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Sent: Tuesday, 14 April 2026 9:40 AM
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<Lucy.Newlinds@malleasons.com>
Subject: RE: MS2026/1 - Wesfarmers submissions

Dear Associate

Further to the below and the draft road transport contractual chain order (**RTCCO**) published by the Commission on Friday 10 April 2026 for the purposes of discussion, Wesfarmers has proposed suggested amendments to the draft RTCCO in the **attached** to reflect amendments it regards as necessary and appropriate if the Expert Panel is to publish a draft order (noting that such suggestions do not constitute acceptance that such an order should be made at all).

The amendments largely adopt the position of the Allens Interested Parties, with some further amendments to address matters raised during the course of the hearing yesterday, including:

- clarifying in a number of places the exclusion of work performed by employees; and
- including a definition of 'Rate Adjustment Mechanism'.

Kind regards
Shea

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From: Shea Wilding

Sent: Monday, 13 April 2026 1:03 PM

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Subject: MS2026/1 - Wesfarmers submissions

Dear Associates

We act for Wesfarmers Limited.

Please see **attached** for filing brief submissions on behalf of Wesfarmers.

Counsel for Wesfarmers will also seek to address these in oral submissions.

Kind regards
Shea

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**MS2026/1 -ROAD TRANSPORT CONTRACTUAL CHAIN ORDER
– FUEL COST RECOVERY**

**AMENDMENTS WESFARMERS CONSIDERS NECESSARY AND
APPROPRIATE IF THE EXPERT PANEL DETERMINES TO
PUBLISH A DRAFT ORDER (WITHOUT TAKING ANY POSITION
AS TO WHETHER THE ORDER SHOULD BE MADE, OR ITS
TERMS)**

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).

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.

FWC means the *Fair Work Commission*.

Group of companies means a company and each body corporate that is related to the company within the meaning of section 50 of the *Corporations Act 2001* (Cth).

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.

Large road transport business means a road transport business that had, or that was part of a group of companies that had, gross revenue for the period 1 July 2024 to 30 June 2025, of at least \$1 billion.

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.

Rate Adjustment Mechanism means any term, condition, formula or process contained in a State or Territory industrial instrument, collective agreement, contract or other arrangement under which the rate or consideration payable for road transport services is adjusted upwards or downwards by reference to changes in fuel costs. A Rate Adjustment Mechanism may operate automatically or periodically, including by reference to an agreed external index or benchmark, and includes (without limitation) a fuel levy, fuel surcharge, fuel indexation or “rise and fall” provisions.

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.

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.

For the avoidance of doubt, this Order does not apply in respect of work performed by employees.

4. Obligations on primary and secondary parties

4.1 Subject to clauses 4.2 and 4.6, Primary parties must, within each **fortnight month** from the date of commencement of this Order, use their best endeavours and act in good faith to adjust the rate they pay to any secondary party for the performance of work (other than by an employee) in the relevant road transport contractual chain industry by the amount necessary ~~by the amount necessary~~ to ensure that the secondary party fully recovers any increased cost of fuel in that month in the same road transport contractual chain ~~the increased cost of fuel~~.

4.2 Subject to clause 4.6, if a secondary party in a road transport contractual chain is a large road transport business, the primary party and secondary party must use their best endeavours and act in good faith to determine and agree the proportion of any increased cost of fuel in that road transport contractual chain in that month, that each

party will bear. For example, the primary party and secondary party may determine that they will share evenly the increased cost of fuel. The primary party must, within each month from the date of commencement of this Order, use their best endeavours and act in good faith to adjust the rate they pay to the large road transport business by the amount agreed as the primary party's share of any increased cost of fuel.

~~Primary parties in a road transport contractual chain must take all reasonable steps to ensure that secondary parties engaging regulated road transport contractors or road transport-like workers in the same road transport contractual chain adjust the rate they pay to such regulated road transport contractors or road transport-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 Subject to clause 4.6, secondary parties must, within each ~~fortnight~~ month from the date of commencement of this Order, use their best endeavours and act in good faith to adjust the rate they pay to any other secondary party, regulated road transport contractor or road transport-like worker for the performance of work ~~(other than by an employee)~~ in the relevant road transport contractual chain industry by the amount necessary ~~by the amount necessary~~ to ensure that the ~~latter secondary~~ party fully recovers ~~the~~ any increased cost of fuel in that month in the same road transport contractual chain.
- 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. For the avoidance of doubt, when a party is determining what (if any) adjustments are required, it shall take into account any Rate Adjustment Mechanism implemented before the date of commencement of this Order.
- 4.5 In respect of contractual relationships governed by State or Territory industrial instruments, collective agreements or individual contracts or other arrangements, the adjustment of rates pursuant to any ~~“rise and fall”~~ Rate Adjustment Mechanism for which any such instrument, agreement or contract or other 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~~ that increased fuel cost (or the agreed proportion under clause 4.2). For the purposes of this provision, it is not necessary that the rate adjustment mechanism provide for “full” recovery of the increased cost of fuel.
- 4.6 If a person has an obligation under this Order to make an adjustment to a rate, they may request that any secondary party, regulated road transport contractor or road transport-like worker in the relevant road transport contractual chain, provide such information as is reasonably necessary and requested by the person for the purpose of that person determining the required adjustment to the rate, including information in respect of:
- (a) the increased cost of fuel incurred by the secondary party, regulated road transport contractor or road transport-like worker in performing the work under the contract or arrangement;
 - (b) whether any work under the contract or arrangement has been performed by employees; and
 - (c) whether the work performed in the road transport contractual chain is performed alongside other work unrelated to the road transport contractual chain, or pursuant to contracts or arrangements in other road transport contractual

chains, and if so, what proportion of the total work undertaken by the secondary party, regulated road transport contractor or road transport-like worker (by reference to load carried or jobs, as relevant) relates to the relevant road transport contractual chain.

The information must be provided one week before any rate adjustment is required to be made.

5. Commencement, operation and cessation of this Order.

- 5.1 This Order will take effect on **20** April [insert date] May 2026.
- 5.2 This Order prevails over any minimum standards order which takes effect while the obligations in clause ~~3~~ 4 apply.
- 5.3 The obligations in clause ~~3~~ 4 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~~ \$2.50 per litre;
 - (b) six months from the date of the commencement of this Order.
- 5.4 Within 3 months from the date of the commencement of this Order (should the obligations in clause 4 still apply), the FWC shall conduct and complete a review of the ongoing need for the obligations in clause 4 of this Order.
- 5.5 The FWC shall provide any interested parties covered by this Order with a reasonable opportunity to be heard at the review conducted under clause 5.4.
- 5.6 Should the FWC be satisfied that the situation at that time warrants it, the FWC may vary clause 5.3(b) of this Order to shorten the period from 6 months to either 3, 4 or 5 months.

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 ~~of~~ 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~~ FWC may use any method of non-arbitral dispute resolution it is permitted by the Act to use that 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 at any stage of the dispute settlement process including in proceedings before the ~~Fair-Work~~

Commission [FWC](#).