

ACTUS WORKPLACE LAWYERS

4 December 2024

Full Federal Court review of FWC single interest employer decision

Three major coal mining companies (Peabody, Whitehaven and Ulan) have [applied](#) to the Federal Court of Australia for judicial review of a decision of the Fair Work Commission (FWC) to make a single interest employer authorisation requiring them to bargain with the Association of Professional Engineers, Scientists and Managers Australia (APESMA) for a single interest employer agreement. The case will be heard by the Full Federal Court in March 2025.

In its 23 August 2024 decision ([\[2024\] FWCFB 253](#)), an FWC Full Bench decided that the operations and business activities of the employers were reasonably comparable and they had clearly identifiable common interests.

The decision of the Full Federal Court will be very important in clarifying the scope of the single interest employer bargaining provisions in the Fair Work Act, that were substantially expanded through the Labor Government's Secure Jobs, Better Pay legislation.

The single interest employer bargaining provisions present many risks for employers, including:

- The risk of a union reaching a single interest employer agreement with a small group of accommodating employers and then applying to the FWC to rope a large number of other employers into the agreement.
- The risks posed by the rebuttable presumption in the legislation. In effect, for employers with 50 or more employees, it is presumed that the operations and business activities of the employers are reasonably comparable and they have clearly identifiable common interests, unless they prove otherwise.
- The risk of coordinated protected industrial action being taken across multiple enterprises.
- The risk of the FWC making an intractable bargaining determination if a single interest employer agreement is not reached after nine months of bargaining.

For further advice or assistance on any enterprise bargaining issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.