

Advice to the Fair Work Commission

This advice has been prepared by the Road Transport Advisory Group in response to a Statement [\[2025\] FWC 216](#) by Justice Hatcher on 22 January 2025 directing the Road Transport Advisory Group to commence a subcommittee consultation process and to provide further written advice as to the prioritisation of the following matters:

- **MS2024/1** and **MS2024/2** – applications by TWU for an employee-like worker minimum standards order and a road transport minimum standards order covering ‘last mile delivery’
- **MS2024/3** – application by TWU for a minimum standards order covering employee-like workers performing digital platform work in the transport by road of food, beverages and other like items
- **MS2024/4** – application by TWU for a road transport contractual chain order
- **AM2021/72** – application by Menulog for new award (discontinued)
- **AM2024/35** – application by Mr Hines for variation of the *Road Transport (Long Distance Operations) Award*

1 September 2025

Background

RTAG Consultation process – applications for minimum standards orders

1. From 6 September 2024 to 22 January 2025, the President of the Fair Work Commission (Commission), Justice Hatcher, issued a series of Statements directing the Road Transport Advisory Group (RTAG) to commence a consultation process in relation to the following applications by the Transport Workers' Union of Australia (TWU) with the final [Statement](#) being issued on 22 January 2025:
 - applications for an employee-like worker minimum standards order and a road transport minimum standards order covering 'last mile delivery' (MS2024/1 and MS2024/2 respectively);
 - application for a minimum standards order covering employee-like workers performing digital platform work in the transport by road of food, beverages and other like items (MS2024/3);
 - application for a road transport contractual chain order (MS2024/4);
2. The Statements also required the RTAG to consult in relation to an application by Menulog Pty Ltd (AM2021/72) seeking that the Commission make a modern award to cover food delivery and an application by Mr Lawrence Hines to vary the *Road Transport (Long Distance Operations) Award 2020* (AM2024/35) (RT(LDO) Award Application). The application by Menulog Pty Ltd was withdrawn and it is not necessary that we deal with that application in this advice.
3. The President's [Statement](#) of 22 January 2025 confirmed the Commission's acceptance of the RTAG's [advice of 11 December 2024](#) in relation to the process it would follow to consult persons and organisations interested in the

applications. The RTAG's advice stated its intention to establish subcommittees as the principal mechanism for consultation for each of the applications in MS2024/1 – MS2024/4, with a single subcommittee being formed to deal with the 'last mile' applications (MS2024/1 and MS2024/2). A subcommittee was also established to deal with the RT(LDO) Award Application (AM2024/35). Guiding Principles for the subcommittees were established by the RTAG and appended to the [advice of 11 December 2024](#). The Terms of Reference and Guiding Principles provided for RTAG members to chair subcommittees and for meetings to be facilitated by Members of the Commission. These were accepted by the President.

4. It was proposed by the RTAG that subcommittees would begin consulting with a broad range of stakeholders as soon as possible after formation, by mid-December 2024 or early January 2025, subject to availability of persons who had sought to participate. The RTAG proposed a six-month period for consultation at the subcommittee level. During this time, the RTAG would monitor the progress of consultation, and would conduct a review of its effectiveness and the likelihood of consensus being reached in relation to the applications and issues at the end of the six-month period.

RTAG provisional view regarding prioritisation of applications.

5. In the [advice of 11 December 2024](#), the RTAG also provided its provisional view on priorities for the work of the Commission in relation to the applications and indicated that it would confirm that provisional view

following the subcommittee level consultation process. The provisional view with respect to prioritisation was:

1. MS2024/3 — application for an employee-like minimum standards order in relation to delivery of food and beverages.
 2. MS2024/4 — application for road transport industry contractual chain order.
 3. MS2024/1 and MS2024/2 — applications for an employee-like minimum standards order and a road transport minimum standards order respectively, both in relation to 'last mile' package delivery.
 4. AM2021/72 — application by Menulog for an award to cover the on-demand delivery service industry (subsequently discontinued).
6. Notwithstanding its provisional view on prioritisation, the consultation process proposed by the RTAG involved the applications moving forward together. This was so that consultation on each of the applications could proceed without delay and to optimise opportunities to identify any common interests and best practice initiatives relevant to each application.
7. The RTAG also stated its intention to consult with affected persons and organisations about its provisional view on the prioritisation of the applications as part of its consultation process. It indicated that following that process the RTAG would either confirm its provisional view in relation to prioritisation or advise the Commission if that view has changed as a result of any views expressed by interested persons or organisations during the consultation process.
8. The Chairperson of the RTAG wrote to the President on 19 August 2025 providing information about the progress of the consultation being conducted by the subcommittees for each of the applications and advised that because of some initial delays in forming the subcommittees, due to difficulties with

the availability of subcommittee participants between December 2024 and January 2025, meetings did not commence until February 2025. The President agreed to the request to provide the RTAG's advice by no later than 1 September 2025.

