



Australian Government
Registered Organisations Commission

4 February 2019

Ms Graciete Ferreira
President
Master Builders Association of the Australian Capital Territory
Graciete@pfwork.com.au

Cc: canberra@mba.org.au
aberry@mba.org.au

Dear Ms Ferreira

I acknowledge the receipt of Ashlee Berry's letter dated 7/01/2019 in regard to the post-election report referred to in this letter, please note that the following information is intended only as a reminder of all of the actions to be taken in regard to that report.

Organisation must respond to the post-election report of the Australian Electoral Commission: E2018/106

On 24/12/2018 the Registered Organisations Commission (the ROC) received a post election report from the Australian Electoral Commission (AEC) for election E2018/106 dated 24/12/2018. 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).

The report identifies 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 report. 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
- 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

7 January 2019

Australian Electoral Commission

By email only to: industrial.elections@aec.gov.au

Dear Sir/Madam

Response to Post-election report: E2018/106 24 December 2018

I note that the Post-election report for the recent scheduled election (E2018/106) identifies a number of rules that are difficult to apply/interpret, namely Rules 8 and 15.

I note that an application was recently made to the Fair Work Commission for amendments to the Rules of the Master Builders Association of the ACT to be made (R2018/260 and R2018/313), which is yet to be finalised.

It is also the intention of the Master Builders Association of the ACT to undertake a comprehensive review and update of its Rules prior to the next scheduled election in 2019. This review and update will take into consideration the issues raised by the AEC in the Post-election report, and will address any outstanding concerns from previous elections.

If you have any queries please contact me on 02 6175 5900.

Yours sincerely,



Ashlee Berry
Legal & Compliance Director

Post-election report

**Master Builders Association of the
Australian Capital Territory**
Scheduled Election
E2018/106

Contents

- Election(s) Covered in this Report3
- Rules.....3
- Roll of Voters4
- Irregularities.....4
- Other Matters4
- Signed5
- Attachments5
 - A. Stage One: Declaration of Results for Uncontested Offices5
 - B. i) Stage Two: Declaration of Results for Uncontested Offices.....5
 - ii) Stage Two: Declaration of Results for Contested Offices5

Election(s) Covered in this Report

Organisation: Master Builders Association of the Australian Capital Territory

Election: Scheduled

Election Decision No/s: E2018/106

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:

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: N/A

For more details see the Model Rules on the AEC website:

https://www.aec.gov.au/About_AEC/AEC_Services/Industrial_Elections

Roll of Voters

Total number of voters on the Roll:	3
Number of apparent workplace addresses:	Nil
Number of non-current addresses:	Nil
Other matters pertaining to the roll of voters:	Nil

Irregularities

Details of written allegations of irregularities, and action taken by AEC: Nil

Other irregularities identified, and action taken:

Other Matters

Returning Officer actions required (Section 193): Yes
Details:

Rule 15(f), Rule 15(i)(ii) and Rule 15(i)(iii) are considered to be procedurally defective because they do not allow sufficient time to complete all nomination and ballot processes in particular the resolution of defective nominations and the time allotted for the return of completed ballot material and completion of ballots prior to declaration of results at the Annual General Meeting.

Accordingly, action was taken under Section 193(1)(b)(ii) of the Fair Work (Registered Organisations) Act 2009 to vary the ballot timetable in order to extend the ballot period to ensure that members have sufficient time to cast their vote by post and provide sufficient time to complete ballot counts and declare results.

It is recommended that the Association address this issue.

Signed



Catherine Bernoth
Returning Officer
Australian Electoral Commission
E: nswelections@aec.gov.au
P: 02 9375 6362
24 December 2018

Attachments

- A. Stage One: Declaration of Results for Uncontested Offices
- B.
 - i) Stage Two: Declaration of Results for Uncontested Offices
 - ii) Stage Two: Declaration of Results for Contested Offices

Master Builders Association of the Australian Capital Territory

DECLARATION OF RESULTS - E2018/106 - Stage 2

Contested Offices

Scheduled Election

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 are:

Suppliers and Subcontractors Council

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	3
Number of voters issued with voting material	3
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	3
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	2
Number of declaration envelopes rejected at preliminary scrutiny (minus)	0
Number of ballot papers returned outside declaration envelopes (minus)	0
COUNT	
Total ballot papers admitted to the count	2
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	0
Voting material packs not returned by voters by closing date of the ballot	1
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	67 %

Alternate Chairman (1)

<u>Candidates</u>	<u>Final Votes</u>
JOSIFOSKI, Rosa	2
PORTER, Karen	0

Total ballot papers admitted for this office	2
Formal Ballot papers	2
Informal Ballot papers	0

I declare the following elected:

- JOSIFOSKI, Rosa



Catherine Bernoth
Returning Officer
Telephone: 02 9375 6375
Email: nswelections@aec.gov.au
06/12/2018

**Master Builders Association of the Australian Capital
Territory**

DECLARATION OF RESULTS - E2018/106
Uncontested Offices

Scheduled Election

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 are:

Commercial Builders Council

Alternate Chairman (1)

Candidates

LUKS, Valdis

Residential Builders Council

Alternate Chairman (1)

Candidates

CORVER, Richard

Civil Contractors Council

Alternate Chairman (1)

Candidates

SACHDEVA, Anisha

Professional Council

Alternate Chairman (1)

Candidates

WISE, Stephen

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



Catherine Bernoth
Returning Officer
Australian Electoral Commission
23/11/2018



19 September 2018

Ms Graciete Ferreira
President
Master Builders Association of the Australian Capital Territory
Graciete@pfwork.com.au

cc: canberra@mba.org.au
aberry@mba.org.au

Dear Ms Ferreira,

Reminder of actions required when persons elected to office

The Australian Electoral Commission has provided the Registered Organisations Commission (the ROC) a declaration of results for the election of stage 1 uncontested offices for [E2018/106]. This letter is a reminder of certain obligations imposed on organisations and on persons elected to office.

A notice must be published on the organisation's website

The organisation or branch must, as soon as practicable after receiving the post-election report, 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 regulation 141 of the Fair Work (Registered Organisations) Regulations 2009).

Holders of office required to undertake approved training

Section 293K of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires each officer with financial management duties to undertake approved training that covers those duties within 6 months after the person begins to hold office. Please ensure that relevant officers undertake approved training within the required timeframe. Please also ensure that all new holders of office are advised of their obligations to make disclosures regarding remuneration, non-cash benefits and material personal interests, the details of which are provided for in the RO Act.

Organisation must notify the Commission of changes

Also, section 233(2) of the RO Act requires that an organisation must notify the Commission **within 35 days of any changes** to the holders of office in the organisation. **If there are no changes a notification is not required.** If the election has resulted in **any changes** to the holders of office, the Master Builders Association of the Australian Capital Territory must notify the Commission of these changes. In particular, please advise:

1. Person(s) who have ceased to hold office:
 - the name of the office vacated;
 - the date of the change of office holder; and
 - the name of the person vacating the office.
2. Person(s) who have commenced to hold office:
 - the name of the office now held;
 - the date of the change of office holder;
 - the name of the person now holding the office;

- the postal address of the person (generally the postal address of the organisation); and
- the occupation of the person now holding the office.

The notification must include a declaration by the Secretary (or other prescribed officer) that the information is a correct statement of the changes made. A template notification of changes, which may assist you, is attached. If any change does not apply until a date in the future, you do not need to notify until then (e.g. AGM, 1 January, 2nd Monday in March). If you have already lodged this information, please disregard this reminder.

