



Fair Work
Commission

Implementation Report

Minimum standards for regulated workers



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Implementation Report – minimum standards for regulated workers

Introduction

1. This Implementation Report discusses new functions related to the creation of minimum standards and collective agreements for regulated workers that will be conferred on the Fair Work Commission under Part 16 of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the Closing Loopholes No.2 Act).¹ These functions, to commence on a date to be fixed by proclamation or 26 August 2024, relate to the making of minimum standards orders and guidelines for regulated workers, road transport contractual chain orders and guidelines, and the registration of collective agreements for regulated workers and regulated businesses.
2. In a [Statement issued on 27 February 2024](#), the President of the Commission said:

the Commission remains steadfast in its commitment to implementing the changes in an open and transparent way and with the needs of our users at the heart of the design of our services.²
3. The President noted the significant nature of the changes relating to regulated workers and indicated an implementation report would be published. This report gives effect to that commitment and is intended to support engagement and consultation with stakeholders about implementation of these new jurisdictions.
4. A separate implementation report will be published for measures dealing with unfair deactivation for employee-like workers and unfair termination for regulated road transport contractors.
5. People and organisations with an interest in the Commission’s incoming new functions relating to standards for regulated workers are invited to comment on anything in this Implementation Report. Feedback can be sent to consultation@fwc.gov.au by **26 April 2024**.

¹ This report also briefly touches on a change to the Commission’s exercise of modern award powers – see paragraph 38.

² President’s Statement 27 February 2024 at [7]; see also [President’s Statement 20 December 2023](#) in relation to implementation of functions arising from *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the [President’s Statement of 8 December 2022](#) in relation to implementation of changes arising from the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.



Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2023

6. The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 was introduced into Parliament on 4 September 2023.
7. It was referred to the Senate Education and Employment Legislation Committee for inquiry and report by 1 February 2024. Details of the inquiry and the published report are at the [inquiry homepage](#).
8. The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 was divided and enacted as the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing Loopholes No.1 Act) and the Closing Loopholes No.2 Act. The Bill for the Closing Loopholes No.1 Act passed both houses of Parliament on 7 December 2023 and received Royal Assent on 14 December 2023.
9. The Bill for the Closing Loopholes No.2 Act passed both houses of Parliament on 12 February 2024 and received Royal Assent on 26 February 2024.
10. The Closing Loopholes No.2 Act confers several new functions on the Commission (see **Attachment A** for a snapshot of functions introduced by the Closing Loopholes No.1 Act and No. 2 Act). In summary, the new functions relating to regulated workers are:
 - making minimum standards orders and minimum standards guidelines for regulated workers
 - making road transport contractual chain orders and road transport contractual chain guidelines for regulated road transport contractors, road transport employee-like workers and other persons in a road transport contractual chain
 - registering collective agreements made between regulated businesses (digital labour platform operators or road transport businesses) and registered employee organisations which set terms and conditions for the regulated workers to whom they apply
 - dealing with applications for a remedy in relation to unfair deactivation from a digital labour platform or unfair termination of a contract by a road transport business (not dealt with in this report).
11. Regulated workers are:
 - Employee-like workers performing digital platform work (section 15P), and
 - Regulated road transport contractors engaged in the road transport industry (section 15Q).
12. The Act also creates a sub-category, 'road transport employee-like worker', capturing employee-like workers performing digital platform work in the road transport industry (section 15RB).
13. Definitions of regulated worker, road transport employee-like worker and other relevant terms are extracted at **Attachment B**.
14. This report is divided into two sections. The first outlines the provisions of the Closing Loopholes No. 2 Act most relevant to the Commission's implementation of the incoming new functions in relation to minimum standards and collective agreements for regulated workers and road transport contractual



chain orders. The second section outlines the actions the Commission proposes to take in implementing these functions ahead of their commencement.

(I) Overview of the Commission's regulated worker standards functions

15. This section provides an overview of the provisions of the Closing Loopholes No. 2 Act most relevant to the Commission's implementation of its future functions relating to minimum standards and collective agreements for regulated workers and road transport contractual chain orders. It also outlines related arrangements in relation to the Expert Panel for the Road Transport Industry and Road Transport Advisory Group.

Minimum standards orders and guidelines

16. The new Part 3A-2 of the *Fair Work Act 2009* (FW Act) will provide for the Commission to make, vary and revoke minimum standards orders and minimum standards guidelines for regulated workers. The Commission may make minimum standards orders and guidelines on its own initiative or on an application.
17. Two forms of minimum standards orders will be able to be made (sections 15D and 536JY):
- employee-like worker minimum standards orders, setting standards for employee-like workers performing digital platform work (including in the road transport industry), and
 - road transport minimum standards orders, setting standards for regulated road transport contractors.
18. The Commission will also be able to make non-binding employee-like minimum standards guidelines and road transport minimum standards guidelines (section 15E and 536KR).
19. Information about the Commission's new functions in relation to road transport contractual chain orders (new Part 3B-2), including their application to road transport employee-like workers, is provided separately from paragraph 47 below.
20. In making minimum standards orders and guidelines, the Commission must take into account a new 'minimum standards objective' (section 536JX) and, in relation to road transport minimum standards orders, the 'road transport objective' (section 40D). The amendments also set out particular matters the Commission must have regard to in making an employee-like minimum standards order (section 536K) and road transport minimum standards order (section 536KA)
21. **Attachment C** sets out the minimum standards objective and road transport objective in full.
22. A minimum standards order will be able to be made under section 536JY. Minimum standards guidelines will be made under section 536KR.



Who can apply

23. An application for a minimum standards order (section 536JZ) or guidelines (section 536KS) can be made by:

- an organisation³ that is entitled to represent the industrial interests of one or more regulated workers who would be covered by the proposed minimum standards order or guideline
- an organisation⁴ that is entitled to represent the industrial interests of one or more of the regulated businesses that would be covered by the proposed minimum standards order or guideline
- a regulated business that would be covered by the proposed minimum standards order or guideline, or
- the Minister.

