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Fuel Cost Recovery Order reactivated from 23 November 2026

UPDATED MEMBER INFORMATION

⚠️ **Key change: Mandatory fuel cost recovery obligations restart on 23 November 2026.** On 9 November 2026 the Fair Work Commission (FWC) Expert Panel varied the Road Transport Contractual Chain Order (Fuel Cost Recovery) 2026 (RTCCO), re-enlivening the rate-adjustment obligations that had been dormant since 5 June 2026. Businesses in road transport contractual chains, including residential builders, must be ready to comply from 23 November.

What has happened

The RTCCO was made by the FWC in April 2026 as an emergency response to the fuel supply disruption caused by conflict in the Middle East and reduced shipping through the Strait of Hormuz. Its central obligations required parties in road transport contractual chains to adjust transport rates so that the increased cost of fuel is recovered. Those obligations switched off automatically on 5 June 2026, when the weekly average national terminal gate price for diesel fell below $2.00 per litre.

On 16 October 2026 the Expert Panel rejected calls to revoke the Order and published a draft variation. On 9 November 2026 it handed down its decision ([2026] FWCFB 294) and a determination varying the Order, substantially in the terms of the draft with some modifications. The variation took effect on 9 November 2026, and the clause 4 obligations recommence on 23 November 2026.

HIA, together with the Australian Industry Group, ACCI and Master Builders, opposed re-enlivening the Order. The Expert Panel was not persuaded to depart from its October view.

What has changed at a glance

Issue	Before the variation	From 9 / 23 November 2026
Frequency of rate adjustment	At least fortnightly.	At least once each calendar month. More frequent adjustment is permitted (cl 4.1, 4.4).
Agreed fuel levy or surcharge	No specific compliance pathway for an agreed levy.	New cl 4.6(d): an agreed fuel levy or surcharge satisfies the obligation if three conditions are met (see below).
Small business carve-out (cl 4.3)	Small business employer that is not a 'road transport business'. Because that term captures anyone receiving road transport services under a services contract, the carve-out was of little practical use to builders.	Small business employer that does not engage road transport contractors or employee-like workers under services contracts and does not employ employees to perform road transport work. Applies to cl 4.2 supply chain duty only.
Rise-and-fall clauses in contracts, agreements and state instruments	Recognised as satisfying the obligation.	Still recognised, but contract and agreement mechanisms must adjust at least each calendar month; state instruments operate at the intervals they set (cl 4.6(a)–(c)).
Cessation trigger	Diesel below $2.00/L for one week.	Diesel below $2.00/L for four consecutive weeks.

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Issue	Before the variation	From 9 / 23 November 2026
Backdating	Uncertain.	Obligations operate from 23 November 2026 with no backdating.
Review	Ambiguous review provision.	Review in February 2027 and every three months thereafter.

The new requirements

The core obligation: monthly rate adjustment

From 23 November 2026, primary parties must, at least once each calendar month, adjust or set the rate they pay to any other primary party for road transport work by the amount necessary for that party to recover the increased cost of fuel (clause 4.1). Secondary parties carry the same obligation toward other secondary parties, regulated road transport contractors and road transport employee-like workers (clause 4.4). It is important to note that:

- **The baseline is 6 March 2026.** The "increased cost of fuel" is the difference between the current cost per litre and the cost on or before 6 March 2026, measured against the rate that applied at that date.
- **Earlier adjustments count.** Rate increases already agreed since the Order commenced can be taken into account toward compliance (clause 4.8).
- **The method is flexible.** Adjustment can be made to the rate or a component of it, by a fuel increment or levy, by direct reimbursement or offset, or a combination (clause 4.5).

The supply chain duty: reasonable steps

Primary parties must also take reasonable steps to ensure that secondary parties in the same chain pass the adjustment through to the regulated road transport contractors and employee-like workers they engage (clause 4.2). This is the obligation from which small businesses may now be exempt (see below).

New pathway: agreed fuel levy or surcharge

New clause 4.6(d) provides that paying a fuel levy or surcharge agreed between parties in the chain satisfies the rate-adjustment obligation, **but only if all three of the following are met:**

Copy of the Order: the person incurring the increased fuel cost has been given a copy of the Order by the other person. An electronic copy is sufficient; a physical copy is not required.

Monthly adjustment: the levy or surcharge is adjusted at least each calendar month.

Reasonable steps on sufficiency: the person paying the levy has taken reasonable steps to ensure it is sufficient for the other person to recover the increased cost of fuel.

On what "reasonable steps" requires, while there are no examples provided by either the Fair Work Commission or the Fair Work Ombudsman on what actions are required to satisfy this test. However, it is understood that the size and nature of the business is relevant and that, for a small business with limited ability to influence the transport component of delivered goods, **modest steps**, such as seeking an assurance that fuel costs have been considered, may well be sufficient.

The improved small business exemption – what it does and does not do

Clause 4.3 now exempts a primary party from the supply chain duty if it is a small business employer (fewer than 15 employees) and it does not directly:

engage road transport contractors or road transport employee-like workers under services contracts; or

employ employees to perform work in the road transport industry.

