

Form F87E – Application for a road transport contractual chain order

Fair Work Act 2009 (Fair Work Act), section 536PE

This is an application to the Fair Work Commission to make a road transport contractual chain order in accordance with Part 3B-2 of the Fair Work Act.

The Applicant



Choose one of the following.

The person making this application (Applicant) is:

- an organisation 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

Provide the following information about the Applicant:

Legal name of Applicant	Transport Workers' Union of Australia		
Applicant's ACN (if a company)			
Applicant's trading name or registered business name (if applicable)			
Applicant's ABN (if applicable)			
Contact person	Lorraine Biviano		
Postal address	Level 9, 447 Kent Street		
Suburb	SYDNEY		
State or territory	NSW	Postcode	2000

Phone number	0419 302 121
Email address	Lorraine.biviano@twu.com.au/legal@twu.com.au

Does the Applicant need an interpreter?



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help in your language](#) on our website.

Yes – Specify language

No

Does the Applicant require any special assistance at the hearing or conference (for example a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A **representative** is a person that is representing the Applicant. This might be a lawyer or paid agent, a union or employer organisation, or a not-for-profit association or body that provides support, advice or advocacy in relation to this kind of application or case. The Applicant does not need to have a representative.

Yes – Provide representative's details below

No

Representative's details



These are the details of the person that is representing the Applicant (if any).

Name of person	Lorraine Biviano
Firm, company or organisation	Transport Workers' Union of Australia
Email address	Lorraine.biviano@twu.com.au
Phone number	0419 302 121

Postal address	Level 9, 447 Kent Street		
Suburb	SYDNEY		
State or territory	NSW	Postcode	2000
Is the representative a lawyer or paid agent?			
	The Applicant will need permission to be represented by a lawyer or paid agent in a conference or hearing that is conducted by a Commission Member. Our lawyers and paid agents practice note explains when you need to ask for permission to be represented.		
<input checked="" type="checkbox"/> Yes – please select:	<input checked="" type="checkbox"/> Lawyer	<input type="checkbox"/> Paid agent	
<input type="checkbox"/> No			

1. Classes of persons to be covered

1.1 Describe the classes of persons in a road transport contractual chain to be covered by the proposed road transport contractual chain order.



See sections 536PE(2), 536PE(3) and 536PM(3) of the Fair Work Act. A class may be described by reference to a particular industry or sector, part of an industry or sector, or particular kinds of work. Persons other than regulated road transport contractors and road transport employee-like workers may be described by name or by class. In your answer, consider describing how the persons to be covered meet the definition of ‘in a road transport contractual chain’ in section 15RA of the Fair Work Act. The classes of persons to be covered will include primary parties, secondary parties, and regulated road transport contractors and/or road transport employee-like workers (see section 15RA(2)).

The persons to be covered by the proposed order include:

- parties, within the meaning of s 15RA(2)(a) of the *Fair Work Act 2009* (Cth), to the first contract or arrangement in the road transport contractual chain the subject of this order, including the client (which may include large building and construction companies including Downer, Lendlease, CIMIC Group, John Holland, Multiplex and Mirvac); and
- parties to subsequent contracts or arrangements in the road transport contractual chain the subject of this order for the purposes of s 15RA(2)(b) of the FW Act, being

- contracts or arrangements under which work is performed by regulated road transport contractors under services contracts or employees;
- regulated road transport contractors who perform work under a services contract in the contractual chains the subject of this order for the purposes of s 15A(2)(c) of the FW Act; and
 - regulated road transport businesses.

2. Work to be covered

2.1 Describe the work to be covered by the proposed road transport contractual chain order.



See section 536PM(1)(a) of the Fair Work Act. The coverage terms of the order must include the work in the road transport industry covered by the order.

The work to be covered by the proposed road transport contract chain order for the purposes of s 536PM(1)(a) of the FW Act is the carriage of concrete in vehicles configured to cart 5 meters cubed of concrete or more (**concrete cartage work**).

