Will the FWC be required to make a single interest employer authorisation for a proposed multi-employer agreement?

Has an application been made to the FWC for a **single interest employer authorisation** in relation to a proposed multi-employer agreement, by either:
- those employers; or
- a bargaining representative of an employee who will be covered by the agreement?

FWA s 248

NO → **FWC must not make an authorisation**

YES →

Is the FWC satisfied that…

FWA s 249

…at least some of the employees that will be covered by the agreement are represented by a union?

NO → **FWC must not make an authorisation**

YES →

…all relevant employers, and the bargaining representatives of the employees of those employers have had the opportunity to express their views on the authorisation to the FWC?

NO → **FWC must not make an authorisation**

YES →

…the employers carry on similar business activities under the same franchise?

NO →

…the employers have clearly identifiable common interests?

(eg, similar geographical location, regulatory regime, nature of enterprises, terms and conditions of employment)

NO → **FWC must not make an authorisation**

YES →

Would making an authorisation be contrary to the public interest?

YES → **FWC must not make an authorisation**

NO →

YES →

Who is making the application?

Employers who will be covered by the agreement.

Have the employers that will be covered by the agreement agreed to bargain together?

NO → **FWC must not make an authorisation**

YES →

Has any person coerced, or threatened to coerce, any of the employers to agree to bargain together?

YES → **FWC must not make an authorisation**

NO →

A bargaining representative of an employee who will be covered by the agreement.

Has each employer consented?

YES →

NO →

Of the non consenting employer/s…

…is the employer a small business employer?

YES → **FWC must not make an authorisation**

NO →

…do majority of employees of the employer want to bargain for the agreement?

NO → **FWC must not make an authorisation**

YES →

Has the employer 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?

YES → **FWC must not make an authorisation**

NO →

Is the employer named in a single interest employer authorisation, or supported bargaining authorisation, in relation to the employees that will be covered by the agreement?

YES → **FWC must not make an authorisation**

NO →

Is the employer, and relevant employees, covered by an enterprise agreement that has not passed its nominal expiry date at the time that the FWC will make the authorisation?

YES → **FWC must not make an authorisation**

NO →

Has the employer already agreed in writing with a union to bargain for a proposed single-enterprise agreement that would cover them and the relevant employees?

YES → **FWC must not make an authorisation**

NO →

Will the proposed multi-enterprise agreement cover employees in relation to general building and construction work?

FWA s 249A

YES → **FWC must not make an authorisation**

NO →

FWC must make a single interest employer authorisation

BUT

Is the FWC satisfied that a named employer…

FWA s 250

…is bargaining in good faith for a proposed enterprise agreement that will cover the employers and relevant employees?

YES → **FWC may refuse authorisation in relation to that employer**

NO →

…has a history of effectively bargaining in relation to one or more enterprise agreements that has covered the employer and relevant employee?

YES → **FWC may refuse authorisation in relation to that employer**

NO →

…has had an enterprise agreement which has covered the relevant employees that has expired less than 6 months ago?

YES → **FWC may refuse authorisation in relation to that employer**

are there any employers left?

NO → **FWC may refuse authorisation**

YES → (back to "Who is making the application?")

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