



DECISION

Fair Work (Registered Organisations) Act 2009
s.159—Alteration of other rules of organisation

Master Builders' Construction and Housing Association of the Australian Capital Territory (R2012/202)

MR ENRIGHT

MELBOURNE, 26 AUGUST 2013

Alteration of other rules of organisation.

[1] On 12 November 2012 the Master Builders' Construction and Housing Association of the Australian Capital Territory (the organisation) lodged with Fair Work Australia (as the Fair Work Commission was then known) a notice and declaration setting out particulars of alterations to the organisation's rules.

[2] The particulars set out alterations to Rules 1, 2, 3, 4, 5, 5A, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 21, 21A, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43 and 44 of the rules of the organisation, deleted Rules 12 and 38 of those rules and renumbered the rules as a consequence of the aforementioned alterations.

[3] On 20 December 2012, the organisation lodged further material in support of its application, dealing with, inter alia, whether the alterations had been made under its rules.

[4] After examining the material which had been lodged, officers of the Fair Work Commission's Regulatory Compliance Branch wrote to the organisation on 26 April 2013. The correspondence sought further information in relation to the truncation of the terms of certain offices which would result from the deletion of Rule 12 and setting out concerns about the variations to various other rules.

[5] The organisation responded to the Fair Work Commission's correspondence on 21, 28 and 29 May 2013. I have considered all of the material lodged by the applicant when forming my opinion under subsection 159(1) of the *Fair Work (Registered Organisation's) Act 2009* (the Act).

[6] An issue arises about whether the alterations have been made under the rules of the organisation.

[7] Rule 43 contains the organisation's rule altering procedure. It provides, in part, that if a written request to alter the organisation's rules has been properly made, the "Peak Council shall then direct that the matter be referred to a Special Meeting of Members".¹ Although the matter was referred to a Special Meeting of Members, it was not referred by the Peak Council.²

[8] Instead, the alterations were considered by a meeting convened at the direction of the Executive Director following a request from the President.³

[9] Clearly, one of the rules associated with the organisation's rule altering procedure has not been complied with. In accordance with the Act, I am required to be satisfied that the alterations have been made under the rules of the organisation.

[10] Predecessors of the FWC held that an organisation must strictly adhere to requirements of its rule altering procedure. Further, the doctrine of waiver cannot be called upon to excuse non compliance. In other words, compliance with the rule altering procedure was mandatory and non compliance was fatal. If any aspect of the procedure was departed from, the affirmative opinion required under s.159(1)(c) - or its legislative forebears - was not available.

[11] This approach was based on the application of a judgment of the Full Court of the Federal Court in *Lawrence v Porter*.⁴ (*Porter*)

[12] *Porter* arose from attempts by The Australian Journalists Association to affiliate with the Australian Council of Trade Unions. These attempts were resisted by a sizeable proportion of the union's membership. Rule alterations were transacted as a facilitative step towards affiliation. In proceedings before the Federal Court, and subsequently on appeal to the Full Court, it was argued that the purported resolution to alter the rules was of no effect and a nullity and consequentially no alteration to the rules had occurred. The resolution was said to be a nullity because irregularities had infected the process by which it was purportedly transacted.

[13] Northrop J stated:

The Federal Court, consistently, has held that the rules of an organization making provision for the alteration of the rules of the organization are mandatory in the sense that they must be complied with strictly... It is too late for this principle to be challenged in this Court. The dichotomy between mandatory and directory rules has been accepted... A rule which is mandatory requires strict compliance. A rule which is directory is complied with where there has been substantial compliance with that rule.⁵

[14] If I were to apply the principles set down by Full Court in *Porter*, it is unlikely that I could be satisfied that the alterations had been made under the rules of the organisation.

[15] However, a subsequent decision of the High Court of Australia advocates a departure from the mandatory/directory dichotomy which lies at the heart of *Porter*. Rather than stating that rules of an organisation providing for the amendment of rules always fall into the mandatory category and must therefore be complied with strictly if an alteration is to be validly effected, this approach concentrates on the question of intention. The relevant question to be asked, according to the High Court was this; Was it intended that non compliance would result in invalidity?

[16] The principle is enunciated in *Project Blue Sky v ABA*⁶ (*Project Blue Sky*). Decided a decade after *Porter*, *Project Blue Sky* concerned an Australian television content standard which was not made in adherence with the *Broadcast Service Act 1992* (Cth). In particular,

the High Court dealt with the question of whether the failure to comply with that Act rendered the standard invalid.

[17] The joint judgment of the majority stated:

An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition...

Traditionally, the courts have distinguished between acts done in breach of an essential preliminary to the exercise of a statutory power or authority and acts done in breach of a procedural condition for the exercise of a statutory power or authority. Cases falling within the first category are regarded as going to the jurisdiction of the person or body exercising the power or authority. Compliance with the condition is regarded as mandatory, and failure to comply with the condition will result in the invalidity of an act done in breach of the condition. Cases falling within the second category are traditionally classified as directory rather than mandatory... As a result, if the statutory condition is regarded as directory, an act done in breach of it does not result in invalidity. However, statements can be found in the cases to support the proposition that, even if the condition is classified as directory, invalidity will result from non-compliance unless there has been "substantial compliance" with the provisions governing the exercise of the power. But it is impossible to reconcile these statements with the many cases which have held an act valid where there has been no substantial compliance with the provision authorising the act in question. Indeed in many of these cases, substantial compliance was not an issue simply because, as Dawson J pointed out in *Hunter Resources Ltd v Melville* when discussing the statutory provision in that case:

“substantial compliance with the relevant statutory requirement was not possible. Either there was compliance or there was not.”

In our opinion, the Court of Appeal of New South Wales was correct in *Tasker v Fullwood* in criticising the continued use of the "elusive distinction between directory and mandatory requirements" and the division of directory acts into those which have substantially complied with a statutory command and those which have not. They are classifications that have outlived their usefulness... A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid... In determining the question of purpose, regard must be had to "the language of the relevant provision and the scope and object of the whole statute".⁷ (footnotes omitted).

[18] The decision *Project Blue Sky* has been applied by Full Benches of the FWC and its predecessors, including a Full Bench under what is now the Act.

[19] In *Re: Australian Principles Federation*⁸ (APF), a Full Bench of the Australian Industrial Relations Commission was dealing with an appeal against a decision by Vice President Ross, as he then was, to register the Australian Principals Federation as an organisation of employees under Schedule 1B of the then Act.

[20] The Australian Education Union objected to the registration of the APF. It did so by submitting, inter alia, that a resolution in favour of registration had not been made “under the rules of the association” by the APF pursuant to section 19(1)(h) of legislation.⁹ At first instance, the Vice President was said to have taken a “pragmatic approach” to the requirement in s.19(1)(h) that the resolution in favour of registration be passed “under the rules of the association”.¹⁰

[21] The Full Bench stated:

[54] In *Project Blue Sky Inc. v Australian Broadcasting Authority* the High Court disapproved of distinguishing between obligations by reference to their characterisation as either “directory” or “mandatory”. Although that case was concerned with legislative obligations, the reasoning is clearly applicable to obligations imposed by the rules of unincorporated associations...

[55] Translating this approach to alleged non-compliance with rules of an unincorporated association, the test is whether it was a purpose of the rules that an act done in breach of a rule should be invalid.¹¹

[22] Before concluding:

[61] ... the expression “under the rules of the association” in s.19(1)(h) in relation to the passing of a resolution, requires no more and no less than that the resolution has been passed in conformity with such of the rules of the association as are, on their face, directly concerned with the passage of resolutions by the committee of management.¹²

[23] Of the cases advocating the strict compliance approach, the Full Bench stated:

[71] ... statements can be found in those decisions that support the proposition that s.19(1)(h) and its predecessors require strict compliance with rules... we decline to follow them.

[72] The issue is not confined to whether, on a strict application of the rules, an instance or instances of non-compliance can be identified that, as a matter of strict logic, flows through to affect the validity of the resolution purportedly passed in favour of registration. In relation to each such instance of non-compliance it is necessary to consider whether the non-compliance results in invalidity in accordance with the approach laid down in *Project Blue Sky*.

