



STATEMENT

Fair Work Act 2009

s.536PG—FWC to prepare and publish a draft of road transport contractual chain order

Application by the Transport Workers’ Union of Australia

(MS2026/1)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
VICE PRESIDENT GIBIAN

SYDNEY, 14 APRIL 2026

Application for a road transport contractual chain order under Part 3B-2 of the Fair Work Act 2009 (Cth) – fuel cost recovery – publication of notice of intent and draft of a proposed road transport contractual chain order under s 536PG(1) – consideration of road transport objective and minimum standards objective.

Introduction

[1] The *Fair Work Amendment (Fairer Fuel) Act 2026* (Cth) (the **Fairer Fuel Act**) received Royal Assent on 1 April 2026. The Fairer Fuel Act amends the *Fair Work Act 2009* (Cth) (the **FW Act**) to enable the Commission to make, vary and revoke a road transport contractual chain order (**RTCCO**) in a more expedited manner than would otherwise be possible in response to an application that the Minister determines to be an ‘emergency application’. The amendments commenced on 2 April 2026.

[2] The Fairer Fuel Act amended the FW Act to provide for the Minister to determine under s 536PEA of the FW Act that an application for the making of a RTCCO, or an application for a determination varying or revoking a RTCCO, is an ‘emergency application’. Such a determination may be made if the Minister is satisfied there are events or circumstances that have occurred or are occurring which are ‘currently having, or likely to imminently have, a significant national negative impact on the road transport industry’, and that it is in the public interest to make the determination: s 536PEA(3).

[3] An RTCCO made or varied as a result of an ‘emergency application’ is a ‘time-sensitive road transport contractual chain order’ (a **time-sensitive RTCCO**). A time-sensitive RTCCO must include one or more terms ‘relating to the event or circumstance, or series of events or circumstances, to which the order relates’: s 536PQA(1). The terms relating to the event or circumstances, or series of events or circumstances, to which the order relates may be about matters which include payment times, fuel levies, rate reviews, termination or cost recovery: s 536PQA(2).

[4] Before making an RTCCO, the Commission must publish a ‘notice of intent’ stating that the Commission proposes to make an RTCCO and publish a draft of the proposed RTCCO: s 536PG(1). The Commission is required to then ensure that affected entities have a reasonable

opportunity to make written submissions to the Commission for its consideration in relation to the draft RTCCO: s 536PH(1). Other requirements with respect to ‘genuine engagement’ with the parties to be covered by an RTCCO and for consultation with the Road Transport Advisory Group which must occur before the Commission makes or varies an RTCCO are set out in ss 536PF(2)(a) and (b).

[5] Rather than the usual 12-month period which must be provided between the publication of a notice of intent for an order and the order coming into operation (or six months if the circumstances urgently require it), the minimum period for a time sensitive RTCCO is another period that the Commission ‘considers is reasonable’: s 536NT(4)(a). The Commission remains required to ensure affected entities have a reasonable opportunity to make written submissions in relation to a published draft of the order albeit s 536PH(1A) indicates that, if the draft is of a time-sensitive RTCCO, a ‘short period’ to make written submissions may constitute a reasonable opportunity.

The Joint Application

[6] On 2 April 2026, the Transport Workers’ Union of Australia (the **TWU**) and the Australian Road Transport Industrial Organization (**ARTIO**) jointly made an application for Commission to make an RTCCO which seeks to deal with the issue of rising fuel costs (the **Joint Application**). The Joint Application was allocated matter number MS2026/1. The Joint Application states:

This application... is made on an urgent basis, seeks orders to come into effect as soon as permissible, deals specifically with fuel costs and contemplates weekly changes to the cost recovery rate to reflect fluctuating fuel costs.

[7] The Joint Application asserts that the transport industry is facing unprecedented increases in fuel prices, which are threatening the viability of transport businesses across the industry, arising from the conflict in the Middle East. The Joint Application contends that it is essential that immediate action be taken to address this issue, given the potential harm that any large-scale disruption may cause to regulated workers, the persons or bodies who rely on their services and the Australian economy at large.

