ALGA
Australian Local Government Association

ALGA Submission

Fair Work Commission – Road Transport Contractual Chain Order – Fuel Cost Recovery 2026

P 02 6122 9400

E alga@alga.asn.au

Building Better Communities.

The Australian Local Government Association (ALGA) welcomes the opportunity to make a submission on the Fair Work Commission's draft Road Transport Contractual Chain Order – Fuel Cost Recovery 2026 (draft Order).

In structure, ALGA is a federation of state and territory local government associations. This submission should be read in conjunction with any separate submissions received from state and territory associations as well as individual councils.

Local governments collectively procure a substantial volume of road transport services across Australia, particularly in relation to waste and recycling, civil construction materials, haulage and some passenger transport services.

In lodging this submission, ALGA submits that local government should be regarded as an affected entity for the purposes of the draft Order. While local government is not explicitly referenced in the draft Order, councils are likely to be captured as primary parties in many common contracting arrangements, as the party on whose behalf work is ultimately performed.

ALGA recognises the volatility of fuel prices and the importance of transport operators being able to recover legitimate costs. However, the draft Order does not adequately account for the funding, governance and procurement realities of local government.

Without modification, the draft Order risks:

- imposing significant, unbudgeted cost increases on councils and ultimately ratepayers;
- creating substantial administrative and governance burdens; and
- adversely affecting councils' capacity to deliver essential services and infrastructure.

ALGA is also concerned that the compressed consultation timeframe, given the scale and complexity of the impacts on local government, does not constitute meaningful engagement with affected councils.

Key recommendations

If the Commission determines that a Road Transport Contractual Chain Order is appropriate, ALGA recommends that the Order be revised to:

1. Explicitly recognise local government as a distinct category of affected entity.
2. Provide for a monthly, rather than fortnightly, review cycle for rate variations.
3. Require any party seeking a rate increase to provide sufficient evidence to substantiate fuel cost increases.
4. Allow for rate variations to be determined on a principle of shared risk, rather than mandatory full cost recovery for one party.
5. Provide clearer guidance on what constitutes "reasonable steps" for compliance, having regard to procurement law, governance obligations and existing contracts.
6. Amend or remove clause 4.2 so that any obligation to ensure pass-through of rate adjustments applies only to the primary party that directly engages secondary parties, and not to a primary party with no knowledge of, or control over, downstream contractual arrangements.
7. Allow a longer lead-in period prior to commencement to enable councils to adjust budgets and contracts responsibly.

Local government interest and standing

Councils are major procurers of road transport services and are heavily reliant on the sector to deliver essential community services. In many contracting arrangements, councils sit at the top of the contractual chain, funding or commissioning services that are ultimately delivered by regulated road transport contractors or businesses. As such, councils are likely to be captured by the draft Order, despite the absence of explicit reference to local government.

Engagement and consultation

ALGA is concerned that the timeframes provided for submissions and consultation, while permitted under the emergency provisions of the Fair Work Act, do not provide a reasonable opportunity for genuine engagement with local government. The scale of potential impacts, the number of councils affected, and the complexity of existing contractual arrangements make it extremely difficult to:

- assess financial exposure;
- consult internally with councils, including elected members; and
- obtain appropriate procurement and legal advice within the time available.

This is particularly concerning given that the draft Order would introduce new, mandatory obligations with immediate effect.

ALGA also notes that clause 5.4 of the draft Order provides for review of the Order following commencement. ALGA submits that, should the Commission proceed, any review process should include genuine and structured engagement with local government, recognising councils as a distinct affected cohort and ensuring their practical experience informs any ongoing operation or amendment of the Order.

Financial impacts on councils

The draft Order would require mandatory fuel cost pass-throughs, potentially overriding existing fixed-price or capped contracts. These impacts are:

- significant in scope; but
- difficult to quantify accurately within the compressed consultation timeframe.

Councils operate within a constrained revenue environment, including:

- limits on community capacity to pay; and
- legislated or policy-based constraints on rate increases and revenue growth in several jurisdictions.

The proposed commencement date of 20 April 2026 occurs late in many councils' budget preparation processes, limiting the capacity to absorb new cost pressures. Impacts are expected to fall disproportionately, though not exclusively, on rural and regional councils, particularly where long travel distances and high fuel consumption are unavoidable. Collectively, these pressures risk undermining councils' ability to deliver critical local services and infrastructure.

Fuel security and service continuity risks

ALGA notes that fuel price volatility is occurring alongside broader fuel security challenges, particularly in regional and remote communities, where councils report irregular supply, delivery delays and limited storage capacity. Councils depend on fuel not only for contracted services such as waste and materials transport, but also for core in-house operations including road maintenance, plant and equipment, community transport, water and sewerage, and, in many cases, airport operations. These pressures are already affecting councils' budgets, capital works and grant-funded projects, and heighten the risk of service disruption at a time when councils have limited capacity to absorb additional mandatory cost transfers.

ALGA further notes that fuel price volatility and supply uncertainty have direct community impacts, including increased anxiety, cost-of-living pressures and concerns about the continuity of essential services. Councils are often the first point of response to these impacts, managing both operational challenges and community expectations, despite having limited control over broader fuel market disruptions.

Administrative and governance burden

The requirement for fortnightly rate reviews represents a substantial administrative burden for councils, and for many, is not feasible in the short term. For many councils, compliance would necessitate:

- new systems and processes;
- engagement of specialist commercial or legal expertise; and
- frequent decision-making on contract variations, including cumulative impacts over time.

It is unclear to what extent councils could coordinate or benchmark approaches without raising probity or competition concerns, meaning that administrative effort would likely be duplicated across hundreds of councils nationally. There is also uncertainty regarding:

- how councils can confidently assess contractor claims;
- how "reasonable steps" should be interpreted in a public-sector context; and
- how the requirements interact with governance, delegation and accountability frameworks.

Clause 4.2 – pass-through obligations and chain-of-responsibility risk

The obligations imposed by clause 4.2 of the draft Order raise particular concern for local government. While the draft Order now requires primary parties to take "reasonable steps" to ensure rate increases are passed through the contractual chain, this obligation remains unclear and potentially unworkable in many council contracting arrangements.

In practice, councils may engage a primary contractor without visibility of, or contractual control over, secondary parties further down the chain. In such circumstances, councils have no practical means of ensuring compliance yet may still be exposed to dispute or alleged non-compliance.

The draft Order does not clearly distinguish between:

- a primary party that directly engages secondary parties; and
- a primary party that contracts only with another primary party, and has no knowledge of subsequent subcontracting.

This creates uncertainty for councils and exposes them to risk disproportionate to their level of control. While the Commission has already amended the draft Order from a requirement to take "all reasonable steps" to "reasonable steps", ALGA submits that this does not sufficiently resolve the underlying issue.

ALGA considers that clause 4.2 should either be removed or amended to clarify that the obligation rests only with the party that directly engages the relevant secondary parties.

Principle of full cost recovery

The draft Order adopts a principle of full cost recovery for transport contractors, without clear justification as to why commercial risk should not be shared between contracting parties. Risk-sharing is a long-established feature of public procurement, particularly in markets subject to price volatility.

For local governments, a mandatory full cost-recovery model represents a further instance of cost shifting onto councils, whereby risks driven by external market conditions are transferred to the level of government with the least revenue flexibility. Councils ultimately hold responsibility for service continuity, contractual compliance and community outcomes, leaving them bearing the financial, legal and governance liability at the end of the contractual chain.

In practice, this approach risks transferring disproportionate risk to councils—particularly where councils are constrained by legislated or policy-based limits on revenue growth and have limited capacity to absorb or pass on unexpected cost increases. ALGA submits that a more balanced approach, grounded in shared risk, would better reflect public-sector procurement principles and avoid exacerbating existing financial pressures on local government.

ALGA also notes that a mandatory full cost recovery model may reduce incentives for efficiency and fuel minimisation across contractual chains, at a time when governments and industry alike are seeking to encourage more judicious fuel use and resilience in response to ongoing supply and price pressure

Dispute resolution and legal exposure

The dispute settlement provisions expose councils to potential involvement in Fair Work Commission processes concerning contract pricing and compliance. Local governments are not typically resourced or structured for ongoing engagement in federal industrial dispute resolution in procurement contexts, creating a new and material governance risk.

Conclusion

ALGA acknowledges and supports the Commission's objective of ensuring road transport operators can withstand the current fuel crisis. However, this objective should not be pursued in a manner that shifts disproportionate financial risk onto local government or leaves councils effectively bearing residual liability for costs arising from broader market disruptions.

Without appropriate modification, the draft Road Transport Contractual Chain Order risks supporting fuel cost recovery for transport operators at the expense of councils' financial sustainability, despite councils having limited revenue flexibility and ultimate responsibility for service continuity.

ALGA therefore urges the Commission to reconsider both the process and substance of the draft Order as it applies to local government, and to ensure that any Order made appropriately balances the interests of transport operators with the funding, governance and service delivery realities of councils.

Contact details

Robert Knight
Policy Director

0421 033 549
robertk@alga.asn.au