[73] ... to the extent that s.19(1)(h) invokes a consideration of any particular alleged non-compliance with a rule, other than those directly dealing with the passage of a resolution, the question of whether any instance of alleged non-compliance results in invalidity in relation to that instance... must be determined in accordance with the approach laid down in *Project Blue Sky*.¹³

[24] The Full Bench was concerned with the acts of an unincorporated association, “under the rules of the association”. Subsection 159(1)(c) is concerned with things done by a body corporate¹⁴ “under the rules of the organisation”. The mere fact of incorporation is not sufficient to distinguish *APF* from the matter before me. In my view, *APF* sets out the appropriate test to be applied in determining whether an alteration has been made under the rules of the organisation for the purpose of subsection 159(1)(c) of the Act.¹⁵

[25] Applying the Full Bench’s reasoning to the facts before me, I find that there was non-compliance with Rule 43(b). However, having regard to Rule 43 and to the rules as a whole, I do not find that the non-compliance results in invalidity in this instance. Except in relation to the admission of members, the Peak Council appears to be an advisory body only.¹⁶ Further,

Rule 43(b) gives the Peak Council no discretion about whether to convene a meeting once a request to alter the rules is properly made. In any event, the manner in which the meeting was called was generally consistent with the rules of the organisation.¹⁷ Finally, there is no question that the members of the Peak Council were made aware that the Special Meeting had been convened, because notice of the meeting was sent to all members of the organisation¹⁸. In my view, the step not taken under Rule 43(b) is procedural and the failure to take it is not fatal.

[26] I am satisfied the alterations have been made under the rules of the organisation.

[27] However, I am unable to certify a number of the alterations. I deal with those below.

[28] The organisation has transacted alterations to subrules (a), (d), (e) and (g) of Rule 1, to Rule 2 and to Rule 5. Rule 1 of the organisation's rules is titled "Interpretation". It defines a number of words and expressions for the purposes of the organisation's rules. Rule 2 of the organisation's rules is titled "Name of the Association and Industry Concerned". As its title suggests, it sets out the organisation's name and the industry in connection with which the organisation is registered. Rule 5 is titled "Membership". Read in conjunction with subrules 1(c), (d), (e), (g) and Rule 2, it sets out the conditions of eligibility for membership of the organisation.

[29] It is convenient to deal with the alterations to subrules 1(a), (d), (e), (g) and Rule 2 and Rule 5 together. The particulars of the alterations in this matter took the form of a marked up copy of the organisation's rules. Every alteration which was transacted by the organisation was included. There is nothing on the face of the material lodged which would suggest that some of the alterations were not submitted for my consideration. That said, applications dealing with changes to the organisation's name and eligibility rules are currently before a Vice President of the Fair Work Commission.¹⁹

[30] Applications for consent to a change in an organisation's name or a change to its eligibility rules must be dealt with by a Presidential Member of the Fair Work Commission under section 158 of the Act. They cannot be dealt with by the General Manager or her Delegate under section 159. To the extent the alterations to subrules 1(a), (d), (e), (g) and Rule 2 and Rule 5 are submitted for my consideration in the present matter, I dismiss them for want of jurisdiction.

[31] I deal next with the alteration to subrule 13(a)(xiii). Rule 13 sets out a number of powers which are exercised by the organisation's committee of management²⁰, known as its Executive Committee. The alteration to subrule 13(a)(xiii) would allow the Executive Committee to entrust any of its powers to an employee or confer any of its powers on an employee.

[32] In my view, allowing the organisation's Committee of Management to bestow its powers on a person who does not hold an office is contrary to the Act. Section 5 of the Act sets out the Parliament's intentions in enacting the Act. Those intentions are said to be furthered if associations of employers and employees meet a number of standards.²¹ Those standards include:

“(a) ensure(ing) that employer and employee organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and

...

(c) encourage(ing) the efficient management of organisations and high standards of accountability of organisations to their members; ...”

[33] Fundamental to meeting the standards concerning accountability of organisation to its members is vesting essential management powers exclusively in those which are directly accountable to the members via election by those members. This standard is undermined when the exercise of management powers is divested to persons who are not directly accountable in that manner. Hence, a rule which allows a Committee of Management to entrust to - or confer upon - an employee one or more of its powers will be contrary to the Act.

[34] Finally, I turn to subrule 34(a)(ii). This subrule provides that a member can be disciplined, including being expelled from membership, if guilty of having “acted or is acting in a manner which appears to be opposed to or contrary to the objects or policy of the Association”.

[35] So far as it deals with a policy of the organisation, the rule is vague and uncertain in meaning as to what acts or omissions constitute an offence.²² As a result, the subrule imposes on members of the organisation an obligation or restriction that “having regard to Parliament’s intention in enacting this Act and the objects of this Act and the *Fair Work Act 2009*, [is] oppressive, unreasonable or unjust”. Therefore, it cannot be certified under section 159 of the Act because it is contrary to the Act.²³

[36] The concern about subrule 34(a)(ii) was raised in the Fair Work Commission’s correspondence of 26 April 2013. In their response of 21 May 2013, the organisation submitted “if the reference to ‘policy is omitted, the policy would be adequately clear... we submit that if the rule change were amended to remove the reference to ‘policy’ it would be clear enough to be certifiable”.

[37] I agree that if the words “or policy” did not appear in the alteration to subrule 34(a)(ii) then it would be capable of certification under section 159 of the Act. However, if the organisation is asking me to excise the offending words, I must refuse the request because section 159 of the Act does not permit me to delete a word or phrase of my own motion in the present circumstances. If I am “of the opinion that a particular word or phrase in a rule or sub-rule amendment makes that rule or sub-rule contrary to the Act etc, [I] should refuse certification.”²⁴

[38] For the abovementioned reasons I refuse to certify, under section 159 of the Act, the:

- alteration to existing subrule 1(a) which sets out the organisation’s name;
- the addition of proposed subrule 1(d) which provides a definition of “Building Member”;

- deletion of existing subrule 1(e) which provides a definition of “Master Builder”;
- alteration to existing subrule 1(g) which provides a definition of “person”;
- alterations to Rule 2, Rule 5 and subrule 13(a)(xiii); and
- addition of proposed subrule 34(a)(ii).

[39] I have considered the above-mentioned alterations in light of the principles regarding severability set out by the majority in *Food Preservers' Union of Australia*.²⁵ An essential part of this task is to determine whether subrules 1(a), (d), (e), (g), Rule 2, Rule 5, subrule 13(a)(xiii) and subrule 34(a)(ii) are sufficiently discrete to enable them to be removed without affecting the other alterations. The alterations lodged in the present matter are the result of a process to “modernise the rules of the Association”.²⁶ As can be seen in paragraph [2] above, the alterations are numerous. They also cover a wide range of subject matter. I am satisfied that the alterations to rules subrules 1(a), (d), (e), (g), Rule 2, Rule 5, subrule 13(xiii) and subrule 34(a)(ii) are sufficiently discrete to be able to be severed.

[40] The remaining alterations comply with and are not contrary to this Act, the *Fair Work Act 2009*, modern awards and enterprise agreements, and are not otherwise contrary to law. I certify accordingly under subsection 159(1) of the Act.



DELEGATE OF THE GENERAL MANAGER
FAIR WORK COMMISSION

Printed by authority of the Commonwealth Government Printer
<Price code C, PR537592>

¹ Rule 43(b).

² Correspondence from the applicant to Fair Work Australia (as it then was) dated 20 December 2012 at page 3.

³ Ibid.

⁴ *Re John Lockwood Lawrence v Barry Porter and Others*; [1988] FCA 149; 30 IR 38; Northrop, Keely and Wilcox JJ; 5 May 1988.

⁵ Ibid at paragraphs 12 - 14.

⁶ *Project Blue Sky v ABA*; [1998] HCA 28; 194 CLR 355; 28 April 1998; Brennan CJ, McHugh, Gummow, Kirby and Hayne JJ.

⁷ Ibid per McHugh, Gummow, Kirby and Hayne JJ at paragraphs 91 - 94.

⁸ *Appeal by the Australian Education Union against the decision of Vice-President Ross of 27 January 2006*; Lawler VP, Kaufman SDP, Smith C; 26 September 2006; [PR973525](#)

⁹ Section 19(1)(h) of the Act is in the same terms.

¹⁰ [PR973525](#) at paragraph 45.

¹¹ Ibid at paragraphs 54 to 55.

¹² Ibid at paragraphs 61.

¹³ Ibid at paragraphs 71 - 73.

¹⁴ See subsection 27(a) of the Act.

¹⁵ A writ of certiorari quashing the Full Bench's decision in *APF* was ultimately issued by a Full Court of the Federal Court of Australia (*Australian Education Union v Lawler*; [2008] FCAFC 135 ; 18 July 2008; Moore, Lander Jessop JJ), albeit on a basis unrelated to the s.19(1)(h) matter discussed above. The Full Bench's analysis may therefore be said to be undisturbed by the reasoning of the Full Court, notwithstanding some obiter dicta discussion by Jessup J at paragraphs 299 - 306.

¹⁶ The only other function specified under the organisation's rules is to be consulted with by the committee of management about matters of importance.

¹⁷ See Rules 11(d)(iv) and 18(d)(ii).

¹⁸ Correspondence from the applicant to Fair Work Australia (as it then was) dated 20 December 2012 at page 3.

