DECISION

Fair Work Act 2009
s.248—Single interest employer authorisation

Independent Education Union of Australia
v
Catholic Education Western Australia Limited and others
(B2023/703)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT HAMPTON

SYDNEY, 28 SEPTEMBER 2023

Application for a proposed single interest employer authorisation regarding a proposed enterprise agreement for Western Australian Catholic education employers.

Introduction

[1] This matter concerns an application by the Independent Education Union of Australia (IEU) under s 248 of the *Fair Work Act 2009* (Cth) (FW Act) for a single interest employer authorisation. The authorisation is sought in respect of bargaining for a proposed multi-enterprise agreement to cover general and support staff employed in the Catholic education sector in the State of Western Australia. In particular, it seeks authorisation for the commencement of bargaining with the following Catholic education employers who operate primary and/or secondary schools and related services in that sector (respondent employers):

(1) Catholic Education Western Australia Limited (CEWA);
(2) John XXIII College Inc;
(3) Loreto Nedlands Limited.
(4) Mazenod College Limited;
(5) Mercy Education Limited;
(6) Norbertine Canons Inc;
(7) Servite College Council Inc;
(8) Edmund Rice Education Australia Colleges Ltd (EREA Colleges Ltd);
(9) Edmund Rice Education Australia Flexible Schools Ltd (EREA Flexible Schools Ltd); and
(10) Marist Schools Australia Limited.

[2] The class of employees to be covered by the authorisation, and who are intended to be covered by the proposed enterprise agreement, is:

(a) all support/operations/general staff employed by the employers listed above, being Catholic schools in Western Australia; and

(b) working in:

(i) schools registered pursuant to the *School Education Act 1999* (WA) and/or

(ii) long day care, occasional care (including those occasional care services not licensed), childcare centres, day-care facilities, out-of-school hours care, kindergartens and preschools, and early childhood intervention programs.

[3] This application excludes employees employed as teachers registered with the Teacher Registration Board of Western Australia.

[4] Each of the respondent employers supports the making of the authorisation in the terms sought.

[5] This application represents the first consideration of relatively recent legislative amendments to the FW Act made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (SJBP Act), which relevantly commenced on 6 June 2023. Given the significance of the matter, the application has been dealt with by a Full Bench of the Commission and other interested organisations were invited to make submissions on the matter. Ultimately, five organisations, being the Australian Council of Trade Unions (ACTU), the Australian Chamber of Commerce and Industry, the Australian Industry Group, and Australian Business Industrial and Business NSW made submissions pursuant to this invitation, primarily about the approach that the Commission should adopt regarding the construction and application of the relevant provisions.

[6] The ACTU supports the application, whereas the other intervenors did not advance any view as to whether the Commission should grant the application.

[7] Given the absence of any factual disputes and any request for a hearing to be conducted, the Full Bench has determined this matter based upon the written submissions and other materials provided by the parties.

[8] For the reasons set out below, we have decided to grant the application and make the authorisation in the terms sought.

The statutory framework

[9] The objects of Part 2-4 — Enterprise agreements of the FW Act are set out in s 171 as follows:

> **171 Objects of this Part**
>
> The objects of this Part are:
>
> (a) to provide a simple, flexible and fair framework that enables collective bargaining in good faith, particularly at the enterprise level, for enterprise agreements that deliver productivity benefits; and

(b) to enable the FWC to facilitate good faith bargaining and the making of enterprise agreements, including through:

(i) making bargaining orders; and
(ii) dealing with disputes where the bargaining representatives request assistance; and
(iii) ensuring that applications to the FWC for approval of enterprise agreements are dealt with without delay.

[10] Since its enactment, Part 2-4 has included, in Division 10, a scheme for single interest employer authorisations in connection with bargaining. That scheme has been the subject of significant amendment by the SJBP Act.

[11] Section 248 concerns the making of applications for single interest employer authorisations, and now provides:

248 Single interest employer authorisations

(1) The following may apply to the FWC for an authorisation (a ***single interest employer authorisation***) under section 249 in relation to a proposed enterprise agreement that will cover two or more employers:

(a) those employers;
(b) a bargaining representative of an employee who will be covered by the agreement.