Powers of the Commission

24. The decisions the Commission will be able to make in response to an application for a minimum standards order are set out at section 536KG. The Commission will be able to:

- refuse to consider the application
- make a minimum standards order
- not make a minimum standards order, or
- make minimum standards guidelines instead of an order.

25. The Commission may make similar decisions under section 536KU in relation to minimum standards guidelines, except that it may decide to make an order instead of a guideline.

26. For both orders and guidelines, the Commission may refuse to consider an application if it is not consistent with the President's direction regarding prioritisation under section 582(4D) (discussed further at paragraph 59).

27. The Commission will have the power to vary or revoke minimum standards orders and guidelines on application or on its own initiative, if satisfied that making the determination is consistent with the minimum standards objective (section 536KQ and 536KZ).⁵

28. The terms that may, must and must not be included in a minimum standards order, including specific requirements in relation to employee-like worker minimum standards orders and road transport

³ 'Organisation' means an organisation registered under the Registered Organisations Act: FW Act, Section 12

⁴ *ibid*

⁵ In the case of a road transport minimum standards order or guideline, the Commission must also consider the road transport objective.



minimum standards orders, are primarily set out in Part 3A-2 Division 3, Subdivision E. This includes the general requirement (section 536KO) that:

A minimum standards order may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the minimum standards objective.

Consultation process

29. The Commission is required to undertake a consultation process with affected entities before making a minimum standards order. The consultation process for applications involving employee-like workers is set out in Part 3A-2, Division 3, Subdivision BA, and the consultation process for applications for road transport minimum standards orders is set out in Part 3A-2, Division 3, Subdivision D.
30. Before making a minimum standards order, the Commission must:
 - Publish a notice (a notice of intent) stating that the Commission proposes to make an order; and
 - Publish a draft of the proposed order.
31. The Commission must ensure that affected entities have a reasonable opportunity to make written submissions⁶ in relation to the draft order, and these submissions must be published. The Commission may hold a hearing in relation to an order.
32. In addition, the Commission must not make or vary an employee like minimum standards order, road transport minimum standards order or road transport contractual chain order (discussed further from paragraph 46) unless there has been genuine engagement with the parties to be covered by the order (section 536K, 536KA and 536PF respectively).
33. For road transport minimum standards orders or guidelines or road transport contractual chain orders or guidelines, the Commission is also required to consult the Road Transport Advisory Group before making or varying an order (sections 536KA and 536PG) (see paragraphs 58-59).
34. The Commission may make changes to the draft order it thinks are appropriate. If the changes are significant, the Commission must:
 - Decide not to make the order based on the draft
 - Publish a subsequent notice of intent in relation to the revised draft order and publish the revised draft, and

⁶ In relation to employee-like minimum standards the Commission must ensure affected entities have a reasonable opportunity to make written submissions, having regard to the unique nature of digital platform work (see s.536KAB). In relation to road transport minimum standards orders the Commission must ensure that affected entities have a reasonable opportunity to make written submissions (see 536KC). A road transport minimum standards order must not come into operation earlier than 12 months after the relevant notice of intent for the order was published, unless the Commission is satisfied there are circumstances urgently requiring a shorter period (but cannot be less than 6 months) (see 536JF).



- Follow the process outlined above in relation to consultation on the revised draft.⁷

35. Unlike minimum standards orders (whether employee-like minimum standards orders or road transport minimum standards orders), there are no specific consultation processes required for minimum standards guidelines.

36. The Commission will have the power to vary or revoke minimum standards orders or guidelines on application or on its own initiative, if satisfied that making the determination is consistent with the minimum standards objective.⁸

Deferral and suspension of minimum standards orders

37. Part 3A-2 Division 3A provides for the deferral and suspension of minimum standards orders (section 536KQA and 536KQD) and Part 3B-2 Division 3 for the deferral or suspension of road transport contractual chain orders (discussed further from paragraph 46) (section 536PU and 536PX) by the Minister. These provisions provide that the Minister may, by notifiable instrument, make a declaration:

- deferring the coming into operation of an order or suspending the operation of an order, or
- deferring or suspending the application of:
 - all of the terms of an order to a specified class or specified classes of persons; or
 - specified terms of an order to a specified class or specified classes of persons; or
 - specified terms of an order to all persons.

38. In addition, in relation to road transport minimum standards orders (section 546KQJ and 536KQP) and road transport contractual chain orders (section 536QB and 536QG), eligible persons may apply to the Commission for a deferral determination or suspension determination:

- deferring the coming into operation of an order or suspending the operation of an order, or
- deferring or suspending the application of:
 - all of the terms of an order to a specified class or specified classes of persons; or
 - specified terms of an order to a specified class or specified classes of persons; or
 - specified terms of an order to all persons.

39. If the Minister has made a deferral declaration or a suspension declaration or the Commission has made a deferral determination or a suspension determination in relation to an order, the Commission must as soon as practicable consider whether to vary or revoke the order (section 536KQS and 536QK).

⁷ In relation to a road transport minimum standards order, the period of consultation is to be no shorter than 12 months starting when the subsequent notice of intent and revised draft were published (see 536KE).

⁸ In the case of a road transport minimum standards order or guideline, the Commission must also consider the road transport objective.



40. Specific consultation requirements apply in relation to the proposed variation or revocation of minimum standards orders and road transport contractual chain orders after deferral or suspension.⁹

Road transport industry standards

41. In addition to the provisions outlined in relation to minimum standards for regulated workers, the amendments will also introduce arrangements applying specifically to the road transport industry.

42. The **road transport industry** is defined in new section 15S.¹⁰

43. Under the umbrella of the road transport industry are two types of workers, “regulated road transport contractors” and “road transport employee-like” workers (see definitions in **Attachment B**).

