

## **Advice to the Expert Panel**

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**MS2026/1 - Application by Transport Workers' Union of Australia & Australian Road Transport Industrial Organization re fuel cost recovery**

**16 April 2026**

## Background

1. On 2 April 2026, the Transport Workers' Union of Australia (**TWU**) and the Australian Road Transport Industrial Organization jointly made an application (**Joint Application**) for the Commission to make a road transport contractual chain order (**RTCCO**). The Joint Application was made under section 536PE of the *Fair Work Act 2009* (**FW Act**). The Joint Application stated that it was made on an urgent basis and sought orders to come into effect as soon as permissible dealing specifically with fuel costs, which contemplated weekly changes to the cost recovery rate to reflect fluctuating fuel costs.
2. An RTCCO can only be made by an Expert Panel for the road transport industry: section 617(10B)(da) of the FW Act. An Expert Panel was constituted to deal with the Joint Application.
3. On 14 April 2026, the Expert Panel issued a [Statement](#) (**Statement**). The Expert Panel stated (at [12]) that it had determined to publish a notice of intent under section 536PG(1) of the FW Act stating that it proposes to make an RTCCO and to publish a draft of the proposed RTCCO (**draft RTCCO**). The [Notice of intent and draft RTCCO](#) were published the same day.
4. In its Statement, the Expert Panel further stated (at [22]):

“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.”
5. The Road Transport Advisory Group (**RTAG**) is established under Part 1-4 Division 3 of the FW Act. Section 40G(1) provides that the RTAG may establish subcommittees to advise it in relation to matters relevant to the performance of its functions. However, under section 40G(3), the RTAG must establish a subcommittee under section 40G(1) of which a majority of the members are owner drivers or representatives of owner drivers:
  - (a) if a proposed road transport minimum standards order or a proposed RTCCO will cover owner drivers; or
  - (b) if the Commission proposes to perform a function or exercise a power in relation to a road transport minimum standards order or an RTCCO that has, or may have, an effect upon owner drivers that is more than minor or technical.
6. In order to comply with the Expert Panel's direction and section 40G(3), the RTAG established a subcommittee of which a majority of the members were owner drivers or representatives of owner drivers (**Subcommittee**).

7. A meeting of the Subcommittee was convened on 15 April 2026. Richard Olsen and Peter Anderson, both members of the RTAG, jointly chaired the meeting. Commissioner Sloan attended the meeting to facilitate discussions.
8. The Subcommittee considered and discussed the draft RTCCO.
9. The RTAG's advice which is set out below reflects the matters raised by the members of the Subcommittee during the meeting.

## **RTAG Advice to the Expert Panel**

10. The RTAG recognises the circumstances in which the Expert Panel proposes to make an RTCCO, as set out in clause 1 of the draft RTCCO. It accepts that the road transport industry is presently in a crisis situation and that an emergency response is required.
11. Subject to the matters set out below, the RTAG supports the Expert Panel making an RTCCO in the terms of the draft RTCCO. It considers that it will provide an effective emergency response to the current crisis.
12. However, the RTAG raises the following matters for consideration.

## **Compliance with any RTCCO**

13. Members of the Subcommittee raised concerns as to how any RTCCO would be enforced. They described their experience that adjustments to rates in accordance with 'rise and fall' formulae, fuel levies, cost models or other means which were supposedly designed to address increases in costs of fuel were not passed on adequately (if at all) to drivers. The members of the Subcommittee were sceptical as to whether primary parties and secondary parties would comply with an RTCCO and appropriately make and/or pass on to drivers any adjustments required under clause 4 of the draft RTCCO.
14. The RTAG recognises that the Commission cannot enforce its own orders. However, the making of an RTCCO is unprecedented. The RTAG respectfully suggests that if the Expert Panel determines to make an RTCCO, it signal to primary and secondary parties that they must comply with the RTCCO and that there might be consequences for them if they fail to do so.
15. In this regard, the RTAG raises the following options for consideration:
  - (a) Including a note in the RTCCO to the effect that section 536NP of the FW Act provides that a person must not contravene the term of a RTCCO, that section 536NP is a civil remedy provision (Part 4-1 of the FW Act) and that the FW Act empowers the Federal Court to award penalties for non-compliance with section 536NP (section 539(2), item 29AF).
  - (b) Including in any decision making an RTCCO observations to a similar effect. The Expert Panel might also use its standing to note that one of the aims of the RTCCO is to support owner-drivers and businesses in a time of significant business stress, and that it would expect primary parties and secondary parties to work to achieve that aim.

## Clause 5.3 of the draft RTCCO

16. Two concerns arise in respect of clause 5.3 of the draft RTCCO. For ease of reference, that clause is in these terms:

The obligations in clause 4 will cease to apply if the weekly average national terminal gate price for diesel, as measured in the weekly diesel price report of the Australian Institute of Petroleum, falls below \$2.00 per litre.

17. First, members of the Subcommittee were unclear as to why the Expert Panel set \$2.00 as the relevant price point. They were of the view that a lower figure – between \$1.50 and \$1.60 – would be more appropriate.

18. Second, there was some confusion as to the meaning and effect of the clause. It seems capable of two constructions, that is:

(a) once the price for diesel falls below \$2.00, the obligations in clause 4 no longer apply. For such obligations to again apply, it would be necessary for another application to be made to the Commission; or

(b) for as long as the price for diesel is below \$2.00, the obligations in clause 4 will not apply. However, if the price increases to \$2.00 or more, clause 4 would once again apply.

19. For context, the second concern stems from the possibility of significant price volatility given current global events. If par 18(a) above paraphrases the intended purpose of clause 5.3, and there is a sudden and significant drop in the price of diesel, followed by an equally sudden and significant increase, owner-drivers and small businesses may be deprived of the benefit of the RTCCO.

20. The RTAG respectfully suggests that that if the Expert Panel determines to make an RTCCO containing a provision in the terms of clause 5.3, it clarifies the intended operation of the clause in any decision making the RTCCO.

**Richard Olsen**

**Member, Road Transport Advisory Group**

**Subcommittee Chair**

**Peter Anderson**

**Member, Road Transport Advisory Group**

**Subcommittee Chair**