



# STATEMENT

*Fair Work Act 2009*

s.536JY—Commission may make a minimum standards order

s.536PD—Commission may make a road transport contractual chain order

s.590—Powers of the Commission to inform itself

## **Applications by Transport Workers' Union of Australia**

(MS2024/1, MS2024/2, MS2024/3 and MS2024/4)

Road transport industry

VICE PRESIDENT ASBURY  
COMMISSIONER CONNOLLY  
COMMISSIONER TRAN  
COMMISSIONER SLOAN

BRISBANE, 10 FEBRUARY 2025

*Applications from the Transport Workers' Union of Australia to make employee-like worker minimum standards orders, a road transport minimum standards order and a road transport contractual chain order – research proposals to inform consultations.*

### **Background**

[1] On 28 August 2024, the Transport Workers' Union of Australia (TWU) applied for minimum standards orders (MS2024/1, MS2024/2 and MS2024/3) and on 26 September 2024 it applied for a road transport contractual chain order (MS2024/4).

[2] The President of the Fair Work Commission (President) issued a Statement on 6 September 2024 setting out his provisional views in relation to the consultation process for MS2024/1-3.<sup>1</sup> The President noted in the Statement that he had constituted this Expert Panel for the road transport industry for the purpose of facilitating consultation in relation to the applications<sup>2</sup> (Expert Panel Consultation).

[3] A further statement issued by the President on 18 October 2024 confirmed the approach to consultation for these applications, including that the Road Transport Advisory Group (RTAG) would be directed to advise on the prioritisation of MS2024/1-3.<sup>3</sup>

[4] The 18 October 2024 Statement also set out the President's provisional view that, unless there were objections, MS2024/4 would be referred to the RTAG for advice about prioritisation.<sup>4</sup> No objections were received.

[5] On 24 October 2024 and 7 November 2024 the President issued directions to the RTAG under s 40F(5) of the *Fair Work Act 2009* (FW Act). Their combined effect was to direct the

RTAG to provide advice about:

- the prioritisation of matters MS2024/1-4;
- how and when it proposed to consult, including whether subcommittees would be formed for that purpose;
- how subcommittees (if formed) would be constituted and and operated and a corresponding direction that the RTAG seek to be inclusive and broadly representative in determining the membership of subcommittees;
- a proposed process for providing its advice in relation to those matters; and
- how it proposes to conduct itself more generally.

[6] On 11 November 2024, we issued a Statement and listed a conference of parties to discuss the consultation process in relation to the four applications. The conference took place on 29 November 2024.<sup>5</sup>

[7] The RTAG provided its advice in response to the President’s directions on 11 December 2024.<sup>6</sup> On 13 December 2024 the President issued a Statement and Directions for interested parties to file submissions regarding the RTAG’s advice.<sup>7</sup> Following the receipt of submissions on 8 January 2025, on 22 January 2025 the President issued a statement regarding the RTAG’s preliminary advice in relation to the four applications.<sup>8</sup>

[8] The RTAG was directed to start the consultation process in relation to these applications (alongside modern award applications AM2021/72 and AM2024/35) in accordance with its 11 December 2024 advice.<sup>9</sup> It is anticipated that the initial consultation period will be six months with a review of the effectiveness to be conducted at the end of that period.<sup>10</sup>

### **Proposed research to facilitate consultations**

[9] As previously stated, the President has constituted this Expert Panel to facilitate consultation in relation to the applications in MS2024/1-4. Given the recent commencement of the minimum standards and contractual chain provisions and early stage of the consultation process, there is limited information and data available to inform the consultation process in relation to the scope of the jurisdiction and the applications.

[10] Section 590 of the FW Act provides that the Commission may inform itself in relation to any matter before it in such manner as it considers appropriate, including by undertaking or commissioning research. The Commission regularly commissions and undertakes research to inform itself in relation to matters under Parts 2-3 – Modern Awards and Parts 2-6 – Minimum Wages of the FW Act.

