Council is subject to the control and direction of the Minister and that the Minister may impose deadlines on the Council within which advice is provided or recommendations made.

Clause 56 deals with the membership of the Council.

Sub-clause (1) provides that the Council will comprise 10 part-time members appointed by the Minister. Other than the Chairperson, the other Council members are nominees of the organisations named in paragraphs (b) and (c).

Sub-clause (2) provides that if one of the named organisations does not nominate a person for membership of the Council within the time or manner directed by the Minister, or if the Minister rejects such a nominee, then the Minister may either appoint a person who the Minister considers is suitably representative of the relevant organisation's members, or call for a further nomination from the relevant organisation.

Sub-clause (3) defines "Roads Corporation" for the purposes of the clause.

Clause 57 provides that Schedule 1 (which sets out a constitution and procedure of industry councils established under the Act) applies to the Council.

Division 2—Forestry Industry Council of Victoria

- Clause 58 Sub-clause (1) establishes the Forestry Industry Council of Victoria.
- Sub-clauses (2) and (3) set out the functions of the Council. The exercise of any of the functions, including making recommendations on codes of practice or other matters, must relate to the objects of the Act and could not, for example, deal with matters such as the regulation of health and safety or environmental standards.
- Sub-clause (4) provides that the Council is not confined to providing advice and making recommendations to the Minister only when requested by the Minister to do so.
- Sub-clauses (5) and (6) provide that the Council is subject to the control and direction of the Minister and that the Minister may impose deadlines on the Council within which advice is provided or recommendations made.
- Clause 59 deals with the membership of the Council.
- Sub-clause (1) provides that the Council will comprise 10 part-time members appointed by the Minister. Other than the Chairperson, the other Council members are nominees of the organisations named in paragraphs (b) and (c).
- Sub-clause (2) provides that if one of the named organisations does not nominate a person for membership of the Council within the time or manner directed by the Minister, or if the Minister rejects such a nominee, then the Minister may either appoint a person who the Minister considers is suitably representative of the relevant organisation's members, or call for a further nomination from the relevant organisation.
- Sub-clause (3) defines "VicForests" for the purposes of the clause.
- Clause 60 provides that Schedule 1 (which sets out a constitution and procedure of industry councils established under this Act) applies to the Council.

PART 8—GENERAL

Clause 61 provides that persons must not engage in certain forms of adverse conduct against other persons for specified (prohibited) reasons. An allegation of breach of this clause will be dealt with as a dispute under Part 5 of the Act. If the dispute is not resolved by alternative dispute resolution and proceeds to the Tribunal for determination, the Tribunal may exercise any of its powers under clause 44 in resolving the dispute, including ordering a party to refrain from doing something, or awarding damages (including exemplary damages).

Sub-clause (1) states that a person must not subject or threaten to subject any other person, or a person associated with the other person, to any detriment for any one or more of the reasons set out in paragraphs (a) to (d). A person associated with the other person includes, for example, a fellow director of a company of which the person is a director, or a family member or other person who, in all the circumstances, is associated in a relevant way with the person who is alleged to have undertaken any of the actions described in paragraphs (a) to (d).

Sub-clause (2) relates only to conduct by hirers against contractors. A hirer must not subject, or threaten to subject a contractor to any detriment because either—

- the contractor has raised, or proposes to raise, issues of health and safety in relation to the performance of services. Note that health and safety issues can include allegations of conduct that is believed to amount to a breach of laws dealing with workplace safety, such as relevant road safety and forestry laws and regulations, or any other allegation that the services under the regulated contract are performed, or have been requested to be performed, in an unsafe manner. It is irrelevant whether the health and safety issue raised by the contractor concerns conduct by the hirer or by another person (such as a customer of the hirer), or the person with whom the contractor raises the issues; or
- the contractor has sought, or proposes to seek, to negotiate a proposed engagement or contract or to renegotiate an existing engagement or regulated contract. This means that a hirer is prohibited from imposing a detriment on a contractor (such as terminating an existing contract, or reducing hours of work) for the reason that the contractor has sought to

improve the terms and conditions of the engagement, either by entering a new contract (at the commencement of an engagement or replacing an expired contract) or through negotiating variations to an existing contract or otherwise replacing an existing contract. The provision does not however prevent a hirer from refusing to renew a contract with a contractor because replacement terms and conditions could not be agreed upon.