The work covered will include the collection, transport and delivery of concrete using a prime mover that is fitted with a concrete agitator.

3. Content of order

3.1 Describe the content of the proposed road transport contractual chain order.



See sections 536PM–536PP of the Fair Work Act for terms that must be included in a road transport contractual chain order. Section 536PQ gives a non-exhaustive list of terms that may be included in a road transport contractual chain order. Section 536PR lists terms that must not be included in a road transport contractual chain order.

The proposed contract chain order will include provisions that impose the following obligations on road transport businesses that engage or employ employees and regulated road transport contractors to perform concrete cartage work in a contractual chain:

Contract terms between regulated road transport business and regulated road transport contractors

1. A term or terms requiring regulated road transport contractors to supply a prime mover and agitator in accordance with the services contract or, where the prime mover is

provided by the regulated road transport business, terms about how the prime mover is to be used.

2. A term or terms providing for the road transport business to provide notice in writing prior to terminating the services contract with a regulated road transport contractor or, where such notice is not provided, payment in lieu of notice. Notice will not need to be given for terminations where the regulated road transport contractor has engaged in serious misconduct as defined in the *Fair Work Regulations 2009* (Cth). Additional notice will be provided to regulated road transport contractors who are natural persons and aged over 45.
3. Include a term addressing any necessary or required installation of communication equipment.

Training and instruction

4. A term or terms requiring that employees and regulated road transport contractors prior to performing concrete cartage work have received appropriate training and instruction dealing at least with the following:
 - a. BlueCard Training;
 - b. work health and safety obligations of all persons involved in concrete cartage work;
 - c. hazards attending to concrete cartage work;
 - d. hazard and incident reporting systems concerning concrete cartage work;
 - e. safe operating policies, procedures and other measures designed to minimise risks to health and safety including but not limited to:
 - f. departure, arrival and on-site procedures;
 - g. communication systems;
 - h. the use and operation of vehicles and other equipment and the safety features of such vehicles and equipment;
 - i. the use, maintenance, care and storage of personal protective equipment;
 - j. access to health and safety information.
 - k. vehicle training for the vehicle(s) which the concrete cartage worker may operate; and
 - l. first aid.
5. A term or terms requiring that employees and regulated road transport contractors who perform concrete cartage work:

- a. are afforded training and have demonstrated competencies to perform the inherent requirements of a competent concrete cartage worker;
- b. are employed or engaged to perform duties consistent with their qualifications and training;
- c. are afforded at least annual accredited and relevant refresher training; and
- d. are remunerated for time spent training at their ordinary rates of pay.

Consultation on hazards, risks and SOPs

6. A term or terms requiring that employees and regulated road transport contractors and their representatives, including the Transport Workers' Union of Australia, are consulted about:
 - a. risk assessments;
 - b. systems of work; and
 - c. SOPs and other control measures.
7. Consultation includes, but is not limited to, the provision of relevant information and a genuine opportunity to contribute to the decision-making process.

Minimum standards for vehicles

8. A term or terms setting out any minimum vehicle and/or equipment specifications. The requirement will ensure that any specified vehicle or equipment requirement will be reasonable and must have regard to ;the capital investment required, the regulated road transport contractors remuneration including cost recovery and any applicable legislative or regulatory requirements.

Provision of Personal Protective Equipment

9. A term or terms requiring that employees and road regulated transport contractors are who are to engaged in concrete cartage work have available to them all necessary personal protective equipment to safely complete the concrete cartage service.

