



About the F87E application form

Application for a road transport contractual chain order

About road transport contractual chain orders

The [Fair Work Act 2009](#) (Fair Work Act) allows the Fair Work Commission (Commission) to set minimum standards for road transport employee-like workers, regulated road transport contractors and other persons in a road transport contractual chain. The Commission may set minimum standards for the road transport industry on application or on its own initiative. Minimum standards for persons in a road transport contractual chain can be in the form of mandatory road transport contractual chain orders or non-binding road transport contractual chain guidelines.

A road transport contractual chain order can contain terms about a range of matters, including fuel levies, rate reviews and cost recovery. There are also several matters that must not be included in a road transport contractual chain order, including overtime rates, rostering arrangements, and certain matters (including matters relating to work health and safety) that are dealt with comprehensively by other laws.

When considering an application for a road transport contractual chain order, the Commission must have regard to the minimum standards objective and the road transport objective at section 536JX and section 40D of the Fair Work Act respectively.

The Commission must also take into account particular matters in making a decision about a road transport contractual chain order (see section 536PF).

The Commission may also make minimum standards orders and minimum standards guidelines. For more information about road transport contractual chain orders, road transport contractual chain guidelines, minimum standards orders and minimum standards guidelines see the [Regulated worker minimum standards](#) page on the Commission website.

When to use this form

Use this form to apply for the Commission to make a road transport contractual chain order.

This form can be used by:

- an organisation that is entitled to represent the industrial interests of one or more persons in a road transport contractual chain
- a regulated business in a road transport contractual chain
- a person who is a primary party to the first contract or arrangement in a road transport contractual chain, or
- the Minister.

If you instead want to apply for:

- non-binding road transport contractual chain guidelines – use form F87G
- a minimum standards order – use form F87A
- non-binding minimum standards guidelines – use form F87C.

How the Commission deals with applications for road transport contractual chain orders

Road transport contractual chain proceedings will be held in public. Applications and supporting documents will be published on the Commission’s website for consideration by other interested parties.

In determining an application, the Commission may inform itself as it considers appropriate. This may include asking for submissions and supporting evidence from the applicant or other interested parties.

The Commission must consult with the Road Transport Advisory Group, ensure there has been genuine engagement with the parties to be covered by the order, and follow the consultation process set out in Subdivision C—Consultation process for road transport contractual chain orders in Division 2 of Part 3B-2 of the Fair Work Act. The Commission must prepare and publish a notice of intent and draft of the proposed order, give affected entities a reasonable opportunity to make written submissions in relation to the draft order, and publish those submissions.

Interested persons can be alerted to new applications and updated on existing minimum standards matters through the Commission’s [subscription service](#). You can sign up to the subscription service through the Commission’s website.

Applications for road transport contractual chain orders will be determined by an Expert Panel for the road transport industry. See sections 617 and 620 of the Fair Work Act for information on the constitution of Expert Panels.

Lodging and serving your completed form

Lodge this form and any supporting documents by email, post or in person at the [Commission’s office](#) in your state or territory.

Applications will be published on the Commission’s website.

The Commission will issue directions if it requires you to serve this form and any supporting documents on other persons.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- processes in the Commission
- how to make an application to the Commission

- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person speaks or acts on a person's behalf, or assists a person in certain other ways in relation to a Commission case. A representative could be a lawyer, paid agent, employee organisation, employer organisation, or a not-for-profit association or body that provides support, advice or advocacy in relation to the kind of application or case concerned.

A person does not need to be represented in a case at the Commission.

A person must ask permission of the Commission to be represented in a case by a lawyer or paid agent participating in a conference or hearing, unless the lawyer or paid agent is an employee or officer of the person or of an organisation representing the person. A person may otherwise be represented in the case without asking permission unless a Commission Member directs otherwise (see rule 13(1) of the [Fair Work Commission Rules 2024](#)).

