



Application by Transport Workers' Union of
Australia and Australian Road Transport
Industrial Organization
(MS2026/1)

Submission

21 May 2026

1. INTRODUCTION

- 1.1 On 28 April 2026, the Fair Work Commission Full Bench (**FWCFB**) issued a Statement setting out the process to review the Road Transport Contractual Chain Order – Fuel Cost Recovery – 2026 [MS900102] (**Order**).¹ This Statement enabled parties to provide submissions with respect to the Order as it is currently operating.
- 1.2 The Chamber of Commerce and Industry of Western Australia (**CCIWA**) acknowledges the substantial impact the Middle East conflict has had on the global energy market and supply chains. This includes the impact of higher fuel prices throughout the economy, not just on road transport operators.
- 1.3 CCIWA's submission is intended to provide a Western Australian context to the impact of the Order by highlighting the significant administrative burden and financial impost on Western Australian businesses.
- 1.4 CCIWA's submission should be read in conjunction with Australian Chamber of Commerce and Industry's (**ACCI**) submission to the review of the Order.

2. ADMINISTRATIVE IMPACT OF THE ORDER FOR BUSINESS

- 2.1 Consistent with the issues raised by many participants at the 1 May 2026 Conference, many WA businesses continue to lack clarity about whether they fall into the bounds of such an arrangement because their interaction with road transport may only be tangential in nature.
- 2.2 This uncertainty includes what constitutes a “road transport supply chain”, specifically whether being in a “chain” - i.e. a series of contracts or arrangements - is a pre-requisite to being covered by the Order.
- 2.3 There may be circumstances where a principal contracts directly with a party who meets the definition of a “regulated road transport contractor” (**RRTC**) for the

¹Application by Transport Workers' Union of Australia and Australian Road Transport Industrial Organization [2026] FWCFB 99, PR799132.

purposes of section 15Q of the *Fair Work Act 2009* (Cth) (**FW Act**), and the RRTC performs the work itself (i.e. it does not subcontract). In that situation, there is only a direct contract between two parties and it is, therefore, unclear whether:

2.3.1. that arrangement constitutes a “road transport contractual chain” for the purposes of section 15RA(1) of the FW Act;

2.3.2. the principal/RRTC are both covered as “primary parties” under the RTCCO; and

2.3.3. clause 4.1 of the Order is enlivened, given that this clause appears to be a standalone obligation between primary parties.

2.4 If such an arrangement is not defined as a chain, they remain uncertain about whether the Order applies, even though a RRTC forms because of the consequence of the contractual arrangements. If it is a chain, parties may be uncertain about how the rate adjustment obligations operate in a two-party model and whether a primary party can recover their own direct costs, rather than flowing through any increased fuel costs.

2.5 This lack of clarity results in significant uncertainty for businesses, particularly if there is a requirement to, with other parties, share or inquire about information to formulate costs. This has resulted in compliance uncertainty and ongoing disputes in instances where other parties elect to not provide the information.

Current arrangements and their applicability

2.6 Many WA businesses had already, prior to the operation of the Order, planned to introduce, or accept from their suppliers, a fuel levy/surcharge. Despite this forethought, these businesses are concerned about whether their already-established cost recovery arrangements qualify to meet the obligations set out in the Order.

2.7 We would expect some arrangements to be compliant. However, the ongoing uncertainty coupled with the knowledge of potential penalties, continues to generate queries from WA businesses to CCIWA as to whether those arrangements are a “reasonable” recovery of the fuel costs.



Broader cost recovery

- 2.8 In addition, there remain queries from WA businesses in relation to the methodology and timing of calculating and seeking recovery of increased fuel costs. Several complex scenarios have been raised in this regard. For example, in the case of mixed load and mixed fleet operations, it is currently unclear how the Order applies when road transport contractors are performing work for multiple primary parties in the same chain. This may be particularly relevant in the context of delivery drivers or road transport tasks within the construction industry.
- 2.9 With little guidance around how costs should be apportioned, many organisations have identified a risk of over-recovery by either the secondary parties or the road transport contractor.
- 2.10 In addition to this, CCIWA have been informed of businesses using the Order as a mechanism to offset costs not associated with the temporarily high cost of fuel.
- 2.11 This is not isolated to one sector and has been raised when additional information has been requested by CCIWA. Ultimately, there is currently no recourse under the Order to disincentivise this behaviour.
- 2.12 Therefore, businesses need further guidance on how to resolve instances of over-recovery, such as using it to offset any under-recovery or allow a business to recover that money from the other party.

3. FINANCIAL IMPACT OF THE ORDER FOR WA BUSINESSES

- 3.1 The financial impact of the Order on WA business is substantial, due to the tyranny of distance Western Australian businesses face. This, coupled with being at the end of most global and national supply chains, makes some transportation routes, particularly for regional Western Australia, marginal in their delivery. Many items on these routes include essential goods such as medicine, food, fuel and other health care products.



- 3.2 The CSIRO's TraNSIT model data demonstrate that WA's fuel costs are already substantial, which correlates with the sheer distance travelled by all freight in WA.
- 3.3 As shown in **Figure 1**, WA's average fuel cost per kilometre sits at \$26.67 per kilometre, which is slightly less than Queensland at \$30.48, and significantly more than New South Wales at \$10.70. Cost variations exist for a variety of reasons, including the types of loads, distance of driving, type of traffic and other such variables.

