

Form F1 – Application (no specific form provided)

Fair Work Commission Rules 2013, subrule 8(3) and Schedule 1

This is an application to the Fair Work Commission.

The Applicant



These are the details of the person who is making the application.

Title [] Mr [] Mrs [] Ms [] Other please specify:
First name(s)
Surname
Postal address 540 Elizabeth Street
Suburb Melbourne
State or territory Victoria **Postcode** 3000
Phone number (03) 9274 9200 **Fax number** (03) 9274 9284
Email address mflinn@cfmeu.org

If the Applicant is a company or organisation please also provide the following details

Legal name of business Construction, Forestry, Maritime, Mining and Energy Union
Trading name of business N/A
ABN/ACN 17 402 743 835
Contact person Michael Flinn

How would you prefer us to communicate with you?

Email (you will need to make sure you check your email account regularly)

Post

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, a union or a family member or friend who will speak on behalf of the Applicant. There is no requirement to have a representative.

Yes – Provide representative's details below

No

Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person	Phillip Pasfield		
Firm, union or company	Slater & Gordon Lawyers		
Postal address	Level 5, 44 Market Street		
Suburb	Sydney		
State or territory	New South Wales	Postcode	2000
Phone number	(02) 8071 2749	Fax number	(02) 8267 0650
Email address	phillip.pasfield@slatertgordon.com.au		

The Respondent



These are the details of the person or business who will be responding to your application to the Commission.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	N/A		
Surname			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

If the respondent is a company or organisation please also provide the following details

Legal name of business
Trading name of business
ABN/ACN
Contact person

1. The Application

1.1 Please set out the provision(s) of the Fair Work Act 2009 (or any other relevant legislation) under which you are making this application.

Section 246(1) of the Fair Work Act (Registered Organisations) Act 2009.

2. Order or relief sought

2.1 Please set out the order or relief sought.



Using numbered paragraphs, set out what you are asking the Commission to do.

- See annexure "A" – details of the existing reporting units.
- See annexure "B" – details of the proposed alternative division into reporting units.
- See annexure "C" - copy of the resolutions of the National Executive and the Divisional National Council of the MUA Division in favour of the proposed Division.

2.2 Please set out grounds for the order or relief sought.



Using numbered paragraphs, set out the grounds, including particulars, on which you are seeking the relief set out in question 2.1.

- See annexure "D" – statement of reasons supporting the proposed division.
- See annexure "E" - Declaration of Michael O'Connor, National Secretary of the Applicant.

3. The employer

3.1 What is the industry of the employer?

N/A

4. Industrial instrument(s)

4.1 Please set out any modern award, agreement or other industrial instrument relevant to the application and their ID/Code number(s) if known.

N/A

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature

Name

Phillip Pasfield

Date

27 June 2019



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

“A”

DETAILS OF EXISTING REPORTING UNITS

1. Having regard to the Judgment of the Federal Court of Australia in *Construction, Forestry, Maritime, Mining and Energy Union v Registered Organisations Commissioner* [2019] FCA 435 delivered on 2 April 2019 the applicant as a whole is one reporting unit.

“B”

DETAILS OF THE PROPOSED ALTERNATIVE DIVISION INTO REPORTING UNITS

1. It is proposed that the alternative division into reporting units be a combination of:
 - a) The MUA Division of the Applicant; and
 - b) The remainder of the Applicant.

“C”

COPIES OF THE RESOLUTIONS IN FAVOUR OF THE PROPOSED DIVISION

1. Resolution of the National Executive dated 25 June 2019

“Having regard to the Judgment of the Federal Court of Australia in Construction, Forestry, Maritime, Mining and Energy Union v Registered Organisations Commissioner (2019) FCA 435 delivered on 2 April 2019 it is resolved that the Union be divided into two reporting units being the MUA Division and the remainder of the Union.

The National Secretary is authorized to take all steps necessary to make application to the Fair Work Commission to give effect to this resolution.”

The vote of the National Executive was one conducted in accordance with National Rule 14(iv). It was a vote of the National Executive conducted by the National Secretary by email. The vote opened on 20 June 2019 and concluded on 25 June 2019. The vote has the same effect as a decision of the National Executive made in meetings assembled.