44. As outlined above, the Commission can make road transport minimum standards orders and guidelines for road transport contractors. It can also make road transport contractual chain orders and guidelines for road transport contractors *and* road transport employee-like workers. This means that, while employee-like minimum standards orders and road transport minimum standards orders can apply only to employee-like workers and regulated road transport contractors respectively, road transport contractual chain orders can apply to both regulated road transport contractors and a subset of employee-like workers (those who perform work in the road transport industry).

Road transport contractual chain orders and guidelines

45. New Chapter 3B of the FW Act will provide for the Commission to make orders and guidelines that set standards for regulated road transport contractors, road transport employee-like workers and other persons in a road transport contractual chain (sections 536PD and 536QP).

46. The terms **road transport contractual chain** and **in a road transport contractual chain** are defined in section 15RA.

47. Section 536PD provides the Commission’s power to make a road transport contractual chain order:

(1) The FWC may make an order (a road transport contractual chain order) that sets standards for regulated road transport contractors, road transport employee-like workers and other persons in a road transport contractual chain.

Note: The FWC must be constituted by an Expert Panel for the purposes of making a road transport contractual chain order (see subsection 617(10B)).

(2) A road transport contractual chain order cannot confer rights or impose obligations on a

⁹ See Division 3B and 3C of Part 3A-2 and Division 3 and Division 4 of Part 3B-2 respectively.

¹⁰ Section 15 defines ‘road transport industry’ by reference to a number of modern awards or any other industry prescribed by regulation. The modern awards are: *Road Transport and Distribution Award 2020*; *Road Transport (Long Distance Operations) Award 2020*, *Waste Management Award 2020*, *Transport (Cash in Transit) Award 2020*, and *Passenger Vehicle Transportation Award 2020*. See Attachment B.



person in the capacity of an employee.

- (3) The FWC may make a road transport contractual chain order under this section:
 - (a) on its own initiative; or
 - (b) on application under subsection 536PE(1).
- (4) The FWC must not make a road transport contractual chain order that covers road transport employee-like workers unless the FWC considers it appropriate.

48. The Commission is also empowered to make road transport contractual chain guidelines (section 536QP).

49. The Commission must have regard to the minimum standards objective and road transport objective in making road transport contractual chain orders or guidelines (sections 536NN and 40D). Section 536PF will require the Commission to take particular matters into account in deciding whether to make or vary a road transport contractual chain order. Terms that may, must and must not be included in a road transport contractual chain order are set out at sections 536PM to 536PR.

50. The persons that will be to apply for a road transport contractual chain order to be made under section 536PE (see section 536QQ for guidelines) are:

- an organisation¹¹ that is entitled to represent the industrial interests of one or more persons in a road transport contractual chain;
- a regulated business in a road transport contractual chain;
- a person who is a primary party to the first contract or arrangement in a road transport contractual chain;
- the Minister; or
- a person or body prescribed by the regulations.

51. Consultation requirements for making road transport contractual chain orders are similar to those applying to minimum standards orders (set out at paragraphs 30-37 above). Chapter 3B, Part 3B-1, Subdivision D also sets out the decisions that the Commission can make in regard to a road transport contractual chain order application again which mirror the provisions for Chapter 3A, Part 3A-2, including:

- refusing to consider the application,
- making an order,
- not making an order and
- making guidelines instead of an order.

52. There are further provisions relating to Ministerial declarations to defer or suspend road transport

¹¹ 'Organisation' means an organisation registered under the Registered Organisations Act: FW Act, section 12.



contractual chain orders and provisions relating to Commission determinations to defer or suspend. These largely mirror the provisions outlined above in relation to minimum standards orders.

Expert Panel for the road transport industry

53. Road transport minimum standards orders and guidelines and road transport contractual chain orders and guidelines must be made, varied and revoked by an Expert Panel for the road transport industry. An Expert Panel for the road transport industry must include:

- The President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
- At least one Expert Panel Member or other Commission Member who has knowledge of, or experience in, the road transport industry; and
- Such number (if any) of other Commission Members as the President considers appropriate.¹²

54. The Expert Panel for the road transport industry must also be constituted for the purpose of making a modern award that the President considers might relate to the road transport industry and for certain types of applications to vary or revoke modern awards that the President considers might relate to the road transport industry. Section 617(10B) states the matter types that the Expert Panel must be constituted to decide (see **Attachment D**).

55. The President also has a discretion to direct the Expert Panel for the road transport industry to deal with certain matters relating to the road transport industry, including an employee-like minimum standards order or guideline if the President considers they might relate to the road transport industry or sector (section 617(10D)).

56. The Revised Explanatory Memorandum states the purpose of the Expert Panel at [1126] – [1127]:

The Expert Panel would be responsible for performing functions and exercising powers relating to the road transport industry, including in relation to modern awards and RTMSOs [road transport minimum standards orders], having regard to the road transport objective. The Expert Panel could also be directed to deal with other matters that the President considers may relate to the road transport industry.

This would ensure the FWC has the expertise it needs to better assess minimum standards and conditions for both employees and contractors working in the road transport industry. The expertise required for the new Expert Panels would be provided by either part-time Expert Panel members or appropriately qualified FWC members.

Road Transport Advisory Group

57. Section 40E establishes a Road Transport Advisory Group (RTAG) to advise the Commission on matters relating to the road transport industry. The Revised Explanatory Memorandum at [1103] – [1108]

¹² There are additional requirements relating to the constitution of an Expert Panel for the road transport industry in relation to deferral or suspension of road transport minimum standards order and road transport contractual chain orders.



states:

The RTAG is a special advisory body appointed by the Minister specifically to support the FWC in carrying out its functions relating to the road transport industry, including in relation to employees and regulated road transport contractors ... Subsection (2) would outline that the function of the RTAG is to advise the FWC in relation to matters about the road transport industry, including but not limited to:

- the making and varying of modern awards relating to the road transport industry;
- the making and varying of RTMSOs [road transport minimum standards orders] and RTGs [road transport guidelines];
- the prioritisation by the FWC of matters relating to the road transport industry; and
- such other matters as are prescribed by the regulations.

