



22 November 2016

The General Manager
Fair Work Commission
80 William Street
EAST SYDNEY NSW 2000

Filed electronically

Dear General Manager,

Application to vary the *Black Coal Mining Industry Award 2010* to provide for safety net coverage of Mines Rescue Employees

Attached to this correspondence is an application pursuant to s158 of the *Fair Work Act 2009* to vary the *Black Coal Mining Industry Award 2010*. The specific terms of the proposed variations are contained in 'Attachment A' to the application.

The terms of the proposed variations have been the subject of a number of meetings involving representatives of the Mines Rescue services in New South Wales and Queensland and unions representing their employees over the last two years. The most recent of these meetings was a conference chaired by Senior Deputy President Hamberger on 17 November 2016.

A copy of this application will be served shortly on interested parties.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Alex Bukarica', is written over a light blue horizontal line.

Alex Bukarica
National Legal Director

Form F46 Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

The Applicant



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

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input checked="" type="checkbox"/> Other please specify: Registered Organisation		
First name(s)	Construction, Forestry, Mining and Energy Union		
Surname			
Postal address	Level 11, 215-217 Clarence Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	(02) 9267 1035	Fax number	(02) 9267 3198
Email address	abukarica@cfmeu.com.au		

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

Legal name of business	Construction, Forestry, Mining and Energy Union
Trading name of business	
ABN/ACN	
Contact person	Alex Bukarica, National Legal Director

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. 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	Alex Bukarica		
Organisation	Construction, Forestry, Mining and Energy Union		
Postal address	Level 11, 215-217 Clarence Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	(02) 9267 1035	Fax number	(02) 9267 3198
Email address	abukarica@cfmeu.com.au		

1. Coverage

1.1 What is the name of the modern award to which the application relates?



Include the Award ID/ Code No. of the modern award

Black Coal Mining Industry Award 2010 (MA000001)

1.2 What industry is the employer in?

Coal Mining Industry

2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award
 a modern award
 a determination revoking a modern award

2.2 What are the details of your application?

The details of the application are contained in **Attachment A** “Schedule of Proposed Variations to the *Black Coal Mining Industry Award 2010*.”

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

Background

1. Mines Rescue personnel are integral to the day-to-day operation of the black coal mining industry in Australia and play a vital occupational health and safety role.
2. There are presently two Mines Rescue service providers for the coal mining industry located in New South Wales and Queensland. These Mines Rescue services engage employees to perform essential functions related to the delivery of Mines Rescue and associated services. Similarly, the Mines Rescue services provide essential support and training for the many volunteer Mines Rescue teams, which are a ubiquitous feature of the black coal mining industry.
3. The two Mines Rescue service providers and the representatives of Mines Rescue employees have agreed, on a “without prejudice” basis, to a number of proposed variations to the *Black Coal Mining Industry Award 2010* (‘BCMIA’). These proposed variations relate to employees of Mines Rescue

services only.

4. The process leading to the development of the proposed variations can be briefly summarised as follows:
5. On 20 December 2013 the Queensland Mines Rescue Service ('QMRS') filed an application to make an Enterprise Award to replace the existing Enterprise Instrument applying to employees of QMRS (Fair Work Commission matter EM2013/99).
6. As a consequence of this application, a conference was convened by Senior Deputy Harrison (as she then was) on 26 August 2014. In addition to QMRS, the Senior Deputy President invited Coal Services Pty Ltd (the counterpart service to QMRS in New South Wales), the CFMEU, and APESMA Collieries Staff Division to the conference.
7. At the conference, Her Honour suggested that the parties might wish to consider appropriate amendments to the *Black Coal Mining Industry Award 2010* ('BCMIA') as an alternative vehicle for obtaining safety net award coverage for Mines Rescue employees, rather than seeking the making of one or more enterprise awards.
8. Consequently, representatives of employers and employees met on a number of occasions over the ensuing two years to consider the types of variations to the BCMIA that would be necessary to provide an effective safety net for Mines Rescue employees.
9. These meetings resulted in a number of proposed variations to the BCMIA that are agreed on a "without prejudice" basis by the abovementioned parties and which are attached to this application as '**Attachment A**'.
10. On 17 November 2016, a further conference was convened by Senior Deputy President Hamberger and representatives of QMRS, Coal Services Pty Ltd, the CFMEU, and APESMA Collieries Staff Division.
11. At the conclusion of this conference it was agreed that the matter would proceed on the basis of the CFMEU lodging an application pursuant to s.158 of the Act and that appropriate directions would then issue.

Grounds and reasons

12. The proposed variations are necessary to achieve the modern awards objective in that they will establish a fair and relevant minimum safety net of terms and conditions for Mines Rescue employees.
13. At present, Mines Rescue employees in the State of New South Wales do not have safety net award coverage as a result of the termination of *The Coal Mining Industry (Permanent Mines Rescue), New South Wales Award 2001*

due to the operation of Schedule 6, Item 10 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.


14. Similarly, in the State of Queensland, the safety net award applicable to Mines Rescue personnel, *The Coal Mining Industry (Mines Rescue Staff) Award 2005*, is a preserved Enterprise Instrument, whose terms and conditions of employment pre-date the Modern Award system.
15. The proposed variations to the BCMIA will, if made, modernise and enhance a fair and relevant minimum safety net of terms and conditions, by reference to the Modern Awards Objective contained in s136 of the Act, in respect of the regulatory framework applicable to Mines Rescue personnel in New South Wales and Queensland.
16. The proposed variations satisfy the requirements of ss136 and 157 of the Act and should be granted.

Attach additional pages, if necessary.

