

Article Information

Author: Martin Lovell

Service: Infrastructure & Construction, Projects

Sector: Energy & Resources, Infrastructure, Power & Utilities, Renewables

Fuel cost recovery order lands: what principals and contractors must do now

(Updated 8 May 2026)

The Fair Work Commission has issued a time-sensitive road transport contractual chain order that captures any party in a road transport contractual chain (including principals and contractors who use road freight) and requires regular fuel cost pass-through across transport supply chains from 21 April 2026.

Principals and contractors must now do three things. First, adjust rates on a single, documented cadence (either fortnightly or twice per calendar month) so the party performing the work recovers the increased cost of fuel since on or before 6 March 2026. Secondly, record the “reasonable steps” you take to ensure those adjustments flow down the chain. Finally, maintain these arrangements unless and until the Australian Institute of Petroleum (AIP) weekly national average terminal gate diesel price falls below \$2.00 per litre.

This Order creates a mandatory fuel pass-through and compliance framework you must implement now, while your force majeure and change-in-law clauses continue to determine whether, and to what extent, you can recover time and cost under your EPC and D&C contracts (as we outlined in our earlier diesel shortage insights).

Key points

- The *Road Transport Contractual Chain Order - Fuel Cost Recovery - 2026* (**Order** or **RTCCO**) started on 21 April 2026 and requires adjustments to rates in both new and existing contracts at least fortnightly or twice per calendar month so that the party doing the work recovers the increased cost of fuel, measured against a 6 March 2026. Businesses should select one cadence or the other and apply it consistently, rather than conducting both in the same period.
- A “**road transport contractual chain**” covers any chain or series of contracts or arrangements under which road transport work is performed for a party to the first contract, with work deemed to be performed for every party to each contract in the chain. This brings principals and contractors into scope even if they did not hire the carrier.
- Primary parties must adjust top-of-chain rates and take reasonable steps to ensure secondary parties pass the adjustment through to regulated road transport contractors and road transport employee-like workers. There is a limited exemption from the “reasonable steps” duty for small business employers that are not road transport. However, the breadth of the *Fair Work Act 2009* “road transport business” definition (which extends to any person who receives services under a services contract for work in the road transport industry) means that this exemption may be narrower in practice than it first appears.
- Compliance can be achieved by changing a rate or rate component, adding a fuel levy, reimbursing or offsetting increased fuel cost, or using existing “rise and fall” or cost models in instruments, agreements or contracts. Adjustments made before the Order started can be credited.
- The obligations in clause 4 cease if the AIP weekly national average terminal gate diesel price falls below \$2.00 per litre. The Order remains in operation and will be reviewed after the first month and then every three months thereafter, with the mechanics of any recommencement on subsequent price increases to be determined. Breach of an Order term is a civil remedy contravention under section 536NP of the *Fair Work Act 2009*.

What changed and why it matters

The Commission made the RTCCO under new emergency provisions in the *Fair Work Amendment (Fairer Fuel) Act 2026*, following a joint application by the Transport Workers' Union (**TWU**) and the Australian Road Transport Industrial Organisation (**ARTIO**). That pathway allowed expedited commencement on 21 April 2026.

The obligation is straightforward. Parties at the top of the chain must adjust rates at least fortnightly or twice per calendar month so the increased fuel cost since on or before 6 March 2026 is recovered by those performing road transport work. The Commission accepted there will be some administrative burden and price effects as costs are passed to end users, but prioritised keeping owner-drivers and small fleets viable to avoid broader supply chain disruption.

Who is covered and how major projects are caught

The chain concept is broad. It captures any chain or series of contracts or arrangements where road transport work is performed by a regulated contractor, an employee-like worker under a services contract, or by an employee for a party to the first contract, and deems that work to be performed for every party to each contract in the chain. The Order applies across the road transport industry, including digital platforms operating in road transport (with cash-in-transit expressly carved out). Major projects rely on road freight of plant, modules, fuel and materials, which typically places both principal and contractor in a chain even where logistics are bundled within the head contract and the principal has not directly engaged the carrier.