Subsection (3) would require that the RTAG, before advising the FWC in relation to a matter, must consult any relevant subcommittee established under 40G.

Subsection (4) would require the President to consult, and have regard to the views of, the RTAG in deciding the priorities for the work of the FWC regarding matters affecting the road transport industry.

Note that new subsection 536KA would require the FWC to not make a RTMSO unless it has consulted with the RTAG.

58. The President can give the RTAG directions as to the way it carries out its functions and may appoint a member of the Expert Panel for the road transport industry to act as its chair (section 40F).

Prioritisation of minimum standards and road transport contractual chain matters

59. The President will be required to give a direction as to how the Commission will prioritise its work under Chapter 3A, Part 3A-2 (minimum standards and guidelines for regulated workers) and Chapter 3B, Part 3B-2 (road transport contractual chain orders and guidelines). The direction must prioritise types of orders under those Parts and specified cohorts of workers (section 582(4D)).
60. The Commission may refuse to consider an application if it is not consistent with a prioritisation direction of the President (sections 536KG and 536QR).

Collective agreements

61. New Chapter 3A, Part 3A-4 of the FW Act provides for the Commission to register, vary and register the termination of collective agreements made between:
- a digital labour platform operator and an organisation entitled to represent the industrial interests of employee-like workers (employee-like collective agreement (section 536MK(2)), or
 - a road transport business and an organisation entitled to represent the industrial interests of regulated road transport contractors (road transport collective agreement (section 536MK(3))).
62. A collective agreement may provide for the terms and conditions on which employee-like workers or regulated road transport contractors covered by the agreement perform work under a relevant services contract. Subsection 536MK(2) provides:



Collective agreement for employee like workers

(2) A collective agreement may be made between a digital labour platform operator and an organisation that is entitled to represent the industrial interests of one or more employee like workers, in respect of the following:

- (a) the terms and conditions on which employee like workers covered by the collective agreement perform digital platform work:
 - (i) under a services contract to which the digital labour platform operator is a party; or
 - (ii) under a services contract arranged or facilitated through or by means of the digital labour platform operated by the digital labour platform operator;
- (b) how the collective agreement will operate.

Note: For when a collective agreement covers a digital labour platform operator, an employee like worker or an organisation, see section 536JM.

63. Similar provisions relating to regulated road transport contractors are provided at section 536MK(3).
64. Sections 536ML to 536MN set out requirements around the consultation that must take place before the collective agreement is registered. A regulated business or an organisation entitled to represent one or more workers who will be covered by the proposed agreement may initiate a consultation period for a proposed collective agreement by giving a consultation notice for the agreement to the other party (section 536ML). The notice must also be given to the Commission (section 536MM). The Commission is required to publish a copy of the consultation notice on the Commission's website (see 536MM(3)). Once this is done either negotiating party must, with the consent of the other party, make reasonable efforts to give a notice to each eligible regulated worker (employee-like worker or regulated road transport contractor) (section 536MN)).
65. Sections 536MM–536MN set out the content required for each of the notices and when an employee-like worker or regulated road transport contractor is eligible to receive the notice.
66. Registering the collective agreement is covered in Division 3.
67. The application for registration must be accompanied by a signed copy of the collective agreement and a declaration signed by the regulated business and organisation covered by the agreement (see requirements as to content at section 536MR).
68. A collective agreement comes into operation on the day it is registered or a later day specified in the agreement (section 536JN(1)) and terminates at the end of the period of operation specified in the agreement or when terminated at an earlier time using a process set out in the agreement (section 536JN(2)). A collective agreement continues in operation until terminated (section 536JN(3)).
69. These provisions also provide for varying (Division 4) and terminating (Division 5) collective agreements and for the Commission to deal with disputes about the making of collective agreements (section 536MP).



(II) Implementation of regulated worker standards functions

70. This section of the report outlines the Commission’s plans to implement the new regulated worker functions, including proposed case management processes, information and education resources and engagement activities.

Standards case management

71. The new standards jurisdictions will require new case management processes and will be supported by Commission staff.

Practice areas and National Practice Leads

72. As outlined in the President’s [Statement](#) issued 27 February 2024, Vice President Asbury has been appointed to oversee the implementation of the Closing Loopholes No. 2 changes.

73. In addition, Vice President Asbury has been appointed National Practice Lead for minimum standards for regulated workers (including guideline standards and road transport contractual chains orders). She will be supported in this role by Commissioner Connolly as Deputy National Practice Lead for road transport and Commissioner Tran as Deputy National Practice Lead for the gig economy.

74. The new regulated worker standards jurisdictions will be supported by a proposed new case management model. Workflow graphics for the new application types have been developed and are attached to **Attachment E**.

75. It is proposed that all new matters will initially be allocated to the President who will constitute either a Full Bench, for employee-like matters, or an Expert Panel, for road transport matters (as set out at section 617(10B)) and matters the President directs an Expert Panel to deal with under section 617(10C) or 617(10D).

76. The process workflows for minimum standards and road transport contractual chain matters have been designed to be broadly similar to the procedures currently undertaken by the Commission in dealing with pay equity and modern award matters. It is proposed that all applications will be published to the website in much the same way as our [create or change a modern award matters list](#). The Commission is well equipped to ensure that these processes are carried out effectively, adapted as appropriate to meet the requirements of the new provisions.

77. Deputy President Masson, who is the current National Practice Lead for Enterprise Agreements, will oversee matters relating to Chapter 3A, Part 3A-4 collective agreements. These matters will be processed administratively through the Commission’s staff Agreements team before being referred to a Member for consideration.

New results framework for standards

78. A new results framework will be developed in the Commission’s case management system to process applications related to standards.