¹⁹ D2012/228 refers in relation to the name change while D2012/229 pertains to the application for consent to the change of the organisation's eligibility rules.

²⁰ See Rule 11(a).

²¹ See subsection [5\(2\)](#) of the Act.

²² See for instance *Re: Australian Boot Trades Employees Federation*; 29 September 1975, 023v 184.

²³ See subsection [142\(1\)\(c\)](#) of the Act.

²⁴ *Stapleton v Australian Theatrical Amusement Employees Association*; Evatt J; 31 August 1983; [1983] FCA 209; 50 ALR 293 at 301

²⁵ *Re Food Preservers' Union of Australia* (1988) 79 ALR 138

²⁶ Correspondence from the applicant to Fair Work Australia (as it then was) dated 20 December 2012 at page 2.

ELLIOTT, Mark

From: John Nikolic [jnikolic@mba.org.au]
Sent: Wednesday, 29 May 2013 12:05 PM
To: ELLIOTT, Mark
Cc: ANDERSON, Eve
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Please see Mr DeLorenzo's declaration below.

Declaration

I, Sam DeLorenzo, a Peak Councilor of the Master Builders Association of the ACT, declare that:

- I was aware that Master Builders' rules had been changed so to abolish the Peak Council;
- I was aware that this meant that my position as a Peak Councilor would also be abolished, from the date of the certification of the relevant rule change by the Fair Work Commission; and
- I consented to those changes or otherwise agree with them.

SAM DELORENZO

28 MAY 2013

Name (in printed letters) of Peak Councilor

Date

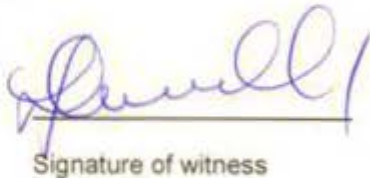

Signature of Peak Councilor

FIONA O'DONNELL

28 May 2013

Name (in printed letters) of witness

Date


Signature of witness

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [mailto:Mark.ELLIOTT@fwc.gov.au]

Sent: Tuesday, 28 May 2013 2:47 PM

To: John Nikolic

Cc: ANDERSON, Eve

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear John,

Thank you very much for your quick response.

I am happy to move forward on the back of Mr DeLorenzo's email response. Read in the context of your email to him, Mr DeLorenzo's email deals with the substance of our enquiry about the abolition of the Peak Council. For completeness, could you please ask Mr DeLorenzo to forward a signed declaration as soon as practicable after he has arrived home.

Consistent with my earlier email, if we can get the rules matter finalised quickly then the amended rules would apply to the forthcoming election. To facilitate this outcome, I will try to get the rule alteration application determined by the end of the week.

My understanding is that your organisation proposes 24 June 2013 as opening date for nominations in the election. I think that gives us sufficient time to conclude the rule alteration matter, get amended prescribed information, obtain a decision in the election matter and give the Australian Electoral Commission the go ahead to conduct the election. After the rule alterations are certified, we will need amending prescribed information from Ms Brooks, reflecting the changes to the organisation's structure.

In the meantime I will persuade Eve to postpone finalising the election pending certification of the rule changes.

Almost there...

Regards,

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]

Sent: Tuesday, 28 May 2013 1:11 PM

To: ELLIOTT, Mark

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Yes I understand your concerns. Apparently Mr DeLorenzo will be back in the country tomorrow so should be able to provide the declaration very shortly. In the meantime, please see his email below, where he indicates his agreement with the abolition of the Peak Council – please let us know if that will suffice.

Obviously we would like to have the rules amended prior to the finalisation of any further elections, so we ask that you please delay the processing of the elections a little longer, if possible.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may wish to seek legal advice. The matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information contained in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: Sam DeLorenzo [<mailto:s.delorenzo@me.com>]

Sent: Friday, 17 May 2013 7:44 PM

To: John Nikolic

Cc: Ashlee-Jo

Subject: Re: Abolition of Peak Council - Declaration required

John

I am overseas at the moment and not sure if I can sign. I agree and will see what I can do and get it to you ASAP.

Regards
Sam DeLorenzo
Sent from my iPad

On 16/05/2013, at 9:29, John Nikolic <jnikolic@mba.org.au> wrote:

Dear Sam,

As I hope you are aware, at a Special Meeting held in conjunction with last year's Annual General Meeting, members voted to abolish the Peak Council, as a way of 'streamlining' Master Builders' management structure. Our application to have that change certified is now with the Fair Work Commission, which has asked for some further evidence that Peak Councilors were aware of the abolition and approve of it.

Please find attached a declaration to that effect. If you do agree with it, we would be grateful if you could sign it and return a scanned copy by email to us shortly.

Please feel free to call me to discuss.

Kind regards,

<image001.png>

<image002.png> <image003.png>

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS

<image004.gif>

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

<image001.png>

<image002.png>

<image003.png>

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information contained in this email.

The information in this email is private and confidential and should not be distributed to any other party.

<Request for declaration re Peak Council - Sam DeLorenzo - 15.05.13.pdf>

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Tuesday, 28 May 2013 12:06 PM
To: John Nikolic
Cc: ANDERSON, Eve
Subject: FW: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Hello John,

I note your advice about Mr DeLorenzo's present unavailability. Thank you.

I also note that the Fair Work Commission has received prescribed information in relation to an election for offices within the MBCHAACT. E2013/143 refers. Ms Lorraine Brook appears to be the contact in your organisation. For convenience a copy of the prescribed information in relation to the election is attached.

The election request is made on the basis of the MBCHAACT's present structure, rather than the structure which would come into being if the current rule alterations were certified. Generally, the rules which are in force when nominations for an election open are the rules which apply in relation to that election and which pertain to offices filled as a result of the election. In other words, if the election request is granted another term of office for all the offices within the organisation's current structure may well commence before the rule alteration matter is concluded. As we have previously discussed, that outcome would affect the current rule alteration application so far as it contemplated the truncation of any office's term.

My manager, Eve Anderson, is concerned about the delay in making arrangements for the conduct of the election. Ms Anderson has asked me to enquire about the likely date of Mr DeLorenzo's return to Australia. It is Ms Anderson's firm view that the election should be arranged forthwith unless Mr DeLorenzo is likely to return soon. Could you therefore let me know when Mr DeLorenzo will be returning to Australia, or is otherwise able to repond to my earlier request for his views about the truncation of the term of his office. If you are unaware of his anticipated return date, can you please advise to that effect.

Please contact me should you wish to discuss this email.

Kind regards,

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]

Sent: Tuesday, 21 May 2013 2:55 PM

To: ELLIOTT, Mark

Cc: Mike Baldwin

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Please find attached a letter with attachments responding to the issues you have raised in our application R2012/202. Unfortunately we are still waiting on one declaration (from a Peak Councilor who is overseas) but we will send it through ASAP.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Wednesday, 15 May 2013 12:05 PM
To: John Nikolic
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Thanks John.

From: John Nikolic [<mailto:jnikolic@mba.org.au>]
Sent: Wednesday, 15 May 2013 11:58 AM
To: ELLIOTT, Mark
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Just wanted to apologise for our tardy reply to the issues you have raised. Am looking at the issues now and hope to be able to respond with all the required info by early next week.

Kind regards,

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS
Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 4:50 PM
To: John Nikolic

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Sure John,

Subject to sorting out the issues noted below it is ready to go.

Have a good weekend.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]

Sent: Friday, 26 April 2013 4:42 PM

To: ELLIOTT, Mark

Cc: John Miller; Mike Baldwin

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Thanks for your email.

We will obtain the further evidence re the Peak Council as requested and consider your other comments. We hope to get back to you within the fortnight.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 1:10 PM
To: John Nikolic
Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elected 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bona fide is to solicit the views of the affected officers. I request you therefore ask the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting or plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts or omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

ELLIOTT, Mark

From: ELLIOTT, Mark
Sent: Tuesday, 28 May 2013 2:47 PM
To: 'John Nikolic'
Cc: ANDERSON, Eve
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear John,

Thank you very much for your quick response.

I am happy to move forward on the back of Mr DeLorenzo's email response. Read in the context of your email to him, Mr DeLorenzo's email deals with the substance of our enquiry about the abolition of the Peak Council. For completeness, could you please ask Mr DeLorenzo to forward a signed declaration as soon as practicable after he has arrived home.

Consistent with my earlier email, if we can get the rules matter finalised quickly then the amended rules would apply to the forthcoming election. To facilitate this outcome, I will try to get the rule alteration application determined by the end of the week.

My understanding is that your organisation proposes 24 June 2013 as opening date for nominations in the election. I think that gives us sufficient time to conclude the rule alteration matter, get amended prescribed information, obtain a decision in the election matter and give the Australian Electoral Commission the go ahead to conduct the election. After the rule alterations are certified, we will need amending prescribed information from Ms Brooks, reflecting the changes to the organisation's structure.