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12, 13 and 14 of the [Fair Work Commission Rules 2024](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Lawyer – a person who is admitted to the legal profession by a Supreme Court of a state or territory.

Paid agent – in relation to a matter before the Commission, an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – a person involved in a matter or case that is brought to the Commission.

Person – includes an individual and a body corporate.

Service – serving a document means giving a copy of the document to a person, usually to the other party to the matter. You can serve a document in a number of ways, including by email, express or registered post, or in person. Part 5 of Chapter 1 and Schedule 1 of the [Fair Work Commission Rules 2024](#) deal with service.

Refer to the [Fair Work Act](#), Part 1-2 of *Division 3A – Definitions relating to regulated workers and persons in a road transport contractual chain* for definitions of other relevant terms in this form, including:

Digital labour platform – section 15L

Digital labour platform operator – section 15M

Digital platform work – section 15N

Employee-like worker – section 15P

Regulated business – section 15F

Regulated road transport contractor – section 15Q

Regulated worker – section 15G

Road transport business – section 15R

Road transport contractual chain and in a road transport contractual chain – section 15RA

Road transport employee-like worker – section 15RB

Road transport industry – section 15S. This definition refers to point-in-time definitions in 5 modern awards, which can be found on the [Fair Work Ombudsman website](#).

Services contract – section 15H

Privacy

The Commission collects the information (including personal information) provided to it in this form for inclusion on the case file, and may disclose this information to the other parties to this matter and to other persons. For more details of the Commission’s collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

Form F87E – Application for a road transport contractual chain order

Fair Work Act 2009 (Fair Work Act), section 536PE

This is an application to the Fair Work Commission to make a road transport contractual chain order in accordance with Part 3B-2 of the Fair Work Act.

The Applicant



Choose one of the following.

The person making this application (Applicant) is:

- an organisation that is entitled to represent the industrial interests of one or more persons in a road transport contractual chain
- a regulated business in a road transport contractual chain
- a person who is a primary party to the first contract or arrangement in a road transport contractual chain
- the Minister

Provide the following information about the Applicant:

Legal name of Applicant	Transport Workers' Union of Australia		
Applicant's ACN (if a company)			
Applicant's trading name or registered business name (if applicable)	Transport Workers' Union of Australia		
Applicant's ABN (if applicable)	18 559 030 546		
Contact person	Lorraine Biviano		
Postal address	Level 9, 447 Kent Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000

Phone number	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> 02 8114 6500
Email address	<div style="background-color: black; width: 200px; height: 15px; margin-bottom: 5px;"></div> legal@twu.com.au

Does the Applicant need an interpreter?



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help in your language](#) on our website.

Yes – Specify language

No

Does the Applicant require any special assistance at the hearing or conference (for example a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A **representative** is a person that is representing the Applicant. This might be a lawyer or paid agent, a union or employer organisation, or a not-for-profit association or body that provides support, advice or advocacy in relation to this kind of application or case. The Applicant does not need to have a representative.


Yes – Provide representative's details below

No

Representative's details



These are the details of the person that is representing the Applicant (if any).

Name of person		
Firm, company or organisation		
Email address		
Phone number		
Postal address		
Suburb		
State or territory	Postcode	
Is the representative a lawyer or paid agent?		
	The Applicant will need permission to be represented by a lawyer or paid agent in a conference or hearing that is conducted by a Commission Member. Our lawyers and paid agents practice note explains when you need to ask for permission to be represented.	
<input type="checkbox"/> Yes – please select:	<input type="checkbox"/> Lawyer <input type="checkbox"/> Paid agent	
<input type="checkbox"/> No		

1. Classes of persons to be covered

1.1 Describe the classes of persons in a road transport contractual chain to be covered by the proposed road transport contractual chain order.