Forms and correspondence

79. The Commission proposes to develop several new forms so that applicants can lodge applications in relation to standards for regulated workers:
- Form F87xx - Application for a minimum standards order
 - Form F87xx – Application to vary or revoke a minimum standards order
 - Form F87xx - Application for minimum standards guidelines
 - Form F87xx - Application to vary or revoke minimum standards guidelines
 - Form F87xx - Application to defer or suspend a road transport minimum standards order
 - Form F87xx – Application for a road transport contractual chain order
 - Form F87xx – Application to vary or revoke a road transport contractual chain order
 - Form F87xx – Application for road transport contractual chain guidelines
 - Form F87xx – Application to vary or revoke road transport contractual chain guidelines
 - Form F87xx – Application to defer or suspend a road transport contractual chain order
 - Form F88xx - Notice of consultation period for a proposed collective agreement
 - Form F88xx - Application to register a collective agreement
 - Form F88xx – Declaration in support of an application to register a collective agreement
 - Form F88xx – Application to vary a collective agreement
 - Form F88xx – Declaration in support of an application to vary a collective agreement
 - Form F88xx - Notice of termination of a collective agreement
 - Form F88xx – Declaration in support of a notice to terminate a collective agreement
 - Form F88xx - Application to deal with a dispute about making a proposed collective agreement
80. It is proposed that the current *Form F10 - Application for the Commission to deal with a dispute in accordance with a dispute settlement procedure* will be amended to accommodate applications to resolve a dispute in accordance with the dispute settlement procedure under a collective agreement.
81. Forms will be designed to minimise complexity and regulatory burden, drawing on user experience and using plain language. The forms will be as simple as possible and will direct parties to relevant information on the Commission’s website.
82. Correspondence to parties that is intended to be sent during the case management process will be prepared using plain language. Plain language helps parties understand the Commission’s processes and can reduce the confusion and anxiety that many people feel when involved in a legal case.



Performance measures

83. New performance measures will be developed by the Commission in due course. While the minimum standards and collective agreement functions have some similarities to existing Commission jurisdictions, the different substantive and procedural requirements that will apply are likely to mean that tailored performance measures will be needed.

Resources

Website information

84. Detailed information on the Commission's role in dealing with applications for minimum standards orders and guidelines, road transport contractual chain orders and guidelines and registering collective agreements will be available on the Commission's website from prior to commencement of the new jurisdictions.

85. Proposed content will include:

- What are minimum standard orders and guidelines
- What are road transport contractual chain orders and guidelines
- What are collective agreements
- Who can apply
- The Expert Panel for the road transport industry
- The Road Transport Advisory Group
- Commission processes and resources

Minimum Standards Benchbook

86. The Commission will, in consultation with stakeholders, developing a new benchbook on minimum standards for regulated workers and road transport contractual chain orders. A benchbook would contain details of relevant case law as it develops, for guidance for parties and their representatives.

Amendments to the Fair Work Commission Rules 2024

87. The Rules will be amended to deal with the new applications for minimum standards orders and guidelines, road transport contractual chains orders and guidelines, and registering collective agreements, and associated applications (for example in relation to variation and revocation). This will include additional service requirements in Schedule 1 of the Rules for the new forms being developed.

88. The Rule amendments will be made and published as soon as practicable after commencement, taking into account the need for consultation.



Engagement

89. The Commission is committed to consulting with affected persons, businesses and organisations as we implement these new functions.
90. The President has established a Regulated Worker User Group. Correspondence has been sent to stakeholders seeking expressions of interest in participating. The group's views will be sought on how we are proposing to implement the new jurisdictions and on how we can best ensure our information and education materials are useful for affected individuals and businesses. Expressions of interest are still being accepted and can be sent to consultation@fwc.gov.au.
91. The National Practice Leads for minimum standards for regulated workers and collective agreements, assisted by the Deputy National Practice Leads for the gig economy and road transport, will also undertake a program of engagement with regulated workers, regulated businesses and the organisations that represent them. This will include attending (in person or virtually) meetings of organisations or their members or other forums to explain the Commission's new functions and how they are being implemented.
92. More information about the Regulated Worker User Group and other engagement activities as they arise will be available on the Commission's website.
93. Other actions will include:
 - sharing information resources with the Fair Work Ombudsman
 - establishing a regulated worker subscription service to alert to Commission updates/events related to regulated workers.
 - public consultation measures including LinkedIn posts, website content, subscriber notices and the publication of this or other implementation reports.
94. The Commission's focus in preparing for the commencement of the new regulated worker jurisdictions will be to work in an open and transparent way, in partnership with stakeholders where possible, to implement processes and resources that minimise complexity and are fit for purpose.
95. Interested persons and organisations are invited to comment on the Commission's plans for engagement or anything else contained in this Implementation Report. Feedback can be sent to consultation@fwc.gov.au by 26 April 2024.



ATTACHMENT A: Closing Loopholes Legislation Commencement Dates

Closing Loopholes Legislation 2023–2025

Key dates for changes affecting the Fair Work Commission

2023

15 December

- Regulated labour hire arrangements
- Workplace delegates rights for employees
- New family and domestic violence protections
- Changes to compulsory conciliation conferences in protected action ballot matters

2024

27 February

- Multiple franchisees access to single-enterprise bargaining
- Transitioning from multi-enterprise agreements
- Intractable bargaining workplace determinations
- Registered organisation withdrawal from amalgamations

1 July

- Workplace delegates rights terms for employees in modern awards, workplace determinations and enterprise agreements
- Exemption certificates for entry to investigate suspected underpayment

26 August

- Changes to definition of casual employee and pathway to full-time and part-time employment
- Right to disconnect*

26 August
(or a date by proclamation)

- Provisions for 'employee-like' workers and the road transport industry
- Collective agreements and workplace delegates rights for regulated workers
- Determining whether a relationship is employment
- Independent contractor 'unfair contracts' disputes

1 November

- Regulated labour hire arrangement orders can commence operation

2025

26 February

(or a date by proclamation)

- Model enterprise agreement flexibility, consultation and dispute terms

* Commencing 12 months later for small business

Published 27 February 2024





ATTACHMENT B: Definitions

Section 12 – Definitions

organisation means an organisation registered under the Registered Organisations Act.