This is a real improvement. The previous test excluded any business that was a "road transport business", a term broad enough to capture most builders who receive transport services. The new test relies on how you engage transport work. **A small builder who relies on suppliers to deliver materials and does not directly engage owner-drivers or carriers or employ drivers, is now likely to fall within the exemption.**

The exemption applies only to the clause 4.2 supply chain duty. It does not exempt small businesses from the core rate-adjustment obligation in clause 4.1. A small builder who is a primary party must still ensure fuel cost increases are recovered in the rates it pays, at least monthly.

A small builder who directly engages an owner-driver or carrier (for example, for haulage or tipper work), or who employs someone to perform road transport work, does not get the benefit of the exemption and must also comply with clause 4.2.

What this means for residential builders

Fuel levy requests may now be legally required

Where you are a party in a road transport contractual chain, from 23 November 2026 a request from a transport supplier or subcontractor for a fuel levy or rate adjustment may reflect a legal obligation on you. Assess each request against the Order rather than treating it as purely commercial. Seek legal advice where necessary.

Existing rise-and-fall arrangements

A contract or agreed arrangement that applies a rise-and-fall formula, cost model or benchmark to fuel costs will satisfy the obligation, provided the adjustment is implemented at least each calendar month. Check the adjustment interval in any existing clause.

No backdating

The obligations ceased on 5 June 2026 and recommence on 23 November 2026. The FWC Panel expressly rejected submissions that payments should be backdated to cover the intervening period. Members are not required to make up adjustments in accordance with the Order for the period of June to November.

Your building contracts are not changed

The Order regulates rates paid within road transport contractual chains. It does not create a right for a builder to pass fuel cost increases through to a client under a fixed-price building contract. HIA's standard residential building contracts do not include a rise-and-fall or fuel cost escalation clause. We are seeking advice on options to give members better contractual protection, having regard to the different requirements and restrictions across jurisdictions.

Penalties and enforcement

Contravening a term of the Order is a civil remedy provision under section 536NP of the Fair Work Act 2009, exposing a business to penalties. The Fair Work Ombudsman can investigate and take enforcement action. Disputes about the Order must first be discussed between the parties and may then be referred to the FWC, and HIA can represent members at any stage of that process (clause 6).

Practical steps for members before 23 November 2026

1. Map your road transport chain

Identify every arrangement under which transport work is performed for your business: materials suppliers delivering to site, carriers, owner-drivers, tipper and haulage operators, and any employees performing road transport work. Note whether you engage them directly under a services contract.

2. Confirm your status

Work out whether you are a primary party in each chain, and whether you are a small business employer (fewer than 15 employees, including associated entities) that meets the new clause 4.3 test.

3. Choose a compliance method for each arrangement

Options are a direct rate adjustment, an existing rise-and-fall mechanism that adjusts at least monthly, or an agreed fuel levy or surcharge under clause 4.6(d). For many members the agreed levy will be the most practical route.

4. If using an agreed fuel levy or surcharge

Send an electronic copy of the Order to the supplier or contractor incurring the fuel cost, and keep a record that you did.

Agree the levy or surcharge and diarise a review at least once each calendar month.

Take and record reasonable steps on sufficiency, such as asking the supplier to confirm the levy reflects its fuel cost increase since 6 March 2026 or checking it against movements in the AIP terminal gate price.

5. If the clause 4.2 supply chain duty applies to you

Take reasonable steps to ensure carriers you engage pass adjustments through to their owner-drivers and employee-like workers, for example by a written request or contractual requirement, and by seeking confirmation that this has occurred.

6. Monitor the diesel price

The weekly average national terminal gate price for diesel published by the Australian Institute of Petroleum (www.aip.com.au) determines when the obligations cease. They switch off only after four consecutive weeks below $2.00 per litre.

7. Keep records

Retain copies of rates, levies, adjustments, the date you provided the Order, and correspondence about fuel costs. Contemporaneous records are your primary protection if compliance is questioned.

8. Build protection into new contracts

For new or renewed subcontracting and supply arrangements, consider a clause allowing rate adjustment in response to the making, variation or reactivation of an instrument such as the RTCCO.

HIA's advocacy position

HIA has participated in these proceedings throughout 2026 and opposed re-enlivening the Order. Our position remains that the mandatory rate-adjustment mechanism is structurally incompatible with fixed-price residential building contracts, which lock in costs at signing and provide no mechanism for passing fuel costs through to consumers.

The Panel has confirmed that it can vary or revoke the Order at any time if the circumstances that prompted it cease without triggering the four-week threshold, and it will review the Order in February 2027. HIA will continue to press the specific circumstances of residential builders at that review and will keep members informed.

To find out more, contact HIA's Contracts & Compliance team on 1300 650 620

This article is for general information only and does not constitute legal advice. The Order remains subject to ongoing FWC review and may be varied at short notice. Members should seek specific advice in relation to their own circumstances.

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