(2) The application must specify the following:

(a) the employers that will be covered by the agreement;
(b) the employees who will be covered by the agreement;
(c) the person (if any) nominated by the employers to make applications under this Act if the authorisation is made.

[12] The main amendment to s 248 made by the SJBP Act is the addition of subsection (1)(b), which now enables a bargaining representative of an employee who will be covered by the proposed agreement to make an application. Under s 176, a registered employee organisation may be a bargaining representative of its members.

[13] Section 249 sets out the circumstances in which the Commission is required to make a single interest employer authorisation:

249 When the FWC must make a single interest employer authorisation

Single interest employer authorisation

(1) The FWC must make a single interest employer authorisation in relation to a proposed enterprise agreement if:

(a) an application for the authorisation has been made; and
(b) the FWC is satisfied that:
(i) at least some of the employees that will be covered by the agreement are represented by an employee organisation; and

(ii) the employers and the bargaining representatives of the employees of those employers have had the opportunity to express to the FWC their views (if any) on the authorisation; and
(iii) if the application was made by 2 or more employers under paragraph 248(1)(a)—the requirements of subsection (1A) are met; and
(iv) if the application was made by a bargaining representative under paragraph 248(1)(b)—each employer either has consented to the application or is covered by subsection (1B); and
(v) the requirements of either subsection (2) or (3) (which deal with franchisees and common interest employers) are met; and
(vi) if the requirements of subsection (3) are met—the operations and business activities of each of those employers are reasonably comparable with those of the other employers that will be covered by the agreement.

(1AA) If:

(a) the application for the authorisation was made by a bargaining representative under paragraph 248(1)(b); and
(b) an employer that will be covered by the agreement employed 50 employees or more at the time that the application was made;

it is presumed that the operations and business activities of the employer are reasonably comparable with those of the other employers that will be covered by the agreement, unless the contrary is proved.

Additional requirements for application by employers

(1A) The requirements of this subsection are met if:

(a) the employers that will be covered by the agreement have agreed to bargain together; and
(b) no person coerced, or threatened to coerce, any of the employers to agree to bargain together.

Additional requirements for application by bargaining representative

(1B) An employer is covered by this subsection if:

(a) the employer employed at least 20 employees at the time that the application for the authorisation was made; and
(b) the employer has not made an application for a single interest employer authorisation that has not yet been decided in relation to the employees that will be covered by the agreement; and
(c) the employer is not named in a single interest employer authorisation or supported bargaining authorisation in relation to the employees that will be covered by the agreement; and
(d) a majority of the employees who are employed by the employer at a time determined by the FWC and who will be covered by the agreement want to bargain for the agreement; and
(e) subsection (1D) does not apply to the employer.

(1C) For the purposes of paragraph (1B)(d), the FWC may work out whether a majority of employees want to bargain using any method the FWC considers appropriate.

(1D) This subsection applies to an employer if:

(a) the employer and the employees of the employer that will be covered by the agreement are covered by an enterprise agreement that has not passed its nominal expiry date at the time that the FWC will make the authorisation; or
(b) the employer and an employee organisation that is entitled to represent the industrial interests of one or more of the employees of the employer that will be covered by the agreement have agreed in writing to bargain for a proposed single-enterprise agreement that would cover the employer and those employees or substantially the same group of those employees.

Franchisees

(2) The requirements of this subsection are met if the employers carry on similar business activities under the same franchise and are:

(a) franchisees of the same franchisor; or
(b) related bodies corporate of the same franchisor; or
(c) any combination of the above.

Common interest employers

(3) The requirements of this subsection are met if:

(a) the employers have clearly identifiable common interests; and
(b) it is not contrary to the public interest to make the authorisation.

(3A) For the purposes of paragraph (3)(a), matters that may be relevant to determining whether the employers have a common interest include the following:

(a) geographical location;
(b) regulatory regime;
(c) the nature of the enterprises to which the agreement will relate, and the terms and conditions of employment in those enterprises.

(3AB) If:

(a) the application for the authorisation was made by a bargaining representative under paragraph 248(1)(b); and
(b) an employer that will be covered by the agreement employed 50 employees or more at the time that the application was made;

it is presumed that the requirements of subsection (3) are met in relation to that employer, unless the contrary is proved.

