

Australian Industry Group

Application for a Single Interest Employer Authorisation

Submission
(B2023/703)

16 August 2023

Ai
GROUP

B2023/703 APPLICATION FOR A SINGLE INTEREST EMPLOYER AUTHORISATION

1. INTRODUCTION

1. This submission of the Australian Industry Group (**Ai Group**) relates to an application made by the Independent Education Union of Australia, WA Branch for a single interest employer authorisation (**Authorisation**) – the first of its kind. The submission is made in response to amended directions issued by the Fair Work Commission (**Commission**) on 9 August 2023.
2. Ai Group is a peak council and registered organisation representing businesses across Australia for 150 years. Together with partner organisations, we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in a wide range of sectors including manufacturing, construction, utilities, engineering, transport, logistics, labour hire, mining services, defence, aviation, information technology, health, aged care, disability care, childcare, horticulture, retail and fast food. We advocate on behalf of, and in the interests of, our members, as well as provide them with advice and assistance with a broad range of workplace relations matters, including enterprise bargaining.
3. Ai Group consistently appears, and plays a leading role, in proceedings before the Commission that are of broad significance, including proceedings concerning potential award variations, annual wage reviews and test cases. Most recently, we have been invited to intervene, and are participating, in proceedings concerning the first application made to the Commission for a supported bargaining authorisation.¹ Ai Group has also been closely involved with the development of the legislative provisions that are here being considered by the Commission, as a key participant in the Government’s consultation process that preceded the passage of the relevant legislation through Parliament.

¹ B2023/538.

4. As a registered organisation that represents and assists a large number of employers who may ultimately be impacted by the approach adopted by the Commission in this matter, and in its capacity as a peak council, Ai Group seeks to file and rely upon this brief submission, which relates largely to the approach that we say the Commission should here adopt.

3. AI GROUP'S POSITION

5. Ai Group does not seek to advance a submission in relation to the merits of the application before the Commission or whether it should be granted.
6. We note that this matter does not necessitate a substantive consideration of the foreseeably contentious elements of s.249(3) of the Act, which turn on the presence or otherwise of *'clearly identifiable common interests'* and an assessment of whether *'it is not contrary to the public interest to make'* the proposed Authorisation, given that it appears that s.249(3)(AB) applies in the context of the current application. Thus, the Commission is not, as such, required to consider or determine how those provisions should be interpreted or applied.
7. In the circumstances, we respectfully submit that the Commission should not proceed to deal with these matters, which are of potentially broad import and significance. The question of whether there are *'clearly identifiable common interests'* and / or whether the making of an Authorisation is contrary to the public interest may, in the context of some matters, be contested or, at the very least, contestable. It would be more appropriate for the Commission to examine the proper interpretation of the relevant provisions in relation to such a matter, where the facts and the positions adopted by the relevant applicant(s) and respondent(s) may illuminate practical issues that can arise from the application of the new legislative provisions and / or provide a factual basis within which the operation of the provisions can more effectively be considered. By contrast, in the matter presently before the Commission, any consideration of the aforementioned legislative provisions would occur in the abstract.

8. Given the nature of the matter and the position of the parties to it, the Commission should simply proceed to deal with it on the basis of the materials filed by them.
9. For completeness; Ai Group may seek the Commission's leave to intervene in proceedings where the Commission is required to turn its mind to s.249(3) of the Act, particularly where this arises for the first time.