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Sent: Tuesday, 14 April 2026 10:00 AM

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

Dear parties,

Please see attached the amended CCO and further note from the TWU.

Kind regards,

Grant Ferreira

Legal Officer

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TWU proposed order

ROAD TRANSPORT CONTRACTUAL CHAIN ORDER – FUEL COST RECOVERY

1. Circumstance in which this Order is made

This Order relates to the circumstance of the fuel supply chain disruption resulting from, or which continues to be affected by:

- 1.1 the significant reduction in shipping through the Strait of Hormuz; and
- 1.2 conflict in the Middle East.

2. Definitions

In this Order:

Act means the *Fair Work Act 2009* (Cth).

Cash in transit means the transport of cash and other valuables.

Digital labour platform – has the meaning set out in s 15L of the Act.

Digital labour platform operator – has the meaning set out at s 15M of the Act.

Fuel means any liquid or gaseous energy source used to power vehicles for the performance of work in the transport industry, including petroleum and diesel products.

Increased cost of fuel means the difference between the cost per litre for the type of fuel used to perform the relevant work in the road transport industry at any given time and the cost as it was on 6 March 2026.

On demand delivery work – means services performed by a road transport employee-like worker that involves the collection of and/or shopping for and/or selection and/or purchase of goods or consumables of no more than 8 separate orders in a single engagement, for delivery as soon as practicable to the ultimate consumer. On demand delivery excludes the collection of such goods and consumables:

- (a) from a facility that is not open to the public and which is used exclusively for online orders and/or dispatches, unless the facility is adjacent to, or in the immediate vicinity of a business that offers the goods or consumables for sale or conducts the retail sale or hire of goods and consumables for personal, household or business consumption; or
- (b) from a standalone distribution or warehouse facility that is not open to the public; or
- (c) by the employee-like worker using a vehicle with a carrying capacity of more than 1 tonne.

Order means this road transport contractual chain order.

Primary party is a person in a road transport contractual chain as described in s 15RA(2)(a)

of the Act.

Rate means the contracted, standard, ongoing or usual rate or amount paid by one person covered by this Order to another for the performance of work in the road transport industry at or around 6 March 2026, including an hourly rate, a running rate, a total amount, or any other form of payment or combination of the foregoing.

Regulated road transport contractor has the meaning set out in s 15Q to the Act.

Regulated worker has the meaning set out at s 15G of the Act.

Rideshare – means the transport by road of a person or persons from one location to another by a road transport employee-like worker, arranged or facilitated through or by means of a digital labour platform.

Road transport business has the meaning set out in s 15R of the Act

Road transport contractual chain has the meaning set out in s 15RA(1) of the Act

Road transport employee-like worker has the meaning set out in s 15RB of the Act.

Road transport industry has the meaning set out in s 15S of the Act.

Secondary party means a person in a road transport contractual chain as described in s 15RA(2)(b) of the Act.

3. Coverage of this Order

3.1 This Order covers all work in the road transport industry.

3.2 This Order covers the following persons in road transport contractual chains involving the performance of work in the road transport industry:

- (a) primary parties;
- (b) secondary parties;
- (c) road transport businesses;
- (d) digital labour platform operators in the road transport industry;
- (e) road transport employee-like workers performing work in the road transport industry; and
- (f) regulated road transport contractors performing work in the road transport industry.

3.3 This Order does not:

- (a) cover on demand delivery work;
- (b) cover rideshare work; or
- (c) cover cash in transit work;

- (d) impose obligations or confer rights on persons who are passengers who are transported by motor vehicle, limousine, car hire, bus or coach.

4. Obligations on primary and secondary parties

- 4.1 Primary parties that contract with or arrange a primary party that is a regulated business to perform work covered by this order must, within each fortnight or twice per calendar month, from the date of commencement of this Order, adjust the rate they pay to any secondary the other primary party for the performance of work in the road transport industry by the amount necessary to ensure that the secondary other primary party fully recovers the increased cost of fuel.
- 4.2 Primary parties in a road transport contractual chain must take all reasonable steps to ensure that secondary parties engaging other secondary parties, regulated road transport contractors or road transport employee-like workers in the same road transport contractual chain adjust the rate they pay to such other secondary parties, regulated road transport contractors or road transport employee-like workers for the performance of work in the road transport industry by the amount necessary to ensure that the secondary party fully recovers the increased cost of fuel.
- 4.3 Secondary parties must, within each fortnight or twice per calendar month, from the date of commencement of this Order, adjust the rate they pay to any other secondary party, regulated road transport contractor or road transport employee-like worker for the performance of work in the road transport industry by the amount necessary by the amount necessary to ensure that the secondary party fully recovers the increased cost of fuel.
- 4.4 The adjustments required under clauses 4.1, 4.2 or 4.3 of this Order may be made by an adjustment to the rate, the introduction of a fuel increment or levy, or a direct reimbursement of money expended upon the increased cost of fuel.
- 4.5 In respect of contractual relationships governed by State or Territory industrial instruments, collective agreements, or individual contracts or other arrangement, the adjustment of rates pursuant to any “rise and fall” rate adjustment or other mechanism for which any such instrument, agreement, or contract, or arrangement provides will satisfy the obligations in clauses 4.1, 4.2 or 4.3 provided that this takes into account the increased cost of fuel and provides for cost recovery of this.

