

From: Dewberry, Simon <Simon.Dewberry@allens.com.au>
Sent: Monday, 13 April 2026 4:12 PM
To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Cc: Dommerson, Katherine <Katherine.Dommerson@allens.com.au>; Lorraine Biviano <lorraine.biviano@twu.com.au>; peter@vta.com.au; Hodgson, Jessica <Jessica.Hodgson@allens.com.au>; Baxter, Sophie <Sophie.Baxter@allens.com.au>
Subject: RE: MS2026/1 - Application by Transport Workers' Union of Australia & Australian Road Transport Industrial Organization

Dear Associate

Thank you for reviewing the transcripts and providing a clear explanation of discrepancy.

See attached a copy of the further submissions from 9 April with the paragraph numbers corrected. I have also attached a document that shows in tracking the changes that were made to correct these references.

Regards

Simon Dewberry
Partner, **Allens**
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From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Sent: Monday, 13 April 2026 3:08 PM
To: Dewberry, Simon <Simon.Dewberry@allens.com.au>
Cc: Dommerson, Katherine <Katherine.Dommerson@allens.com.au>; Lorraine Biviano <lorraine.biviano@twu.com.au>; peter@vta.com.au; Hodgson, Jessica <Jessica.Hodgson@allens.com.au>; Baxter, Sophie <Sophie.Baxter@allens.com.au>
Subject: RE: MS2026/1 - Application by Transport Workers' Union of Australia & Australian Road Transport Industrial Organization

Dear Mr Dewberry,

Thank you for this courtesy. I have checked with the President and his Honour would be grateful if you could provide an updated version of your submissions, reflecting the paragraph numbering in the [full transcript of Wednesday's proceedings](#).

I regret the inconsistency; we had identified the discrepancy in the paragraph numbering but opted to upload the full transcript 'as is' so parties could access the entirety of Wednesday's evidence as soon as possible. I have now had the opportunity to review all three extracts as against the full transcript, and have identified that the discrepancies arise because of the following edits that the transcriber has made:

- PN221 in the full transcript (published on 9 April 2026) did not appear in the second extract published on 8 April 2026;
- PNs 298–300 in the second extract published on 8 April 2026 have been consolidated into PN299 in the full transcript;
- PNs 305–307 in the third extract published on 8 April 2026 have been consolidated into PN304 in the full transcript; and
- PN500 in the full transcript did not appear in the third extract published on 8 April 2026.

The above edits meant that two paragraphs were added and six paragraphs were consolidated into two (i.e. +2, -4). While, as you mentioned, there was a numbering discrepancy of three between paragraphs early in the third extract and those paragraphs as they appear in the full transcript, I note that because of the addition of PN500 in the full transcript, the discrepancy by the equivalent of the end of the third extract was reduced to two, in line with what I have set out above.

I will arrange for this email to be uploaded to the matter webpage as well, in case the above clarification assists other parties.

Edrea Venal (she/her)
Associate to Justice Hatcher, President
Member Support Team, Tribunal Support Branch



Fair Work Commission
Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.j@fwc.gov.au

Level 11, Terrace Tower
80 William Street, EAST SYDNEY NSW 2011

In the Sydney office on Mondays and Tuesdays until 2:15 pm (usually!)



At the Fair Work Commission we respect and celebrate the diversity of our communities and we are committed to creating a safe and welcoming space for all.

We acknowledge that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to Country and pay our respects to their Elders past and present. This email was sent from Gadigal land.

Important: This message may contain private or confidential information. If you think this email was sent to you by mistake, please immediately notify the sender and delete all copies of the email from your system. Please refer to our [privacy policy](#) for more information on how we collect and handle personal information.

From: Dewberry, Simon <Simon.Dewberry@allens.com.au>
Sent: Friday, 10 April 2026 1:26 PM
To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Cc: Dommerson, Katherine <Katherine.Dommerson@allens.com.au>; Lorraine Biviano <lorraine.biviano@twu.com.au>; peter@vta.com.au; Hodgson, Jessica <Jessica.Hodgson@allens.com.au>; Baxter, Sophie <Sophie.Baxter@allens.com.au>
Subject: RE: MS2026/1 - Application by Transport Workers' Union of Australia & Australian Road Transport Industrial Organization

Dear Associate

We have identified that the paragraph numbering in the full [Transcript - 8 April 2026](#) added to the dedicated page for this matter is different to the numbering in the parts of the transcript that were made available to parties on 8 April. Each paragraph number in the full transcript is 3 less than the number in the parts (eg, what was PN361 is now PN358).

The paragraph numbers we referenced in the attached further submissions are from the parts of the transcript, not the full transcript that is now available.

If the Expert Panel would be assisted by us updating the further submissions so that the references to paragraphs from the transcript use those from the full transcript, please let me know. We will send you an updated copy of the further submissions with those minor changes.