Section 15B - Meaning of *collective agreement*

A **collective agreement** means the following:

- (a) an employee-like worker collective agreement (see subsection 536MK(4));
- (b) a road transport collective agreement (see subsection 536MK(5)).

Section 15D - Meaning of *minimum standards guidelines*

Minimum standards guidelines means the following:

- (a) employee-like worker guidelines (see subsection 536KR(2));
- (b) road transport guidelines (see subsection 536KR(3)).

Section 15E - Meaning of *minimum standards order*

A **minimum standards order** means the following:

- (a) an employee-like worker minimum standards order (see subsection 536JY(2));
- (b) a road transport minimum standards order (see subsection 536JY(3)).

Section 15F - Meaning of *regulated business*

A person is a **regulated business** if:

- (a) the person is a digital labour platform operator (see section 15M); or
- (b) the person is a road transport business (see subsection 15R)

Section 15G - Meaning of *regulated worker*

A person is a **regulated worker** if:

- (a) the person is an employee-like worker (see section 15P); or
- (b) the person is a regulated road transport contractor (see section 15Q).

Section 15P - Meaning of *employee-like worker*

(1) A person is an **employee-like worker** if:

- (a) the person is:



- (i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or
- (ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or
- (iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or
- (iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same partnership and performs work under the contract, whether or not the individual is a party to the contract; and

- (b) the person performs all, or a significant majority, of the work to be performed under the services contract; and
- (c) the work that the person performs under the services contract is digital platform work; and
- (d) the person does not perform any work under the services contract as an employee; and
- (e) the person satisfies 2 or more of the following:
 - (i) the person has low bargaining power in negotiations in relation to the services contract under which the work is performed;
 - (ii) the person receives remuneration at or below the rate of an employee performing comparable work;
 - (iii) the person has a low degree of authority over the performance of the work;
 - (iv) the person has such other characteristics as are prescribed by the regulations.

(2) In this Part, a reference to an independent contractor includes a reference to an individual who is an employee-like worker within the meaning of subsection (1).

(3) Regulations made for the purposes of subparagraph (1)(e)(iv) may specify that a person must have all or only one or some of the characteristics prescribed (e) the person is not an employee-like worker who performs work in the road transport industry under the services contract.

(4) For the purposes of determining whether an individual satisfies the criteria specified in paragraph (1)(e), the effect of a minimum standards order, minimum standards guidelines or a collective agreement applying to, or covering, the individual is to be disregarded.

Section 15Q - Meaning of **regulated road transport contractor**

(1) A person is a **regulated road transport contractor** if:

- (a) the person is:



- (i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or
- (ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or
- (iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or
- (iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same partnership and performs work under the contract, whether or not the individual is a party to the contract; and

- (b) the person performs all, or a significant majority, of the work to be performed under the services contract; and
- (c) the person does not perform any work under the services contract as an employee; and
- (d) the work performed under the services contract is work in the road transport industry; and
- (e) the person is not an employee-like worker who performs work in the road transport industry under the services contract.

(2) In this Part, a reference to an independent contractor includes a reference to an individual who is a regulated road transport contractor within the meaning of subsection (1).

Section 15RB - Meaning of a **road transport employee-like worker**

A **road transport employee-like worker** means an employee-like worker who performs work in the road transport industry.

Section 15S - Meaning of **road transport industry**

(1) The **road transport industry** means:

- (a) the **road transport and distribution industry** within the meaning of the Road Transport and Distribution Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
- (b) the **long distance operations in the private road transport industry** within the meaning of the Road Transport (Long Distance Operations) Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
- (c) the **waste management industry** within the meaning of the Waste Management Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and



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(d) the ***cash in transit industry*** within the meaning of the Transport (Cash in Transit) Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and

(e) the ***passenger vehicle transportation industry*** within the meaning of clause 4.2 of the Passenger Vehicle Transportation Award 2020, not including paragraph 4.2(c)), as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and

(f) any other industry (however described) prescribed by the regulations for the purposes of this paragraph.

(2) For the purposes of paragraph (1)(f), the regulations may prescribe an industry by applying, adopting or incorporating any matter contained in a modern award as in force or existing from time to time.



ATTACHMENT C: Minimum standards and road transport objectives

Section 536JX – The minimum standards objective

In performing a function or exercising a power under this Part, the FWC must take into account the need for an appropriate safety net of minimum standards for regulated workers, having regard to the following:

(a) the need for standards that:

(i) are clear and simple; and

(ii) are fair and relevant; and

(iii) recognise the perspectives of regulated workers, including their skills, the value of the work they perform and their preferences about their working arrangements; and

(iv) do not change the form of the engagement of regulated workers from independent contractor to employee; and

(v) do not give preference to one business model or working arrangement over another; and

(vi) are tailored to the relevant industry, occupation or sector and the relevant business models; and

(vii) are tailored to the type of work, working arrangements and regulated worker preferences; and

(viii) reflect the differences in the form of engagement of regulated workers as independent contractors to the form of engagement of employees; and

(ix) have regard to the ability of regulated workers to perform work under services contracts for multiple businesses, and the fact that the work may be performed simultaneously;

(b) in addition to the other matters provided for in this subsection, the need for standards that deal with minimum rates of pay that:



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- (i) take into account costs necessarily incurred by regulated workers directly arising from the performance of a services contract; and
 - (ii) take into account safety net minimum standards that apply to employees performing comparable work; and
 - (iii) do not change the form of the engagement of regulated workers;
- (c) the need to avoid unreasonable adverse impacts upon the following:
- (i) sustainable competition among industry participants;
 - (ii) business costs, regulatory burden, sustainability, innovation, productivity or viability;
 - (iii) administrative and compliance costs for industry participants;
 - (iv) the national economy;
 - (v) persons or bodies that use or rely on the work performed by regulated workers, or the services received under services contracts for the performance of that work;
- (d) the need to consider other orders or instruments (however described) made under this Chapter and to avoid unnecessary overlap of such orders or instruments.