Whether an entity is a "primary party" depends on whether it is a party to the first contract or arrangement in a road transport contractual chain under section 15RA(2)(a) of the *Fair Work Act 2009*. Entities that simply purchase goods via road transport arranged by others will not necessarily be primary parties. The Order requires adjustment of a "Rate" paid "for the performance of work in the road transport industry," and the chain definitions require a "services contract" for road transport work and a "chain or series" of contracts or arrangements — requirements that a pure goods purchase with incidental delivery may not satisfy.

However, the boundaries are genuinely uncertain. Where a supply contract includes an identifiable transport or delivery component, or where ongoing delivery arrangements are structured as services agreements, there is a risk that the purchaser is within a contractual chain and paying a "Rate" within the meaning of the Order. Where that is the case, the breadth of the section 15R "road transport business" definition — which extends to any person who receives services under a services contract for work in the road transport industry — means the clause 4.3 small business exemption may not assist. Project-specific analysis of the relevant contracts is required in each case, focusing on whether the arrangement involves a "services contract" for road transport work and whether a separately identifiable rate for that work exists.

The RTCCO is new, with no judicial consideration to date. A broader reading of section 15RA(5) — which deems work to be performed for each party to a contract or arrangement in a chain — cannot be excluded. It is also unresolved whether a single contract with a carrier who performs the work directly (without sub-contracting) constitutes a "road transport contractual chain" under section 15RA(1). These questions were raised by waste industry and agricultural sector representatives at the 1 May 2026 engagement conference and acknowledged by the Vice President as listed for the Fair Work Commission review hearing.

As a commercial consequence of the Order's operation, businesses should expect suppliers and vendors to pass through increased fuel costs via price adjustment requests, contract variation claims, activation of reimbursable cost provisions, or renegotiation of delivery pricing.

Some contracts involve mixed arrangements. For example, a supplier may arrange transport to a depot or laydown area, while the principal or contractor arranges the final leg to site. In those cases, you may be a primary party for the leg you contract for, even if you are a passive recipient for the other leg. Each contract needs to be assessed on its specific terms to determine where RTCCO obligations arise.

What you must do now (as a primary or secondary party)

Whether you are a "primary party" or a "secondary party" depends on where you sit in the contractual chain. If you engage the carrier, logistics provider or haulage company (whether under a standalone freight contract, a purchase order with a transport component, or an arrangement where you organise delivery) you are likely a primary party. If you are further down the chain (for example, a subcontractor engaged by the party who arranged the freight), you are a secondary party. Both have obligations, but primary parties carry the additional duty to take reasonable steps to ensure compliance flows downstream.

Adjust rates wherever you are a primary party. Use a mechanism that recalibrates on your chosen cadence (either fortnightly or twice per calendar month) and transparently adjusts a defined rate component by reference to the difference between the current cost per litre for the fuel used and the cost on or before 6 March 2026, using a credible data source (for example, AIP weekly national average terminal gate diesel or equivalent). Bare references to a benchmark without an

articulated method are unlikely to satisfy clause 4.6(c). You can apply a transparent fuel levy line item, change a rate component, or reimburse or offset the increased fuel cost. If you already have “rise and fall” or cost model mechanisms in instruments, agreements or contracts, you can use those to comply.

If you are a primary party (unless you are a small business employer that is not a road transport business), you must also take reasonable steps to ensure your secondary parties pass the adjustment through to regulated road transport contractors and road transport employee-like workers (and you should document those steps). The Commission explained this obligation is analogous to the “chain of responsibility” provisions of the *Heavy Vehicle National Law*, and confirmed that evidence of a defined fuel increment can suffice without disclosing full rate cards.

If you are a **secondary party**, follow the same fortnightly or twice per calendar month adjustment cycle and ensure payments to other secondary parties and to regulated workers achieve recovery of the increased fuel cost. Where calculating cost recovery for each individual driver or contractor is not practical, clause 4.7 permits reasonable averaging of the increased cost of fuel across a group of regulated road transport contractors or road transport employee-like workers engaged by a single road transport business, applied in a standardised way that reasonably approximates recovery.

Update your internal approvals and payment cycles so recalculations can be processed on the same fortnightly or twice per calendar month cycle. This reduces payment lag and cashflow strain for subcontractors and reduces dispute risk.