Calculating number of employees

(3AC) For the purposes of calculating the number of employees referred to in paragraph (1AA)(b), (1B)(a) or (3AB)(b):

(a) ***employee*** has its ordinary meaning; and
(b) subject to paragraph (c), all employees employed by the employer at the time that the application for the authorisation was made are to be counted; and
(c) a casual employee is not to be counted unless, at that time, the employee is a regular casual employee of the employer; and
(d) associated entities of the employer are taken to be one entity.

Operation of authorisation

(4) The authorisation:

(a) comes into operation on the day on which it is made; and
(b) ceases to be in operation at the earlier of the following:
(i) at the same time as the enterprise agreement to which the authorisation relates is made;
(ii) 12 months after the day on which the authorisation is made or, if the period is extended under section 252, at the end of that period.

[14] The main amendments to s 249 effected by the SJBP Act are:

(1) Subparagraphs (i) and (ii) of s 249(1)(b) constitute new requirements that must be satisfied for a single interest employer authorisation to be made.

(2) The 'common interest employers' requirements in s 249(3), which operate as an alternative to the franchisee requirements in s 249(2), have replaced the requirement for a Ministerial declaration made under s 247 (now repealed). Section 249(3A) sets out examples of what constitutes 'common interests' for the purpose of s 249(3)(a). As we discuss further below, the text of s 249(3)(a) and (3A) is very similar to that in s 243(1)(b)(ii) and (2) respectively, which concern the Commission's power to make supported bargaining authorisations. Section 249(3AB) and (3AC) establish a rebuttable presumption as to satisfaction of the requirements in s 249(3).

(3) Where the new 'common interest employers' requirements in s 249(3), rather than the franchisee requirements in s 249(2), are applicable, thea new 'reasonably comparable' requirement in s 249(1)(b)(vi) that must be satisfied. New s 249(1AA) establishes a rebuttable presumption as to the satisfaction of the new requirement in s 249(1)(b)(vi).

(3) There is now an added requirement in s 249(1)(b)(iv) in respect of any application made by an employee bargaining representative. There are two alternatives: each employer must either have consented to the application or be covered by new s 249(1B). Section 249(1B) sets out five cumulative requirements for the subsection to apply (in paragraphs (a)-(e)). The requirements in paragraphs (d) and (e) operate in conjunction with new subsections (1C) and (1D) respectively.

[15] Section 249A is a provision added by the SJBP Act which establishes a new restriction on making single employer authorisations as follows:

249A Restriction on making single interest employer authorisations

The FWC must not make a single interest employer authorisation in relation to a proposed enterprise agreement if the agreement would cover employees in relation to general building and construction work.

[16] Section 250 prescribes the content of a single interest employer authorisation as follows:

250 What a single interest employer authorisation must specify

What authorisation must specify

(1) A single interest employer authorisation in relation to a proposed enterprise agreement must specify the following:

(a) the employers that will be covered by the agreement;
(b) the employees who will be covered by the agreement;
(c) the person (if any) nominated by the employers to make applications under this Act if the authorisation is made;
(d) any other matter prescribed by the procedural rules.

Authorisation may relate to only some of employers or employees

(2) If the FWC is satisfied of the matters specified in subsection 249(2) or (3) (which deal with franchisees and common interest employers) in relation to only some of the employers that will be covered by the agreement, the FWC may make a single interest employer authorisation specifying those employers and their employees only.

(3) The FWC may make a single interest employer authorisation that does not specify one or more employers specified in an application for the authorisation, and the employees (the ***relevant employees***) of those employers specified in that application, if the FWC is satisfied that:

(a) the employers are bargaining in good faith for a proposed enterprise agreement that will cover the employers and the relevant employees, or substantially the same group of the relevant employees; and
(b) the employers and the relevant employees have a history of effectively bargaining in relation to one or more enterprise agreements that have covered the employers and the relevant employees, or substantially the same group of the relevant employees; and
(c) on the day that the FWC will make the authorisation, less than 9 months have passed since the most recent nominal expiry date of an agreement referred to in paragraph (b).

(4) If the effect of subsection (3) is that no employers would be specified in the authorisation, the FWC may refuse the application for the authorisation.

[17] Subsections (3) and (4) of s 250 were added by the SJBP Act.