This is the ***minimum standards objective***.

Section 40D –the road transport objective

In performing a function or exercising a power under this Act, the Expert Panel for the road transport industry must take into account the need for an appropriate safety net of minimum standards for regulated road transport workers and employees in the road transport industry, having regard to the following:

- (a) the need for standards that ensure that the road transport industry is safe, sustainable and viable;
- (b) the need to avoid unreasonable adverse impacts upon the following:
 - (i) sustainable competition among road transport industry participants;
 - (ii) road transport industry business viability, innovation and productivity;



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(iii) administrative and compliance costs for road transport industry participants.

(c) the need to avoid adverse impacts on the sustainability, performance and competitiveness of supply chains and the national economy;

(d) the need for minimum standards in road transport contractual chains.

This is the ***road transport objective***.

Note: The matters that must be dealt with by the Expert Panel for the road transport industry are matters relating to modern awards relating to the road transport industry, road transport minimum standards orders and road transport contractual chain orders (see subsection 617(10B)). The President also has a discretion to direct the Expert Panel for the road transport industry to deal with a matter (see subsection 617(10D)).



ATTACHMENT D: Matters the Expert Panel for road transport must decide

Section 617(10B) Expert Panel for road transport industry

(10B) The following must be made by an Expert Panel constituted for that purpose:

(a) a modern award made under Part 2-3 that the President considers might relate to the road transport industry;

(b) a determination made under subsection 157(1) varying or revoking a modern award that the President considers might relate to the road transport industry;

(c) a road transport minimum standards order made under paragraph 536JY(1)(b) or a determination made under subsection 536KQ(1) varying or revoking a road transport minimum standards order;

(ca) a deferral determination made under subsection 536KQJ(1) in relation to a road transport minimum standards order;

(cb) a suspension determination made under subsection 536KQP(1) in relation to a road transport minimum standards order;

(cc) a determination made under subsection 536KQ(1) varying or revoking a road transport minimum standards order to give effect to a decision to vary or revoke the minimum standards order under paragraph 536KQS(2)(a) or (b);

(cd) a decision made under paragraph 536KQS(2)(a), (b) or (c) as to whether or not to vary or revoke a road transport minimum standards order;

(d) road transport guidelines made under subsection 536KR(1) or a determination made under subsection 536KZ(1) varying or revoking road transport guidelines;

(da) a road transport contractual chain order made under section 536PD or a determination made under 536PT varying or revoking a road transport contractual chain order;

(db) road transport contractual chain guidelines made under section 536QP or a determination made under section 536QW varying or revoking road transport contractual chain guidelines;

(dc) a deferral determination made under subsection 536QB(1) in relation to a road transport contractual chain order;

(dd) a suspension determination made under subsection 536QG(1) in relation to a road transport contractual chain order;

(de) a determination made under subsection 536PT(1) varying or revoking a road transport



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contractual chain order to give effect to a decision to vary or revoke the road transport contractual chain order under paragraph 536QK(2)(a) or (b);

(df) a decision made under paragraph 536QK(2)(a), (b) or (c) as to whether or not to vary or revoke a road transport contractual chain order;

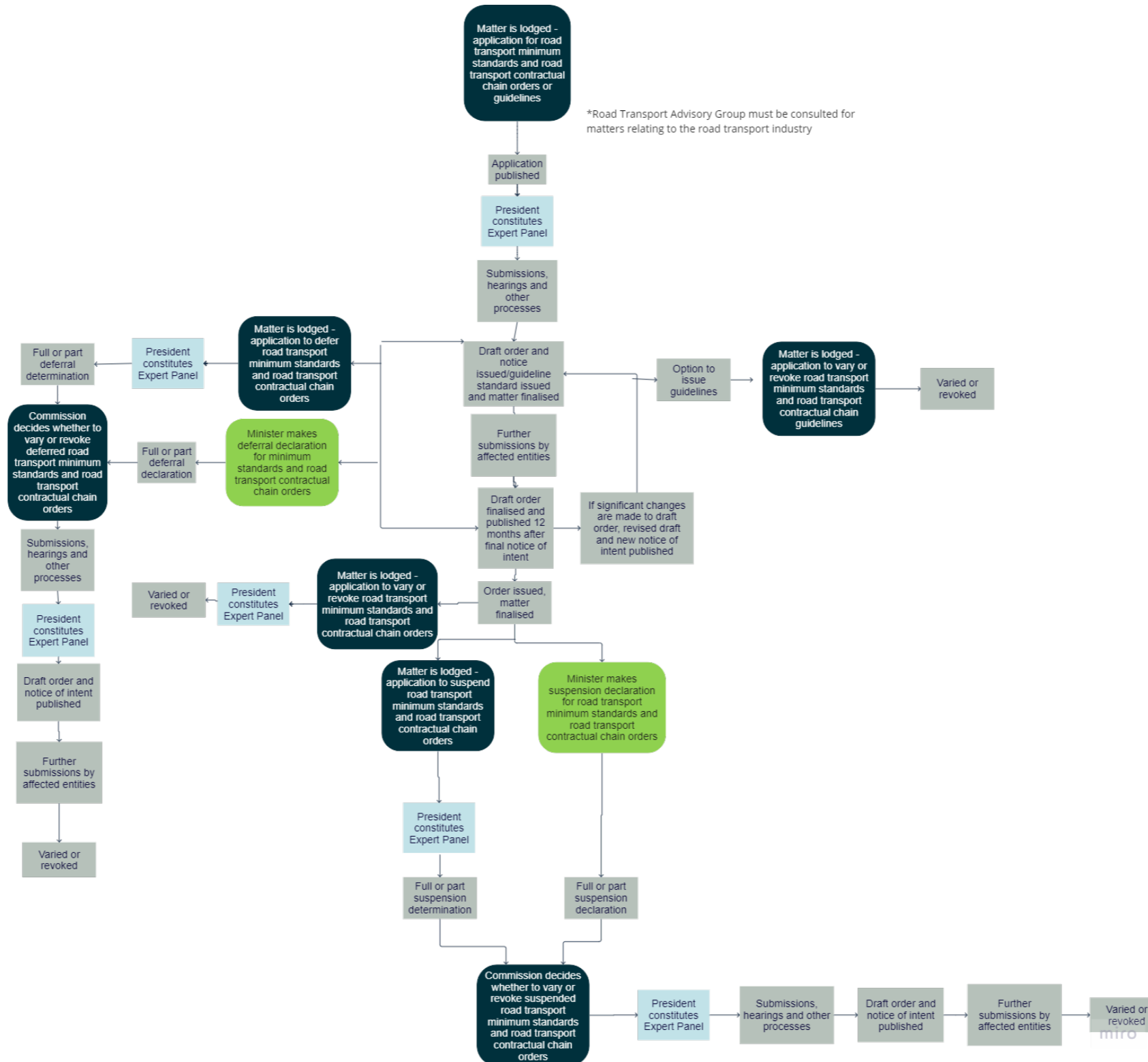
(e) such other instruments as are prescribed that the President considers might relate to the road transport industry.