In the meantime I will persuade Eve to postpone finalising the election pending certification of the rule changes.

Almost there...

Regards,

MARK ELLIOTT
Regulatory Compliance Branch

Fair Work Commission
Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [mailto:jnikolic@mba.org.au]
Sent: Tuesday, 28 May 2013 1:11 PM
To: ELLIOTT, Mark
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Yes I understand your concerns. Apparently Mr DeLorenzo will be back in the country tomorrow so should be able to provide the declaration very shortly. In the meantime, please see his email below, where he indicates his agreement with the abolition of the Peak Council – please let us know if that will suffice.

Obviously we would like to have the rules amended prior to the finalisation of any further elections, so we ask that you please delay the processing of the elections a little longer, if possible.

Kind regards,

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS
Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You must ensure that the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: Sam DeLorenzo [<mailto:s.delorenzo@me.com>]
Sent: Friday, 17 May 2013 7:44 PM
To: John Nikolic
Cc: Ashlee-Jo
Subject: Re: Abolition of Peak Council - Declaration required

John
I am overseas at the moment and not sure if I can sign. I agree and will see what I can do and get it to you ASAP.

Regards
Sam DeLorenzo
Sent from my iPad

On 16/05/2013, at 9:29, John Nikolic <jnikolic@mba.org.au> wrote:

Dear Sam,

As I hope you are aware, at a Special Meeting held in conjunction with last year's Annual General Meeting, members voted to abolish the Peak Council, as a way of 'streamlining' Master Builders' management structure. Our application to have that change certified is now with the Fair Work Commission, which has asked for some further evidence that Peak Councilors were aware of the abolition and approve of it.

Please find attached a declaration to that effect. If you do agree with it, we would be grateful if you could sign it and return a scanned copy by email to us shortly.

Please feel free to call me to discuss.

Kind regards,

<image001.png>

<image002.png> <image003.png>

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS
Master Builders Association of the ACT
1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609
Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

<image004.gif>

jnikolic@mba.org.au
www.mba.org.au

<image001.png>

<image002.png>

<image003.png>

*The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is **not** legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.*

The information in this email is private and confidential and should not be distributed to any other party.

<Request for declaration re Peak Council - Sam DeLorenzo - 15.05.13.pdf>

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Tuesday, 28 May 2013 12:06 PM
To: John Nikolic
Cc: ANDERSON, Eve
Subject: FW: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Hello John,

I note your advice about Mr DeLorenzo's present unavailability. Thank you.

I also note that the Fair Work Commission has received prescribed information in relation to an election for offices within the MBCHAACT. E2013/143 refers. Ms Lorraine Brook appears to be the contact in your organisation. For convenience a copy of the prescribed information in relation to the election is attached.

The election request is made on the basis of the MBCHAACT's present structure, rather than the structure which would come into being if the current rule alterations were certified. Generally, the rules which are in force when nominations for an election open are the rules which apply in relation to that election and which pertain to offices filled as a result of the election. In other words, if the election request is granted another term of office for all the offices within the organisation's current structure may well commence before the rule alteration matter is concluded. As we have previously discussed, that outcome would affect the current rule alteration application so far as it contemplated the truncation of any office's term.

My manager, Eve Anderson, is concerned about the delay in making arrangements for the conduct of the election. Ms Anderson has asked me to enquire about the likely date of Mr DeLorenzo's return to Australia. It is Ms Anderson's firm view that the election should be arranged forthwith unless Mr DeLorenzo is likely to return soon. Could you therefore let me know when Mr DeLorenzo will be returning to Australia, or is otherwise able to repond to my earlier request for his views about the truncation of the term of his office. If you are unaware of his anticipated return date, can you please advise to that effect.

Please contact me should you wish to discuss this email.

Kind regards,

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]

Sent: Tuesday, 21 May 2013 2:55 PM

To: ELLIOTT, Mark

Cc: Mike Baldwin

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Please find attached a letter with attachments responding to the issues you have raised in our application R2012/202. Unfortunately we are still waiting on one declaration (from a Peak Councilor who is overseas) but we will send it through ASAP.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You must ensure that the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]

Sent: Wednesday, 15 May 2013 12:05 PM

To: John Nikolic

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Thanks John.

From: John Nikolic [<mailto:jnikolic@mba.org.au>]
Sent: Wednesday, 15 May 2013 11:58 AM
To: ELLIOTT, Mark
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Just wanted to apologise for our tardy reply to the issues you have raised. Am looking at the issues now and hope to be able to respond with all the required info by early next week.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not be aware that the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 4:50 PM
To: John Nikolic
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Sure John,

Subject to sorting out the issues noted below it is ready to go.

Have a good weekend.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]

Sent: Friday, 26 April 2013 4:42 PM

To: ELLIOTT, Mark

Cc: John Miller; Mike Baldwin

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Thanks for your email.

We will obtain the further evidence re the Peak Council as requested and consider your other comments. We hope to get back to you within the fortnight.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may wish to seek legal advice. The matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]

Sent: Friday, 26 April 2013 1:10 PM

To: John Nikolic

Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elected 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bona fide is to solicit the views of the affected officers. I request you therefore ask the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of to Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting of plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts of omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT
Regulatory Compliance Branch

Fair Work Commission
Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

ELLIOTT, Mark

From: ELLIOTT, Mark
Sent: Tuesday, 28 May 2013 12:06 PM
To: 'John Nikolic'
Cc: ANDERSON, Eve
Subject: FW: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)
Attachments: Letter - JN to GM Delegate of FWC - 21.05.13 - with attachments.pdf; E2013-143[1].pdf

Hello John,

I note your advice about Mr DeLorenzo's present unavailability. Thank you.

I also note that the Fair Work Commission has received prescribed information in relation to an election for offices within the MBCHAACT. E2013/143 refers. Ms Lorraine Brook appears to be the contact in your organisation. For convenience a copy of the prescribed information in relation to the election is attached.

The election request is made on the basis of the MBCHAACT's present structure, rather than the structure which would come into being if the current rule alterations were certified. Generally, the rules which are in force when nominations for an election open are the rules which apply in relation to that election and which pertain to offices filled as a result of the election. In other words, if the election request is granted another term of office for all the offices within the organisation's current structure may well commence before the rule alteration matter is concluded. As we have previously discussed, that outcome would affect the current rule alteration application so far as it contemplated the truncation of any office's term.

My manager, Eve Anderson, is concerned about the delay in making arrangements for the conduct of the election. Ms Anderson has asked me to enquire about the likely date of Mr DeLorenzo's return to Australia. It is Ms Anderson's firm view that the election should be arranged forthwith unless Mr DeLorenzo is likely to return soon. Could you therefore let me know when Mr DeLorenzo will be returning to Australia, or is otherwise able to repond to my earlier request for his views about the truncation of the term of his office. If you are unaware of his anticipated return date, can you please advise to that effect.

Please contact me should you wish to discuss this email.

Kind regards,

MARK ELLIOTT
Regulatory Compliance Branch

Fair Work Commission
Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]
Sent: Tuesday, 21 May 2013 2:55 PM
To: ELLIOTT, Mark
Cc: Mike Baldwin
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Please find attached a letter with attachments responding to the issues you have raised in our application R2012/202. Unfortunately we are still waiting on one declaration (from a Peak Councilor who is overseas) but we will send it through ASAP.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]

Sent: Wednesday, 15 May 2013 12:05 PM

To: John Nikolic

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Thanks John.

From: John Nikolic [<mailto:jnikolic@mba.org.au>]

Sent: Wednesday, 15 May 2013 11:58 AM

To: ELLIOTT, Mark

Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Just wanted to apologise for our tardy reply to the issues you have raised. Am looking at the issues now and hope to be able to respond with all the required info by early next week.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You must ensure that the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information contained in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 4:50 PM
To: John Nikolic
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Sure John,

Subject to sorting out the issues noted below it is ready to go.

Have a good weekend.

MARK ELLIOTT
Regulatory Compliance Branch

Fair Work Commission
Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]
Sent: Friday, 26 April 2013 4:42 PM
To: ELLIOTT, Mark
Cc: John Miller; Mike Baldwin
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Thanks for your email.

We will obtain the further evidence re the Peak Council as requested and consider your other comments. We hope to get back to you within the fortnight.

Kind regards,

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS
Master Builders Association of the ACT
1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, completeness or timeliness of this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 1:10 PM
To: John Nikolic
Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elected 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bona fide is to solicit the views of the affected officers. I request you therefore ask the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of to Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting of plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts of omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

Ms Ailsa Carruthers
General Manager's Delegate
Fair Work Commission
11 Exhibition St
Melbourne Victoria 3000

21 May 2013

Dear Ms Carruthers

Application for certification of 'other rules' (R2012/202)

On 26 April 2013, we received an email from Mr Mark Elliot of the Regulatory Compliance Branch at the Fair Work Commission, providing feedback about the Master Builders Construction and Housing Association of the Australian Capital Territory's (**Master Builders**) application (R2012/202) (**the Application**) to amend its registered rules (**the Rules**). This letter responds to the issues raised in that email, which is attached (**Attachment A**) and provides the further information requested. Please note that the rule references below use the numbering from the amended Rules in the Application.

Requests for further evidence re abolition of Peak Council

As requested, please find attached (**Attachment B**) declarations from the various members of the Peak Council (who are not also members of the Executive Committee) that they were aware of the termination of their offices and approve of it. Also attached (**Attachment C**) are the declared results for the Peak Council 2012-2013 election from the AEC, listing the six relevant Peak Councilors. Please note that Mr Sam DeLorenzo is currently overseas, so was unable to provide a declaration as at 21 May 2013. However, we will forward his declaration as soon as possible following his return to Australia.

Rule 9

The redrafting of the notification requirements in rule 9 were intended to accommodate the ability of members to send notifications via email, as now provided for in the redrafted Rules at rule 42(g). The amendment to rule 9(e) is admittedly still somewhat out of kilter with the new notice provisions, but we submit that the overall meaning is clear – that a member's resignation can be effective even where it has not been sent to the Executive Director. We submit that the rule change is sufficiently clear so as to be certifiable.

Rule 10(a)(iii)

Rule 10(a)(iii) has only had a referencing change, which leaves the substantive effect of the existing rule unchanged. Its intention is indeed that a person's membership

will cease if they cease to be a representative, which was provided for under the existing Rules at (renumbered) rule 8(d). We submit that this is not ambiguous, once it is understood that the Rules have historically contemplated 'members' in two senses, namely the actual business (whether an individual or a company) which is eligible for membership and is the member 'proper' and then their representative, usually an employee of that business. While it is perhaps unfortunate that the two concepts have traditionally been conflated, the Rules make no less sense than it did previously, and it is clear enough from rule 10(a)(iii) that it is referencing only the termination of a 'member as a representative' rather than as a member proper. We submit that the rule change is sufficiently clear so as to be certifiable.

Rule 13(xiii)

With regard to Mr Elliot's comments, we would not press the alteration to rule 13(xiii) insofar as it includes a reference to employees, but would seek for the other changes to be certified.

Rule 16(a)

By way of background, rule 16(a) was amended to accommodate casual vacancies within the *two-yearly* terms instituted in the redrafted Rules under rule 15. The three-quarterly term was chosen as the longest allowable term under section 146(2) of the *Fair Work (Registered Organisations) Act 2009* (Cth).

While there is a small risk that the termination of a casually-filled office may not synchronize with the expiry of regularly-filled offices, it is important to understand that a casual vacancy can only occupy time within 'the unexpired part of the term of the last person elected to the office' (up to three-quarters of the total term) and so would usually expire with the usual expiry-date of the original term. However, there is a risk that a casual office might expire *prior to* that of regular office holders, so that there would be a temporary vacancy (rather than any overrun) just prior to the expiry of the regularly-filled offices. This would only occur if a casual vacancy occurred within the first quarter of an office, with the casual office then expiring at the end of three-quarters of the original term, but leaving a short gap before the regularly-filled offices expired.

This could be cured by the election of a *further* casual office, which could then expire in harmony with the other offices. However, this would probably require a further rule change, perhaps to the effect that the casual vacancy must occupy only 'the unexpired part of the term of the last person elected to the office, who did not fill a casual vacancy'. Otherwise the duration of a second casual vacancy might be referable to the duration of the prior casual vacancy.

Although there are technical issues with rule 16(a), we would seek its approval given that it has been voted on by members, and would seek to amend it again at a later date.

Rule 21(e)

Upon consideration of Mr Elliot's comments, we would not press the removal of rule 21(e). However, by way of background, it was removed on the basis that the term 'supreme authority' had a somewhat antique and ambiguous quality. We considered that the alterations to rule 21(d), which referred to a special resolution of members at a Special Meeting as being 'binding on the Association', better confirmed democratic control by members.

Rule 34(a)(ii)

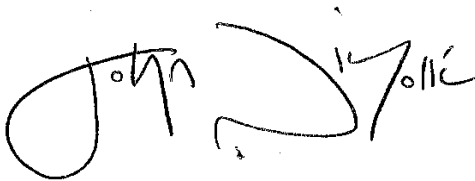
We agree that rule 34(a)(ii) is probably too broad, given that it refers to both the 'objects or *policy* of the Association' (emphasis added). However, we submit that if the reference to 'policy' is omitted, the provision would be adequately clear, referencing only the 'objects' of the Association as per rule 4. This would be very similar to the provision regarding the power to exclude employers from membership where they are a 'body corporate whose constituent documents make provisions inconsistent with the purposes for which the organisation was formed' under section 166(5)(a)(ii) of the *Fair Work (Registered Organisations) Act 2009* (Cth). We submit that if the rule change were amended to remove the reference to 'policy' it would be clear enough to be certifiable.

We thank Mr Elliot for his comments, which will prompt future applications to further clarify the operation of Master Builders' Rules.

It is perhaps worth foreshadowing that if any rule changes were to be amended or rejected by the Fair Work Commission to comply with the *Fair Work (Registered Organisations) Act 2009* (Cth) we understand that Master Builders' Executive Committee would then be able to redraft the Rules to comply with that legislation without the need for a further vote by members, under rule 44(d). We would appreciate guidance from the Fair Work Commission about whether that is indeed allowable under Master Builder's Rules.

Please let us know if we can assist further with our application.

Yours sincerely,



John Nikolić

Senior Advisor Industrial Relations

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 1:10 PM
To: John Nikolic
Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elated 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bone fide is to solicit the views of the affected officers. I request you therefore ask the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make

submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of to Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting of plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts of omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609 | PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6247 2099 Fax: (02) 6249 8374 Email: canberra@mba.org.au Web: www.mba.org.au

ABN: 52853376568



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY

Declaration

I, Mark Bauer, a Peak Councilor of the Master Builders Association of the ACT, declare that:

- I was aware that Master Builders' rules had been changed so to abolish the Peak Council;
- I was aware that this meant that my position as a Peak Councilor would also be abolished, from the date of the certification of the relevant rule change by the Fair Work Commission; and
- I consented to those changes or otherwise agree with them.

MARK BAUER.

21ST MAY 2013

Name (in printed letters) of Peak Councilor

Date

Mark Bauer

Signature of Peak Councilor

DANIELLE BANNON

21 MAY 2013

Name (in printed letters) of witness

Date

D. Bannon

Signature of witness

Declaration

I, Richard Corver, a Peak Councilor of the Master Builders Association of the ACT, declare that:

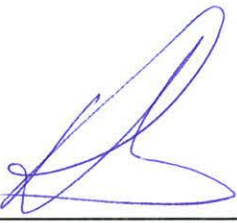
- I was aware that Master Builders' rules had been changed so to abolish the Peak Council;
- I was aware that this meant that my position as a Peak Councilor would also be abolished, from the date of the certification of the relevant rule change by the Fair Work Commission; and
- I consented to those changes or otherwise agree with them.

RICHARD CORVER

Name (in printed letters) of Peak Councilor

17/5/13

Date



Signature of Peak Councilor

ANTHONY CORVER

Name (in printed letters) of witness

17/5/13

Date



Signature of witness

Declaration

I, Nigel Forde, a Peak Councilor of the Master Builders Association of the ACT, declare that:

- I was aware that Master Builders' rules had been changed so to abolish the Peak Council;
- I was aware that this meant that my position as a Peak Councilor would also be abolished, from the date of the certification of the relevant rule change by the Fair Work Commission; and
- I consented to those changes or otherwise agree with them.

Nigel Forde

Name (in printed letters) of Peak Councilor

20/5/2013

Date

Nigel Forde

Signature of Peak Councilor

Leanne Haynes

Name (in printed letters) of witness

20.5.13.

Date

[Signature]

Signature of witness

Declaration

I, Peter Middleton, a Peak Councilor of the Master Builders Association of the ACT, declare that:


- I was aware that Master Builders' rules had been changed so to abolish the Peak Council;
- I was aware that this meant that my position as a Peak Councilor would also be abolished, from the date of the certification of the relevant rule change by the Fair Work Commission; and
- I consented to those changes or otherwise agree with them.

PETER MIDDLETON

17-5-13

Name (in printed letters) of Peak Councilor

Date



Signature of Peak Councilor

Therese Kelly

17-5-13

Name (in printed letters) of witness

Date



Signature of witness

Declaration

I, Stuart Ritchie, a Peak Councilor of the Master Builders Association of the ACT, declare that:

- I was aware that Master Builders' rules had been changed so to abolish the Peak Council;
- I was aware that this meant that my position as a Peak Councilor would also be abolished, from the date of the certification of the relevant rule change by the Fair Work Commission; and
- I consented to those changes or otherwise agree with them.

STUART RITCHIE

21/5/2013

Name (in printed letters) of Peak Councilor

Date



Signature of Peak Councilor

JIM SMITH

21/5/2013

Name (in printed letters) of witness

Date



Signature of witness

Attachment C - Declared election results for Peak Council

**Master Builders' Construction and Housing
Association of the ACT
Peak Council Members**

DECLARATION OF RESULTS FOR UNCONTESTED OFFICES

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.

Peak Council Members (Stage 2)

Peak Council - Commercial Builders' Council Members (6)

Candidates

BAUER, Mark
DELORENZO, Sam
No further nominations were accepted

Peak Council - Suppliers and Subcontractors' Council Members (4)

No nominations were received

Peak Council - Residential Builders' Council Members (4)

Candidate

CORVER, Richard
No further nominations were accepted

Peak Council - Civil Contractors' Council Members (4)

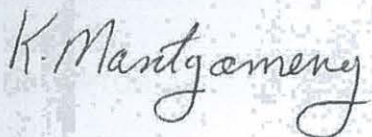
Candidates

FORDE, Nigel
MIDDLETON, Peter
RITCHIE, Stuart
No further nomination was accepted

Peak Council - Professional Consultants' Council Members (4)

No nominations were received

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



Kathryn Montgomery
Returning Officer

10 September 2012



ELLIOTT, Mark

From: John Nikolic [jnikolic@mba.org.au]
Sent: Tuesday, 21 May 2013 2:55 PM
To: ELLIOTT, Mark
Cc: Mike Baldwin
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)
Attachments: Letter - JN to GM Delegate of FWC - 21.05.13 - with attachments.pdf

Dear Mark,

Please find attached a letter with attachments responding to the issues you have raised in our application R2012/202. Unfortunately we are still waiting on one declaration (from a Peak Councilor who is overseas) but we will send it through ASAP.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [mailto:Mark.ELLIOTT@fwc.gov.au]
Sent: Wednesday, 15 May 2013 12:05 PM
To: John Nikolic
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Thanks John.

From: John Nikolic [mailto:jnikolic@mba.org.au]
Sent: Wednesday, 15 May 2013 11:58 AM
To: ELLIOTT, Mark
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Just wanted to apologise for our tardy reply to the issues you have raised. Am looking at the issues now and hope to be able to respond with all the required info by early next week.

Kind regards,

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS
Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387

jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You must ensure that the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]
Sent: Friday, 26 April 2013 4:50 PM
To: John Nikolic
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Sure John,

Subject to sorting out the issues noted below it is ready to go.

Have a good weekend.

MARK ELLIOTT
Regulatory Compliance Branch

Fair Work Commission
Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]
Sent: Friday, 26 April 2013 4:42 PM
To: ELLIOTT, Mark
Cc: John Miller; Mike Baldwin
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Thanks for your email.

We will obtain the further evidence re the Peak Council as requested and consider your other comments. We hope to get back to you within the fortnight.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [<mailto:Mark.ELLIOTT@fwc.gov.au>]

Sent: Friday, 26 April 2013 1:10 PM

To: John Nikolic

Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elected 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bona fide is to solicit the views of the affected officers. I request you therefore ask

the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of to Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting of plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts of omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

ELLIOTT, Mark

From: John Nikolic [jnikolic@mba.org.au]
Sent: Friday, 26 April 2013 4:42 PM
To: ELLIOTT, Mark
Cc: John Miller; Mike Baldwin
Subject: RE: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mark,

Thanks for your email.

We will obtain the further evidence re the Peak Council as requested and consider your other comments. We hope to get back to you within the fortnight.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not be satisfied with the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: ELLIOTT, Mark [mailto:Mark.ELLIOTT@fwc.gov.au]
Sent: Friday, 26 April 2013 1:10 PM
To: John Nikolic
Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elected 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bona fide is to solicit the views of the affected officers. I request you therefore ask the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of to Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting of plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts of omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT
Regulatory Compliance Branch

Fair Work Commission
Tel: 03 8661 7899
Fax: 03 9655 0410
mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

ELLIOTT, Mark

From: ELLIOTT, Mark
Sent: Friday, 26 April 2013 1:10 PM
To: 'jnikolic@mba.org.au'
Subject: R2012/202 - Application by Master Builders' Construction and Housing Association of the Australian Capital Territory (s.159 Fair Work (Registered Organisations) Act 2009)

Dear Mr Nikolic,

I refer to our discussion last Friday in relation to the abovementioned matter. During that discussion I undertook to further particularise concerns which have arisen in relation to some of the alterations.

I turn first to the abolition of the organisation's Peak Council.

Under the current rules, Peak Council members are elected to serve a one year term (Rule 14(b)), retiring at the organisation's annual general meeting (Rule 14(b)) which is held no later than the second Tuesday in October each year (renumbered Rule 20(a)).

The present Peak Council members were declared elected 10 September 2012 (see [E2012/243](#)) and would thus be expected to hold office until sometime between mid September and early October 2013.

Given the terms of subsection 159(3) of the [Fair Work \(Registered Organisations\) Act 2009](#) (the Act) the present alterations, including the deletion of Rule 12 and the consequential changes throughout the rules, would take effect on the day of certification. There are no transitional provisions which would preserve the offices of the last elected Peak Council members until those offices end by effluxion of time. Therefore the offices will be abolished upon certification of the rule changes and the terms of office of the incumbent offices will be truncated as a result.

Whilst the Federal Court of Australia and the Industrial Relations Court of Australia have held that it is not contrary to the Act to abolish an office during the currency of its term, such abolition must nonetheless be effected in accordance with the rules and be bona fide (see for instance *Roughin v AMIEU* ([\[1990\] FCA 477](#)) and the authorities referred to therein).

One way the Fair Work Commission and its predecessors have assessed whether the decision to abolish an office during the currency of its term is bona fide is to solicit the views of the affected officers. I request you therefore ask the current Peak Council members to forward to the FWC, through you, declarations attesting to whether they were aware of the current alterations to the organisation's rules, whether they understood the effect of those changes in relation to their office and whether they consented to or otherwise accepted the changes.

Next, as noted during our discussion, there are some other alterations to the rules which may not be certifiable. I deal with those below. You are invited to make submissions about the alterations in question. Any material lodged will be considered by the General Manager's Delegate before a decision under s.159 of the Act is made.

Following alteration, Rule 9 is vague and uncertain. Where an alteration is so uncertain that a member cannot understand their rights and obligations under the rules, the alteration may be found to be contrary to subsection 142(1)(c) of the Act.

Rule 10(a)(iii) is uncertain. It seems to suggest that a membership of a person, who has been nominated as the representative of another member, terminates if they cease to be a representative of the second member. This too could be contrary to subsection 142(1)(c) of the Act.

The inclusion of employees in the class of persons to whom Executive Committee powers can be conferred means that the alteration to Rule 13(xiii) is not certifiable. Having regard to subsections 5(3)(a) and (c) of the Act, various responsibilities, powers and obligations under the Act can only be reposed in holders of office.

Although certifiable, the alteration contained in the final paragraph of to Rule 16(a) may lead to the term of office of a person who fills a casual vacancy may fall out of sync with the term of office of his/her colleagues.

The deletion of (renumbered) Rule 21(e) is not certifiable. The committees of organisations, such as the Executive committee, must be subject to control by the members (see subsection 141(1)(b)(iv)). The Federal Court has long held that this must either be via general meeting of plebiscite. So far as I can tell, the removal of Rule 21(e) means neither method would be available.

The offence under proposed (renumbered) Rule 34 (a)(ii) is vague and uncertain in relation to what acts of omissions constitute offences under the rules. This is likely to render the alteration contrary to subsection 142(1)(c) of the Act.

Please contact me should you wish to discuss this email or the further progress of the matter.

Kind regards.

MARK ELLIOTT

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000

GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

Ailsa Carruthers
Delegate to General Manager
Fair Work Australia
GPO Box 1994
Melbourne, Victoria 3001
orgs@fwa.gov.au

20 December 2012

Dear Ms Carruthers,

Application for certification of changes to other rules

On 9 October 2012, members of the Master Builders Construction and Housing Association of the Australian Capital Territory (**'the Association'**) approved a number of alterations to the 'other rules' (unrelated to its name or eligibility provisions) of its registered Rules (**'the Rules'**). Please note that separate applications have been made to amend the Association's eligibility provisions and name.