Select and document a single cadence (either fortnightly or twice per calendar month) aligned to your billing cycle. There is no requirement to perform both in the same period.

In New South Wales, if you pay in accordance with a Chapter 6 contract determination such as the General Carriers temporary fuel surcharge, continue that monthly process and implement a bridging approach to meet the Order’s cadence pending clarification at the review. A carve-out or deeming solution has been canvassed but not adopted.

Does this allow change-in-law claims under EPC and similar contracts?

On market-standard EPC and D&C forms, the position usually turns on two common drafting features.

First, the definition and scope of “Law” or “Change in Law”. Many clauses define these terms to include new or amended Acts, regulations, orders, determinations, directions or other instruments of a competent authority that take effect after the contract date and which the contractor must comply with in performing the works. The RTCCO is a binding order made under the *Fair Work Act 2009* that applies to parties in a road transport contractual chain. If you are in that chain, it will ordinarily satisfy the definitional limb of a change in law under clauses that extend to new orders or instruments issued by a government authority.

Secondly, the relief mechanics and carve-outs. Some standard forms grant time and cost relief for increased costs of compliance with a change in law, including mandatory payment adjustments to third parties imposed after the contract date. In those forms, the RTCCO will typically support a cost claim tied to the measurable increase in transport rates required to comply, provided causation, proof and notice requirements are met. Other forms preserve commodity and input price risk unless a defined adjustment event is triggered, or they provide time-only relief, or they exclude certain categories of cost even if driven by a new instrument. In those forms, you may be able to claim time to implement the required payment machinery but not cost, unless your clause expressly allows recovery of increased costs directly and solely caused by a change in law. [Our earlier insights](#) explained that a credible change-in-law pathway requires a binding regulation, order or direction that applies to users and necessitates a variation, resequencing or additional cost of compliance as defined in the contract. The RTCCO meets the “binding order” test for covered parties and compels compliant payment adjustments for road transport, but whether that yields cost relief depends on the wording of your change-in-law clause and any carve-outs.

The practical step now is to test each contract against these two points. Confirm that your definition of “Law” (“Legislative Requirement”, etc.) captures new Commission orders, and that your relief clause allows recovery of increased costs of compliance rather than only time. If it does, the RTCCO should be capable of supporting a change-in-law cost claim for the incremental transport rate increases required to comply, subject to causation and notice. If it does not, you must still implement the mandatory pass-through but should prepare for time-only or no contractual price relief under that head, and consider other levers such as price variation mechanisms or negotiated risk sharing.

Evidence, disputes and enforcement

Create a brief evidence pack for each covered chain. Record the mechanism used, the data source(s) evidencing cost per litre and the baseline date, the recalculation dates on your chosen cadence, and the reasonable steps taken to ensure secondary parties pass through the adjustment. This supports compliance and early resolution. Use the Order’s dispute

term and ensure parties genuinely try to resolve disputes before going to the Commission. A breach of an Order term is a civil remedy contravention under section 536NP of the *Fair Work Act 2009*.

Timeline and reviews

Track the AIP weekly national average terminal gate diesel price. If it falls below \$2.00 per litre, the clause 4 obligations cease. The Order itself continues and will be reviewed after the first month and then every three months thereafter. Whether obligations recommence automatically if the price rises again is an issue identified for determination at the review. Industry has asked for guidance on what counts as “reasonable steps”, and we expect the first review to address this.

How this sits with our earlier diesel shortage guidance

Our March and April insights on diesel shortage impacts and emergency frameworks remain current. Force majeure clauses in many EPC forms are narrow and often time-only. Change-in-law can assist when drafted to capture new instruments, including orders and directions, that apply to users and require lawful variation, resequencing or defined additional costs of compliance. The RTCCO is a separate regulatory obligation and you must implement it regardless of what your contract says about price risk. Your contractual clauses then determine whether you can recover those costs from your counterparty.

How we can help

We can help you identify covered contracts, implement compliant fuel adjustment mechanisms, document reasonable steps, and align your change-in-law clauses with the Order.

If you would like to discuss further, please contact [Martin Lovell](#).

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