Regards

Simon Dewberry
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IN THE FAIR WORK COMMISSION

Matter No: MS2026/1

Applicants: Transport Workers' Union of Australia and Australian Road Transport Industrial Organization

FURTHER SUBMISSIONS OF THE ALLENS INTERESTED PARTIES

A. OVERVIEW

1. This further submission is filed on behalf of Australia and New Zealand Banking Group, Coles, Commonwealth Bank of Australia, National Australia Bank, Westpac Banking Corporation and the Woolworths Group (**Allens Interested Parties**), in response to the:
 - (a) one expert witness statement and two expert reports filed by the Transport Workers' Union of Australia (**TWU**) with the Fair Work Commission (**FWC**) on 7 April 2026;
 - (b) 12 lay witness statements tendered by the TWU at the initial hearing on 8 April 2026;¹ and
 - (c) oral submissions made by Counsel for the TWU at the initial hearing,in support of the TWU's proposed road transport contractual chain order (**Proposed RTCCO**), and the issuing of a notice of intent with respect to it.
2. The witness statements and expert reports amount to some 2,427 pages in total, inclusive of annexures. The Allens Interested Parties were served with this evidence shortly before the commencement of the initial hearing on 8 April 2026. Our clients' legal representatives were then, without notice, required to listen to the receipt of additional oral evidence, viva voce, on that day, with (again) no meaningful opportunity to object or note its significance to the case advanced. These further submissions were then required to be filed by 5.00pm the following day (9 April 2026), with any evidence to be led on 10 April 2026.
3. As a result, there has been less than two days (one of which was largely consumed by

¹ With no meaningful opportunity to object to the tender of any of it: PN40, PN51 and PN90 of the Transcript of Hearing dated 8 April 2026 (**Transcript**).

Date of document: 9 April 2026

Filed on behalf of: Australia and New Zealand Banking Group, Coles, Commonwealth Bank of Australia, National Australia Bank, Westpac Banking Corporation and Woolworths Group

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proceedings in the FWC) to review the over 2,400 pages of witness statements and expert reports (and annexures), consider the Transcript of the Evidence in Chief in light of the witness statements, expert reports and annexures, and for clients to provide instructions to their legal advisers. This is notwithstanding that the application is yet to be determined to be an "emergency application" by the Minister in accordance with s 536PEA of the *Fair Work Act 2009* (Cth) (**FW Act**), and noting the apparent "ceasefire" in the war announced on 8 April 2026.

4. For the record and irrespective of the FWC's "ruling" on process on 8 April 2026, the Allens Interested Parties do not accept that procedural fairness has been, or is being, afforded to interested parties to the application (including themselves). The Allens Interested Parties are not in a position to do anything meaningful in respect of the application (including in relation to whether a notice of intent should issue, or the drafting or content of any draft order), other than advance the initial statements made herein (supplemented by oral address). In light of the breadth of the Proposed RTCCO and the scale of differing operations conducted by (and within) each of the six Allens Interested Parties, they have had no proper opportunity to consider and provide any meaningful or cogent evidence in respect of the Proposed RTCCO.
5. Accordingly, no part of the Allens Interested Parties' participation in the proceedings in accordance with the FWC's "ruling", amounts to (or should be taken to amount to):
 - (a) any waiver of any of their rights (including to challenge the proceedings, or any orders made arising from them, on grounds of a denial or procedural fairness); or
 - (b) a complete statement of the submissions and arguments they would intend to advance in respect of the Proposed RTCCO (and its content/coverage/drafting), including in particular having regard to ss 536PH and 536PJ of the FW Act (in the event a draft proposed order is published by the FWC).²
6. The Allens Interested Parties otherwise reserve all of their rights. This further submission should be read together with the preliminary submissions filed on behalf of our clients on 6 April 2026, including in relation to the additional matters that ought be included in any draft order, if one were to issue.

B. RELEVANT OBJECTIVES AND OTHER STATUTORY CRITERIA

7. Pursuant to s 536NN of the FW Act, in performing any function or exercising any power in relation to the present application, the FWC must have regard to the "minimum standards objective" in s 536JX of the FW Act. It must also take into account (and have regard to) the

² From a preliminary review, some deficiencies in the drafting and coverage of the Proposed RTCCO are apparent.

“road transport objective” in s 40D of the FW Act.

8. To the extent that the Proposed RTCCO seeks to cover “road transport employee-like workers”, the FWC must consider it “appropriate” that it do so (s 536PD(4)). Before making any order, the FWC must comply with s 536PF of the FW Act. The content of any RTCCO (assuming it to be a time-sensitive RTCCO) is governed by ss 536PM to 536PP, 536PQA and 536PR of the FW Act.