5. Commencement, operation and cessation of this Order.

- 5.1 This Order will take effect on 20 April 2026.
- 5.2 This Order prevails over any minimum standards order which takes effect while the obligations in clause 3 apply.
- ~~5.3 The obligations in clause 3 will cease to apply on the occurrence of the earlier of the following:~~

(a) — 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;

(b) — six months from the date of the commencement of this Order.

Proposed replacement of clause 5.3 as follows:

The Order will be reviewed by the Fair Work Commission 3 months from its making and every 3 months thereafter.

6. Dispute settlement

- 6.1 This clause sets out the procedures to be followed in relation to disputes concerning the implementation ~~or~~ operation ~~or effect of this~~ Order.
- 6.2 The parties to the dispute must first try to resolve the dispute as between themselves.
- 6.3 If the dispute is unable to be resolved between the parties, a party to the dispute may refer the dispute to the ~~Fair Work Commission~~ FWC.
- 6.4 ~~The Fair Work Commission~~ The FWC may use any method of ~~non-arbitral~~ dispute resolution it is permitted by the Act to use ~~that and which~~ it considers appropriate to resolve the dispute.
- 6.5 If the dispute is unable to be resolved, the ~~Fair Work Commission~~ FWC may arbitrate the dispute, ~~but only~~ with the consent of ~~all of the parties~~ to the dispute.
- 6.6 Any party to a dispute may be represented by an industrial association, ~~paid agent or lawyer~~ at any stage of the dispute settlement process, including in proceedings before the ~~Fair Work Commission~~ FWC.

In the Fair Work Commission

Matter No. MS2026/1

Application by the Transport Workers' Union of Australia and the Australian Road Transport Industrial Organization re fuel cost recovery

TWU further note

1. In accordance with the directions of the Full Bench, the TWU provides the following note on proposed amendments to the order made following argument yesterday and the question of the impact of the abolition of the road user charge.

Amended proposed order

2. The amended order filed with this note:
 - a. aims to address the issue raised by the Full Bench in respect of the definition of “primary party” in s 15RA(2)(a) of the Act by amending cl 4.1 to make clear that the obligation is imposed on the primary party to the first contract or arrangement in the chain that engages the other primary party where that other primary party is a person who is a “road transport business” to perform work. Both parties are “primary parties” but the amendment clarifies that the obligation is on the person contracting with or arranging the primary party that is a road transport business to perform work. This would capture, for instance, a retailer engaging a major transport company to perform a transport task or a constructor that engages a company like Holcim to manufacture and deliver cement.¹ It would also capture a scenario where both primary parties are themselves road transport businesses (for instance, if parcel delivery business contracted with fleet owner to perform delivery tasks);
 - b. amends cl 4.2 by refining the obligation to the taking of reasonable steps and inserts the word “employee” in the term “road transport employee-like workers”;
 - c. inserts the word “employee” in the term “road transport employee-like workers” and removes surplus words from cl 4.3;
 - d. adds to cl 4.5 the words “or other arrangement” and “or arrangement”; and
 - e. adds to cl 4.5 the words “or other” to make clear that rise and fall mechanisms are not the only means by which rates may be adjusted.

¹ See the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023* Supplementary Explanatory Memorandum at [95] and the illustrative example of Supermellon and Hugo’s Haulage [100].

3. The TWU does not oppose the amendments made to cl 6 as proposed by Mr Follett's clients.

Road user charge

4. The road user charge is set under the *Fuel Tax Act 2006* (Cth). It is presently 32.4 cents per litre.² This applies to vehicles with a GVM of 4.3 tonnes or more.
5. On 2 April 2026, the federal government announced relief measures affecting heavy vehicle operators. These included reducing the road user charge to 0 for three months. This followed the reduction in fuel excise from 52.6 cents to 20.6 cents per litre.³
6. Where fuel is purchased as a business expense, eligible businesses may be entitled to claim back the full amount of duty paid (being the excise) as a "fuel tax credit". This enables those businesses to claim back any excise paid. However, the capacity to claim back excise is limited as such businesses must also pay the road user charge. Therefore, the amount actually able to be claimed back is the excise amount paid minus applicable road user charge. Ordinarily, this would be 52.6 cents – 32.4 cents, totalling 20.2 cents.
7. Presently, the excise is 20.6 cents. Payment of the road user charge of 32.4 cents would mean that practically no relief from fuel costs is provided. By reducing the road user charge to 0, the government ensured that heavy vehicle operators are able to obtain the full benefit of the cut in fuel excise.
8. This is, however, not relevant to the question of cost recovery on fuel, given that the measure results in heavy vehicle operators being able to benefit from the reduced prices paid on fuel resulting from the reduction in excise. This matter does not need to be brought to bear in determining the appropriate terms of a CCO.

Philip Boncardo

Counsel for the TWU

14 April 2026

² See <https://www.ntc.gov.au/laws-and-regulations/road-user-charges>.

³ See the announcement: <https://www.infrastructure.gov.au/department/media/news/fuel-excise-and-heavy-vehicle-road-user-charge-relief-australian-drivers>.