[18] Finally, the SJBP Act added the following new subsection to s 172, which establishes a significant consequence of the making of a single interest employer authorisation:

> *Requirement for employer specified in single interest employer authorisation*
>
> (5) Despite any other provision of this Part, if an employer is specified in a single interest employer authorisation that is in operation:
>
> (a) the only kind of enterprise agreement the employer may make with their employees who are specified in the authorisation is a single interest employer agreement; and
> (b) the employer must not initiate bargaining, agree to bargain, or be required to bargain with those employees for any other kind of enterprise agreement.

[19] The Revised Explanatory Memorandum (REM) for the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* makes it apparent that the overall purpose of the amendments to Division 10 of Part 2-4 is to liberalise access to single interest employer authorisations. The REM relevantly states:

> 1006. Part 21 of Schedule 1 to the Bill would amend Division 10 of Part 2-4 of the FW Act to remove unnecessary limits on access to single interest employer authorisations and simplify the process for obtaining them, and facilitating bargaining by:
>
> - removing the requirement for two or more employers with common interests who are not franchisees to obtain a Ministerial declaration before applying a single interest employer authorisation;
>
> - providing for employee bargaining representatives to apply for a single interest employer authorisation to cover two or more employers, subject to majority support of the relevant employees;
>
> - permitting employers and employee bargaining representatives to apply to vary a single interest employer authorisation to add or remove the name of an employer from the authorisation, subject to meeting specified requirements; and
>
> - inserting new Subdivision AD—Variation of single interest employer agreement to add employer and employees, into Division 7 of Part 2-4 of the FW Act to permit employers and employee organisations to apply to the FWC for approval of a variation to extend coverage of an existing single interest employer agreement to a new employer and its employees, subject to meeting specified requirements.
>
> …
>
> 1066. New subsection 249(1) would delineate the requirements of which the FWC must be satisfied before making a single interest employer authorisation depending on whether the application for the authorisation was made by the employer and its employees, or an employee organisation. It would also clarify the requirements of which the FWC must be satisfied depending on whether the single interest employer authorisation is to operate in respect of two or more common interest employers or franchisees. The term 'common interest employers' would be introduced by these amendments and used to identify those employers who may be included in a single interest employer authorisation but who are not franchisees.

Evidentiary material

[20] The evidentiary material relied upon by the IEU is comprised of a Statement of Agreed Facts (SAF) signed by the IEU and CEWA on behalf of all 10 respondent employers. The text of the SAF is reproduced in full in Attachment A to this decision. No party submitted that we should not rely upon the SAF or contested any parts of its content. The facts stated in the SAF concern matters known to the IEU and the respondent employers and nothing stated is improbable or of a contentious nature. We accept the SAF as constituting a reliable evidentiary basis upon which to found our consideration of the application.

[21] Although not part of the SAF, it is common ground that all but two of the respondent employers concerned have previously satisfied the then-relevant requirements of the FW Act for a single employer authorisation to cover teaching staff employed by them.[1] In making that authorisation, the Commission was, amongst other matters, satisfied that the respondent employers had agreed to bargain together pursuant to s 249(1)(b)(i) of the FW Act (as it then was). The Commission further extended that authorisation on 28 February 2023.[2]

[22] The only difference between the list of employer respondents here and the employers specified in this previous teaching staff single interest employer authorisation is reflective of a governance restructure by one employer. Effective January 2023, the Trustees of Edmund Rice Education Australia Ltd restructured to become Edmund Rice Education Australia Ltd (EREA Ltd). EREA Ltd utilises a series of subsidiary companies, two of which operate schools in Western Australia: EREA Colleges Ltd and EREA Flexible Schools Ltd. This restructure was reflected in an amended authorisation[3] issued by the Commission.

Consideration

[23] Section 249 in its current form establishes a number of alternative pathways to the making of a single interest employer authorisation. The pathway is relatively straightforward where, as stated in the SAF here, the respondent employers consent to the application and each of them has 50 employees or more. That means that it is unnecessary for us to engage in consideration of the proper construction and application of many of the new provisions of s 249. We address each of the applicable requirements in turn below.