9. The RTAG has formed a subcommittee to consult about AM2024/35 and has held three meetings to date. The subcommittee is chaired by Mr Peter Anderson and meetings have been facilitated by Vice President Asbury. Subcommittee participants have agreed to pause consultation while they await the outcome of research being conducted by the Commission into the history of, and rationale for, certain award provisions subject of the application, to inform future proceedings. The views of applicant and those supporting him are that this application should have priority above the minimum standards orders applications. For reasons set out in the conclusion of this advice, the RTAG does not share this view.

RTAG Request for advice to Subcommittee Chairpersons

10. The three subcommittees formed to consult about the minimum standards order applications in MS2024/1 – MS2024/4 held meetings between February and September 2025. The subcommittees were chaired by RTAG Members, and the meetings were facilitated by Members of the Fair Work Commission. Records of those meetings have been published on the Commission's [RTAG website](#).
11. The Chairperson of RTAG wrote to the Chairpersons of each subcommittee on 28 March 2025 requesting that they provide the RTAG with advice, 7

August 2025, about the following matters in relation to each application being considered by the subcommittee:

- matters that are agreed;
- matters that may be agreed;
- matters that cannot be agreed and need to be determined by the Commission;
- the views of the subcommittee on the prioritisation of the application they were considering, in relation to other applications referred by the President to RTAG; and
- any other matters concerning the application that the subcommittee considered relevant.

12. The subcommittees have each provided their advice in the form of a report to the RTAG which responds to the request for advice set out in the letter of 28 March 2025. Some subcommittees needed a further period to provide their advice given the delay in meetings commencing, discussed above. The subcommittee meetings were conducted on a without prejudice basis and on the understanding that participants were not bound by agreed matters unless all the terms of a proposed order were agreed. As a result, the reports provided to RTAG reflect positions and contain material that participants do not agree should be published. The RTAG has summarised this advice at a high level, consistent with the views of the parties as to publication.

13. The advice received from each of the subcommittees is, in summary, as follows.

Advice from Subcommittees

The Last Mile Delivery Subcommittee

14. The Last Mile Delivery subcommittee was chaired by Mr Richard Olsen, who with Mr Peter Anderson was appointed as Joint Chairperson, and meetings were facilitated by Commissioner Damien Sloan. Eleven meetings of the subcommittee were conducted, with eight meetings dealing with both applications and three meetings dealing only with MS2024/2 (application for a road transport minimum standards order). Participants at the meetings included representatives from the TWU, Amazon, Aramex Australia, Australia Post, Australian Chamber of Commerce and Industry (ACCI), Australian Business Lawyers & Advisors (ABLA) (representing Business NSW, Australian Business Industrial and others), Australian Industry Group (AiG), Australian Road Transport Industrial Organisation (ARTIO), Couriers Please, DAI Post, DoorDash, FedEx Express Australasia, National Road Freighters Association (NRFA), National Road Transport Association (NRTA), Team Global Express, Toll Group and Uber.
15. The TWU application in MS2024/1 (employee like worker minimum standards order) proposes that:

The regulated workers to be covered by the proposed order are employee-like workers who use a range of vehicles and who:

 - a. are engaged through means of a digital labour platform operated by a digital platform operator to perform work that involves the transport by road of goods, wares or other things (other than food, beverages and other like things):

- i. From transportation-hubs, logistics centres, distribution or storage facilities, warehouses, or other like locations, to their ultimate destination; or
 - ii. that are ordered by a person using an online enabled application, website or system to be collected and delivered from and to locations nominated by a customer; or
 - iii. from one place to another in a system of distribution of goods, wares or other things operated or facilitated by a digital platform operator.
- b. perform work of the kind detailed in (a) above under contracts arranged or facilitated through or by means of a digital labour platform.