C. EVIDENCE ISSUES

9. There is a threshold question as to whether the applicants for the Proposed RTCCO have provided sufficient evidence for the FWC to be satisfied that it is appropriate to make the Proposed RTCCO. Some of the TWU's evidence suggests that it is not affecting the viability of road transport contractors or employee-like workers, or at least not uniformly (as appears to be assumed by the terms of the Proposed RTCCO).³
10. Further, the TWU's evidence is limited to the experience of small fleet operators and owner operators in various sectors of the road transport industry.
11. From that evidence it is clear that:
 - (a) the impact of fuel price increases depends heavily on the vehicles utilised to provide road transport services (e.g. 20L/100km for smaller vehicles compared with 140L/100km for larger vehicles)⁴ – the result is that it would be necessary to identify the type of vehicle used to perform work under a contract for road transport services, as well as the distance travelled, in order to assess the precise fuel costs ultimately incurred in respect of that work;
 - (b) it is common practice for small fleet operators and owner operators engaged to perform work for large operators, to refuel at dedicated refuelling facilities owned or operated by the large operator with the cost of the fuel deducted from future service payments at rates significantly lower than retail rates, or to have fuel cards to purchase fuel at a discounted rate⁵ – the result is that the AIP reports of retail fuel rates are clearly inappropriate as a reference point where such arrangements are in place;
 - (c) at least some owner operators have already negotiated arrangements for cost recovery in respect of the recent increases in fuel prices (noting that some of those arrangements are not due to commence until the next payment cycle),⁶ and others have simply

³ See for example, PN358 of the Transcript.

⁴ PN273 of the Transcript.

⁵ See for example, PN335-PN337, PN599-602 of the Transcript.

⁶ See for example, PN368, PN355, PN434-PN441 and PN516-PN520 of the Transcript.

increased their service fees to account for the increase in fuel prices⁷ - the result is that the proposed order would not further benefit those persons in the event an order issued in the form of the Proposed RTCCO covered them;

- (d) it is often the case that owner operators are not in a position to readily identify the specific costs of operating their business⁸ - the result that it is likely to be practically difficult (at best) for those operators to readily identify the precise fuel costs incurred in respect of work performed under a specific services contract; and
- (e) some of the TWU's evidence demonstrates that is not appropriate that the Proposed RTCCO provides full cost recovery to large road transport operators. For example, at PN362 of the Transcript, the TWU's witness, Mr Andrich, explained that for a multinational, billion dollar company, \$500 a week or \$1,000 a fortnight is "*not much of a hit*", compared to the owner drivers, for which it is quite a large amount compared to their earnings.

12. At the initial hearing on 8 April 2026, the TWU submitted that this matter should be well progressed by 21 April 2026, as that is the date that owner drivers and businesses will be paying fuel bills for the month of March.⁹ This seems to contradict the evidence and submissions that there is already an impact on margins since prices increased in March.
13. The totality of evidence filed by the TWU does not support that the weekly rate review mechanism, as described in the Proposed RTCCO, is necessary, appropriate or administratively feasible. Some of the oral witness evidence presented in the initial hearing indicated that monthly rate reviews would "suffice", as that would still be a significant increase in frequency from the quarterly and annual rate reviews in some existing arrangements in the road transport industry.¹⁰ Professor Hassall noted in his oral evidence that '*accountants ...of various companies would probably pull their hair out a little bit by doing ... weekly*'.¹¹ The TWU's witness, Mr Andrich, indicated that both weekly or monthly reviews would assist businesses in the chain.¹² As above, it is also the case that for some arrangements, fuel costs are deduced at other than weekly intervals and in retrospect.

⁷ PN489 of the Transcript.

⁸ PN272-PN273 of the Transcript.

⁹ PN150 of the Transcript.

¹⁰ See PN286 of the Transcript.

¹¹ See PN286 of the Transcript.

¹² See PN368 of the Transcript.

Dated: 9 April 2026

Matthew Follett

Counsel for the Interested Parties

Allens

Solicitors for the Interested Parties

IN THE FAIR WORK COMMISSION

Matter No: MS2026/1

Applicants: Transport Workers' Union of Australia and Australian Road Transport Industrial Organization

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³ See for example, [PN364](#)[PN358](#) of the Transcript.

⁴ [PN272](#)[PN273](#) of the Transcript.

⁵ See for example, [PN338](#)–[PN340](#), [PN601](#)–[604](#)[PN335](#)–[PN337](#), [PN599](#)–[602](#) of the Transcript.

are not due to commence until the next payment cycle),⁶ and others have simply increased their service fees to account for the increase in fuel prices⁷ - the result is that the proposed order would not further benefit those persons in the event an order issued in the form of the Proposed RTCCO covered them;

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⁶ See for example, [PN371](#), [PN358](#), [PN437](#)-[PN444](#) and [PN518](#)-[PN522](#)[PN368](#), [PN355](#), [PN434](#)-[PN441](#) and [PN516](#)-[PN520](#) of the Transcript.

⁷ [PN492](#)[PN489](#) of the Transcript.

⁸ [PN271](#)-[PN272](#)[PN272](#)-[PN273](#) of the Transcript.

⁹ PN150 of the Transcript.

¹⁰ See [PN285](#)[PN286](#) of the Transcript.

¹¹ See [PN285](#)[PN286](#) of the Transcript.

¹² See [PN371](#)[PN368](#) of the Transcript.

Dated: 9 April 2026

Matthew Follett

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Solicitors for the Interested Parties