FairWork Commission

DECISION

Fair Work Act 2009
s.248 - Application for a single interest employer authorisation

Application by Fredon Industries Pty Ltd & Ors
(B2026/617)

COMMISSIONER MCKINNON — SYDNEY, 24 SEPTEMBER 2026

Application for a single interest employer authorisation – NSW and ACT electrical contracting industry

[1] On 5 June 2026, twelve employers listed in Annexure A (the Employers) in the electrical contracting industry applied under s 248(1)(a) of the *Fair Work Act 2009* (the Act) for a single interest employer authorisation in relation to a proposed enterprise agreement covering the Employers, their employees engaged in electrical services, and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The application was made by consent of the CEPU. The National Electrical Contractors Association (NECA) objects to the application.

[2] Under s 249 of the Act, the Commission must make a single interest employer authorisation in relation to a proposed enterprise agreement on application under s 248 if satisfied of certain matters. This decision is about whether I am satisfied of those matters and must make the authorisation.

[3] For the reasons that follow, I am not satisfied that each of the requirements for the making of an authorisation have been met. The application will be dismissed.

Matters about which the Commission must be satisfied

[4] Section 249(1) of the Act provides as follows:

> (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.

[5] *s 249(1)(b)(i) (union representation):* There is no direct evidence of union membership among employees of the Employers. The CEPU is an employee organisation for the purposes of the Act and consents to the application in its capacity at least as the default bargaining representative for employees in the electrical contracting industry. It has drafted, and commenced bargaining for, a proposed multi-enterprise agreement to be made under the auspices of this authorisation (if granted). It has done so, presumably, on behalf of its members. I am satisfied that at least some of the employees that will be covered by the proposed enterprise agreement are represented by the CEPU.

[6] *s 249(1)(b)(ii) (opportunity to express views):* I have received written materials and heard from the parties on 28 July 2026 in relation to the application. I am satisfied that the Employers and the CEPU have had the opportunity to express their views on the authorisation to the Commission.

[7] *s 249(1)(b)(iii) (requirements of s 249(1A) – agreement to bargain together in the absence of coercion):* Because the application was made by two or more employers under s 248(1)(a) of the Act, I must be satisfied that the Employers have agreed to bargain together and that no person coerced, or threatened to coerce, any of the employers to agree to bargain together. It is clear, and I am satisfied, that the Employers have agreed to bargain together. Whether I am satisfied that no person coerced, or threatened to coerce, any of the Employers to agree to bargain together, depends on reaching a positive state of satisfaction that there was no relevant coercion, or threat of coercion, of any of the Employers.

[8] The evidence of the Employers in this regard is thin. A witness statement was filed on behalf of each employer, and each makes the bare statement, in identical terms, that the witness was at no time ‘coerced, threatened, or pressured by any person or organisation into agreeing to bargain together’. No detail is provided about the circumstances in which agreement was reached between the Employers to bargain together. The CEPU did not file evidence or other supporting material on the matter in the proceedings.

[9] NECA submits that the agreement to bargain must have been affected by coercion or the threat of coercion because of the sudden ‘unexplained’ change in position of the Employers in relation to multi-employer bargaining. NECA relies on the experience of other employers in the industry to submit that many experienced a significant increase in rights of entry and safety inspections as soon as bargaining in connection with a proposed multi-enterprise agreement commenced, and that employers who took a hard line in response to earlier multi-employer bargaining efforts faced a campaign of significant industrial pressure leading to their exclusion from the process.

[10] NECA's concern generally is that employers in the industry have been targeted if they did not comply with threats to 'get in line and agree' or they would 'be next' (to face significant industrial pressure), but NECA is in a bind. Its ability to establish the concern with probative evidence is compromised by what it says are witnesses unwilling to be identified for fear of retribution. Further, much of the industrial pressure described above is likely to be conduct authorised by the Act, except in relation to industrial action taken while the CEPU was engaged in pattern bargaining in relation to a proposed enterprise agreement[1] (discussed further below).

[11] The history of the application goes some way to addressing the concern raised by NECA about the sudden 'unexplained' change in position in relation to multi-employer bargaining. It demonstrates that the likely reason for the change in position was a compromise reached on the scope of the proposed authorisation between the CEPU and the Employers.

[12] On 16 December 2025, the CEPU applied for a single interest authorisation with the consent of 11 employers (including 9 affected by this application) covering employers and their Electrical Worker employees in New South Wales (NSW) and the Australian Capital Territory (ACT). A competing employer application with narrower scope was made by an overlapping group of 11 employers a few days later, on 19 December 2025.[2] The employer application sought to cover Electrical Workers in the County of Cumberland in NSW on construction projects with a contract value of more than $125 million.

[13] In May 2026, the CEPU and interested employer parties began discussions on narrowing the scope of their dispute. In early June 2026, the parties reached agreement to abandon their respective applications and make this application by consent. The application was made on 5 June 2026 and the agreement was formalised in writing in a 'Deed of Agreement' between the CEPU and the Employers. The Deed of Agreement includes, as parties, 10 of the Employers who were also party to one or both earlier application(s). Two are new to the process, while 6 employers involved in the earlier applications are no longer involved. This is presumably because they did not agree to bargain together for the proposed agreement, or did not meet the criteria for inclusion in a single interest employer authorisation, or were excluded from the process for some other reason.

[14] The Deed of Agreement describes the scope of the proposed authorisation (and any resultant enterprise agreement) as covering the Employers and their Electrical Worker employees in NSW and the ACT, with some difference in terms and conditions of employment depending on whether the employees work in:

1. Commercial Construction with a total construction value of $55 million or more within the county of Cumberland.

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[1] *Fair Work Act 2009 (Cth)*, s.409(4).

[2] *Application by Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (128V)* [2026] FWCFB 66.

2. Other Construction with a total construction value of less than $55 million within the county of Cumberland.
3. Regional NSW and the ACT – on jobs with a total construction value of $110 million or more.
4. NSW (anywhere other than the County of Cumberland) – on jobs with a total construction value of less than $110 million.

[15] There is no reason to doubt the authenticity of the Deed of Agreement. Given the nature of the industry and materials produced, it would be naïve to consider that no industrial pressure was brought to bear on any of the Employers at any time in connection with their agreement to bargain together. That said, the workplace relations framework is designed to tolerate a degree of industrial pressure, and pressure and coercion are not always the same thing.

[16] There is no direct evidence of coercion or threatened coercion of any of the Employers in relation to the agreement to bargain together. NECA filed evidence of strike action described by the CEPU on social media as ‘bringing major projects across Sydney to a standstill including critical data works’ as well as evidence of conversations with unidentified NECA members about multi-employer bargaining and the CEPU’s conduct generally. It filed photographic evidence of an inflatable grub with a sign that says: ‘NO MORE PROPAGANDY!’. This is an obvious play on the name of the CEO of Stowe Australia (Stowe), Mr Scott Gandy. The grub was used during a bargaining-related rally involving the CEPU outside the headquarters of Stowe. Standing in front of the grub are members of the union’s NSW Branch and its leadership team including Mr Allen Hicks, State Secretary.

[17] The behaviour in using the grub to target Mr Gandy in connection with his role in bargaining is plainly intimidatory. It occurred in circumstances where Stowe was party to the earlier employer application, and calls into question the CEPU’s stated commitment, in its proposed multi-enterprise agreement, to ‘maintain a working environment that is safe, both on sites and elsewhere, providing a safe and healthy work environment, free from discrimination, harassment, and all forms of bullying’. I reject entirely the CEPU’s description of the conduct as simply ‘colourful’. Even so, the evidence is not relevant to the question of coercion of the Employers in this application, because Stowe is not one of them.

[18] The Deed of Agreement is evidence that the agreement to bargain together was a choice made by each of the Employers after discussion between the relevant parties and with informed consent. On this basis, and in the absence of any probative evidence to the contrary, I am satisfied that no person coerced, or threatened to coerce, any of the Employers to agree to bargain together.

[19] *s 249(1)(b)(v) & s 249(3)(a) (common interest employers):* It is presumed, under s 249(3AB) of the Act, and unless the contrary is proved, that employers have clearly identifiable common interests for the purposes of s 249(3) if they employed 50 or more employees at the time the application was made. There being no evidence to the contrary, the presumption applies to all but two of the Employers, including to ARA Electrical Major Projects Division Pty Ltd (ARA). Although ARA has 45 direct employees, it is part of a larger business group and can be taken to have at least 50 employees across the ARA Group as a whole.