See sections 536PE(2), 536PE(3) and 536PM(3) of the Fair Work Act. A class may be described by reference to a particular industry or sector, part of an industry or sector, or particular kinds of work. Persons other than regulated road transport contractors and road transport employee-like workers may be described by name or by class. In your answer, consider describing how the persons to be covered meet the definition of ‘in a road transport contractual chain’ in section 15RA of the Fair Work Act. The classes of persons to be covered will include primary parties, secondary parties, and regulated road transport contractors and/or road transport employee-like workers (see section 15RA(2)).

The persons to be covered by the proposed order include:

- parties, within the meaning of s 15RA(2)(a) of the *Fair Work Act 2009* (Cth), 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 s 15A(2)(c) of the FW Act; and
- regulated road transport businesses.

2. Work to be covered

2.1 Describe the work to be covered by the proposed road transport contractual chain order.



See section 536PM(1)(a) of the Fair Work Act. The coverage terms of the order must include the work in the road transport industry covered by the order.

The work to be covered by the proposed road transport contract chain order for the purposes of s 536PM(1)(a) of the FW Act is:

- the transport by road of goods, wares, merchandise, material or anything whatsoever, whether in its raw state or natural state, wholly or partly 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 partly manufactured, decomposed or partly decomposed or in any other state or form and including all domestic, trade and industrial waste.

3. Content of order

3.1 Describe the content of the proposed road transport contractual chain order.



See sections 536PM–536PP of the Fair Work Act for terms that must be included in a road transport contractual chain order. Section 536PQ gives a non-exhaustive list of terms that may be included in a road transport contractual chain order. Section 536PR lists terms that must not be included in a road transport contractual chain order.

The proposed contract chain order (CCO) will include provisions that achieve the following:

Minimum 30-day payment terms—to protect road transport businesses and regulated road transport contractors against unjust, unsustainable delays in payment

1. That the primary party to a services contract, (referred to in the road transport industry as the client), must ensure that any regulated road transport business or regulated road transport contractor be paid any undisputed amount for the performance of the services/work in full within 30 days of the services/work being performed.
2. That the requirement to pay within 30 days will apply notwithstanding any provision contained in a services contract allowing for a longer time to pay.
3. That any party engaging a regulated road transport contractor or a road transport business wishing to dispute any amounts *payable to any regulated road transport contractors or road transport businesses*, is to notify the regulated road transport contractor or any road transport business in writing of the amounts disputed and the reasons for the dispute within 30 days of the work being performed.
4. Provide for an efficient, readily accessible, Fair Work Commission process to deal with disputes about amounts set out in a taxation invoices (including recipient created tax invoices) relating to the work performed by regulated road transport contractors and/or road transport businesses, including the capacity to conciliate and, where necessary, resolve the dispute by arbitration taking into account fairness as between all parties in the transport contractual chain. An application to the Commission to exercise its

functions of conciliation and/or arbitration may include as respondents any party in the contractual chain.

Prohibition of automatic reduction or set-off terms – to better protect regulated road transport contractors and road transport businesses from unfair contractual terms

5. Prohibition/extinguishment of terms which feature in the road transport industry and operate unfairly, capriciously and arbitrarily including:
- What are described as ‘compulsory productivity improvement initiatives’ which include predetermined reductions in contract costs over time; and
 - Inappropriate indemnity clauses that hold road transport businesses and regulated road transport contractors liable for negligence of the primary party in a contract chain.

[Example Provision] That a primary party in the road transport contract chain and any subsequent party in a road transport contractual chain must ensure that any road transport business and/or regulated road transport contractor in the road transport contractual chains covered by the proposed order must not be subjected to any reduction whatsoever in rates or remuneration, including by way of set-off, for the reason, or for reasons which include the reason, that they have been performing work (or will be performing work) for a period or periods of time. This requirement will apply notwithstanding any provision contained in contract to the contrary.