Regards

Christine Hibberd
Registered Organisations Commission

Master Builders Association of the Australian Capital Territory
DECLARATION OF RESULTS - E2018/106
Uncontested Offices

Scheduled Election

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 are:

Commercial Builders Council

Chairman (1)

Candidates

No Nominations Received

Members of Ordinary Council (5-20)

Candidates

WISE, Stephen

BAUER, Mark

DELORENZO, Sam

BUTT, Simon

MACLACHLAN, Norman

HARRIS, John

LUKS, Valdis

SOFATZIS, Chris

Suppliers and Subcontractors Council

Chairman (1)

Candidates

No Nominations Received

Members of Ordinary Council (5-20)

Candidates

PORTER, Karen

JOSIFOSKI, Rosa

KRALJEVIC, Milan

Residential Builders Council

Chairman (1)

Candidates

LEEMING, Bryan

Members of Ordinary Council (5-20)

Candidates

TANCHEVSKI, Jason

CORVER, Richard

ROLAND, Marc

Civil Contractors Council

Chairman (1)

Candidates

MIDDLETON, Peter

Members of Ordinary Council (5-20)

Candidates

FORDE, Nigel

BURGESS, Jason

SACHDEVA, Anisha

RITCHIE, Stuart

GOODSELL, Rory

ZARDO, Nick

Professional Council

Chairman (1)

Candidates

NIKOLIC, John

Members of Ordinary Council (5-20)

Candidates

AHERN, Bryan

WISE, Stephen

CROMPTON, Andrew

LEEMING, Bryan

MULHERIN, Shelley

TAYLOR, Alisa

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

C Bernoth .

Catherine Bernoth
Returning Officer
Australian Electoral Commission
13/09/2018





DECISION

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

Master Builders Association of the Australian Capital Territory (E2018/106)

MR ENRIGHT

MELBOURNE, 26 JULY 2018

Arrangement for conduct of election.

[1] On 7 June 2018 the Master Builders Association of the Australian Capital Territory (the organisation) lodged with the Registered Organisations Commission (the ROC) prescribed information for an election to fill the following offices:

Commercial Builders Council

Chairman
Members of Ordinary Council (5-20)

Alternate Chairman

Suppliers and Subcontractors Council

Chairman
Members of Ordinary Council (5-20)

Alternate Chairman

Residential Builders Council

Chairman
Members of Ordinary Council (5-20)

Alternate Chairman

Civil Contractors Council

Chairman
Members of Ordinary Council (5-20)

Alternate Chairman

Professional Council

Chairman

Members of Ordinary Council (5-20)

Alternate Chairman

[2] I note that in my Decision in matter E2016/112¹ relating to these offices, I brought to the attention of the organisation that an adverse report was given by the Australian Electoral Commission (the AEC) to the organisation in relation to the previous election E2014/97.²

[3] The report in relation to E2014/97 was given by the AEC to the organisation on 19 December 2014. The report identified Rules 11(b) and 15 as rules difficult to apply/interpret.

[4] Section 198(1) of the RO Act requires an organisation to respond, in writing, to such a report within 30 days.

[5] Upon consulting with the AEC, the ROC was informed that a written response to the report was not provided to the AEC addressing the report or what action is to be taken by the organisation as required by subsection 198(1) and (2) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

[6] The organisation received another adverse report from the AEC following the conduct of election E2016/112. That report was given by the AEC to the organisation on 15 November 2016. The report identified Rules 7(b), 11(b) and 15 as rules difficult to apply/interpret.

[7] The AEC has informed the ROC that a written response to this further adverse report was not provided to the AEC, either addressing the report or what action is to be taken by the organisation as required by subsection 198(1) and (2) of the RO Act.

[8] An adverse report was also issued by the AEC following the election E2017/31³ The AEC has informed the ROC that the organisation responded to that report, and that the response stated that the rules of the organisation were (at that time) under review and that the organisation would engage with the Fair Work Commission (FWC) regarding its rules. I am advised that the organisation engaged with the FWC on 27 September 2017. However, the rules, as published on the FWC's website, have not been altered in response to the adverse reports from the AEC, and on that basis, I consider it is entirely likely that the AEC will encounter the same difficulty in interpreting these rules as previously reported.