Remuneration systems

10. A term or terms requiring that regulated road transport contractors performing concrete cartage work receive:
 - a. a minimum safety net rate for the cartage of each cubic metre (or part thereof) of concrete;
 - b. a minimum safety net rate for each kilometre travelled in the delivery of the concrete; and

- c. a set hourly rate for each hour (or part thereof) spent waiting to load and/or unload concrete in performance of the work.
11. The safety net will ensure that the amount paid by regulated road transport businesses to regulated road transport contractors is sufficient to recover costs associated with the conduct of their business and provide for a reasonable profit margin for the operation of their business.
12. Cost recovery rates will be provided for ensuring that payment from the regulated road transport business to the regulated road transport contractors takes into account fixed and running costs for the prime mover and/or agitator supplied as well as the following:
 - a. labour costs as derived from the *Road Transport and Distribution Award 2020*;
 - b. annual leave, personal/carers leave and public holidays;
 - c. capital costs, including return on capital, depreciation and lease costs;
 - d. fuel costs;
 - e. registration;
 - f. tyres;
 - g. oil;
 - h. administration;
 - i. repair and maintenance costs; and
 - j. insurances.
13. A term or terms allowing for the ready adjustment of rates to accommodate significant fluctuations in fuel costs which impact the capacity of regulated road transport contractors to achieve cost recovery.

Tolls

14. A term or terms requiring that requires payment and/or reimbursement for all tolls incurred during the performance of concrete cartage work.

Record and audit obligations

15. A term or terms requiring a road transport business to keep for at least 6 years, and make available for inspection by concrete cartage workers or their representatives, including the Transport Workers' Union of Australia, records relating to their compliance with this contract chain order.
16. A term or terms requiring that road transport businesses must put in place an annual internal audit program that verifies their compliance with this contract chain order and

provide certification of their compliance with this contract chain order on at least an annual basis to their Client.

Safe, Sustainable and Viable Operations in Concrete Cartage

17. The proposed contract chain order will include provisions that impose the following obligations on primary parties to services contracts in a contractual chain (which may including building and construction businesses including Mirvac, Lendlease, Downer, etc.) and road transport businesses who engage other road transport businesses that engage employees and regulated road transport contractors to perform concrete cartage work in a contractual chain (**Clients**).
18. Any contract entered into with road transport business in relation to concrete cartage work must contain a term or terms that:
 - a. require all contracts entered into by the road transport business in relation to the performance of concrete cartage work to be in writing and to be provided to the Client;
 - b. requires the regulated road transport businesses provide information about any significant change to the contractual arrangements of any engaged regulated road transport contractor and that no such significant change can be proposed or take effect until such time as the primary party has properly considered and approved the contractual amendment;
 - c. require that the road transport business comply with its obligations under this contract chain order and other applicable legislative and regulatory requirements relating to concrete cartage work;
 - d. allow the Client to conduct an audit of the road transport business in relation to its compliance with this contract chain order;
 - e. provide that the Client will not maintain its contract with the road transport business in the event the road transport business is not complying with its obligations under this contract chain order;
 - f. ensure that the road transport business holds all necessary and appropriate insurances including compulsory third party insurance, and comprehensive motor vehicle insurance that includes cover for damage to the concrete agitator, product and public liability insurance, contractors load insurance in relation to the transportation of concrete and workers compensation insurance;

- g. ensure that employees and regulated road transport contractors who will perform concrete cartage work hold all necessary and relevant licenses and qualifications in relation to that work; and
 - h. ensure that the primary party or client to a road transport contract (such as the large building and construction companies) adequately funds the concrete cartage work it requires to be performed, including ensuring that the primary party or client adequately funds any successive contract where such work is further contracted out so that the work is viable, safe and sustainable.
19. A term or terms imposing an obligation to take reasonable steps, including by the conduct of audits of the road transport business to ensure that the road transport business that engages employees and regulated road transport contractors to perform concrete cartage work is complying with this contract chain order.
20. A term or terms imposing an obligation to, on becoming aware that the road transport business is not complying with its obligations under this contract chain order, take such action as is necessary to ensure that such a breach is rectified and is not repeated including notification of relevant regulators, or the issue of breach notices under, or termination of, the contract.
21. A term or terms imposing a prohibition on entering into a contract or contracts in relation to concrete cartage work with a road transport business that engages employees and regulated road transport contractors to perform concrete cartage work, unless it has ensured that the road transport business complies with its legislative and regulatory obligations including its obligations under this contract chain order.
22. A term or terms requiring that a Client must include terms in its contract with a road transport business a term or terms that provide for at least yearly rate reviews which take into account the need for employees and road regulated road transport contractors who perform concrete cartage work to be paid a fair and reasonable rate for work they perform including, as a minimum, rates prescribed by industrial instruments.