Compulsory Rate Review Provisions to promote proactive cost adjustments

6. That a primary party in the road transport contract chain and any subsequent party in a road transport contractual chain must ensure that the costs associated with providing road transport services incurred by road transport businesses and road transport contractors engaged in the contract chain are regularly reviewed and adjusted and ensuring also that:
- a. “regularly” means not less than yearly in relation to all costs;
 - b. a mechanism for interim urgent review exists to account for sharp rises in specific cost components (e.g. fuel);
 - c. no barriers or preconditions are applied before a rate review is conducted; and
 - d. rate reviews occur in good faith and take into account and have regard to costs of the road transport business and/or regulated road transport contractor including in relation to:
 - Fuel;

- Repairs and maintenance;
- Insurances;
- Administrative costs, including regulatory compliance;
- Capital costs, including depreciation;
- Return on Investment;
- Tyres;
- Labour costs.

Attach additional pages if necessary (which may include a draft of the proposed order).

3.2 Does the proposed road transport contractual chain order overlap with an existing minimum standards order? If so, identify the order.



Section 536PN of the Fair Work Act provides that a road transport contractual chain order must include a provision for how it interacts with a minimum standards order.

The proposed order does not overlap with any extant minimum standards order.

3.3 Does the proposed road transport contractual chain order overlap with existing road transport contractual chain guidelines? If so, identify the guidelines.



Sections 536QW(5) and 536QW(6) of the Fair Work Act provide that if the Commission makes a road transport contractual chain order that overlaps with road transport contractual chain guidelines, the Commission must revoke or vary the guidelines with effect from the day the order comes into operation.

The proposed order does not overlap with any extant contractual chain guidelines.

4. Minimum standards objective and road transport objective

4.1 Explain why the proposed road transport contractual chain order is consistent with the minimum standards objective.



See the minimum standards objective in section 536JX of the Fair Work Act. The Commission must have regard to the minimum standards objective in deciding whether to make a road transport contractual chain order.

The proposed CCO provides an appropriate safety net of minimum standards by setting out in clear and simple, as well as fair and relevant, terms and obligations to ensure that regulated road transport contractors and regulated road transport businesses in the contractual chains the subject of the order are paid undisputed amounts within 30 days of the performance of work.

This will ensure that regulated road transport contractors and road transport businesses, are able to be paid in a timely fashion and to assist regulated road transport contractors to achieve cost recovery. This is an elementary minimum standard that is tailored and directed to the road transport industry and the experiences of regulated road transport contractors and regulated road transport businesses.

Regulated road transport contractors are in a vulnerable position in the contractual chains the subject of the proposed order as they are dependent on the timely payment of invoices to achieve cost recovery. Non-payment of invoices or delayed payment places significant economic pressure on regulated road transport contractors in order to service their vehicles and businesses. This is apt to undermine the viability of their businesses and the placement of undue pressure on them which may undermine the safe performance of work.

Regulated road transport businesses are also dependent on payment of invoice in a timely fashion and invariably face undue financial and commercial pressures when any party in the road transport supply chains fail to ensure amounts for the performance of work are paid

Any disputes about amounts in invoices are able to be dealt with by the Commission, with the Commission first exercising its conciliation functions and, if the dispute cannot be resolved, by arbitration with the Commission required to take into account fairness between the parties in arbitrating any dispute.

The proposed CCO also proscribes any reduction in rates or remuneration of regulated road transport businesses in the contractual chains the subject of the proposed order on the basis that they have been performing work for a particular period of time.

There is a practice in the road transport industry of regulated road transport contractors and road transport businesses being subjected to unilateral or automatic deductions in rates or remuneration after performing work for a particular period under contracts which apply to them. These reductions are asserted to be on the (spurious) basis that performance of particular work for a prescribed period means the work can or should be performed more efficiently and quickly by the regulated road transport contractor or road transport business. These unilateral or automatic deductions are arbitrary, unfair and are antithetical to the achievement of cost recovery and ensuring viable operations in the road transport industry.

