



21 November 2017

Frank Porreca
Treasurer
Master Builders Association of the Australian Capital Territory
canberra@mba.org.au

Dear Mr Porreca

Organisation must respond to the post-election reports of the Australian Electoral Commission: E2017/31 and E2017/155

On 20/11/2017 the Registered Organisations Commission (the ROC) received post election reports from the Australian Electoral Commission (AEC) for elections E2017/31 and E2017/155 dated 20/11/2017. The AEC will have also provided the report to the organisation under section 197 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

These reports identify rules that were difficult to interpret or apply, in particular rules 8 and 15(h). This letter serves as a reminder of the obligations imposed on the organisation or branch as a consequence of the AEC's reports. If a response has already been sent to the AEC and made available to all members please disregard this letter.

A notice must be published on the organisation's website

The organisation or branch must publish on its website a notice that a copy of the report is available from the organisation, branch or the AEC on request. The notice must be kept on the website for a period of at least 3 months (see regs 141(4) and (5)).

A written response must be provided to the AEC

A written response must be provided to the AEC within 30 days of receipt of the report. The organisation's response must include whether the organisation or branch intends to take action and if so what action the organisation or branch intends to take (s198(2)).

Extract of report must be made available to members

The organisation or branch must make the section of the report relating to the difficult rules available to its members (s198(3)). This extract from the report must be made available to the members before or at the same time as the organisation's response is made available to members.

Written response must be made available to members

A copy of the organisation's response to the AEC must be made available to members either:

- within 30 days after the response is given to the AEC, or
- published in the next edition of the organisation or branch journal (s198(5))

Subsection 198(6) and regulation 142 prescribe ways in which the relevant extract and the copy of the response can be made available to members. These do not limit the ways in which they can be made available to members. The organisation will comply if it does all of the following:-

- publish the report extract and the copy of the response in the next edition of the organisation or branch's journal; and

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- within 30 days of giving the response to the AEC:
 - lodges with the ROC a copy of the relevant extract and response, together with a declaration that a copy will be provided to any member who so requests; and
 - give notice in the next edition of the organisation or branch's journal, or an appropriate newspaper, that a copy of the relevant extract and response are available on request to each member free of charge; and
- publish the relevant extract on the website within 14 days after receiving the report, and publish the response on the website within 14 days of giving the response to the AEC (reg 142(2)).

Penalties may apply

If the organisation or branch does not:

- respond to the AEC within 30 days,
- make the extract of the report relating to the rules available to members no later than the organisation's response is made available to members, or
- make the organisation's response available to members within 30 days or in the next edition of the journal,

the organisation may face penalties under the RO Act. Each requirement listed above is a civil penalty provision that may result in fines for the organisation

As noted above, if the response and report have already been made available to members and the AEC, please disregard this letter. If you have any questions in relation to these obligations please contact the ROC for assistance by email to regorgs@roc.gov.au.

If the organisation or branch decides to alter its rules in response to the AEC's report

If the organisation or branch decides to alter its rules in response to the AEC's report, the ROC is NOT able to provide advice and assistance regarding draft alterations or the processes required to make the alterations. Rule alterations remain a function of the Fair Work Commission.

Yours faithfully

Christine Hibberd

Registered Organisations Commission

20 November 2017

Post-election Report

**Master Builders Association of the Australian
Capital Territory – E2017/31**

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Election(s) Covered in this Report

Election Decision No/s: E2017/31

Rules

Rules used for the election: [241V: Incorporates alterations of 20/6/2014 [R2013/45]]
(replaces rulebook dated 1/12/2013 [D2012/228 & 229])

Rules difficult to apply/interpret: **Issues related to Representative:-**

Rule 8 of the association indicates that representative and additional representative have equal duties and responsibilities. The member listing provided to the returning officer identifies the representatives as voter 1 and voter 2. This is difficult to apply as it is not clear which of the two voters should receive the ballot materials. It is highly recommended that for the purpose of an election, the rules specify who out of the two representatives have voting rights.

Rule 8 & Rule 15(h) is difficult to apply & interpret, particularly whether a member can have both their representative and additional representative on the council. For clarity, the rules must specify if the council can have not less than 5 or more than 20 unique members on the council. If a member cannot have both its representative and additional representative on the council, then the rules must provide an avenue for the returning officer to resolve nominations should both representative from the same member nominate.

Similar type of issues were also raised in the post-election report related to election reference number E2016/112. It is recommended that these issues be resolved to avoid possible irregularities in future elections.

Model Rule reference (if any) : None

Roll of Voters

As there were no contested offices, no Roll of Voters was required.

Irregularities

Details of written allegations of irregularities, and action taken by AEC: None

Other irregularities identified, and action taken: None

Other Matters

Issues related to Casual Vacancy election:

Delete “Executive Director” and replace with “Returning Officer” under rule 16(b). This rule may contravene Sec 143(b) of Fair Work (Registered Organisations) Act 2009 unless the casual vacancy meets the requirement of Sec 146(2). To allow for flexibility, the rule can specify the circumstances where an executive director will call for nominations or when an AEC returning officer will call for nominations.