[8] An RTCCO can only be made under s 536PD(1) of the FW Act by an Expert Panel for the road transport industry: see s 617(10B)(da) of the FW Act. The present Expert Panel was constituted to deal with the Joint Application and consider whether the Commission should publish a notice of intent to make a RTCCO and a draft order under s 536PG of the FW Act and, if it does, what the terms of the draft order should be. Other steps were taken to publicise the making of the Joint Application, including notifying interested persons of the Joint Application by subscription service and establishing a major case page on the Commission’s webpage as the means for communicating developments in the matter to interested parties.

[9] The Expert Panel conducted hearings in relation to the Joint Application on 8 April 2026, 10 April 2026 and 13 April 2026. A large number of interested parties participated in the hearings and a considerable volume of evidence and submissions was received by the Commission. For the purposes of stimulating discussion with interested parties, the Expert Panel published a simplified version of the draft order contained in the Joint Application on 10 April 2026, which endeavoured to provide an alternative approach to addressing the

concerns that prompted the application and issues that interested parties had raised in relation to the draft order proposed by the TWU and ARTIO.

[10] On 10 April 2026, the Minister for Employment and Workplace Relations made the *Fair Work (Emergency Application – MS2026/1) Determination 2026* (the **Determination**). Clause 5 of the Determination provides:

5 Emergency application determination

- (1) I hereby determine that the application is an emergency application.
- (2) The circumstance to which the application relates is the fuel supply chain disruption resulting from, or which continues to be affected by:
 - (a) the significant reduction in shipping through the Strait of Hormuz; and
 - (b) conflict in the Middle East.

[11] The ‘application’ specified in the Determination is the Joint Application. The consequence is that the Joint Application is an ‘emergency application’ and any RTCCO made as a result of the Joint Application will be a time-sensitive RTCCO.

Notice of intent

[12] After considering the evidence and submissions advanced by interested parties, the Expert Panel has determined to publish a notice of intent under s 536PG(1) of the FW Act stating that it proposes to make an RTCCO and to publish a draft of the proposed RTCCO. The notice of intent and draft RTCCO are published together with this statement.

[13] The TWU suggested that it is necessary for the Expert Panel to have regard to the ‘road transport objective’ and the ‘minimum standards objective’ when deciding whether to issue a notice of intent and publish a draft RTCCO under s 536PG(1). The road transport objective is set out in s 40D which provides that, ‘[i]n 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 matters specified in that section.

[14] Section 536NN provides that the Commission must have regard to the minimum standards objective ‘in performing a function or exercising a power’ under Chapter 3B — Minimum standards for persons in a road transport contractual chain. The minimum standards objective is set out in s 536JX and requires the Commission, in performing a function or exercising a power under Part 3A-2, to take into account the need for an appropriate safety net of minimum standards for regulated workers having regard to the matters specified in paragraphs (a)–(d).

[15] There may be a question as to whether, by merely publishing a notice of intent and draft RTCCO under s 536PG(1), the Expert Panel is ‘performing a function or exercising a power’ under the Act generally or Chapter 3B. The publication of a notice of intent and draft order indicates no more than that the Expert Panel is proposing to make an RTCCO. The Expert Panel may decide that no RTCCO is to be made based on the draft or, if it decides to make an RTCCO based on the draft, may make any changes it thinks appropriate to the draft RTCCO: ss 536PJ(1) and 536PK.

[16] We have received limited submissions with respect to this question. It is not necessary or appropriate for the Expert Panel to express a concluded view in relation to the question of statutory construction that is raised. It is sufficient to indicate that, in the circumstances of the present matter, we consider it is appropriate to have regard to both the road transport objective and the minimum standards objective in deciding whether to publish a notice of intent and draft RTCCO under s 536PG(1) and in determining the content of the draft proposed RTCCO.