The regulated businesses to be covered by the proposed order are digital labour platform operators of the class who enter into, or facilitate, services contracts with employee-like workers who use a range of vehicles and who:

- i. are engaged through, or by means of, a digital labour platform operated by a digital platform operator to perform work that involves the transport by road of goods, wares or other things (other than food, beverages and other like things);
- ii. from transportation-hubs, logistics centres, distribution or storage facilities, warehouses, or other like locations, to their ultimate destination; or
- iii. that are ordered by a person using an online enabled application, website or system to be collected and delivered from and to locations nominated by a customer; or
- iv. from one place to another in a system of distribution of goods, wares or other things operated or facilitated by a digital platform operator.

who arrange or facilitate through or by means of a digital labour platform work the kind detailed above, by employee like workers.

16. The TWU's application in MS2024/2 (road transport minimum standards order) seeks to cover:

Regulated workers who are regulated road transport contractors who perform work involving the transport by road of goods, wares or other things from transportation

hubs, logistics centres, distribution or storage facilities, warehouses, or other like locations, to customers.

Regulated businesses who receive services under a services contract in the road transport industry; are constitutional corporations; and engage regulated road transport contractors under services contracts to perform work that involves the transport by road of goods, wares or other things from transportation hubs, logistics centres, distribution or storage facilities, warehouses, or other like locations, to customers.

17. The work to be covered by both of the proposed orders is the same except that the orders cover employee-like workers and regulated road transport contractors respectively. The relevant work includes:

- The transport by road of goods, wares or other things from transportation-hubs, logistics centres, distribution facilities, warehouses, storage facilities and other like locations, to their ultimate destination, which is referred to as 'last mile work' or 'last mile delivery' and involves the final phase of the delivery process in respect to goods, wares or other things. Generally, a customer will order a product for delivery to their home, business or another nominated address or location. The goods, wares or other things will generally, but not always, be packaged or placed in a parcel for delivery to the customer. The goods, wares or other things will be located at a transportation-hub, logistics centre, distribution or storage facility, warehouse, or other similar location from which they will be collected by employee-like workers or regulated road transport contractors, who will then transport them by road to their ultimate destination.
- The transport by road of goods, wares or other things by employee-like workers of the kind detailed above who perform what conventionally has been described as 'courier work'.
- the transport by road of goods, wares or other things by employee-like workers of the kind detailed above in the context of a system of distribution. A company such as Amazon would be covered.

18. The Last Mile Subcommittee identified what it described as threshold issues in relation to MS2024/1 as follows:

- No consensus could be reached on making an order. While drafts were prepared by two parties, differences were significant and could not be reconciled.
- There is particular concern as to drawing a clear line between orders that may arise from the applications dealing with employee-like workers undertaking last mile work (MS2024/1) and food and beverage delivery (MS2024/3). Some parties argue that the two areas are fundamentally different, and distinctions must be recognised and reflected in any orders while others contend that there should be a common approach to work value and associated rates and parity in other terms and conditions across both applications. Most participants do not believe that further consultation will change the position with respect to the Last Mile Subcommittee's advice to RTAG.

19. The advice from the subcommittee in relation to MS2024/1 (employee-like workers) is that no matters are agreed; it is unable to identify any matters that may be agreed; and all terms of any minimum standards order would need to be determined by the Commission.

20. In relation to MS2024/2 (regulated road transport contractors) the Last Mile subcommittee was also unable to reach consensus on the making of an order. Some suggest that the making of an order is premature, and that guidelines should first be issued. Coverage is seen as a threshold issue and there are significant differences between the parties about the work to be

covered by any order and its area of operation. The determination of coverage is seen by some participants as necessary to ensure two things:

- that any MSO is aligned to the minimum standards objective, and
- to anticipate and deal with any possible interaction between/overlap with other MSOs.

21. A draft prepared by ABLA was discussed by the subcommittee. An alternative draft circulated by AiG on 31 July 2025 was not discussed at the final scheduled meeting of the subcommittee on 1 August 2025. Issues raised by participants in relation to the ABLA draft include scope, the exclusion of New South Wales from the proposed order, limitations on the operation of the proposed order in Queensland, and the extent of the terms.