Particulars and reasons for the amendments

The Association is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**'the Act'**) ([241V](#)). In accordance with section 159 of the Act and regulation 126(1)(a) of the Fair Work (Registered Organisations) Regulations 2009 (Cth) (**'the Regulations'**) a notice setting out the particulars of the alterations is attached, comprising:

- (i) a copy of the amended Rules (**'Amended Rules'**) in tracked (at Attachment A);
- (ii) a table summarising the reasons for the changes and their effect (Attachment B); and
- (iii) a copy of the original (unamended) rules (**'Prior Rules'**) (Attachment C).

Please note that in the Amended Rules at Attachment A, additions are indicated in underlined text, while deletions are set out in 'strike-through' text. In accordance with regulation 126(2) of the Regulations, this letter also contains:

- (i) a declaration that the changes were made in accordance with the Rules; and

- (ii) a statement of the action taken under the Rules to make the changes;
and
- (iii) that the particulars set out in the notice are true and correct to the best of my knowledge and belief .

As President of the Association, I am an 'officer' authorised under the Rules¹ to declare and verify the matters set out below and in the attachments. Please also note that this application was first made on 9 November 2012.

Procedure for rule changes under the Rules

Rule changes are provided for under rule 43 of the Rules (please note that the rule references are to the Prior Rules). Rule 43 indicates that any individual member acting on their own initiative or committee appointed by the Peak Council may request a rule change, whereupon the Peak Council is obliged to refer the proposal to a Special Meeting of Members,² where three-quarters of those present must vote in favour of the amendment for it to be approved.³ Further procedures for Special Meetings are provided for under rule 20. Ten is the quorum⁴ and members must be given three days written notice by mail, requesting members' attendance and setting out the matters to be considered.⁵

Action taken under the Rules to make the amendments

Between 29 February and 1 March 2012, the Executive Committee, some members of the Peak Council and Association management staff attended a strategic workshop at Sylvan Glen. One of the issues raised was the need to modernise the Association's Rules. Accordingly, terms of reference proposing the creation of a Constitutional Review Committee⁶ were drafted and approved by the Executive Committee in its meeting of 5 March 2012 (Appendixes 1 and 2). The Constitutional Review Committee was composed of the President and Treasurer of the Association, along with three other

¹ Rule 11(d).

² Rule 43(b).

³ Rule 43(c).

⁴ Rule 20(f).

⁵ Rule 20(b).

⁶ Although rule 43(a) of the Rules refers to such a committee being formed by the Peak Council, committees may also be formed by the Executive Committee: rule 13(a)(xvi). Also note that the Peak Council is largely constituted by the Executive Committee: rule 12(b). In any event, the creation of a committee is unnecessary, given that any member may on their own initiative request a rule change under clause 43(a).

members of the Executive Committee, a life member and two Association staff. The terms of reference set down the date of 9 October 2012 for any vote by members on proposed changes.

From March to September 2012, the Constitutional Review Committee met regularly to draft a series of rule changes, which are now the subject of this application. The Executive Committee was regularly informed about the progress of the Constitutional Review Committee. By late September 2012, the final version of the proposed changes, drafted in consultation with the Constitutional Review Committee, had been prepared.

The Constitutional Review Committee requested that the Association provide as much notice as possible about the proposed changes.⁷ Accordingly, on 14 September 2012, the Association sent a notice by email to all members alerting them to the fact that a Special Meeting was to be convened on 9 October 2012 (see Appendixes 3 and 4). That notice indicated that members would be given a week's notice of the relevant rule changes prior to the Special Meeting.

On Tuesday 2 October 2012, all members were sent by courier a notice⁸ and agenda for the Special Meeting on Tuesday 9 October 2012, along with a copy of the amended rules in tracked changes and a letter and table explaining the changes. The notice and agenda are attached at Appendixes 5 and 6, while the amended rules and table explaining the changes are at Attachments A and B. Those documents would have been received that day or the next day, i.e. on Wednesday 3 October 2012, which is also the date on which notice is deemed to have been received under the Prior Rules⁹ (see also the actual date of service in the invoice at Appendix 7). Accordingly members were provided with seven days notice of the proposed rule changes. On Thursday 4 October 2012 members were also emailed the documents that were mailed on 2 October 2010 (i.e. the notice and agenda for the Special

⁷ Rules 43(a) and 43(b) state that rule change proposals will be notified to the Peak Council, which shall then 'direct that the matter be referred to a Special Meeting'. However, the rule changes were not referred to the Peak Council, nor the Special Meeting convened on the direction of that Council. Nevertheless, the Association submits that this did not impact on the substantive fairness of the process, as rule changes were drafted under the instruction of the Executive Committee (which largely comprises the Peak Council) and because under rule 43, the Peak Council does not have any discretion about the notification of the Special Meeting (i.e. it is merely a procedural step).

⁸ The notice was sent on the direction of the Executive Director, who was acting on the instructions of the Constitutional Review Committee, which included the President. The President may request the convening of any meeting (rule 11(d)(v)) which the Executive Director is then obliged to convene (rule 18(d)(ii)).

⁹ Rules 41(c) and 41(f).

Meeting, along with the proposed amendments in tracked changes and a table explaining the changes – Appendix 8).

On Tuesday 9 October 2012, at 4.30 pm, the Special Meeting was held, where the proposed amendments were discussed. A motion was moved and seconded to approve the amendments and of the 19 financial members present, 18 voted in favour of the amendments, with one abstention (see draft minutes at Appendix 9).

A notification of this application to Fair Work Australia was posted on the Associations' website on 15 October 2012 (Appendix 10).¹⁰

Declaration and verification of facts

I declare that the alteration to the name and eligibility rules were made in accordance with the actions described above and the Rules and that the particulars set out in this application and attachments are true and correct to the best of my knowledge and belief.



Simon Butt (Officer making declaration)
President



John Miller (counter-signatory for seal under Rules)
Executive Director



¹⁰ See: http://www.mba.org.au/media_room/mbanews/article/?id=154 (accessed 26 October 2012).

[241V: Incorporates alterations of 24/05/2004 [R2004/233]]

I CERTIFY under section 161 of Schedule 1B of the Workplace Relations Act 1996 that the pages herein numbered 1 to 35 both inclusive contain a true and correct copy of the registered rules of the Master Builders' ~~Construction and Housing~~ Association of the Australian Capital Territory

DEPUTY INDUSTRIAL REGISTRAR

Rules of the MBGHA ACT Contents

1 - INTERPRETATION	1
2 - NAME OF ASSOCIATION AND INDUSTRY CONCERNED	2
3 - REGISTERED OFFICE	2
4 - OBJECTS	2
5 - MEMBERSHIP	4
6 - PERSONS WHO MAY BE OFFERED SERVICES	5
7 - ADMISSION OF MEMBERS.....	5
8 - DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES	7
9 - RESIGNATION OF MEMBERS	8
10 - TERMINATION OF MEMBERSHIP.....	8
11 - ORDINARY COUNCILS	10
12 - OFFICE-BEARERS, EXECUTIVE COMMITTEE AND THEIR POWERS AND DUTIES	10
13 - POWERS OF EXECUTIVE COMMITTEE.....	14
14 - RETIREMENT OR REMOVAL OF OFFICE-BEARERS AND MEMBERS OF ORDINARY COUNCILS.....	16
15 - ELECTION OF OFFICE-BEARERS AND ORDINARY COUNCIL MEMBERS	17
16 - CASUAL VACANCIES - OFFICE-BEARERS AND/OR MEMBERS OF ORDINARY COUNCILS.....	20
17 - COMMITTEES	21
18 - POWERS AND DUTIES OF MEMBERS OF COMMITTEES AND COUNCILS	22
19 - EXECUTIVE DIRECTOR.....	22
20 ANNUAL GENERAL MEETING	23
21 - SPECIAL MEETINGS	24
22 - EXECUTIVE COMMITTEE MEETINGS	25
23 - ORDINARY COUNCIL MEETINGS	25
24 - QUORUM	26
25 - RESOLUTIONS: CONDUCT OF MEETINGS	26
26 - FINANCIAL YEAR.....	26
27 - SUBSCRIPTIONS.....	26
28 - LEVIES, CONTRIBUTIONS	27
29 - RECOVERY OF SUBSCRIPTIONS AND OTHER AMOUNTS DUE TO THE ASSOCIATION.....	27
30 - APPLICATION AND CONTROL OF FUNDS, PROPERTY	28
31 - APPOINTMENT OF AUDITORS AND AUDIT	29
32 - EXAMINING BOOKS, RECORDS AND ACCOUNTS BY MEMBERS	30
33 - REGISTER OF MEMBERS.....	30
34 - DISCIPLINARY POWERS.....	30
35 - MEMBERS' ASSENT TO RULES.....	32
36 - INDEMNIFICATION OF MEMBERS, OFFICE-BEARERS AND EMPLOYEES	32
37 - COMMON SEAL.....	32
38 - ASSOCIATION EMBLEM.....	32
39 - MEMBERSHIP EMBLEM	33
40 - CONCILIATION AND ARBITRATION, AUTHORISED AGREEMENTS	33
41 - ANNUAL REPORT	34
42 - NOTICES	34
43 - POLICY.....	35
44- ALTERATIONS TO RULES.....	35
45 - DISSOLUTION OF THE ASSOCIATION.....	35
46 - LOANS, GRANTS AND DONATIONS	36
1 - INTERPRETATION	1
2 - NAME OF ASSOCIATION AND INDUSTRY CONCERNED	1
3 - REGISTERED OFFICE	2
4 - OBJECTS	2

