You're in good hands

Fuel Surcharges and the Road Transport Order

MEMBER INFORMATION

⚠**Current situation: Diesel prices are rising again.** In the past two weeks, escalating conflict between Saudi Arabia and Houthi forces has disrupted Saudi oil infrastructure and added fresh upward pressure on global crude and diesel prices. The mandatory fuel cost adjustment obligations under the RTCCO remain dormant.

This article explains what that means for your business right now.

If you receive a demand for fuel levy payments, do not assume it has a legal basis under the RTCCO in its current dormant state. Check whether your contract imposes any such obligation independently, and seek legal advice if necessary, before responding.

The Current Legal Status

The Road Transport Contractual Chain Order (Fuel Cost Recovery) 2026 (RTCCO) was made by the Fair Work Commission (FWC) in April 2026 as an emergency response to the fuel supply shock caused by conflict in the Middle East and the disruption of shipping through the Strait of Hormuz.

Its central obligation requires primary and secondary parties in road transport contractual chains to review and adjust transport rates fortnightly to recover increased fuel costs. This requirement switched off automatically less than seven weeks later, when the weekly average national terminal gate diesel price fell below $2.00 per litre in the week ending 5 June 2026.

That obligation has not been reactivated. The RTCCO remains legally on foot but is dormant: it has not been revoked, and the FWC is yet to decide whether to revoke it, re-enliven its obligations, or take some other step. The next FWC hearing is scheduled for 9 October 2026.

HIA has appeared in these proceedings throughout 2026 as a representative of the residential building sector and is actively arguing for revocation of the Order. We will keep members updated as the matter progresses.

Why this matters – Fuel Price Surcharges and Levies by suppliers

The Road Diesel prices fell sharply in June and July 2026 as conflict conditions temporarily eased — the event that triggered the automatic cessation of the RTCCO's obligations. Since August, prices have climbed back above $2.00 per litre following the full restoration of the fuel excise on 3 August 2026. In the past two weeks, prices have risen further as the Saudi–Houthi conflict has intensified, with fresh disruption to Saudi oil infrastructure threatening global crude supplies and adding a new layer of upward pressure on international refined diesel prices.

Despite these elevated prices, the RTCCO's mandatory rate-adjustment obligations remain dormant. The FWC has not reactivated them, and no variation to that effect has been made. The practical consequence is that **fuel cost recovery has entirely reverted to commercial contract terms.** This means any fuel surcharges or levies imposed must be in accordance with your contractually negotiated and agreed terms.

What this means for Residential Builders

No mandatory rate adjustments

Businesses in road transport contractual chains are not currently required by law to review or adjust transport rates to account for fuel cost changes. The fortnightly rate-adjustment obligations under clause 4 of the RTCCO do not apply unless and until the FWC acts to revive them, which would require a formal variation of the Order.

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Existing contract terms govern

Whether a transport subcontractor can pass through increased fuel costs depends entirely on what your contract says. If a contract includes a privately agreed fuel surcharge matrix or a rise-and-fall clause, those terms apply. If no such clause exists, there is no statutory mechanism requiring any adjustment. Fuel levies being charged by transport operators or subcontractors at this time are a matter of commercial negotiation, not legal obligation.

HIA standard contracts

HIA's standard residential building contracts do not currently include a rise-and-fall or fuel cost escalation clause. We are seeking advice on what options may be available to provide members with better contractual protection going forward, having regard to the varying requirements and restrictions that apply across jurisdictions. Please contact HIA's contracts and compliance team for guidance specific to your situation and state.

The RTCCO may be reactivated

The FWC has not closed this matter. If the Expert Panel decides to revive the clause 4 obligations - either by variation of the RTCCO or by a new instrument - mandatory rate-adjustment obligations could return. This could potentially cover both the period after reactivation and, depending on the form of any variation, earlier periods.

While HIA is opposing reactivation and arguing for revocation, members should not assume the matter is resolved.

Practical Steps for Members

1. Monitor the diesel price

The weekly average national terminal gate price for diesel, reported by the Australian Institute of Petroleum (AIP), is the metric on which the RTCCO's cessation trigger operates. It will determine the practical effect of whatever the FWC decides at the 9 October hearing, unless the FWC changes the threshold itself. Current AIP weekly reports are available at aip.com.au.

2. Review your contracts

Assess whether your current building and subcontracting contracts contain any mechanism for adjusting rates in response to fuel cost changes or regulatory variations. If they do not, and fuel levies are being sought by parties in your chain, that is a commercial negotiation, not a legal obligation. Contact HIA's contracts team if you need guidance.

3. Build protection into new contracts

Where you are entering into new or renewed subcontracting or supplier arrangements, consider including a clause that allows for rate adjustment in response to changes to applicable regulations, or to the making, variation or reactivation of an instrument such as the RTCCO. This avoids the need to renegotiate contracts from scratch if the Order is revived.

4. Keep records

Maintain records of fuel cost documentation, correspondence, and any discussions with other parties in your contractual chain. If the RTCCO's obligations are revived and questions arise about compliance, contemporaneous records are your primary protection. This is particularly important for primary parties, who carried a "reasonable steps" obligation under clause 4.2 of the Order for the period it applied.

- Document fuel costs and any rate adjustments made (or not made) during the period April – June 2026 when the Order was operative.
- Retain correspondence and discussions with subcontractors, suppliers and transport operators about fuel cost adjustments during that period.
- Keep any records that show whether and how the Order was complied with in the period it applied.

5. Communicate with your supply chain

Inform subcontractors and other businesses in your road transport contractual chain of the current legal position: the RTCCO's obligations are dormant, no mandatory adjustments are currently required, and the matter will be further reviewed by the FWC at the 9 October 2026 hearing. This helps avoid disputes arising from misunderstandings about what is and is not legally required at this time.

HIA’s Advocacy Position

HIA has participated, and continues to actively do so, in the FWC proceedings throughout 2026 and is arguing strongly that the RTCCO should be revoked. Our position is that:

- The emergency that justified the Order has passed, and the Order’s own cessation mechanism has operated as intended;
- The Australian Government has confirmed the emergency is over by winding back every associated emergency measure, including the temporary fuel excise relief, on its stated timetable;
- The mandatory rate-adjustment mechanism is structurally incompatible with fixed-price residential building contracts, which lock in costs at signing and have no mechanism for fuel cost pass-through to consumers; and
- The FWC has not yet engaged with its statutory obligation to ensure the Order does not impose a disproportionate burden on the residential building sector.

HIA’s advocacy in this matter is grounded in the specific circumstances of residential builders, which are distinct from those of other retail and commercial supply chains. We will continue to make those arguments and to update members as the matter progresses.

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 law in this area is subject to ongoing FWC proceedings and may change at short notice. Members should seek specific advice in relation to their own circumstances.

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