2. Resolution of the Divisional National Council of the MUA Division – No. 87/2019

“Having regard to the Judgment of the Federal Court of Australia in Construction, Forestry, Maritime, Mining and Energy Union v Registered Organisations Commissioner [2019] FCA 435 delivered on 2 April 2019 it is resolved that the Union be divided into two reporting units being the MUA Division and the remainder of the Union.”

The resolution of the Divisional National Council of the MUA Division was conducted pursuant to MUA Divisional Rule 17(e)(ii). The proposed resolution was put to the members of the Divisional National Council by the Divisional National Secretary on 20 June 2019 and was recorded as Divisional National Council Vote No. 87/2019. A decision was made in favour of the resolution. Such decision is effective for all purposes as though it had been made by a resolution of the Divisional National Council.

“D”

STATEMENT OF REASONS SUPPORTING THE PROPOSED DIVISION

1. On 29 June 1992, a Deputy Industrial Registrar of the Australian Industrial Registry issued a consolidation certificate in respect of the Waterside Workers' Federation of Australia ("WWF") pursuant to section 271 of the *Industrial Relations Act 1988* (Cth) ("1992 WWF Consolidation Certificate").
2. On 1 July 1993, the WWF amalgamated with the Seamen's Union of Australia to form The Maritime Union of Australia ("MUA").
3. On and from 1 July 1993, the MUA reported as one financial reporting unit on the basis of the 1992 WWF Consolidation Certificate.
4. On 27 March 2018, the MUA and the Textile, Clothing and Footwear Union of Australia ("TCFUA") amalgamated with the Construction, Forestry, Mining and Energy Union to form the Construction, Forestry, Maritime, Mining and Energy Union ("CFMMEU"). On the same day, the MUA and TCFUA were deregistered. Relevantly, the MUA became the MUA Division of the CFMMEU.
5. On 2 April 2019, Bromwich J of the Federal Court of Australia delivered Judgment in *Construction, Forestry, Maritime, Mining and Energy Union v Registered Organisations Commissioner* [2019] FCA 435. His Honour found that the 1992 WWF Consolidation Certificate survived the amalgamation on 27 March 2018 notwithstanding section 251 of the *Fair Work (Registered Organisations) Act 2009* (Cth) and that the references in the 1992 WWF Consolidation Certificate are references to the CFMMEU.
6. Consequently, the 1992 WWF Consolidation Certificate permits and requires financial reporting at the level of the CFMMEU as a whole.
7. The MUA Division desires to continue to report as one reporting unit as it has continued to do so since 27 March 2018 on a de facto basis. It is submitted that the level of financial information that would be available to the members of the MUA Division affected would be adequate and relevant to them in that the financial reporting would continue on the same basis as has been done since 1 July 1993. Further, the Rules of the MUA Division are designed on the basis that the MUA Division is one reporting unit. In particular, reference is made to MUA Divisional Rule 52. The MUA Division is not aware that in continuing to report as has been done since 1 July 1993 that there has been any adverse comment by the regulator (from time to time) or by members or others during that period as to the alternative basis of reporting other than the matters raised by Mr Enright of ROC in 2018 which ultimately led to the Judgment of the Federal Court in *CFMMEU v ROC* [2019] FCA 435.

"E"

DECLARATION

Regulation 153(1) of the Fair Work (Registered Organisations) Regulation 2009, section 246(1) of the Fair Work (Registered Organisations) Act 2009

I, Michael O'Connor, of 540 Elizabeth Street, Melbourne in the State of Victoria, Union Official, hereby declare that:

1. I am the National Secretary of the Construction, Forestry, Maritime, Mining and Energy Union ("CFMMEU").
2. I am authorised to make this declaration on behalf of the CFMMEU.
3. I verify that the facts set out in the accompanying application and the documents lodged with and attached to the application are true and correct.

Dated: 27 June 2019



Michael O'Connor

National Secretary

Construction, Forestry, Maritime, Mining and Energy Union