Disputes

23. A term or terms providing that any disputes about matters set out in the contract chain order are able to be dealt with by the Commission, with the Commission first exercising its conciliation functions and, if the dispute cannot be resolved, by arbitration with the

Commission required to take into account fairness between the parties in arbitrating any dispute.

Termination

24. A term or terms setting out the requirement of the primary party to terminate this Agreement in accordance with applicable legislation and on lawful grounds, including by agreement, material breach, insolvency, or loss of required licences or accreditations. Any termination must comply with statutory notice requirements and provide the contractor a reasonable opportunity to remedy any alleged breach unless immediate termination is required by law.

Attach additional pages if necessary (which may include a draft of the proposed order).

3.2 Does the proposed road transport contractual chain order overlap with an existing minimum standards order? If so, identify the order.



Section 536PN of the Fair Work Act provides that a road transport contractual chain order must include a provision for how it interacts with a minimum standards order.

No

3.3 Does the proposed road transport contractual chain order overlap with existing road transport contractual chain guidelines? If so, identify the guidelines.



Sections 536QW(5) and 536QW(6) of the Fair Work Act provide that if the Commission makes a road transport contractual chain order that overlaps with road transport contractual chain guidelines, the Commission must revoke or vary the guidelines with effect from the day the order comes into operation.

No

4. Minimum standards objective and road transport objective

4.1 Explain why the proposed road transport contractual chain order is consistent with the minimum standards objective.



See the minimum standards objective in section 536JX of the Fair Work Act. The Commission must have regard to the minimum standards objective in deciding whether to make a road transport contractual chain order.

The proposed CCO provides an appropriate safety net of minimum standards by setting out in a clear and simple fashion fair and relevant, terms and obligations to ensure that primary parties to services contracts, regulated road transport contractors and regulated road transport businesses in the contractual chains, subject to the order, are established.

The concrete cartage industry faces ongoing operational issues stemming from a range of factors not the least of which are the protracted and seemingly unreasonable negotiation of replacement contracts for regulated road transport contractor engaged in the sector. Those negotiations do not appear geared to properly ensuring that regulated road transport business can continue to safely perform concrete cartage services.

The draft contract chain order puts in place standards for primary parties to services contracts in the contractual chain, regulated road transport business and regulated road transport workers that are clear, simple, fair and relevant. This is achieved through the inclusion of provisions that clearly set out the relevant standards essential to ensure the safe, fair viable and sustainable performance of concrete cartage services. This is particularly important given the significant investment that those in concrete cartage service make in their capital equipment.

The contract chain order recognises the unique perspective of regulated road transport workers and regulated road transport businesses who perform concrete cartage services. The draft contract chain order will ensure that those workers are the subject of established minimum standards. Further, the contract chain order will ensure that those regulated road transport businesses and regulated road transport workers/contractors are able to be paid in a fashion that recognises their skills and the value of the work they perform to the Australian community including in infrastructure investment.

The contract chain order will assist regulated road transport contractors to achieve cost recovery. This is an elementary minimum standard that is tailored and directed to the road transport industry and the experiences of regulated road transport contractors and regulated road transport

businesses, particularly due to the large cost outlays when purchasing appropriate prime movers and agitators for work in the sector.

4.2 Explain why the proposed road transport contractual chain order is consistent with the road transport objective.



See the road transport objective in section 40D of the Fair Work Act. The Commission must have regard to the road transport objective in deciding whether to make a road transport contractual chain order.