[20] The presumption does not apply to Goldline Industries Pty Ltd (Goldline) and Carringtons Electrical Pty Ltd (Carringtons) who each have less than 50 employees. At the time of application, Goldline had approximately 47 employees. Goldline carries out electrical service work mainly in the Sydney metropolitan area. It specialises in design, installation, management and service to the construction industry across the commercial real estate and industrial sectors. It performs a variety of electrical work including light and power reticulation, communications and audio-visual services. Although unclear, NECA's description of the general structure of the electrical and communications contracting industry indicates that Goldline is most likely a 'Tier 2' employer in the industry.

[21] Carringtons has approximately 18 employees and also operates only in the Sydney metropolitan area. As an electrical contractor, it undertakes varied electrical and communications work servicing the residential, commercial and industrial sectors. Its main clients are Tier 1 builders including on the Sydney Harbour R3 project. On NECA's description of the industry, it is likely to be a 'Tier 3' business, or small employer.

[22] Goldline and Carringtons each operate in the same regulatory environment for workplace safety and for licensed electrical contracting work in NSW as the other Employers operating in NSW, although their operating environment is not as complex as some of the employers who operate nationally or across regions and jurisdictions, such as Heyday5, FIP Electrical, National Cable Installations and Thyristors).

[23] The Employers are all covered by the *Electrical, Electronic and Communications Contracting Award 2020* (Electrical Award) and a version of the CEPU's 'NSW/ACT Construction Union Agreement 2024-25' in nearly identical terms. According to each of the Employers, this reflects the reality that the NSW electrical contracting industry's historical practice is to follow a pattern bargaining model with the CEPU. This can be accepted at least in relation to the Employers. It is likely to also be the case for other 'Tier 1' employers in the industry. On NECA's submission, however, not all employers in the electrical contracting industry are party to union pattern agreements and it is a common complaint of Tier 1 companies that Tier 2 companies are cheaper because they do not have to abide by such agreements.

[24] On balance, I am satisfied that each of the Employers have clearly identifiable common interests.

[25] *s 249(1)(b)(v) & s 249(3)(b) (not contrary to the public interest)*: Having concluded that the Employers have clearly identifiable common interests, the requirements of s 249(3) will be met if I am satisfied that it is not contrary to the public interest to make the authorisation (s 249(3)(b)). This again requires a positive state of satisfaction. There is no statutory presumption in favour of this requirement being met because the application was made by the Employers and not by the CEPU (see s 248(1) and s 249(3AB)).

[26] The Employers submit that the application being made by consent is of itself an indicator than the authorisation is not contrary to the public interest. They further submit that the authorisation will:

1. Provide predictable wage and allowance settings that support more consistent tendering across all electrical and communications work undertaken by the Employers in NSW and the ACT,
2. Promote competition on efficiency, capability, safety performance and productivity rather than on labour conditions, and
3. Streamline bargaining by replacing duplicative single enterprise rounds with one structured process covering the same industry, workforce and geographic market.

[27] NECA submits that the authorisation raises two broad public interest concerns: firstly, that a major target of the authorisation is not the Employers but other electrical contracting businesses, who realistically and practically will not be able to resist any application to add them to the authorisation. Secondly, that the authorisation has an anti-competitive purpose and that it is not in the public interest for a small number of employers to set the industry standard to the detriment of hundreds of other businesses.

Potential for anti-competitive outcomes

[28] As noted above, the application is made in the context of an accepted practice of 'pattern bargaining' in the NSW electrical contracting industry. The evidence of the Employers in each case is again the same:

> Enterprise bargaining in the electrical contracting industry in New South Wales has historically followed a pattern bargaining model, whereby employers in the industry negotiate and enter into enterprise agreements with the CEPU on substantially the same core terms and conditions, including rates of pay, classifications, leave entitlements, rostering arrangements, overtime, safety obligations, and redundancy entitlements. The Company's bargaining history reflects this pattern.

[29] This history, together with the fact that the Employers are each covered by CEPU enterprise agreements in nearly identical terms, suggests that the practice of pattern bargaining will continue between the parties if no single-interest employer authorisation is made. It brings into question the purpose, or 'the end sought to be accomplished by the conduct',[3] of seeking authorisation to bargain for a multi-enterprise agreement of such wide scope and coverage in an industry with an already established and apparently successful history of enterprise bargaining.

[30] The Deed of Agreement does not speak to the parties' purpose in seeking the authorisation.

[31] The Employers say, in identical terms, that their reasons for agreeing to bargain together 'include' that coordination provides a structured way to progress bargaining and reduces the risk of fragmented or inconsistent outcomes across employers competing in the same market for the same work and the same workforce. The word 'include' suggests that there are also other, unspecified, reasons. Putting that aside for the moment, and putting the given reason another way, the Employers say that bargaining as a group reduces the scope for both outcomes

[3] *Rural Press Limited v Australian Competition and Consumer Commission Australian Competition and Consumer Commission v Rural Press Limited* [2003] HCA 75 at [66].

tailored to the individual enterprise and competition in the electrical services market – for labour and for work.

[32] This is the kind of outcome to which Part IV of Chapter 3 of the *Competition and Consumer Act 2010* (Restrictive trade practices) is directed, for the public policy purpose of enhancing the welfare of Australians, including through the promotion of competition and fair trading.[4] Restrictive trade practices such as price fixing tend to impede the competitive process.[5] The risk of such outcomes is likely to be greater where the businesses involved hold substantial market power.

[33] In this case, a majority of the Employers are 'Tier 1' businesses in the electrical contracting industry, with 100 or more employees. Some describe themselves as 'leading electrical contractors', and most work on high value (more than $50 million) or major projects in the construction industry. On NECA's evidence, they represent about half of all (approximately 20) Tier 1 businesses in NSW. There is no direct evidence about the level of market share of the Employers, or their ability to influence outcomes in the industry. According to NECA, there are many more electrical contracting businesses in NSW and ACT at Tier 2 level (approximately 220). Presumably because of their smaller size, Tier 2 businesses tend to work on construction projects of up to $50 million in value, although in this case many of the Employers would appear to work across NECA's Tier 1/Tier 2 divide.

[34] The Employers submit that removing competition on the price of labour will promote competition on efficiency, capability, safety performance and productivity instead. There is insufficient evidence to establish the proposition, such as information about common tender requirements for electrical services work. I consider it likely that the cost of labour would be a significant component of any tender because the nature of the work is services-based. Larger, better-resourced businesses, are likely to have greater capacity to invest in safety performance and capability than their smaller competitors, meaning that competition on safety and capability alone is likely to advantage larger businesses. I deal further with questions of productivity and efficiency below.

[35] The CEPU has not filed any submission or evidence about its reasons for supporting the authorisation. There is apparent value for the CEPU (and for the Employers) in streamlined bargaining processes, both because of the nature of a bargaining for a multi-enterprise agreement (where a collective is represented by a few) and mechanisms in the Act that operate to facilitate such a process. For the CEPU, this includes a qualified right of veto over putting an agreement to a vote (s 180A and s 240B) and the ability to add or 'rope in' new employers to a multi-enterprise agreement on application by a bargaining representative (s 251(3)). If the authorisation is granted and a multi-enterprise agreement is made, the latter mechanism is likely to become a common alternative to enterprise-level bargaining in the electrical contracting industry because of the way bargaining has historically occurred. The effect will be to remove much of the debate about the benefits of enterprise bargaining from the enterprise level to the Commission, whose task it is to vary authorisations to add new employers on application where the relevant statutory requirements are met.

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[4] *Competition and Consumer Act 2010 (Cth),* s.2.

[5] *Visy Paper Pty Limited v Australian Competition and Consumer Commission* [2003] HCA 59 at [52].

[36] NECA submits that the real purpose of the application is the opportunity to rope in other employers in the electrical contracting industry once the multi-enterprise agreement is approved. The submission is not without substance, having regard to the accepted practice of industry pattern bargaining, and materials produced by NECA that speak to the CEPU's intentions:

1. A letter from the ETU NSW Branch to NECA on 20 October 2025, confirming that it would not agree to a carve out from its then proposed authorisation scope where there was an existing enterprise agreement or project agreement in place, because the carve out would 'impact on our ability to rope employees covered by single enterprise agreements with future nominal expiry dates into the SIE Agreement after these enterprise agreements expire', and that for employers identified by NECA with enterprise agreements that had not yet expired, it would apply to have them roped into the SIE Agreement immediately after the relevant single enterprise agreement expires, either with or without their consent.

2. A social media post on 17 June 2026 about the Employer's agreement to bargain, stating that the union would be 'trying to make sure employees of other companies get at least this'.

[37] Although the CEPU has now reversed its position of 20 October 2025 in relation to a proposed carve out of existing enterprise agreements and project agreements, its intention to rope in other employers in the electrical contracting industry in NSW and the ACT does not appear to have changed.

[38] NECA further submits that the Employers have agreed to bargain together because the authorisation will lead to a 'levelling up' of lower tier businesses in terms of their cost of doing business. NECA submits that the likely practical effect of doing so will be to exclude many Tier 2 businesses from the market. The submission is not dissimilar to the Employer's reason for agreeing to bargain together: that is, to limit the scope for differences of outcome among the Employers and their competitors.

[39] On the materials, the practice of pattern bargaining in the electrical contracting industry tends against a finding that the authorisation is not contrary to the public interest, including because one purpose of the authorisation is to restrict competition in the electrical services market.

Productivity benefits?

[40] This case is unusual in that despite no authorisation having yet been issued, bargaining for a proposed multi-enterprise agreement has substantially progressed to the point where its terms appear to be mostly known. This makes it relevant to consider those terms as part of the broader context for the application, accepting that work is still to be done (or at least was, at the time of hearing) on Schedules to the proposed agreement to differentiate certain aspects of employee's terms and conditions of employment based on project size and geographical location. Making the authorisation is likely to see the terms of the proposed agreement become commonplace in the electrical contracting industry in NSW and the ACT, both in metropolitan areas and in the regions.

[41] A useful lens for the exercise is by reference to the objects of Part 2-4 of the Act (Enterprise Agreements) and in particular, the object found in s 171(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.

[42] The potential for productivity benefits does not attract much focus in the Employer's materials. The CEPU was unable to identify any likely productivity benefits from the proposed agreement although it pointed to minimum quotas for the employment of women as well as ratios and related provisions supporting the employment of apprentices to address skills shortages. The CEPU's support for the authorisation was expressed in terms of its potential to improve terms and conditions of employment for employees, and this is true: the proposed agreement would deliver a significant uplift in pay and conditions for employees compared to the Award. This would be achieved by a related significant uplift in labour and compliance costs for employers currently operating on the Award.

[43] The Employers submit that the proposed authorisation would be consistent with the objects of the Act. However, other than aspirational 'objectives' in clause 2 of the proposed agreement, most of the proposed agreement terms appear to be either neutral on the matter of productivity or tend against the proposition that it will deliver productivity benefits, in the following ways:

1. By restricting the use of supplementary labour (clauses 7, 8 and 24(d)) and prohibiting the use of casual and temporary labour, including fixed or maximum term employment and project-based employment (clause 17)
2. By limiting work on construction wiring to licensed electricians (clause 13)
3. By restricting the use of foreign labour (clause 15)
4. By restricting the performance of electrical work, wiring and cable installation including by limiting the number of Grade 1-4 employees working with a qualified supervisor to one at any time (clause 16)
5. By fixing Rostered Days Off to an annual industry RDO calendar (clause 22)
6. By increasing the entitlement to annual leave to 5 weeks each year (6 weeks for continuous shiftworkers) (clause 25) (equivalent to 1254 weeks less work each year by affected employees of the Employers - although I note that this claim may remain in dispute), and
7. By restricting Grade 3 and 4 employees from undertaking any tasks requiring the skills of a tradesperson (Schedule A).

[44] One term of the proposed agreement claims productivity increases from converting the daily 30-minute unpaid meal break into a paid 30-minute break. Described as the standard 'one break day' (clause 21(i)), employees take one 30-minute 'unpaid' break during an 8-hour shift, but finish work 30 minutes earlier than normal finishing time without loss of pay. The result appears to be that employees work 7.5 ordinary hours and are treated as having worked 8 ordinary hours. The productivity benefit of the one break day only arises in the context of comparison to a two-break day (clause 21(j)), where employees work for 7 hours and 10 minutes, have a 20-minute paid break and a 30-minute unpaid break, and are paid for 8 hours.

Once voted in, this practice must be maintained at the affected site for the duration of the project. Adopting the one break day instead of the two-break day means an additional 20 minutes' work per employee. Although the Award is incorporated in the proposed agreement, there is no separate rest break for day workers in the Award. However, the productivity benefit of the one break day is illusory because it is offset by the loss of 30 minutes' work by reason of an earlier finishing time. The net effect is 10 minutes' less work per day.

[45] Clause 38 of the proposed agreement provides for an hourly 'productivity allowance' for employees who undertake annual CEPU or Energy Skills Australia training on an 'Agreement Interpretation Course'. In return, employees are entitled to an hourly allowance of between $1.05 per hour and $4.20 per hour (in 2026) depending on their classification and place of work. The premise is that employees who have a good understanding of the terms of the enterprise agreement will have better relationships with the company, and fewer disputes, leading to increased productivity. NECA's evidence is to the effect that its members have expressed doubt about this and are concerned that it may instead promote division and disputation. Each contention is arguable, and while there is undoubted value in improved knowledge and understanding, it is no guarantee of peace.

[46] Clause 43 contains a disputes settlement procedure, recording a fundamental objective of the proposed agreement to 'eliminate lost time in the event of a dispute'. Achieving that objective would avoid loss of productivity would be maintained although not enhanced. Separately, the disputes procedure is restrictive in relation to disputed changes because the pre-change 'status quo' must be maintained while the dispute is being resolved. This might happen quickly, but in other cases it might take many months or even years.

[47] Clause 44 provides for 'performance and flexibility', committing employees to working to the best of their ability and as reasonably required within the bounds of their practical competence, training, classification and safety. This general provision would likely operate subject to the restrictions on performance of work identified above.

[48] Clause 54 prohibits employees other than union delegates and health and safety representatives from using personal mobile telephones at work. This is likely to reduce distractions and so maintain (but not enhance) expected levels of productivity.

[49] Clause 75 provides for the Employers to establish a Consultative Committee whose purposes include to monitor, discuss, develop, recommend measures or actions on matters including productivity and competitiveness, and the removal of restrictive work practices.

Requirement to conceal and destroy information

[50] One term of the proposed agreement gives me cause for some disquiet. Clause 11(d) is part of a broader clause dealing with surveillance at work. Much of the clause is ordinary and directed at the reasonable protection of employee information. However, clause 11(d) requires the Employers to destroy information that comes into their possession as a result of surveillance by someone other than the Company. It further requires the Employers not to allow that information to be disclosed to any other person or to be used for any performance management, counselling or disciplinary action purpose, including dismissal. So, for example, if the owner of the site, or a security contractor, provides one of the Employers with images or camera footage of an employee that appears to show a serious safety incident, or alleged sexual harassment, or the commission of a crime, the term on its face would operate to require the Employer to destroy the evidence and not to admit its existence or use it in any investigation of the matter. Such an outcome would not be consistent with prevailing community standards.

[51] The electrical contracting industry contracts to the construction industry, and the Employers in this case work on some of Australia's major construction projects. Putting aside the question of whether the requirement to conceal and destroy evidence would itself involve unlawful conduct, it is likely to undermine efforts in the construction industry and the electrical contracting industry to provide a safe workplace, uphold integrity and foster a sense of security for employees and others while they are at work.

Other matters

[52] The Employers submit that the authorisation will support voluntary, orderly bargaining for a defined cohort, promote fair and efficient bargaining consistent with the objects of the Act and reflects a natural progression from established pattern bargaining practices, reducing cost and complexity. I have considered above whether the application is consistent with the objects of Part 2-4 of the Act. The parties' respective consent to the application is a matter of private interests, rather than the public interest. Each has a history of successfully bargaining for enterprise agreements in the electrical contracting industry.

[53] As a practical matter, the authorisation may reduce some of the costs of bargaining for those involved and simplify the bargaining process in some respects. But the notion of giving endorsement under statute to a mechanism that legitimises widespread pattern bargaining practices across an industry sits uncomfortably with the emphasis in Part 2-4 of the Act on enterprise-level bargaining and guardrails against industrial action in support of pattern bargaining in s 409(4).