4.2 Explain why the proposed road transport contractual chain order is consistent with the road transport objective.



See the road transport objective in section 40D of the Fair Work Act. The Commission must have regard to the road transport objective in deciding whether to make a road transport contractual chain order.

The proposed order takes into account the need for an appropriate safety net of minimum standards for regulated road transport workers and road transport businesses by setting standards that are directed to ensuring the viability of the industry, as well as the safety, sustainability and viability of the conduct of work by regulated road transport contractors and road transport businesses. Ensuring timely payment of invoices and proscribing unfair and arbitrary rate reduction practices are imperative to ensure cost recovery is achieved and that the businesses of road transport contractual chain participants are sustainable and viable.

The proposed order ensures the sustainability, performance and competitiveness of the supply chains it covers and the safe conduct of road transport operations in those supply chains.

5. Road transport contractual chain order – particular matters to take into account

5.1 Explain how the proposed order takes into account the commercial realities of the road transport industry, including commercial practices in relation to part load, mixed load, no load, multi-leg and return trips.



Section 536PF(2)(d) of the Fair Work Act provides that in deciding whether to make a road transport contractual chain order, the Commission must have regard to the commercial realities of the road transport industry, including commercial practices in relation to part load, mixed load, no load, multi-leg and return trips.

The proposed order attends to the commercial realities of the industry by ensuring that regulated road transport contractors and road transport businesses are paid in a timely fashion for work performed and any disputes about payment are dealt with by the Commission. The proposed order also addresses the unfair and arbitrary commercial practices which are incongruent with the commercial realities of the industry and the operation of businesses by regulated road transport contractors and road transport businesses.

5.2 Explain how the proposed order will not unduly affect the viability and competitiveness of road transport businesses, owner drivers or other similar persons.



Section 536PF(2)(e) of the Fair Work Act provides that the Commission must not make the road transport contractual chain order unless the Commission is satisfied that the order will not unduly affect the viability and competitiveness of road transport businesses, owner drivers or other similar persons.

The proposed order will not adversely impact the viability of road transport businesses, owner drivers, or similar persons. Rather, it will enhance and promote the viability of road transport businesses, owner drivers, or similar persons by ensuring timely payment for work performed and the proscription of deleterious and unfair rate reduction practices.

5.3 Explain how any other current or proposed road transport contractual chain orders and any current or proposed minimum standards orders should be taken into account.



Section 536PF(2)(f) of the Fair Work Act provides that the Commission must take into account any current or proposed road transport contractual chain orders and any current or proposed minimum standards orders in deciding whether to make a road transport contractual chain order.

This is not applicable.

5.4 Explain how the coverage of the proposed order is clear.



Section 536PF(2)(g) of the Fair Work Act provides that the Commission must take reasonable steps to ensure that the coverage of the road transport contractual chain order is clear.

The coverage of the proposed contractual chain order is clear, and the order covers the road transport contractual chains stipulated including road transport businesses and regulated road transport contractors. In this regard, primary parties, secondary parties and regulated road transport contractors who are in such contractual chains are covered by the proposed order.

5.5 If the proposed order would cover road transport employee-like workers, explain why it is appropriate for the proposed order to cover those workers.



Section 536PD(4) of the Fair Work Act provides that the Commission must not make a road transport contractual chain order that covers road transport employee-like workers unless the Commission considers it appropriate.

This is not applicable.

Authority to sign and signature



For 'Authority to sign':

- If you are the Applicant—insert 'Applicant'
- If you are an employee of a company or organisation that is the Applicant – insert your position title
- If you are an officer or authorised employee of a registered organisation – insert your position title
- If you are the Applicant's representative and have provided your details in this form – insert 'Representative'.

Authority to sign	National Secretary
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Insert your signature, name and the date. If you are completing this form electronically and do not have an electronic signature, type your name in the signature field.

Signature	
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Name	Michael Kaine
Date	26 September 2024

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS