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Sent: Tuesday, 14 April 2026 9:24 AM

To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>

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Subject: MS2026/1 - TWU & ARTIO application for a road transport contractual chain order – fuel cost recovery | Re: Note

Dear Associate,

During closing submissions, Mr Ward indicated he would consider cl 4.5 of the Discussion Document issued by the Expert Panel. The **attached** note responds that issue with a view to assist the Expert Panel.

Further, Mr Ward seeks leave to reply briefly to the submission of Counsel for Coles and Woolworths, which is also addressed in the note.

Yours faithfully,

Alana


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FAIR WORK COMMISSION

**APPLICATION BY TRANSPORT WORKERS' UNION OF AUSTRALIA &
AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANIZATION RE FUEL COST
RECOVERY**

MS2026/1

**NOTE ON CLAUSE 4.5 IN FWC DISCUSSION DOCUMENT AND
THE “THRESHOLD PROPOSAL” OF WOOLWORTHS AND COLES**

14 April 2026

NOTE

Discussion Draft Clause 4.5

1. During closing submissions, Mr Ward indicated that he would consider the ‘ABLA’ proposed clause 4.6 against the FWC Discussion Document clause 4.5 to consider whether an amended clause 4.5 could satisfactorily preserve existing arrangements to address the “*increased cost of fuel*” as they apply to regulated workers and transport businesses (fleet owners) who may operate with or without “*rise and fall*” arrangements as detailed in the ‘ABLA’ evidence.
2. Subject to the Expert Panel accepting our proposal on review periods (which would be necessary to preserve arrangements already satisfactorily in place). The following amended clause 4.5 is proposed to achieve this and if accepted would not require the ‘ABLA’ proposed clause 4.6:

4.5 In respect of relationships between a road transport business and a regulated worker or a road transport business and another road transport business governed by:

- (i) State or Territory industrial instruments;*
- (ii) collective agreements;*
- (iii) an individual contract; or*
- (iv) an arrangement,*

the adjustment of rates pursuant to any "rise and fall" rate adjustment mechanism or other fuel cost adjustment mechanism utilising the Australian Institute of Petroleum Index that takes into account the increased cost of fuel¹ will satisfy the obligations in clauses 4.1, 4.2 or 4.3.

¹ Relevantly this is a key defined term as it focusses attention on relevant fuel price changes rather than the potentially ambiguous notion of full cost recovery which as we submitted could be a reference to the payment of an individual’s personal fuel bill.

Woolworths and Coles Threshold Proposal

3. Counsel for Woolworths and Coles proposed the inclusion of a revenue threshold to exclude certain parties from certain obligations.
4. In closing submissions, while commenting on proposed clause 4.7 of document “A”, Mr Ward indicated that mature secondary parties of scale may wish to reach commercial agreements with primary parties (who are not regulated transport businesses) on price recovery; not recover, recover part, recover as part of broader costs recovery etc.
5. If the Expert Panel is attracted to the type of threshold that is proposed by Counsel for Woolworths and Coles it should only remove a primary party who is not a regulated transport business from its obligations where it meets the threshold requirement and the parties reach an agreement on price recovery rather than simply exclude them based on the threshold alone.



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