Section 249(1)(a) — Whether an application has been made

[24] The first requirement is that of s 249(1)(a), namely whether an application for the authorisation has been made. As recently stated in *Application by UWU, AEU and IEU*[4] in respect of the identically-worded provision in s 243(1)(a), the requirement for an application to have been made connotes an application that has been validly made in accordance with the applicable statutory requirements — in this case, the requirements of s 248. Here, the application has been made by the IEU, a registered organisation of employees. Each of the respondent employers employs persons who are members of the IEU and are represented by the IEU in respect of the proposed multi-enterprise agreement. This satisfies the requirement for standing to apply in s 248(1)(b). In accordance with s 248(2), the application specifies the employers that will be covered by the agreement (which are all corporations and are thus national system employers within the meaning of s 14 of the FW Act), and also the employees who will be covered by it (see [2] above).

Applicable requirements of s 249(1)(b)

[25] The requirements of s 249(1)(b) about which we must be satisfied in this case are those contained in subparagraphs (i), (ii), (iv), (v) and (vi). The requirement in subparagraph (iii) does not apply because the application was not made by two or more employers.

Section 249(1)(b)(i) — Are at least some of the employees who will be covered by the Agreement represented by an employee organisation?

[26] Consistent with our finding concerning the IEU's standing to make this application, at least some of the employees that will be covered by the proposed agreement are represented by the IEU, an employee organisation.

Section 249(1)(b)(ii) — Have the employers and bargaining representatives of the employees had the opportunity to express their views?

[27] We are satisfied that the respondent employers and the bargaining representatives have had the opportunity to express their views on the proposed authorisation. A preliminary conference was held before Deputy President Hampton on 20 July 2023. The Commission subsequently issued directions to the parties requiring them to provide a statement of agreed facts and written submissions. Other parties, or intervenors, seeking to be heard were also afforded an opportunity to provide written submissions. The application and material filed in the proceedings were published on the Commission's public website. The IEU has provided submissions confirming their views, and the respondent employers have confirmed that they did not intend to make submissions but were in support of the authorisation being made. There is no basis to consider that there is currently any bargaining representative other than the IEU for employees to be covered by the proposed agreement.

Section 249(1)(b)(iv) — Has each employer consented to the application or is covered by subsection (1B)?

[28] As earlier stated, each employer consents to the IEU's application. Consideration of s 249(1B) is therefore not necessary.

Section 249(1)(b)(v) — Have the requirements of either ss 249(2) or 249(3) been met?

[29] This application is advanced on the basis that the requirement in s 249(3) is met (s 249(2) being inapplicable because the respondent employers do not carry on business activities under a franchise). Our consideration under s 249(3) is simplified because the application here is made by a bargaining representative and the SAF demonstrates that each of the respondent employers has 50 employees or more (applying the counting methodology in s 249(3AC)), meaning that s 249(3AB) applies to our consideration under s 249(3). Section 249(3AB) establishes a rebuttable presumption that the requirements of s 249(3) are met with respect to each employer that has 50 employees or more, counted in accordance with s 249(3AC), 'unless the contrary is proved'. No party appearing in the matter has attempted to prove the contrary and, in any event, there is no evidence before us which would permit the

contrary to be established. Therefore, in accordance with s 249(3AB), we are satisfied that the requirements of s 249(3) are met with respect to all the respondent employers.

[30] We would, in any event, have been positively satisfied that the requirements in s 249(3) were met on the basis of the material before us even without reliance on s 249(3AB). The SAF discloses that each of the respondent employers:

- is principally engaged in the provision of primary and/or secondary education in a school setting;
- operates in the state of Western Australia;
- operates schools that are registered under the *School Education Act 1999* (WA);
- is the employer of one or more employees to whom the *Educational Services (Schools) General Staff Award 2020* applies;
- engages in Roman Catholic religious instruction;
- receives funding from the Government of the Commonwealth of Australia for the purpose of delivering education;
- receives funding from the Government of the State of Western Australia for the purpose of delivering education; and
- employs one or more persons who are principally employed to provide, or to assist in providing, educational instruction or who are employed in any other capacity, and who are not employed as teachers.