22. There was no consensus on prioritisation. To the extent positions were put in the Last Mile Subcommittee meetings, they are as follows:

- The TWU proposed that MS2024/2 (last mile road transport minimum standards order) and MS2024/4 (contractual chain order) be dealt with first, preferably concurrently and that MS2024/1 (last mile employee-like minimum standards order) and MS2024/3 (food and beverage employee-like minimum standards order) be dealt with next. The TWU believes that prioritisation of the matters as it proposes would most likely result in minimum standards being established in a timelier manner.
- Amazon maintains that MS2024/3 (food and beverage application) should be dealt with first followed by MS2024/1 (last mile employee-like minimum standards order), MS2024/2 (last mile road transport

minimum standards order) with MS2024/4 (contractual chain order) being dealt with last, on the basis that it is only at the point that other applications are dealt with that parties can be sure that any form of contractual chain order aligns with and addresses any overlap.

- Amazon also proposes that the two last mile applications should not be listed together on the basis that there is more likely to be overlap between MS2024/3 (food and beverage) and MS2024/1 (last mile) (which both concern digital labour platform operators and employee-like workers) than with MS2024/2. As presently drafted, Amazon contends that it will be subject to both MS2024/3 and MS2024/1 and the same workers could be covered by both orders depending on the items being delivered. In contrast, it is not possible for MS2024/1 and MS2024/2 to overlap given the kinds of workers concerned and the fundamental differences in the work they are performing.
- AiG believes that the applications should be prioritised as follows: MS2024/3 (food and beverage), MS2024/1 (last mile employee-like workers), MS2024/2 (last mile regulated road transport contractors) and MS2024/4 (contractual chain). AiG maintains that its proposed prioritisation is consistent with the scheme of the FW Act and will ensure that all parties with an interest in multiple proceedings can participate fully and effectively. AiG also contends that:
 - The content of any order that may be made in MS2024/1 and MS2024/3 would have a bearing on the content of MS2024/2, particularly if parties are arguing for MS2024/3 to deal with more than the delivery of meals for immediate consumption.
 - The content of any order made in MS2024/2 would have a bearing on the content of any RTCCO made in MS2024/4.

- MS2024/4 would require a consideration of different and new sections in the FW Act to those which would be required in the resolution of the proceedings in MS2024/1, MS2024/2 or MS2024/3 and would also involve different factual matters.
- The range of parties affected by MS2024/4 is broad and difficult to identify. Research commissioned by the FWC to scope supply chains has not yet been made public (or presumably finalised). An RTCCO made in MS2024 would impact the largest number of parties out of all the applications and would likely necessitate a very significant volume of evidence being dealt with by the FWC. It is also related to a particularly novel new power of the FWC. An extensive window for consultation by relevant associations with affected parties would be necessary once the content of any advice from the RTAG subcommittee and RTAG and the FWC commissioned research is published.
- There appears to be a significant level of consensus between the major digital labour platform operators that MS2024/3 and, to a lesser degree that MS2024/1, should be prioritised. Prioritisation of MS2024/3 is also consistent with the RTAG's provisional advice.
- To a significant extent, the purported urgency of regulating the 'gig economy' was publicly argued to be the justification for the legislative amendments enabling the making of the relevant applications.
- It is foreseeable that a more limited number of parties are likely to participate in proceedings relating to MS2024/3 and, to a lesser extent MS2024/1, relative to MS2024/2 and MS2024/4, and that this may result in more confined proceedings.
- The breadth of the coverage of MS2024/2 will likely require that a very broad range of factual matters are taken into account by the Expert Panel before considering the issuing a notice of an intent to make an MSO in or an actual MSO (absent broad consensus over its terms). The ABLA proposed order would touch not only a diverse range of road transport businesses, but also a much broader range of other sectors of the economy than the other MSOs.
- There is a significant risk that the making of an order in MS2024/2 prior to the making of an order in MS2024/3 and MS2024/1 would expose parties covered by MS2024/2 to an unfair competitive disadvantage as parties covered by MS2024/2 would consequently be left competing with largely unregulated entities.