Figure 1: Average fuel cost per kilometre

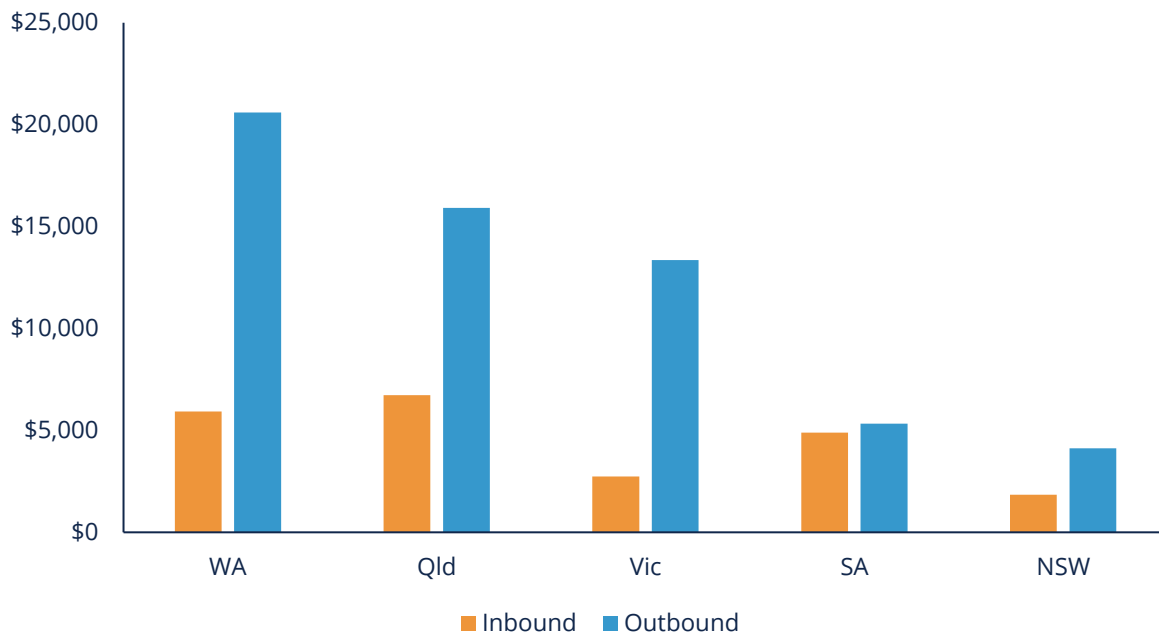


Source: CCIWA, CSIRO TraNSIT

- 3.4 Despite a lower per kilometre fuel cost than Queensland, WA's outbound freight cost is the highest, sitting above \$20,000 per average trip, as shown in **Figure 2**.
- 3.5 This is approximately \$5,000 more per average outbound than Queensland.



Figure 2: Average fuel cost per trip type



Source: CCIWA, CSIRO TraNSIT

3.6 **Figure 2** also shows that the fuel component of inbound freight costs in WA is higher than those reported for South Australia, New South Wales and Victoria.

3.7 This Order could add a further 10 to 15 per cent on top of WA's already high transport costs, putting transport-reliant sectors across the State at risk.

3.8 In addition to the inability to ensure the costs passed on are reflective of fuel costs, the Order may lead to a reduction or cessation in services on WA's marginal transportation routes, impacting businesses and the wider WA community.

3.9 The impacts on businesses reliant on these routes will flow through into their pricing broadly. For example, some CCIWA members have said:

3.9.1. *The increased costs in freight charges [have] a knock on effect to our suppliers which in turn has then been passed on to us. In order to absorb those additional costs it is expected they will be taken into consideration when pricing up customer projects. With the current state of the economy*



our customers are not prepared to wear the additional costs unless the job is a necessity, thus a decline in quote conversions and workflow.²

3.9.2. *I've been told just today that freight costs will double. I now have to think about what I order as this is hard for any small business to onward [these costs] to products.³*

3.10 The process of fuel recovery, including how best to do so, should depend on individual contractual arrangements and allow for flexibility so parties can appropriately negotiate levels of recovery.

3.11 Examples of this include backloading, which is common in regional parts of Western Australia, due to the marginal nature of some routes within the State. The inability of the Order to appropriately capture such arrangements will, over time, likely result in a reduction in servicing of these regional communities and, importantly, a reduction in work for some operators.

4. PROPOSED RECOMMENDATIONS

Operative end date for the Order

4.1 CCIWA holds concerns about the indefinite nature of the Order. As noted in ACCI's submission dated 17 April 2026, there may be a situation where diesel prices remain elevated above the cessation trigger contained in clause 5.4.⁴

4.2 It is appropriate that there should be a sunset clause for the operative function in clause 4 to ensure that the fuel recovery mechanism under the Order is only operational on a short-term temporary basis. This would then meet the intent of mitigating the impacts of a temporary fuel price shock.

² Small business in construction.

³ Retail business in regional WA

⁴ ACCI, 'Application in response to the draft order', submission in *Application by Transport Workers Union of Australia and Australian Road Transport Industrial Organization*, MS2026/1, 17 April 2026,[10] – [12].

- 4.3 If elevated prices are maintained for a sustained period, (i.e. more than six months), commercial arrangements would likely factor in the longer-term higher cost of fuel.
- 4.4 Importantly, if higher fuel costs became entrenched, these elevated costs would flow through contractual and pricing structures across the economy as well.

Current contractual arrangements and interaction with the Order

- 4.5 CCIWA is of the view that if there are rise and fall provisions included within contracts, they should be expressly directed to infer compliance with any Order, as they provide ways to recover fuel costs that have already been negotiated between parties.
- 4.6 It should be the priority of the Commission to ease any additional regulatory burden, including by preserving contractual arrangements where rise and fall clauses exist.
- 4.7 CCIWA would support additional guidance by regulators on how existing rise and fall provisions can be respected and to ensure they meet the obligations under the Order.

Greater guidance on when and where the Order applies

- 4.8 In addition to the above recommendations, CCIWA believes it is appropriate that additional guidance is provided by regulators on how the Order applies, particularly for small operators to assist in understanding their obligations.