[31] In *Application by UWU, AEU and IEU*,[5] the Full Bench said the following in relation to the expression 'common interests' in s 243(1)(b)(ii) in connection with applications for supported bargaining authorisations:

> …the expression 'common interests' used in s 243(1)(b)(ii) in connection with the employers the subject of an authorisation application is one of wide import, and on its ordinary meaning extends to any joint, shared, related or like characteristics, qualities, undertakings or concerns as between the relevant employers. The diversity of the non-exhaustive list of 'examples' of common interests in s 243(2) gives contextual support to the breadth of meaning which we assign to the expression. The common interests must be 'clearly identifiable', that is, plainly discernible or recognisable, but need not be self-evident.

[32] Given, as earlier stated, the commonality of language used in s 243(1)(b)(ii) and (2) and s 249(3)(a) and (3A), we consider this approach may equally be applied here. On this basis, the matters in the SAF set out above would readily satisfy the requirement for clearly identifiable common interests between the relevant employers in s 249(3)(a). As for s 249(3)(b), it is sufficient to say that there is nothing before us to indicate that it would be contrary to the public interest to make the authorisation sought. A fuller exploration of the proper construction and application of the expression 'not contrary to the public interest' in s 249(3)(b) may await a case in which this consideration is in contest.

Section 249(1)(b)(vi) — Are the operations and business activities of each of the employers reasonably comparable with those of the other employers that will be covered by the agreement?

[33] Section 249(1)(b)(vi) imposes an additional requirement in cases where subsection (3) rather than subsection (2) applies. Section 249(1AA) applies a rebuttable assumption to s 249(1)(b)(vi) that is in similar terms to s 249(3AB) and likewise uses the methodology for counting the requisite number of employees in s 249(3AC). One aspect of s 249(1AA) that may give rise to difficulty is how the presumption works where some but not all of the relevant employers meet the 50-employee threshold. However, we need not consider that difficulty further here because, as earlier found, all of the respondent employers meet the numerical threshold for the operation of the presumption. Because no party in the matter has attempted to prove that the requirement in s 249(1)(b)(vi) is not met, and there is no evidence before us that this is the case, we consider that the requirement in s 249(1)(b)(vi) is met.

[34] We observe, without engaging in full in a consideration of the proper construction and application of s 249(1)(b)(vi), that we would be satisfied that the requirement in the provision has been met in this case even if s 249(1AA) did not apply. Although it is apparent that the requirement for comparability of operations and business activities is likely more stringent than the requirement for common interests in s 249(3), we consider that the matters set out in paragraph [30] above would be sufficient to demonstrate the necessary comparability.

Section 249A — General building and construction work

[35] The proposed agreement will not cover employees in relation to general building and construction work, and therefore the restriction on the making of single interest employer authorisations in s 249A does not apply.

Conclusion

[36] Because we are satisfied as to each of the applicable requirements in s 249(1), and the restriction in s 249A does not apply, we are required to make the single interest employer authorisation sought. The authorisation is made by a separate order that is published in conjunction with this decision and which specifies the matters required by s 250, as applicable. In accordance with s 249(4), the authorisation will operate from the date of this decision.

PRESIDENT

Appearances:

P Dean, of counsel, with permission, with *M Elliot* and *A Odgers* for the IEU.

M Jensen, solicitor (of Lavan), with permission, with *T Littlejohn* and *C Jones* on behalf of the respondent employers.

Hearing details:

2023.

Video using Microsoft Teams:
20 July (initial conference before Hampton DP).

Otherwise determined on the papers.

Written submissions:

Respondent employers: 3 August 2023
Independent Education Union of Australia: 4 August 2023.
Australian Council of Trade Unions: 10 August 2023.
Australian Chamber of Commerce and Industry: 16 August 2023.
The Australian Industry Group: 17 August 2023.
Australian Business Industrial and Business NSW: 17 August 2023.

Reply submissions:

Independent Education Union of Australia: 21 August 2023.