Rule 16 (e) and 16 (f) also need to make the same distinction as above. That is, whether the rules apply for an ordinary election arising from insufficient nominations/ resignation or a casual vacancy arising from sec 146 (2). Rule 16 (e) and 16(f) cannot be followed for an ordinary election arising from insufficient nomination or resignations (that do not meet sec 146(2)).

Similar type of issue was also raised in the post-election report related to election reference number E2016/283. It is recommended that these issues be resolved to avoid potential irregularities in future elections.

Attachments

- 1) Declaration of results for Uncontested Offices

Ishtiaq Ahmed
Returning Officer
20 November 2017

Master Builders Association of the Australian Capital Territory

Scheduled Election 2017– E2017/31

Declaration of Results for Uncontested Offices

Below are the results of the election for the following offices, conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation.

Master Builders Association ACT

President

Candidates

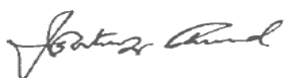
FERREIRA, Graciete

Treasurer

Candidates

PORRECA, Frank

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.



Ishtiaq Ahmed
Returning Officer

6 September 2017



DECISION

Fair Work (Registered Organisations) Act 2009
s.189—Arrangement for conduct of an election

Master Builders Association of the Australian Capital Territory (E2017/31)

MR ENRIGHT

MELBOURNE, 17 JULY 2017

Arrangement for conduct of election.

[1] On 5 June and 10 July 2017, the Master Builders Association of the Australian Capital Territory lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

President
Treasurer

[2] The organisation did not lodge the prescribed information before the prescribed day as required by regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009*. The prescribed information should have been lodged by 18 May 2017. In its correspondence dated 10 July 2017, the Treasurer, Frank Porreca stated the delay was due to an ‘administrative oversight.’

[3] I am not satisfied that the above reason is a sufficient ground to justify the failure to comply with a statutory obligation. Having regard to the normal and reasonable expectation that registered organisations take steps to ensure they comply with the time-frame requirements set out not only in the *Fair Work (Registered Organisations) Act 2009* (the Act) but also in instruments or references pertaining to their own governance formulated by the organisations themselves, I decline on this occasion to allow, under section 189(2) of the Act, a later day for lodgement. The failure to lodge the prescribed information before the prescribed day therefore renders the organisation liable for a civil penalty provision pursuant to section 189(2) of the Act.

[4] The refusal of an extension of time under section 189(2) of the Act does not, however, affect a determination of an election notification matter for the purposes of section 189(3) of the Act.

[5] I am satisfied that an election for the abovenamed offices is required to be held under the rules of the organisation and, under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE COMMISSIONER

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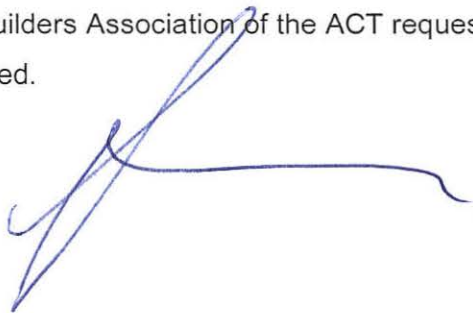
PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 *Fair Work (Registered Organisations) Act 2009* and Regulation 138 *Fair Work (Registered Organisations) Regulations 2009*

I, Frank Porreca, being the Treasurer of the Master Builders Association of the Australian Capital Territory, make the following statement:

1. I am authorised to sign this statement containing prescribed information for the Master Builders Association of the Australian Capital Territory
2. The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. The elections that are required are set out in the table in Annexure A.
4. Insufficient nominations were received in an earlier election and the declaration of results is attached.
5. Due to an administrative oversight this statement is not lodged at least 2 months before nominations open for the election below.
6. Accordingly Master Builders Association of the ACT requests an extension of time to allow this information to be lodged.

Signed:

Dated: 10 July 2017



[PLEASE NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. It can be submitted to regorgs@roc.gov.au.]

ANNEXURE A

- Elections that are required:

Name of Office	Number required	Voting System <i>Direct voting system; Collegiate electoral system</i>	Reason for Election <i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	Electorate
<i>President</i>	1	<i>DVS</i>	<i>Scheduled</i>	<i>All financial and life members of the association – Rule 15(a).</i>
<i>Treasurer</i>	1	<i>DVS</i>	<i>Scheduled</i>	<i>All financial and life members of the association – Rule 15(a).</i>

- Important dates:
For President and Treasurer

	Direct Voting System
Nominations OPEN	<i>At least six (6) weeks prior to the Annual General Meeting (held on 29th August 2017 at the latest) - Rules 20 and 15(d).</i>
Nominations CLOSE	<i>4pm, at least four (4) weeks prior to the Annual General Meeting - Rule 20 and 15(f)</i>
Roll of Voters cut off date	<i>7 days prior to nominations opening -Rule 15(i)(ii).</i>