- If MS2024/2 is prioritised ahead of MS2024/3 and to a lesser extent MS2024/1, there is a risk that the time and resources of the parties and the Commission in connection with consultation and engagement undertaken in relation to MS2024/2 may be superseded or wasted, if matters subsequently dealt with in MS2024/3 have an impact on the content of an order in MS2024/2. If those matters necessitate substantial changes to the terms of the draft MSO in MS2024/2, this would necessitate a further updated notice of intent, draft MSO, and 12 month consultation period (under s. 536KE(2)(c) of the FW Act).
- There is significant uncertainty over what the view of industry participants beyond subcommittee participants will be to the proposed expanded coverage of MS2024/2 (if the TWU amends its application), given the application presently before the Commission has much narrower scope.
- There appears to presently be a greater prospect of broad, even if not complete, consensus on MS2024/2 being achieved through further Commission facilitated conferencing than MS024/3. Consequently, MS2024/3 should be prioritised and should progress to arbitral phase.
- AiG also contends that further conciliation in relation to MS2024/2 should be undertaken promptly. Should a greater level of consensus crystallise over some or all the terms of any order arising from MS2024/2, the FWC could move to arbitral determination of the matter prior to the resolution of MS2024/1 and MS2024/3.
- ABLA, Team Global Express, FedEx Express and Aramax hold the view that some level of alignment would be needed in prioritisation between MS2024/2 and MS2024/1 to ensure that no party gained an unfair advantage through more beneficial regulation while delivering the same goods with the same vehicles. MS2024/3 should also have the same level of priority, unless its scope is limited to delivery of food and beverages only.

- Uber and DoorDash state that consistent with the provisional view of RTAG MS2024/3 (the food and beverage application) should have the first priority and point to the fundamental differences in relation to MS2024/1 and MS2024/2 as a reason for their disagreement with the TWU contention that prioritisation of those matters above MS2024/3 would likely result in appropriate minimum standards being established in a timelier manner.

The Food and Beverage Subcommittee

24. The Food and Beverage subcommittee was chaired by Mr Richard Olsen and meetings were facilitated by Commissioner Oanh Tran. Eight meetings of the Food and Beverage subcommittee were held between 7 February and 25 July 2025. Participants at subcommittee meetings included representatives from ACCI, Amazon, the AiG, ARTIA, DoorDash, Menulog, Sherpa/Drive Yello, the TWU, Uber, an academic, and individual food delivery workers. At the first meeting, participants agreed that discussions would be conducted on a without prejudice basis and that high level meeting records would be published, with participants identified only if requested. Without prejudice drafts have been exchanged between the participants. The outcome of the Food and Beverage subcommittee consultation is that no matters have been agreed, although the advice from that subcommittee indicates the view that *'significant constructive progress has been made'*.
25. The TWU indicated that it is preferable that this application is determined in its entirety and that further consultation is unlikely to result in any agreed position. A key factor that informs this view is that the applicant, platforms and industry representatives agree that it is imperative for a minimum

standards order to be made for employee-like workers in the food and beverage delivery industry as a matter of priority.

26. Subcommittee participants are of the view that, where required, any conciliation process should run concurrently with a determination/arbitration process. This view is informed by the participants' view of the priority of this application. To have utility, the conciliation process should be responsive to the determination/arbitration process and relate to particular matters or issues only.
27. While there is no agreement among subcommittee participants in relation to prioritisation, there is broad consensus that the Food and Beverage application should be given the highest priority and dealt with before other applications for minimum standards orders, informed by the following factors:
 - currently, no minimum standards cover the workers in this industry,
 - considerable progress has been made in reaching consensus between the applicant industry participants on terms to be included in a minimum standards order, and
 - Menu log recently discontinued its application in AM2021/72 for a new On Demand Delivery Services award.
28. The majority of participants agreed that it is desirable for the RTAG to formally advise the President that this application should be the first priority and a small number of participants are reported to have indicated a view that if another application has made greater progress towards agreement, they may form a view that that application is progressed as a

priority. Some participants expressed a view that the order of priority should be:

1. MS2024/3 (the Food and Beverage application)
 2. MS2024/1 (last mile employee-like workers)
 3. MS2024/2 (last mile regulated road transport contractors)
 4. MS2024/4 (contractual chain order).
29. It is the TWU's view that the parties in matters MS2024/2 and MS2024/4 are more likely to reach a position of consensus than matters MS2024/1 and MS2024/3 and that the prioritisation of these matters would likely result in appropriate standards being established in a timelier fashion.