Attachment A: Statement of Agreed Facts

1. Each of the entities named in Annexure A:

    1.1. is a corporation, registered under the *Corporations Act 2001* (Cth);

    1.2. is principally engaged in the provision of primary and /or secondary education in a school setting;

    1.3. operates in the state of Western Australia;

    1.4. operates schools that are registered under the *School Education Act 1999* (WA);

    1.5. is the employer of one or more employees that are employees:

        1.5.1. covered by the *Educational Services (Schools) General Staff Award* (the Award) being a modern award made by the Fair Work Commission; and

        1.5.2. to whom that Award applies;

    1.6. engages in Roman Catholic religious instruction;

    1.7. receives funding from the Government of the Commonwealth of Australia for the purpose of delivering education;

    1.8. receives funding from the Government of the State of Western Australia for the purpose of delivering education;

    1.9. employs one or more persons who are:

        1.9.1. principally employed to provide, or to assist in providing, educational instruction or who are employed in any other capacity; and

        1.9.2. are not employed as teachers.

    1.10. proposes to be represented in any bargaining with the Applicant in respect of the proposed agreement by CEWA;

    1.11. is presently engaged in bargaining with the Applicant in relation to conditions for employees engaged as teachers pursuant to a single interest bargaining authorisation which is presently in force, issued on application by the entities named in Annexure A (B2021/227, PR728298 as varied by B2023/101, PR751277); and

    1.12. is not engaged in bargaining for an agreement in respect of any of the employees who would be covered by the proposed agreement.

2. Each of the entities named in Annexure A employs one or more persons who are:

2.1 a member of the Applicant; and

2.2 represented by the Applicant.

3. The parties are unaware of any enterprise agreement within the meaning of the *Fair Work Act 2009* (or its predecessor) which applies to or covers any of the entities named in Annexure A which would cover the employees to which the proposed agreement would apply;

4. Each of the entities named in Annexure A employs:

4.1 with the exception of Loreto Nedlands, more than 50 employees; and

4.2 in the case of Loreto Nedlands:

4.3 Loreto Nedlands has more than 20 employees;

4.4 Loreto Nedlands is an associated entity of Loreto Ministries Limited (**LML**);

4.5 LML appoints the corporate directors of Loreto Nedlands;

4.6 LML is the sole owner of Loreto Nedlands; and

4.7 LML has more than 50 employees;

5. In respect of the employees who would be covered by the proposed agreement, each of the entities named in Annexure A afford conditions that [] are not less favourable than those provided by former [S]tate agreements imposing identical employment obligations;

6. None of the employees who would be covered by the proposed agreement are engaged in relation to general building and construction work;

7. No application has been made pursuant to s 248 by any of the employers named in Annexure A for a single interest employer authorisation in respect of the employment to which the proposed agreement would apply.

Annexure A – Western Australian Catholic Education Employers
[email addresses redacted]

	Entity	ABN/ACN	Address	Contact Person
1	Catholic Education Western Australia Ltd	ABN 47 634 504 135	PO Box 198 LEEDERVILLE WA 6903	Dr Debra Sayce Executive Director
2	Mercy Education Limited	ACN 154 531 870	720 Heidelberg Road ALPHINGTON VIC 3078	Mr Christopher Houlihan Chief Executive
3	Servite College Council Inc	ABN 69 356 899 381	PO Box 263 Tuart Hill WA 6939	Ms Silvana Vicoli Principal
4	Norbertine Canons Inc	ABN 29 781 711 208	St Norbert College QUEENS PARK WA 6107	Ms Sharon Rainford Principal
5	Mazenod College Limited	ABN 53 128 213 267	55 Gladys Rd LESMURDIE WA 6076	Mr Simon Harvey Principal
6	John XXIII College Inc	ABN 63 415 939 827	PO Box 226 CLAREMONT WA 6910	Mr Daniel Mahon Principal
7	EREA Colleges Ltd	ABN 71 659 944 831	PO Box 33185 Domain LPO MELBOURNE VIC 3004	Mr Chris Woolley Chief Executive Officer
8	EREA Flexible Schools Ltd	ABN 52 659 978 846	PO Box 2 Virginia BC QLD 4014	Mr Matt Hawkins Chief Executive Officer
9	Marist Schools Australia Limited	ABN 76 654 014 794	PO Box 1247 Mascot NSW 1460	Dr Frank Malloy National Director
10	Loreto Nedlands Limited	ABN 42 317 652 643	69 Webster Street NEDLANDS WA 6009	Ms Rika Audres Principal

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[1] PR728298.

[2] PR751277.

[3] PR764138.

[4] [2023] FWCFB 176 at [29].

[5] Ibid at [34].