Note 1: For the constitution of an Expert Panel for that purpose, see subsection 620(1E).

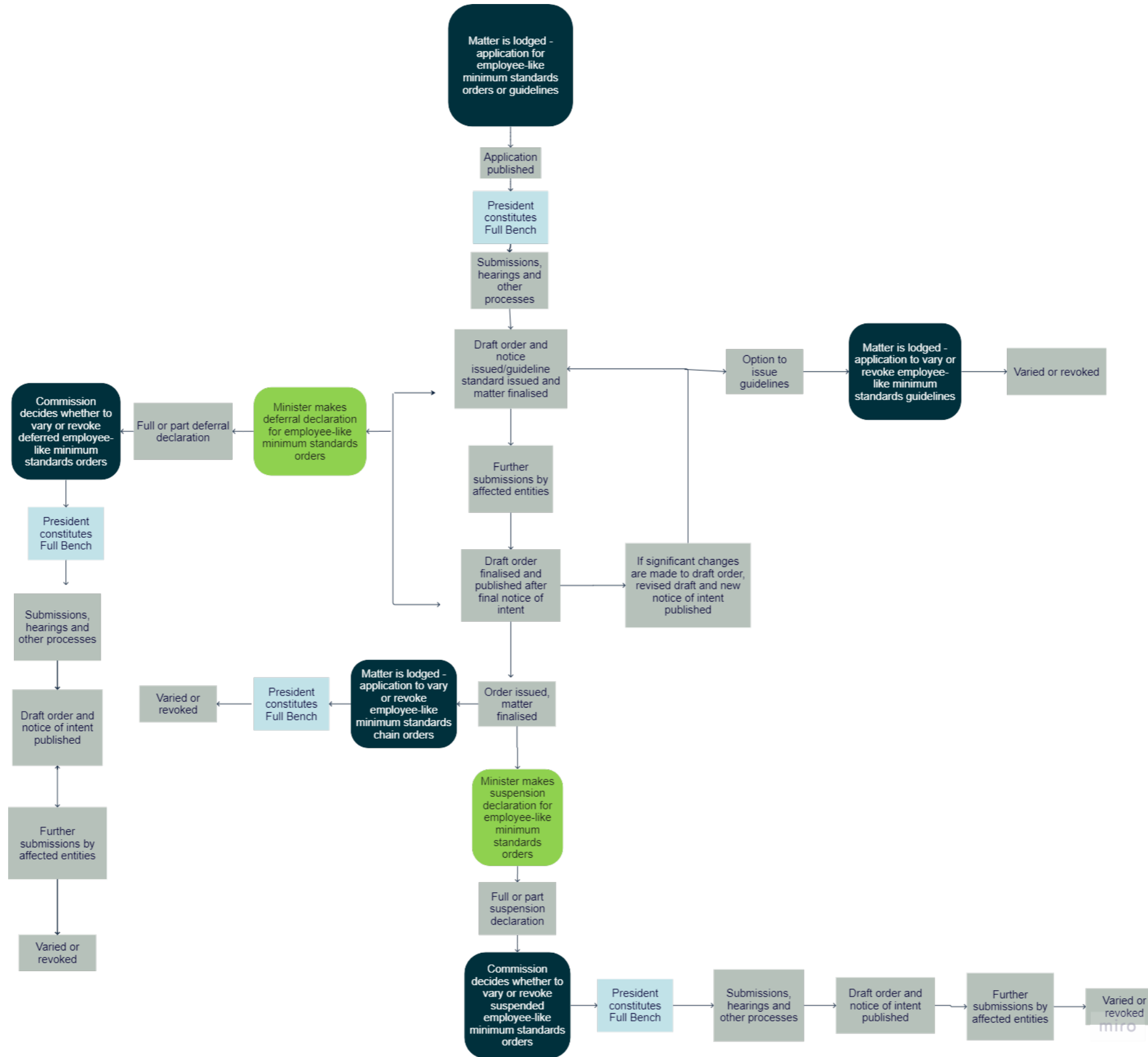
Note 2: The road transport objective is relevant to the functions of an Expert Panel referred to in this subsection, see section 40D.

ATTACHMENT E: Workflow

A. Road transport minimum standards and contractual chain orders and guidelines



B. Employee-like minimum standards orders



B. Collective agreements