The Contractual Chain Order Subcommittee

30. The Contractual Chain Order subcommittee was chaired by Mr Peter Anderson and meetings were facilitated by Commissioner Scott Connolly. Six meetings of the Contractual Chain Order subcommittee were held between 21 February and 25 June 2025. Participants at the initial meeting included representatives from the TWU, NRTA, the AiG, ABLA, ACCI, ARTIO, Toll Group, McKenzie Water, DEA Logistics, the University of New South Wales, and individuals who are long haul owner drivers/former independent contractors. Other regular participants (who did not attend the first meeting) are Coles Group, Australian Public Transport Industrial Association/Bus Industry Confederation, FedEx Express Australasia, and Woolworths Group. Records of meetings and participants were posted on the Commission's [RTAG website](#).
31. The Contractual Chain Order subcommittee participants expressed concerns about the form of the request by the RTAG Chairperson for advice,

including that regardless of whether consensus was reached, all matters would be required to be 'determined' by the Commission and that parties would not necessarily be bound by the positions they adopted in the subcommittee meetings. This is the basis upon which all subcommittee meetings were conducted.

32. The application made by the TWU seeks:

The persons to be covered by the order include:

- *parties, within the meaning of s 15RA(2)(a) of the FW Act, to the first contract or arrangement in the road transport contractual chains the subject of this order including the client; and*
- *parties to subsequent contracts or arrangements in the road transport contractual chains for the purposes of s 15RA(2)(b) of the FW Act the subject of this order, being contracts or arrangements under which work is performed by regulated road transport contractors under services contracts or employees;*
- *regulated road transport contractors who perform work under a services contract in the contractual chains the subject of this order for the purposes of s15A(2)(c) of the FW Act; and*
- *regulated road transport businesses.*

The work to be covered by the order includes:

- *the transport by road of goods, wares, merchandise, material or anything whatsoever, whether in its raw state or natural state, wholly or partially manufactured state, or of a solid or liquid or gaseous nature or otherwise;*
- *the transport by road of meat from abattoirs, slaughterhouses, and wholesale meat depots;*
- *the transport by road of crude oil or gas condensate;*
- *the transport on public roads of milk and cream in bulk, and the transport, vending and distribution of milk, cream, butter, cheese and their derivatives (including fruit juices, yoghurt and custard);*
- *the transport by road of quarried materials;*

- *the distribution and/or relocation by road of new or used vehicles, where the vehicle itself is required to be driven from one location to another for the purposes of delivery and/or relocation of the vehicle;*
- *the transportation of any waste material whatsoever, whether solid or liquid, organic, biological, medical, raw or natural, wholly or partially manufactured, decomposed or partly decomposed or in any other state or form and including all domestic, trade and industrial waste.*

That included in the order are provisions for:

- *Minimum 30-day payment terms - to protect road transport businesses and regulated road transport contractors against unjust, unsustainable delays in payment.*
- *Prohibition of automatic reduction or set-off terms – to better protect regulated road transport contractors and road transport businesses from unfair contractual terms.*
- *Compulsory rate review provisions to promote proactive cost adjustment.*

33. The TWU provided a draft order on 13 March 2025 and a revised draft order on 24 April 2025. Those documents were provided on a without prejudice basis for discussion by the subcommittee.

34. The following threshold issues were identified in the Contractual Chain Order subcommittee's advice. Subcommittee members have not been able to reach a consensus to support the making of an order in the terms proposed by the TWU's application or its draft order. Some participants have expressed concern about the scope and application of the order. For others, the placing of obligations on primary parties to contracts with secondary parties where there is little or no capacity to control conduct or consequence is a threshold issue. Other participants are supportive of the application's terms '*in principle*' and of an order being considered and made by the FWC. Others are opposed and consider any order premature.

35. The parties agree that any Road Transport Contractual Chain Order (RTCCO) should:

- not cover transport within a contractual chain on private roads; the Cash-in-transit industry; the passenger transport industries; and beyond the scope of transport work as defined by the *Road Transport and Distribution Award 2020* and the *Road Transport (Long Distance Operations) Award 2020* (ie: excluding distribution).
- not include a term that would prohibit terms to be included in contracts or engagements between parties in a road transport contractual chain, noting that the TWU's position that the prohibition of terms requiring automatic efficiency offsets or other like provisions should be further addressed or considered at an appropriate later time.
- include the dispute clause in the TWU draft order of 24 April 2025.