[11] The Supplementary Explanatory Memorandum to the amending act which inserted Chapters 3A and 3B to the FW Act foreshadowed that the Commission may inform itself through research:

“Utilising its broad powers in current section 590, the FWC would be able to inform itself as to this matter in the manner it considers appropriate, including e.g. seeking the views of impacted owner drivers or commissioning research from an independent expert in relation to the potential impacts.”<sup>11</sup>

[12] We are of the *provisional view* that research which, broadly, investigates the nature and extent of the workers, sectors or industries which may have an interest in, or be affected by, the applications may assist us in facilitating consultation. We are also conscious that the commissioning and undertaking of research requires lead time and commencing a research process now will assist the timely progression of the consultation process on these matters.

[13] We note that sections 536K(4)(a), 536KA(2)(a) and 536PF(2)(a) of the FW Act provide that the Commission must not make or vary a minimum standards order or a road transport contractual chain order unless there has been genuine engagement with the parties to be covered. We consider that such research may also be a useful step towards meeting this requirement.

### **Research proposals**

[14] The Labour Standards Support Branch consists of staff who support the Commission's functions, including conducting and commissioning research relating to modern awards, minimum wages, equal remuneration, regulated worker minimum standards orders and road transport contractual chain orders.

[15] The Labour Standards Support Branch has identified four options for potential research projects to inform the Panel's consultation processes, set out in [Attachment A](#).

[16] While it is proposed that research conducted will, where possible, be focussed on the sectors that are subject to the applications before the Panel, the research would not seek to make determinative findings about the coverage of the applications. These remain matters before the Commission. However, conducting and publishing the research may assist parties, the RTAG and the Expert Panel to determine how this, and other matters and applications, are dealt with.

[17] Research proposals adopted would be coordinated by staff of the Labour Standards Support Branch and, when finalised, presented to the Expert Panel for publication.

### **Next steps**

[18] For the reasons set out above, our provisional view is that one or more research projects would inform us in our approach to facilitating consultations in relation to the applications. These may be drawn from the proposals in Attachment A or from research projects suggested by parties, in response to this Statement.

[19] We invite interested parties to provide feedback on the proposed approach, including suggestions for research projects, on or before **4.00pm on Friday 21 February 2024** by email to [rws@fwc.gov.au](mailto:rws@fwc.gov.au).

[20] A final decision on research projects to proceed will be made taking into account the feedback and suggestions received as well as the Commission's available resources.



VICE PRESIDENT

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<PR784172>

**ATTACHMENT A — RESEARCH PROPOSALS*****Proposal 1 — Information note with data on digital platform and road transport workers in Australia***

Commission staff would prepare an information note setting out publicly available data in relation to the demographics and other characteristics of the digital platform workforce and road transport workforce in Australia. The information note would seek to present data in a similar form to other Commission information notes for award or annual wage review matters.<sup>12</sup>

The note would draw on publicly available data sets relevant to providing information on demographics and characteristics relevant to the digital platform workforce and road transport workforce in Australia. Where possible, a more detailed examination of data sources relevant to the sectors of the applications before the Expert Panel (in matters MS2024/1, MS2024/2, MS2024/3 and MS2024/4) would be included. Data obtained from the Australian Bureau of Statistics, the Melbourne Institute's Household, Income and Labour Dynamics in Australia Survey and from published research will be considered.

This data may inform understanding of these characteristics, including:

- Sector and nature of work performed
- Digital platform/s used (including extent of multi-apping, where possible)
- Gender
- Age profile
- Language background
- Disability status
- Labour force status (i.e. working, student, retired etc)
- Household status
- Whether digital platform work is a primary source of income

The information note would also identify gaps or limitations in the publicly available data.

***Proposal 2 — Insights about digital platform worker characteristics and preferences***

The Commission would engage an external research provider to generate insights for the Expert Panel on effective methods to consult and engage with digital platform workers, with a particular focus on worker cohorts who may be subject to applications MS2024/1 and MS2024/3. This would include identifying issues that may limit workers from participating in Expert Panel consultation processes and options to address those issues.

The project would seek to fill any gaps in the understanding of demographics and characteristics of relevant workers not able to be addressed through publicly available data by using qualitative research methods. These would be determined in conjunction with the research provider but potentially could involve a small-scale online survey, focus groups and/or in-depth interviews.

The Commission has previously procured research using similar methodologies – see, for example, the qualitative study [research report](#) prepared by the Social Research Centre in the Work and Care modern award review matter (AM2023/21) (noting this research was focussed on generating findings to assist matters/issues arising from the proceedings as opposed to informing consultation approaches).