Sub-clause (3) sets out the actions that constitute detriment for the purpose of the clause. Such actions are in breach of the Act only where they are engaged in for a reason (or reasons including a reason) specified in either sub-clause (1) or (2). Sub-clause (3)(b) covers conduct by a hirer such as reducing the benefit to the contractor of the terms and conditions of engagement.

Sub-clause (3)(c) covers conduct by a hirer such as reducing the contractor's customary hours or income under the contract, or changing other work arrangements in a manner calculated to harm the contractor's interests.

Sub-clause (3)(d) covers the situation where a hirer refuses to engage a contractor.

Sub-clause (3)(e) covers the situation where a hirer engages a contractor on terms and conditions less favourable than terms and conditions provided to equivalent contractors.

- Clause 62 provides that for the purposes of the Act the conduct of a partner is taken to have been engaged in by each other partner of a partnership.
- Clause 63 provides that for the purposes of the Act conduct by an officer, employee or agent of a corporation, or by any other person at the direction of such person, is taken to have been engaged in by a corporation.
- Clause 64 provides for an authorisation for certain conduct undertaken by persons in accordance with the Act for the purpose of section 51(1)(b) of the Trade Practices Act 1974 of the Commonwealth and the Competition Code of Victoria. This means that such action is to be disregarded in determining whether any person has contravened Part IV (ant-competitive conduct) of that Act or the Competition Code.

The actions that are so authorised are set out in sub-clause (1). Actions by the industry councils, members, the Minister or any other person in making, developing, publishing or promoting a code of practice, a rates and running costs schedule or model contract specified in the Act are authorised.

The actions of a group of contractors, in developing a negotiating position, appointing and instructing a negotiating agent and entering into a regulated contract are all authorised. This authorisation does not extend to actions extraneous to the negotiating process, such as actions that are unlawful (such as breaching existing contracts) undertaken by a group of contractors with the intention of placing pressure on the hirer to agree to claims made in the negotiations.

Single business is defined in sub-clause (2), and includes a single business, project or undertaking, and includes a joint venture or a single business carried on by related corporations.

Clause 65 provides that a provision of a regulated contract is void to the extent that it is contrary to or inconsistent with anything in the Act, a regulation, code of practice or an order of general application, or purports to exclude the operation of the Act or the Regulations.

However, sub-clause (2) provides for a grace period of 6 months from commencement day (the day that Division 3 of Part 2 comes into operation) to allow time for parties to bring their arrangements into line with the requirements of Divisions 3 and 4 of Part 2 of the Act. These Divisions set out certain requirements for regulated contracts, being that: contracts must be in writing, set out a minimum level of hours or income, specify the rates to be paid and provide for notice (clause 20), specify a minimum notice of termination of either one or three months (clause 21 and 22), prohibit deductions for insurance except in certain circumstances (clause 23) and prohibit certain deductions of payments to contractors (clause 24).

Clause 66 provides for the making of regulations with respect to matters required or permitted under the Act.

PART 9—AMENDMENTS OF VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998

Clause 67 Makes amendments to the **Victorian Civil and Administrative Tribunal Act 1998**.

Sub-clause (1) sets out an amendment to section 73 of that Act to allow the Small Business Commissioner to intervene in Tribunal proceedings brought under this Act.

Sub-clause (2) amends Schedule 1 to that Act to provide for particular provisions concerning representation and costs in proceedings in the Tribunal under this Act. In particular, the amendments relating to costs allow the Tribunal to award costs against a party that refused to take part in or withdrew from alternative dispute resolution under this Act.

PART 10—TRANSITIONAL

Clause 68 sets out the transitional arrangements for the Act.

Sub-clause (1) provides that Division 1 of Part 2 (information booklet) applies to contractors engaged on or after the commencement of that Division. This means that any contractor commencing after commencement day must be given the information booklet as prescribed.

Sub-clause (2) provides that Division 1 of Part 2 also applies in relation to contractors who continue to be engaged for 45 days after the commencement of that Division by the same hirer or through the same freight broker as if the contractor had been engaged on the first day following the end of that 45 day period. This means that contractors already engaged by a hirer on the commencement day must be given the booklet no later than 45 days after commencement.

Sub-clause (3) provides that Division 2 of Part 2 (rates and costs schedule) applies to contractors engaged on or after the commencement of that Division. This means that any contractor commencing after commencement day must be given the schedule as prescribed.

