

# ACTUS WORKPLACE LAWYERS

30 November 2024

## Supported bargaining developments

There have been some important developments regarding the supported bargaining provisions of the Fair Work Act. These provisions enable multi-enterprise agreements to be made for employers and employees who require support to bargain. The supported bargaining stream gives unions many additional rights they do not have under other bargaining streams and consequently they are endeavouring to establish excessively wide boundaries for this bargaining stream.

The supported bargaining process typically commences with a union applying to the Fair Work Commission (FWC) for a supported bargaining authorisation covering a group of employers. When considering the application, the FWC is required to determine whether it is appropriate for the employers to bargaining together, taking into account a limited number of issues, including:

- Whether low rates of pay prevail in the industry or sector,
- Whether the employers have clearly identifiable common interests, and
- Any other matters the FWC considers appropriate.

If a supported bargaining authorisation is issued, the parties are required to negotiate a supported bargaining agreement – a type of multi-enterprise agreement. If agreement is not reached after nine months of bargaining, the FWC can make an intractable bargaining workplace determination setting the wages and conditions for the employees of the employers covered by the supported bargaining authorisation.

So far, the FWC has issued supported bargaining authorisations for groups of employers in the early childhood education sector ([\[2023\] FWCFB 176](#)), the social and community services sector ([\[2024\] FWC 2036](#)), and the preschools sector ([\[2024\] FWC 2583](#)). Each of these sectors is primarily government-funded and in each case the employers consented to the supported bargaining authorisation.

The unions have now begun targeting employers in sectors that are not government-funded.

The Shop, Distributive and Allied Employees' Association (SDA) has [applied](#) for a supported bargaining authorisation against a group of McDonald's franchisees in South Australia. Fortunately, the application is being strongly opposed by the franchisees. If the SDA succeeds with this application, a very large number of employers will be exposed to being roped into multi-enterprise agreements, particularly in sectors where employees are typically paid at or close to award rates, including the fast food, retail, hospitality and restaurant sectors.

The case is listed for hearing before a Full Bench of the FWC in February next year.

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](mailto:stephen.smith@actuslawyers.com.au).