The proposed order takes into account the need for an appropriate safety net of minimum standards for regulated road transport workers and road transport businesses by setting standards that are directed to ensuring the viability of the industry, as well as the safety, sustainability and viability of the conduct of work by regulated road transport contractors and road transport businesses. Ensuring that appropriate minimum standards associated with safe operating procedures, minimum vehicle standards, personal protective equipment, contracting obligations, auditing obligations and appropriate systems of remuneration are proscribed.

The proposed order ensures the sustainability and performance of the supply chains it covers and the safe conduct of road transport operations in those supply chains. The contract chain order proposed will ensure the ongoing sustainability and viability of the concrete cartage industry. The terms are drafted are intended to ensure that fair contracting principles will hold clients to account in ensuring the necessary objectives are achieved.

5. Road transport contractual chain order – particular matters to take into account

5.1 Explain how the proposed order takes into account the commercial realities of the road transport industry, including commercial practices in relation to part load, mixed load, no load, multi-leg and return trips.



Section 536PF(2)(d) of the Fair Work Act provides that in deciding whether to make a road transport contractual chain order, the Commission must have regard to the commercial realities of the road transport industry, including commercial practices in relation to part load, mixed load, no load, multi-leg and return trips.

The proposed order attends to the commercial realities of the industry by ensuring that regulated road transport contractors and road transport businesses are appropriately remunerated for the services and infrastructure necessary to complete concrete cartage work. This includes having regard to the significant investment required to safely operate in the sector.

The proposed order also addresses the unfair and arbitrary commercial practices which are incongruent with the commercial realities of the industry and the operation of businesses by regulated road transport contractors and road transport businesses. It does this by requiring the primary party to properly have regard to the costs of operating in the concrete cartage sector through auditing and contracting practices that impose clear obligations on clients, including large building and construction companies.

5.2 Explain how the proposed order will not unduly affect the viability and competitiveness of road transport businesses, owner drivers or other similar persons.



Section 536PF(2)(e) of the Fair Work Act provides that the Commission must not make the road transport contractual chain order unless the Commission is satisfied that the order will not unduly affect the viability and competitiveness of road transport businesses, owner drivers or other similar persons.

The proposed order will not adversely impact the viability of road transport businesses, owner drivers, or similar persons. Rather, it will enhance and promote the viability of road transport businesses, owner drivers, or similar persons by ensuring that appropriate standards are observed having regard to the nature of the concrete cartage industry. The draft contract chain order will ensure that all parties in a road transport contract chain, including the primary party, will be held accountable for ensuring that the appropriate contract provisions are determined that consider the true operating costs in performing concrete cartage work and other relevant factors such as the appropriate industrial instrument.

5.3 Explain how any other current or proposed road transport contractual chain orders and any current or proposed minimum standards orders should be taken into account.



Section 536PF(2)(f) of the Fair Work Act provides that the Commission must take into account any current or proposed road transport contractual chain orders and any current or proposed minimum standards orders in deciding whether to make a road transport contractual chain order.

This is not applicable.

5.4 Explain how the coverage of the proposed order is clear.



Section 536PF(2)(g) of the Fair Work Act provides that the Commission must take reasonable steps to ensure that the coverage of the road transport contractual chain order is clear.

The coverage of the proposed contractual chain order is clear, and the order covers the road transport contractual chains stipulated including road transport businesses and regulated road transport contractors. In this regard, primary parties, secondary parties and regulated road transport contractors who are in such contractual chains are covered by the proposed order

5.5 If the proposed order would cover road transport employee-like workers, explain why it is appropriate for the proposed order to cover those workers.



Section 536PD(4) of the Fair Work Act provides that the Commission must not make a road transport contractual chain order that covers road transport workers unless the Commission considers it appropriate.

This is not applicable.

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant—insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant – insert your position title
- If you are an officer or authorised employee of a registered organisation – insert your position title
- If you are the Applicant's representative and have provided your details in this form – insert 'Representative'.

Authority to sign	
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	Lorraine Biviano
Name	Lorraine Nunziata Biviano – Director – Legal & Industrial Strategy
Date	18 December 2025

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS