



WALGA

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RTCCO Implications for Local Governments

1 May 2026



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Artwork by Jade Dolman, a young Whadjuk/Ballardong Nyoongar, Eastern Arrernte, Irish woman from Perth.





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Duncan Fletcher and Beth Robinson

1 May 2026

This presentation is for informational purposes only and does not constitute legal advice.

Please seek legal advice regarding your specific circumstances.



Agenda

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1. Overview and coverage of RTCCOs
 2. Core obligations for Local Governments
 3. Practical compliance for Local Governments
 4. Dispute Resolution and RTCCO enforcement
 5. Key considerations and recommended actions
 6. Questions

Overview and Coverage of RTCCOs

What has happened?

- Under the *Fair Work Act 2009* (Cth) (**FW Act**), the Fair Work Commission (**FWC**) has the power to make Road Transport Contractual Chain Orders (**RTCCOs**).
- On 30 March 2026, the Federal Government successfully passed through Parliament the *Fair Work Amendment (Fairer Fuel) Bill 2026*.
- On 2 April 2026, the Transport Workers' Union of Australia and the Australian Road Transport Industrial Organisation filed in the FWC for a RTCCO.
- This is an Emergency Order made by the FWC on **20 April 2026**, effective **21 April 2026**, in response to a dramatic spike in diesel prices caused by Middle East conflict disrupting international oil supplies.

Overview and Coverage of RTCCOs

What has happened?

- Requires participants in road transport contractual chains to adjust rates fortnightly to allow recovery of increased fuel costs.
- Covers all work in the road transport industry, very broad scope.
- The first fuel cost recovery process must occur by 5 May (within 14 days).
- Non-compliance is a civil remedy provision; civil penalties may apply.

The key concept is the concept of a "rate" and how this is determined.

When will we be caught by the Order?

Identifying "primary parties" in a Road Transport Contractual Chain

A party to a "road transport contractual chain" as defined in s 15RA FW Act.

1

Scenario 1: Direct engagement of a road transport operator

If a party contracts directly with a road transport operator, it will almost certainly be a "primary party".

2

Scenario 2: Engagement through a supplier with bundled delivery

If a party engages a supplier to provide materials "delivered to location".

3

Scenario 3: Engagement for a service or project with incidental delivery

If a party is the principal for a service or project (e.g. construction work) and transport is incidental to the contract.

If we are caught by the Order what do we need to do?

Core Obligations

1

Clause 4.1 – Primary party rate adjustment

Must, within each fortnight or twice per calendar month, adjust the rate paid to any other primary party for road transport work by the amount necessary to ensure the other primary party recovers the increased cost of fuel.

2

Clause 4.2 – “Reasonable Steps” obligation

Primary parties in a road transport contractual chain **must take reasonable steps** to ensure that secondary parties engaging regulated road transport contractors or road transport employee-like workers in the same road transport contractual chain adjust the rate they pay to such 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 recovery of the increased cost of fuel.

3

Clause 4.4 – Secondary party rate adjustment

If a local government is a secondary party, it must also adjust rates fortnightly to ensure cost recovery

4

Clause 4.5 – Flexibility of adjustment mechanism

Adjustments may be made by rate adjustment, fuel increment or levy, direct reimbursement or offset, or any combination.

First rate review must occur by approximately 5 May 2026 (within the first fortnight from 21 April commencement)

Deemed Compliance: when do existing arrangements satisfy the order?

Clause 4.6(a) — State/Territory industrial instrument.

If an applicable State or Territory instrument includes a rise-and-fall formula for fuel, adjustment under that instrument satisfies the Order

Clause 4.6(b) — Collective agreement or contract with rise-and-fall formula.

If an existing contract includes a fuel escalation mechanism, adjustment under that mechanism may satisfy the Order

Clause 4.6(c) —Ongoing or special arrangement with agreed methodology.

An ongoing or special arrangement between persons in a road transport contractual chain which adjusts the rate in accordance with an agreed 'rise and fall' formula, cost model or other benchmarking methodology to account for or address recovery of the increased cost of fuel. This is the broadest and **most important** deemed compliance pathway

Clause 4.8— Pre-commencement adjustments.

Rate adjustments implemented before 21 April 2026 may be taken into account in satisfaction of obligations.

Deemed Compliance: when do existing arrangements satisfy the order?

Examples of contract terms – Waste Contract

Rise and Fall clause

"On the anniversary of the Execution Date or such other date specified in the Contract, any Fees, rates and other amounts payable under the Contract will be adjusted by the application of the rise and fall mechanism set out in Annexure 3 to Schedule 3."

Variations clause

"The Fee is inclusive of all costs and expenses... and no additional amounts will be payable by the Principal," subject to:

- Variations and
- "any amounts payable as set out in the Procurement Form or otherwise specified in this Contract."

Amendments clause

"An amendment of any term of the Contract must be in writing and signed by both parties."

Deemed Compliance: when do existing arrangements satisfy the order?

Examples of contract terms – Minor works contract

Services clause

"The Contractor must, at its own cost, provide and maintain all Services (other than those Services which the Principal agrees to maintain as notified to the Contractor in writing) necessary for the Contractor to perform the Works in accordance with the Contract."

Variations clause

If the Principal requires a Variation, Contractor must provide a Variation Quotation.

If accepted, the Principal issues a Variation Notice, and the Price will be adjusted by the amount in the accepted Variation Quotation.

Written amendment signed by both parties

"An amendment of any term of the Contract must be in writing and signed by both parties."

Dispute Resolution and Enforcement

Clause 6 — Dispute settlement

- Parties must first genuinely try to resolve disputes between themselves.
- If unresolved, either party may refer the dispute to the FWC.
- The FWC may use any method of dispute resolution permitted by the Act.
- Arbitration is only available with the consent of both parties.

Section 536NP

- Contravention of the Order is a civil remedy provision: **civil penalties may apply.**
- Section 539 sets out who may apply to the courts for an order in relation to contraventions and the maximum applicable penalties.

Clause 5.4 — Periodic Review

- The Order will be reviewed by the FWC after 1 month (by 21 May 2026), and then every 3 months thereafter.

Anti-avoidance

- Parties cannot offset, neutralise or negate any increase in rates determined under the order in relation to fuel. This includes a prohibition on imposing deductions, set-offs or any other adjustments that reduce pay rates for other components of remuneration.

Key Considerations in WA

Cost absorption and Rates

- Rates are set annually and any changes require public consultation. Cost increases cannot be passed on to ratepayers until the following financial year at the earliest.
- Regional local governments are particularly exposed. Contracts already price in higher fuel costs to reflect regional operating conditions. The RTCCO compounds this burden.
- Local governments have limited mechanisms to recover costs in-year
- The fortnightly adjustment cycle is fundamentally misaligned with annual budgeting and rating processes.
- This creates a structural gap: local governments may be required to pay increased costs immediately but cannot recover them from ratepayers for up to 12 months.

Key Considerations in WA



Contracts

Contracts issued under a tender legally cannot be varied unless statutory exceptions are satisfied.

Compliance with the order is not one of the exceptions.

Variations of contracts that are outside the CEO's delegation or resulting in unbudgeted expenditure, require full council approval.



Governance

Where the variation results in an unbudgeted cost, council approval is required. This may mean that councils need to approve each fortnightly variation without legislative intervention.

Fortnightly meetings will result in additional sitting fees and allowances being triggered.

Any necessary authorisation by elected councils is an added complication.



Capacity

Local governments may only have visibility of the principal contractor.

Small regional shires may lack the administrative resources to conduct fortnightly reviews, manage documentation, and satisfy audit trail requirements.

The Order is wide reaching, but compliance is focused on the concept of a "rate" which is a concept that may not be captured in local government contracts.

Recommended Actions

1

Audit contracts to identify RTCCO exposure

Map where road transport services are directly procured or embedded in supply.

2

Understand CEO delegations in relation to contract variations

Identify which variations the CEO can approve and which require council approval.

3

Establish streamlined approval templates for fuel variation adjustments

Reduce governance workload for recurring fortnightly adjustments.

4

Brief councils early and seek pre-endorsement of frameworks where possible

Develop approval frameworks that maximise delegation of authority to speed decision making.

Recommended Actions

5

Identify clause 4.6 reliance opportunities

Identify opportunities to rely on clause 4.6 of the Order. Review all contracts for 'rise and fall' clauses, fuel cost escalation mechanisms (e.g., linked to AIP diesel prices, CPI or a cost model).

6

Engage contractors early and proactively

Calculate exposure before engagement with contractors as there will be disagreement on how much rates should increase.

7

Document decision-making rationale carefully

Document decision-making rationale carefully — contemporaneous records will be critical if compliance is ever challenged.

8

Keep clear audit trails

Maintain clear audit trails. Document every adjustment, the methodology, and the rationale.

Questions?





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