36. Matters that may be agreed include that any RTCCO should provide:

- That obligations on primary parties who enter contracts with secondary parties to perform work subject of the order '*take all reasonable steps*' (to be defined) to ensure that contractual terms they enter facilitate compliance.
- That the time from which a requirement to pay made by any order begins is from when an invoice or recipient created tax invoice (RCTI) is issued or received in relation to the work performed under the contractual chain.
- that any order for payment must include a term to facilitate the identification of disputed amounts within a reasonable timeframe and that parties' rights to make claims in relation to amounts paid will not be disturbed by any such term.
- an obligation in an order made by the FWC in relation to contract terms between parties in a RTCC or engagements between parties in a RTCC include a requirement to conduct a 'rate review' in 'good faith' subject to clarification and definition of those terms.

- that any exercise of arbitral powers by the FWC in relation to disputes about matters between parties subject to a RTCC order shall be by consent of those parties.
- the most appropriate definition of work within the scope of the application.
- the benefit of RTCCOs.
- indicative matters relating to rate reviews, to be considered in any real rate review may include such items as: fuel, repairs and maintenance, insurances, administrative costs, capital costs including depreciation, returns on investment, tyres, labour costs, individual costs, and industry costs and/or standards. However, subcommittee members were unable to agree on whether the point of reference for the consideration of costs should be individual costs, industry costs, standards or a combination of these things.
- the benefit of public and industry specific education and information supporting the implementation and transition to any RTCCO being made by the FWC and coming into effect.

37. Matters that cannot be agreed can be summarised as follows:

- Whether the TWU's proposed draft order dated 24 April 2025 should be made.
- Whether the scope of the of the TWU's proposed order within all road transport contractual chains and for all contracts or engagements for work in the road transport contractual chain should apply or be narrowed.
- Matters relating to invoices and RCTIs and the party they are issued by.
- Matters relating to the definition of an invoice or RCTI with respect to the party it is issued by.
- Payment terms between primary and/or secondary parties.
- Payment terms between secondary parties and road transport businesses or regulated road transport contractors they engage.
- Whether the term of any order should require or relate to the conduct of a 'real' rate review between parties involved in RTCCs.

- How obligations in relation to primary parties taking all reasonable steps to ensure that contracts or arrangements between secondary parties and road transport businesses provide for undisputed amounts to be paid within specified time frames, and/or for disputed amounts to be notified and identified, or for real rate reviews to be conducted, can be included in any order.
- How any order made by the FWC will impact existing contracts and arrangements between parties, including contracts or arrangements providing for transport services as part of other services (multi-services) between the parties and the commercial terms of such arrangements.

38. The parties were also unable to reach agreement in relation to prioritisation. Some members agreed with the provisional view of the RTAG. Other members maintained a position that a contractual chain order must not be made prior to the making of any minimum standards order, based on s. 536PN of the *Fair Work Act 2009*, which provides that any contractual chain order must include a requirement about its interaction with minimum standards orders. Other members considered that a contractual chain order should not be made until the Commission has considered the applications for minimum standards orders. Some members also seek a further opportunity to be heard by the President on the prioritisation of matters.

RTAG advice about prioritisation

39. Having regard to the views of the subcommittees considering the minimum standards applications and its own assessment of their reports, the RTAG considers that the following matters are relevant to prioritisation.

- While the subcommittee process has resulted in agreement in principle in relation to aspects of some applications, there are no substantive

terms for orders agreed in respect of any of the four minimum standards applications.

- To the extent that there is agreement in principle, it has been reached on a 'without prejudice' basis and is subject to agreement on the overall terms of any order, which in all cases has not been reached.
- At this stage the Commission will be required to determine each application in its entirety with no agreement having been reached, including as to the narrowing of issues in dispute.
- It is unlikely that further consultation at this stage will result in progress in respect of any of the applications.
- Any further consultation is likely to be of benefit only after Fair Work Commission proceedings in relation to each application have commenced and with respect to proposals about specific terms rather than the terms of an order, considered as a whole.
- Whether the requirement in s. 536PN of the *Fair Work Act 2009* that a road transport contractual chain order must include a term about its interaction with minimum standards orders, precludes a contractual chain order from being made before a minimum standards order is made, is a matter to be determined by the Commission.
- For the purposes of this advice, the RTAG assumes that s. 536PN does not operate in this way and simply requires that a road transport contractual chain order includes a term about its interaction with any other minimum standards order that may be in existence at the time the contractual chain order is made.