[9] As it has been more than three years since these issues were first raised with the organisation, as well as further reminders throughout this period, I will separately consider, as Delegate of the Commissioner, appropriate action in relation to what appears to have been an inadequate response to these matters. I also strongly encourage the organisation to re-engage with the FWC with the view of changing its rules which the AEC has identified as difficult to apply/interpret as a matter of priority. The organisation should ensure that it complies with subsections 198(1) and (2) of the RO Act in relation to any adverse reports be issued by the AEC.

[10] Notwithstanding the apparent failure by the organisation to address, either adequately or at all, the matters raised in several adverse AEC reports, about which I intend to write

separately to the organisation, in my view the objectives of the RO Act are better served by arranging the election and then in turn, dealing with the AEC adverse reports.

[11] 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 RO Act, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE COMMISSIONER

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¹[\[2016\] FWCD 3107](#)

²[\[2014\] FWCD 2597](#)

³[\[2017\] ROCD 57](#)

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, Graciete Ferreira, being the President of the Master Builders Association of the ACT make the following statement:

1. I am authorised to sign this statement containing prescribed information for Master Builders Association of the ACT.
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. No rule alterations are pending that will impact the election.
5. This statement **IS** lodged at least 2 months before nominations open for the election below.

Signed:



Date:

7/6/18

ATTACHMENT A

Chairmen and Councilors of Ordinary Councils

Number of positions: 1 Chairman and between 5 and 20 Councilors / Members (inclusive of Chairman and Alternate Chairman and noting that note that fewer than 5 Councilors may be elected) for each of the following Ordinary Councils:

- Commercial Builders Council;
- Suppliers and Subcontractors Council;
- Residential Builders Council;
- Civil Contractors Council; and
- Professional Council.

Method: Direct voting system (DVS)

Length of Office: 2 years

Elected from: all full and financial and/or life members of each respective membership category for a particular Ordinary Council.

Elected by: all full and financial and/or life members of each respective membership category for a particular Ordinary Council.

Relevant rules: rules 5(b), 11(a), 11(b), 12(b), 15(a), 15(ba), 15(l)

Alternate Chairmen of Ordinary Councils (5)

Number of positions: 1 Alternate Chairman for each of the following Ordinary Councils:

- Commercial Builders Council;
- Suppliers and Subcontractors Council;
- Residential Builders Council;
- Civil Contractors Council; and
- Professional Council.

Method: Collegiate voting system (CVS)

Length of Office: 2 years

Elected from: the members – i.e. Chairmen and Councilors / Members – of each respective Ordinary Council.

Elected by: the members – i.e. Chairmen and Councilors / Members – of each respective Ordinary Council.

Relevant rules: rules 5(b), 11(a), 11(b), 12(b), 15(a), 15(ba), 15(l)

Reasons for election:

- Elections for offices and positions indicated above are required as the terms of office are due to expire in the normal course of events under the rules of the organisation.

Elected by:

- The DVS electorates for the for the Offices of the Chairpersons and Councillors / Members of the respective Ordinary Councils are all full and financial and/or life members of each respective membership category for a particular Ordinary Council (rules 5(b), 11(a), 11(b), 12(b), 15(a), 15(l)).
- The CVS electorates for the Offices of Alternate Chairpersons are the members – i.e. Chairmen and Councillors / Members – of each respective Ordinary Council (rules 5(b), 11(a), 11(b), 12(b), 15(a), 15(l)).

Nominations open:

- For Offices to elected by DVS – at least 6 weeks before the Annual General Meeting (**AGM**) on 2 October 2018, i.e. **20 August 2018** (rule 15(d)).
- For Offices to be elected by CVS – at the discretion of the Returning Officer

Nominations close:

- For Offices to be elected by DVS – four weeks prior to the AGM, i.e. **4 September 2018** (rule 15(f)).
- For Offices to be elected by CVS – at the discretion of the Returning Officer.
- Cut off date for roll for:
 - Offices to be elected by DVS – 7 days prior to the opening date for nominations, so 13 August 2018 (rule 15(i)(ii)); and
 - Offices to be elected by CVS –at the discretion of the Returning Officer.