[17] We have considered the road transport objective and the minimum standards objective in deciding to publish the notice of intent and draft RTCCO. We consider that publishing a notice of intent and the draft RTCCO at this time is an appropriate step taking 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 matters set out in s 40D of the FW Act. We are also satisfied that taking this step is appropriate having regard to the need for an appropriate safety net of minimum standards for regulated workers having regard to the matters set out in s 536JX of the FW Act.

[18] We make clear that the Expert Panel has reached no concluded view as to whether an RTCCO should be made based on the draft or, if an RTCCO is made based on the draft, what the terms of the RTCCO should be. The Expert Panel will give further consideration to the submissions and evidence it has already received, and any further submissions, feedback or other responses it receives in relation to the draft RTCCO, before determining whether to make an RTCCO based on the draft or the terms of any such RTCCO. We will further consider the road transport objective and the minimum standards objective in deciding whether to make an RTCCO and, if we make an RTCCO, the terms to be included in the order, and provide more fulsome reasons for our consideration at that time.

Timetable for submissions, consultation and engagement

[19] Section 536PH(1) of the FW Act requires the Commission to ensure that affected entities have a reasonable opportunity to make written submissions to the Commission for its consideration in relation to a draft RTCCO published under s 536PG(1)(b). Section 536PH(1A) provides that if the draft is a time-sensitive RTCCO, a short period to make written submissions may constitute a reasonable opportunity. Having regard to the urgent circumstances pertaining to this matter, and to ensure that the Commission is able respond in a timely way to the time-sensitive events identified in the Determination, the Commission directs that any written submissions by affected parties are to be lodged by **12:00 pm (AEST) on Friday, 17 April 2026**. Submissions may be lodged by email to rws@fwc.gov.au or by using the online submissions form on the [webpage for this matter](#). Submissions will be published to that webpage.

[20] Section 536PF(2)(a) provides that the Commission must not make or vary a RTCCO 'unless there has been genuine engagement with the parties to be covered'. The hearings conducted to date have, in our view, constituted the requisite 'genuine engagement' in that any party to be covered by the proposed RTCCO has been given an opportunity to adduce evidence and make submissions. We intend to take the following additional steps to further engage with parties to be covered by the draft RTCCO we have published:

- (1) On **Thursday, 16 April 2026 commencing at 10:00 am (AEST) in Sydney**, Vice President Asbury will conduct an engagement conference with any party to be covered by the draft RTCCO who wishes to participate. Participants may attend in person or by video link using Microsoft Teams. At this conference, any party may express their view about the draft RTCCO, including whether it should be made and its proposed terms, and the Commission will have regard to any issues raised. Any party wishing to participate in this conference should advise of their intention to do so and, if necessary, request the Microsoft Teams meeting details, by **4:00 pm (AEST) on Wednesday, 15 April 2026**. Depending on the number of parties wishing to participate, the Commission may assign time markings for attendance by particular parties.

- (2) The Expert Panel will conduct a further hearing on **Friday, 17 April 2026 commencing at 10:00 am (AEST) in Sydney**. At this hearing, any party to be covered by the RTCCO, as well as any other affected entity, may adduce evidence and make submissions concerning the draft RTCCO including whether it should be made and its proposed terms. Witness evidence may be adduced *viva voce* provided that the relevant party advises the Expert Panel (by email to chambers.hatcher.j@fwc.gov.au) of the name of the witness and a brief summary of the subject matter of the evidence to be adduced by **4:00 pm (AEST) on Thursday, 16 April 2026**.

[21] Section 536PF(2)(b) provides that the Commission must not make or vary a RTCCO unless the Road Transport Advisory Group has been consulted. A copy of this statement, the Notice of Intent and the draft RTCCO will be sent to the members of the RTAG. Pursuant to s 40F(5), the President directs the RTAG to advise the Commission of its views concerning the draft RTCCO, including whether it should be made and its proposed terms, in writing by **12:00 pm (AEST) on Friday, 17 April 2026**. It is noted that s 40G(3) is applicable in the present circumstances. A member of the Commission other than those constituting this Expert Panel will be made available to facilitate the conduct of any RTAG meetings.



PRESIDENT

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