- The desirability of progressing applications about which consensus is most likely to be reached, must be weighed against the imperative of achieving an outcome in areas where there is currently no regulation, noting that there is some regulation at State level in relation to work undertaken by regulated road transport contractors as defined in the Fair Work Act 2009.
 - It is clear from the positions expressed by parties in relation to prioritisation, that there is considerable scope for overlap or for applications to impact other applications particularly in relation to the terms of those concerning employee-like workers engaged in the delivery of food and beverages and last mile deliveries.
 - While no consensus on prioritisation has been reached, it appears that the most common view is that:
 1. the food and beverage application (MS2024/3) should be given a high (or the highest priority); and
 2. opportunities to progress applications where some parties perceive that consensus is most likely to be reached should be progressed expeditiously.
40. The RTAG believes that there are likely to be matters that have general relevance to all applications. As a result, there will be synergies that will emerge as the applications and the terms sought by each of them are articulated and dealt with by the Commission. On a fundamental level, all applications concern the delivery of goods by road in a range of vehicles, many of which are common across the areas in which each of the proposed orders will operate. While the context in which the workers covered by

each of the proposed applications may differ, the costs of operating vehicles in various contexts may be the same or similar. Matters of this kind are more likely to be dealt with and resolved more efficiently, if all of the applications are moving at or around the same time.

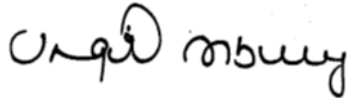
41. On this basis, the RTAG's advice is that all applications are simultaneously assigned to Expert Panels for the Road Transport Industry with those Expert Panels commencing to deal with the applications as soon as possible and that to the extent that it is reasonable and practical, the applications move at or around the same timeframes. The RTAG believes that Commission Members who would preside on Expert Panels would have the capacity to manage scheduling so as to not adversely impact parties and that contrary to the views of some parties, this process would be more efficient, because it would avoid duplication and enable approaches to be considered in a range of contexts so that there is consistency to the extent possible. This approach will also avoid arguments about sectors being benefited or disadvantaged by timing.
42. If this is not possible, the RTAG confirms its initial advice that the priorities for minimum standards applications should be as follows:
 1. MS2024/3 — application for an employee-like minimum standards order in relation to delivery of food and beverages.
 2. MS2024/4 — application for road transport industry contractual chain order.
 3. MS2024/1 and MS2024/2 — applications for an employee-like minimum standards order and a road transport minimum standards order respectively, both in relation to 'last mile' package delivery.
43. The RTAG understands and acknowledges the strong views on the part of the applicant in AM2024/35 and those supporting that application, that this application should be given priority above the minimum standards

applications. Notwithstanding those views, the RTAG advises that this application should not be prioritised above the minimum standards orders applications for the following reasons:

1. While there may be issues with the *Road Transport (Long Distance Operations) Award* that have been identified in the application, the Award provides enforceable regulation in this sector.
 2. Some matters dealt with in the application concern alleged breaches of the Award, for which there are remedies in the courts or are premised on differing interpretations of the Award and the provisions of the Fair Work Act which may be capable of resolution other than by varying the *Road Transport (Long Distance Operations) Award*.
 3. Other matters raised in the application will have an impact on the relationship between the *Road Transport (Long Distance Operations) Award* and the *Road Transport and Distribution Award*.
 4. It is apparent from the discussions in the Subcommittee dealing with this application, that the extensive variations sought by the applicant will have widespread effects in the road transport industry generally, and that it is unlikely that it will be appropriate for the application to determined 'on the papers', as sought by the applicant.
 5. The application is not in final form evidenced by the fact that as recently as 28 August 2025, the applicant sought to significantly amend it by filing a further application. This will likely necessitate further consultation and would delay the progress of the application even if it was given the priority the applicant has requested.
44. It should also be noted that the subcommittee considering this application has agreed that staff of the Fair Work Commission will undertake a research project to identify the history of the provisions subject of the application and any rationale for the alleged anomalies. This project is underway. The applicant and those supporting the application have been providing

information to support the research with the most recent communication having been received today. Other parties have also had input to the matters being considered as part of the research project and have provided information to assist. Once the amendment sought to the application has been considered, the RTAG will be in a position to provide a timeframe for the research project to be completed.

45. The RTAG is happy to discuss this advice or to provide any clarification you require and awaits your views in relation to it.



Ingrid Asbury

Vice President

Fair Work Commission

Chair, Road Transport Advisory Group