***Proposal 3 — Data profile and mapping of the digital platform worker economy in Australia***

The Commission would engage an external research provider to provide a contemporary snapshot of the digital platform worker economy’s composition, size, and participants using quantitative data sources, with particular focus on the sectors relevant to the applications MS2024/1 and MS2024/3.

A number of the data-driven studies or research conducted on the digital platform worker economy in Australia were conducted some years ago and prior to the COVID-19 pandemic. These include:

- A Green Paper published in 2020 by the Actuaries Institute of Australia: *The Rise of the Gig Economy and its impact on the Australian Workforce*,<sup>13</sup> prepared with data provided by analytics firm Quantium.
- A 2019 report published by consultancy AlphaBeta analysing administrative data provided by Uber.<sup>14</sup>

This project would involve commissioning research to produce, identify, obtain and analyse existing recent data and provide a report covering similar subject matter to these examples (with the exclusion of any policy or advisory content). The project would seek to provide insights not able to be generated using publicly available data sources outlined by proposal 1. A large-scale survey to generate new primary data, such as that undertaken for the 2019 Report of the Inquiry into the Victorian On-Demand Workforce,<sup>15</sup> is outside the scope of this proposal.

#### ***Project 4 — Data profile and mapping of road transport contractual chains in Australia***

The Commission would engage an external research provider to prepare a report that examines the composition, size and extent of road transport contractual chains in Australia, drawing on available data and other information.

The purpose of this report would be to inform the Expert Panel’s understanding of the individuals, businesses and organisations that rely on road transport contractual chains who may be affected by regulatory change in this area. This would assist the Expert Panel in determining where to focus its consultation efforts related to MS2024/4.

This project would draw on available data, previous research, literature and other sources to:

- Provide a data profile of road transport supply chains, including:
  - Measures of activity, including freight movements and value of freight moved
  - Structure and composition of road transport contractual chains, including business size, workforce characteristics, use of (sub)contracting; and
- Map the industries or sectors potentially affected by MS2024/4 that rely on the movement of goods by the road transport industry either as consignors, consignees or both.

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<sup>1</sup> Application by Transport Workers’ Union of Australia [\[2024\] FWC 2438](#).

<sup>2</sup> Application by Transport Workers’ Union of Australia [\[2024\] FWC 2438](#), [14].

<sup>3</sup> Application by Transport Workers’ Union of Australia [\[2024\] FWC 2895](#).

<sup>4</sup> Application by Transport Workers’ Union of Australia [\[2024\] FWC 2895](#), [28].

<sup>5</sup> Application by Transport Workers’ Union of Australia [\[2024\] FWCFB 427](#).

<sup>6</sup> Road Transport Advisory Group, ‘Response to Directions’, *Applications by TWU*, MS2024/1-4, 11 December 2024.

<sup>7</sup> Application by Transport Workers’ Union of Australia [\[2024\] FWC 3470](#).

<sup>8</sup> Application by Transport Workers’ Union of Australia [\[2025\] FWC 216](#).

<sup>9</sup> Application by Transport Workers’ Union of Australia [\[2025\] FWC 216](#) [32].

<sup>10</sup> Application by Transport Workers’ Union of Australia [\[2025\] FWC 216](#) [13]; RTAG Response to Directions, 11 December 2024 [19].

<sup>11</sup> Supplementary Explanatory Memorandum, *Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023*

<sup>12</sup> See for example research undertaken for the Gender undervaluation – priority awards review on a [Data profile - Pharmacists and the Pharmacy Industry Award 2020](#) and research undertaken for the Modern Awards Review 2023–24 on [Data profile – Work and care](#)

<sup>13</sup> Actuaries Institute of Australia, [The Rise of the Gig Economy and its impact on the Australian Workforce](#) (Green Paper, December 2020).

<sup>14</sup> AlphaBeta, *Flexibility and fairness: What matters to workers in the new economy* (Report, March 2019).

<sup>15</sup> McDonald, Paula et al, [Digital Labour Platform Work in Australia: Prevalence, Nature and Impact](#), Queensland University of Technology (Report, November 2019); See also Williams, Stewart et al, [Digital platform work in Australia: Findings from a 2023 national survey](#), Queensland University of Technology (Report, July 2024).