Sub-clause (4) provides that Division 2 of Part 2 also applies in relation to contractors who continue to be engaged for 45 days after the commencement of that Division by the same hirer or through the same freight broker as if the contractor had been engaged on the first day following the end of that 45 day period. This means that contractors already engaged by a hirer on the commencement day must be given the schedule no later than 45 days after commencement.

Sub-clause (5) provides that Divisions 3 and 4 of Part 2 (requirements for contracts) apply to contractors engaged on or after the commencement of those Divisions. Thus all contracts made after the commencement of those Divisions must comply with the Act.

Sub-clause (6) provides that Divisions 3 and 4 of Part 2 also apply in relation to contractors who continue to be engaged during the period of 6 months after the commencement of those Divisions by the same hirer or through the same freight broker, as if the contractor had been engaged on the first day following the end of that 6 month period. This means that contractors already engaged by a hirer on the commencement day must be engaged on contracts that comply with Divisions 3 and 4 of Part 2 no later than 6 months after the commencement.

Clause 69 sets out further transitional arrangements for those provisions of the Act dealing with unconscionable conduct and disputes.

Sub-clause (1) provides that Part 4 applies to conduct occurring before or after the commencement of Part 4. This is because Part 4 is based on the relevant provisions of section 8A of the **Fair Trading Act 1999**, with modifications appropriate to the industries being regulated under this Act.

Sub-clause (2) provides that a dispute may be resolved under Part 5 whether the conduct that gave rise to the dispute occurred before or after the commencement of clause 33. Action that took place prior to the commencement of this Act cannot be said to be in breach of the Act. However, parties will be able to utilise the new dispute resolution process in Part 5 to deal with disputes arising under or in relation to regulated contracts, regardless of whether the conduct occurred prior to commencement. Part 5 establishes an alternative to section 107 of the **Fair Trading Act 1999** for the resolution of disputes involving regulated contracts.

SCHEDULE 1—CONSTITUTION AND PROCEDURES OF INDUSTRY COUNCILS

Clause 1 defines "Council" as meaning the Transport Industry Council or the Forestry Industry Council.

Clause 2 provides for periods of office of Council members as specified in the instrument of appointment not exceeding 3 years.

Clause 3 provides for payment of Council members.

- Clause 4 provides for the appointment and powers of acting members in the case of a vacancy or the absence of a member. Acting members must, if possible, be appointed from the same organisation from which the absent member was appointed.
- Clause 5 provides for the resignation and removal of members from office. Members may be removed from office by the Minister at any time, and the office of the member becomes vacant if certain matters occur as specified in sub-clause (3).
- Clause 6 Sub-clause (1) provides that the **Public Administration Act 2004** does not apply to a member of the Council in respect of that office.
- Sub-clause (2) allows for members of a Council to hold other offices under other Acts while being a member of the Council.
- Clause 7 sets out the general procedure of the Council.
- Sub-clause (1) provides for the Chairperson or a replacement member to preside over meetings.
- Sub-clause (2) provides that a quorum is 5 members.
- Sub-clause (3) provides for questions to be determined by a majority of votes, and for the presiding member to have a deliberative vote, and in the case of an equality of votes, a casting vote.
- Sub-clause (4) provides that the nominees of the Roads Corporation (VicRoads) and the Secretary to the Department of Primary Industries do not have voting rights.
- Sub-clause (5) provides that accurate minutes of meetings must be kept.
- Sub-clause (6) allows for business to be transacted by telephone, closed circuit television or in any similar way.
- Clause 8 deals with conflicts of interest of members.
- Sub-clause (1) provides that a member of the Council must disclose any actual or potential conflict of interest involving a direct or indirect pecuniary interest in a matter that could conflict with the member's performance of duties in relation to the consideration of the matter.
- Sub-clause (2) requires any such disclosure to be recorded in the minutes and for any member having such a conflict of interest not to participate or vote in any deliberations of the Council on the matter.

Sub-clause (3) provides that while the Council is determining whether a member has a conflict of interest that should preclude the member from participating, the member must not be present during the deliberation and must not vote on the issue.

Sub-clause (4) provides that the supply of goods or services to a person on the same terms and conditions as to other members of the public does not constitute a pecuniary interest that would give rise to a conflict of interest.

- Clause 9 provides for a means of obtaining the assent of Council members to proposed resolutions and making a determination of the Council without a meeting of Council being held.
- Clause 10 provides that an act or decision of Council is not invalid only because of a vacancy or defect in its membership or any irregularity in the appointment of a member or acting member.