Am I satisfied that it is not contrary to the public interest to make the authorisation?

[54] On the materials, I am not satisfied that it is not contrary to the public interest to make the authorisation. There is an insufficient evidentiary basis to reach a positive state of satisfaction to that effect in this case. The available information gives rise to concerns about whether the authorisation will facilitate outcomes that are consistent with the objects of the Act, and whether the outcome will instead mean less competition, lower productivity, and one that undermines efforts to ensure the safety, integrity and security of workplaces in the electrical contracting and construction industries. It follows that the requirements of s 249(3) are not met.

[55] *s 249(1)(b)(vi) & s 249(3) (reasonably comparable employers):* Because I am not satisfied that the requirements of s 249(3) are met, it is not necessary to consider whether the operations and business activities of the Employers are reasonably comparable with each other. If it were necessary to do so, I would have accepted that for most of the Employers, their operations and business activities are reasonably comparable. As noted above, they are relatively large businesses providing electrical services to mostly Tier 1 builders either nationally or in NSW, commonly in Sydney. They tend to work on major construction projects and compete with each other for work. In the case of National Cable Installations, the majority of its work is contracting to other electrical contractors, but on the same type of projects and at a similar scale.

[56] However, I would have held concerns about whether Goldline met the relevant threshold because of the nature of its work, its comparatively smaller size and the limited evidence of its operations and business activities. I would not have been satisfied on the evidence that the operations and business activities of Carringtons were reasonably comparable to those of the other Employers. Carringtons is a much smaller operation, with approximately 18 employees. It services residential, commercial and industrial clients. While details are scant in relation to its operations and business activities, it is likely that its access to resources and its capacity to establish and implement systems and processes and compete generally in the market is materially limited in comparison to the other Employers, whose workforce size ranges from more than 50 to approximately 380 employees.

Restriction on authorisations in relation to general building and construction work

[57] A restriction applies to the making of a single interest authorisation in relation to a proposed enterprise agreement if the agreement would cover employees in relation to general building and construction work (s 249A).

[58] There is a close relationship between the industry of electrical services and the industry of general building and construction in this case. The Employers regularly contract to, and work with, other businesses in the construction industry. Proposed terms of the agreement recognise this reality by differentiating terms on the basis of location and value of construction projects. Although the words 'in relation to' are of wide import, they are used in this context to refer to the work performed by employees that would be covered by the proposed agreement. That means, in this case, work in the industry of electrical services.

[59] General building and construction work has the meaning given to it by s 12 and s 23B(1) of the Act. Relevantly, it means work done, onsite, by an employee in the industry of general building and construction or civil construction (in each case as defined in the *Building and Construction General On-site Award 2020*). Expressly excluded from this definition is work in the industry of electrical services, within the meaning of the Electrical Award.

[60] It follows that s 249A does not restrict the making of the authorisation in this case.

Conclusion

[61] As I am not satisfied that each of the requirements for a single interest employer authorisation have been met, I am not required to make a single interest employer authorisation in the terms sought.

[62] The application is dismissed.

COMMISSIONER

Hearing details:

Sydney
July 28.

Appearances:
A DeBoos for the Applicant
A Heffernan for the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
P Willink for the National Electrical Contractors Association
No appearance for Thyristors Pty Ltd

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Annexure A – The Employers

No.	Name
1	Fredon Industries Pty Ltd (ABN 12 003 361 297)
2	Heyday5 Pty Ltd (ABN 85 158 865 091)
3	CESA Electrical Services Pty Ltd (ABN 30 682 973 762)
4	F.I.P. Electrical (NSW) Pty Ltd (ABN 62 066 085 578)
5	Grid Electrical Services Pty Ltd (ABN 67 112 551 532)
6	Thyristors Pty Ltd (ABN 15 139 626 029)
7	New Edge Group (Australia) Pty Ltd (ABN 63 169 892 791)
8	Goldline Industries Pty Ltd (ABN 65 145 459 490)
9	ARA Electrical Major Projects Division Pty Ltd (ABN 13 090 962 851)
10	Carringtons Electrical Pty Limited (ABN 16 089 302 796)
11	Barnwell Cambridge Pty Ltd (ABN 98 002 682 957)
12	National Cable Installations Pty Ltd (ABN 46 083 277 767)