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	Andrew Vickers
Date	22 November 2016
Capacity/Position	General Secretary



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

Attachment A:

Schedule of Proposed Variations to the *Black Coal Mining Industry Award 2010*

1. In “Table of Contents” insert a new “Schedule H” immediately following existing “Schedule G” as follows:

“Schedule H – Mines Rescue Service Employees”

2. In clause “3. Definitions and interpretation”, under sub-clause 3.1, insert a new definition for “mines rescue service” immediately after the existing definition of “mine”, in the following terms:

“**mines rescue service** means an entity which is established for the purpose of providing mines rescue activities, pursuant to relevant State legislation, within the black coal mining industry.”

3. In clause “4. Coverage”, under sub-clause 4.1(b), insert an additional sub-paragraph containing the following words:

“(iii) employees employed by a mines rescue service.”

4. In “Schedule B.1 Employment Functions” immediately after the existing definition of “Assistant Surveyor” insert a new definition of “Training Officer” as follows:

“**Training Officer** means an employee of a mines rescue service who undertakes training of coal mine employees and other persons in respect to mines rescue equipment or procedures.”

5. In Schedule B.2.1 under Group H, immediately after the existing classification of “Training Officer” insert consecutively, the following new classifications:

“Mines Rescue Training Officer Level 1”

“Mines Rescue Technical Officer Level 1”

“Occupational Hygienist/ Statutory Dust Sampler”

6. In Schedule B.2.1 under Group I, immediately after the existing classification of “Mine Surveyor”, correct the existing typographical error by separating into two consecutive classifications “Planning Officer” and “Occupational Health Nurse”
7. In Schedule B.2.1 under Group I, immediately after the now corrected classification of “Occupational Health Nurse” insert consecutively, the following new classifications:

“Mines Rescue Training Officer Level 2”

“Mines Rescue Technical Officer Level 2”

8. In Schedule B.2.1 Group J, immediately after the existing classification “EDP Supervisor” insert consecutively, the following new classifications:

“Mines Rescue Training Officer Level 3”

“Mines Rescue Technical Officer Level 3”

9. In Schedule B.2.1 Group K, immediately after the existing classification “Coal Preparation Plant Supervisory” insert consecutively, the following new classifications:

“Mines Rescue Training Coordinator”

“Mines Rescue Senior Technical Officer”

10. In Schedule B.2.1 Group L, immediately after the existing classification of “Chief Electrical and/or Mechanical Engineer” insert new a new classification as follows:

“Mines Rescue Assistant Superintendent”

11. In Schedule B.2.1 Group M, immediately after the existing classification of “Undermanager (in charge)” insert a new classification as follows:

“Mines Rescue Superintendent”

12. In Schedule B.2, immediately after the last paragraph in the existing sub-clause B.2.3, insert a new subsection B.2.4 as follows:

“B.2.4 Training and Development – Mines Rescue Training Officers

The Employer will provide reasonable training and development as is required for the employee to undertake their role, or as required by the Employer, so that employees:

- (a) maintain competencies and a skills base in order to carry out the requirements of their role
- (b) can demonstrate the capability to undertake any reasonable tasks required by the Employer
- (c) are supported to progress through the classifications set out in B.2.1, as agreed by the employee and Employer.

13. Insert new “Schedule H”, immediately following existing “Schedule G” as follows:

“Schedule H – Mines Rescue Service Employees

H.1 The following provisions shall apply to mines rescue service employees only. The provisions in this Schedule shall prevail over any other term of the Award, to the extent of any inconsistency.

H.2 **Stand-by allowance:** - a stand-by allowance calculated on a daily basis shall be payable to employees who are placed on a stand-by roster, at the following rates:

H.2.1 For employees on a Monday to Friday stand-by roster - \$79.76;

H.2.2 For employees on a stand-by roster that includes Saturday and/or Sunday - \$145.45

- H.2.3 For Duty Officers on a Monday to Friday stand-by roster - \$93.84
- H.2.4 For Duty Officers on a stand-by roster that includes Saturday and/or Sunday - \$187.68
- H.3 **Stand-by rosters:** - when formulating a stand-by roster, the employer shall ensure that an employee is not continuously on stand-by for more than two consecutive week-ends or for more than two consecutive working weeks (other than in exceptional circumstances).
- H.4 **Overnight travel:** - an employee required by the employer to be absent from his or her normal residence overnight, shall be provided with one of the following at the discretion of the employer:
- H.4.1 A reasonable standard of hotel/motel or site camp accommodation and one evening meal and one breakfast meal, free of charge; or
- H.4.2 An expense related allowance of at least equivalent value to H.4.1 above: or
- H.4.3 Reimbursement of overnight accommodation and meal expenses on the basis of the standard provided for in H.4.1 above.
- H.5 **Work related travel:** - an employee shall not be required by the employer to travel outside of his or her own normal working hours for work related purposes without appropriate compensation or time off in lieu, as agreed to by the employer and employee. This provision excludes an employee's commute from his or her residence to normal place of work.
- H.6 **Emergencies:** - in the event of a mine site emergency involving the deployment of mines rescue service employees, the following provisions of the Award shall be suspended for the duration of the emergency, upon the direction of the Mines Rescue Superintendent, or Assistant Superintendent:

H.6.1 Clause 17.6 – (rest period after working overtime).

H.6.2 Clause 21.1 – (ordinary hours of work).

H.6.3 Clause 22 – (Shift work).

H.6.4 Clause 24 – (meal breaks).

Provided that nothing in this clause shall be read as releasing the employer from payment of the normal shift allowances, penalties and overtime rates of pay that are payable for the work undertaken by employees.

H.7 **Medical retirement:** - should an employee be subject to medical retirement, they shall be entitled to severance pay at the rate of one week's pay for each year of service in addition to all other accrued entitlements.