Contents

<u>5</u>	<u>MEMBERSHIP</u>	<u>4</u>
<u>5A</u>	<u>PERSONS WHO MAY BE OFFERED SERVICES</u>	<u>5</u>
<u>6</u>	<u>ADMISSION OF MEMBERS</u>	<u>5</u>
<u>7</u>	<u>DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES</u>	<u>6</u>
<u>8</u>	<u>RESIGNATION OF MEMBERS</u>	<u>7</u>
<u>9</u>	<u>TERMINATION OF MEMBERSHIP</u>	<u>8</u>
<u>10</u>	<u>ORDINARY COUNCILS</u>	<u>9</u>
<u>11</u>	<u>OFFICE BEARERS, EXECUTIVE COMMITTEE AND THEIR POWERS AND DUTIES</u>	<u>10</u>
<u>12</u>	<u>PEAK COUNCIL</u>	<u>12</u>
<u>13</u>	<u>POWERS OF EXECUTIVE COMMITTEE</u>	<u>13</u>
<u>14</u>	<u>RETIREMENT OR REMOVAL OF OFFICE BEARERS AND COUNCIL</u>	<u>16</u>
<u>15</u>	<u>ELECTION OF OFFICE BEARERS AND COUNCIL MEMBERS</u>	<u>16</u>
<u>16</u>	<u>CASUAL VACANCIES OFFICE BEARERS AND/OR MEMBERS OF COUNCILS</u>	<u>20</u>
<u>17</u>	<u>COMMITTEES</u>	<u>21</u>
<u>17A</u>	<u>POWERS AND DUTIES OF MEMBERS OF COMMITTEES</u>	<u>21</u>
<u>18</u>	<u>EXECUTIVE DIRECTOR</u>	<u>21</u>
<u>19</u>	<u>ANNUAL MEETING</u>	<u>23</u>
<u>20</u>	<u>SPECIAL MEETINGS</u>	<u>23</u>
<u>21</u>	<u>PEAK COUNCIL MEETINGS</u>	<u>24</u>
<u>21A</u>	<u>ORDINARY COUNCIL MEETINGS</u>	<u>25</u>
<u>22</u>	<u>QUORUM</u>	<u>25</u>
<u>23</u>	<u>RESOLUTIONS: CONDUCT OF MEETINGS</u>	<u>25</u>
<u>24</u>	<u>FINANCIAL YEAR</u>	<u>26</u>
<u>25</u>	<u>SUBSCRIPTIONS</u>	<u>26</u>
<u>26</u>	<u>LEVIES, CONTRIBUTIONS</u>	<u>27</u>
<u>27</u>	<u>RECOVERY OF SUBSCRIPTIONS AND OTHER AMOUNTS DUE TO THE ASSOCIATION</u>	<u>27</u>
<u>28</u>	<u>APPLICATION AND CONTROL OF FUNDS, PROPERTY</u>	<u>28</u>
<u>29</u>	<u>APPOINTMENT OF AUDITORS AND AUDIT</u>	<u>29</u>
<u>30</u>	<u>EXAMINING BOOKS, RECORDS AND ACCOUNTS BY MEMBERS</u>	<u>29</u>
<u>31</u>	<u>REGISTER OF MEMBERS</u>	<u>30</u>
<u>32</u>	<u>DISCIPLINARY POWERS</u>	<u>30</u>
<u>33</u>	<u>MEMBERS' ASSENT TO RULES</u>	<u>31</u>
<u>34</u>	<u>INDEMNIFICATION OF MEMBERS, OFFICE BEARERS AND EMPLOYEES</u>	<u>31</u>
<u>35</u>	<u>COMMON SEAL</u>	<u>32</u>
<u>36</u>	<u>ASSOCIATION EMBLEM</u>	<u>32</u>
<u>37</u>	<u>MEMBERSHIP EMBLEM</u>	<u>32</u>
<u>38</u>	<u>UNAUTHORISED USE OF ASSOCIATION SEAL OR EMBLEM</u>	<u>32</u>
<u>39</u>	<u>CONCILIATION AND ARBITRATION, AUTHORISED AGREEMENTS</u>	<u>33</u>
<u>40</u>	<u>ANNUAL REPORT</u>	<u>33</u>
<u>41</u>	<u>NOTICES</u>	<u>33</u>
<u>42</u>	<u>POLICY</u>	<u>34</u>
<u>43</u>	<u>ALTERATIONS TO RULES</u>	<u>34</u>
<u>44</u>	<u>DISSOLUTION OF THE ASSOCIATION</u>	<u>34</u>
<u>45</u>	<u>LOANS, GRANTS AND DONATIONS</u>	<u>35</u>

1 - INTERPRETATION

In the interpretation of these Rules and this Constitution, the following words and expressions shall have the meaning hereinafter specified unless the context otherwise requires -

- (a) **'Annual General Meeting'** means a meeting held under Rule 20.
- (b) **'Association'** means the Master Builders' ~~Construction and Housing~~ Association of the Australian Capital Territory.
- (cb) **'Association's Office'** means the registered office of the time being of the Association.
- (d) **'Builder Member'** means any person who is a Commercial Builder Member, a Residential Builder Member or a Civil Contractor Member, as defined in Rule 5(b).
- (e) **'Committee'** means a committee described in Rule 17.
- (f) **'Code of Conduct'** means the Code of Conduct as approved from time-to-time by the Executive Committee under these Rules.
- (e) ~~Peak Council means the Peak Council as provided for under Rule 12.~~
- (gd) **'Executive Director'** means the person appointed in accordance with Rule 198 and shall also include any other person acting as Executive Director from time to time in accordance with the said Rule.
- (h) **'Executive Committee'** means the body provided for under Rule 12(c).
- (e) ~~Master Builder means any person who is qualified by training and/or experience to control and direct building construction or civil engineering works.~~
- (if) **'Member'** means any person who has been admitted to membership and includes a representative or additional representative, and **'Financial Member'** means a member not being in default in accordance with and as provided in Rules 27 and 29.
- (j) **'Ordinary Council'** means a council provided for under Rule 11.
- (k) **'Office-Bearer'** means those persons listed in Rule 12(b).
- (lg) **'Person'** shall also ~~mean~~ include individuals, sole-traders, firms, partnerships, associations, corporations, incorporated or unincorporated bodies, trustees, companies or any body duly registered under the *Corporations Act 2001 (Cth)* ~~Companies Act~~ or similar Act of the Commonwealth or any State therein, societies, agencies or other organisations or businesses thereof.
- (mh) **'Register of Members'** means that Register of Members as required by Rule 334.
- (ni) **'Rules'** means these rules and includes by-laws.
- (o) **'Special Meeting'** means a meeting held under Rule 21.
- (pj) **'Turnover'** means the gross amount expended on labour, materials, goods, services and sub-contracts in all phases of building-construction, civil engineering works, excavation work, demolition work and the like, whether under written contract or not, and shall include amounts paid to other contractors.

4 - OBJECTS

- (qk) Words importing the singular number include the plural number and vice-versa.
- (rl) Words importing the masculine gender include the feminine and neuter gender.

2 - NAME OF ASSOCIATION AND INDUSTRY CONCERNED

The Association's name is ~~shall be known as the "Masters Builders' Construction and Housing Association of the Australian Capital Territory"~~, and is formed by employers in the ~~bBuilding and cConstruction~~ Building and Construction Industry for the purposes hereinafter set out.

3 - REGISTERED OFFICE

The registered office of the Association shall be at such place in the Australian Capital Territory as the ~~Council Executive Committee~~ may from time to time determine.

4 - OBJECTS

The ~~a~~Association is formed to endeavour by all lawful means~~for the following purposes:~~

- (a) To promote and advocate ~~by all lawful and proper means~~ the interests of the building and construction industry in the Australian Capital Territory;
- (b) To protect and safeguard by lawful and proper means the interests of its members in the building and construction industry and associated industries and activities; ~~their regular business as master builders or such activities as are ancillary to and in which they are engaged with as principal, agent or consultant in the building construction industry;~~
- (~~e~~) ~~To protect and use all lawful means for the protection of its members in carrying out any work in the building industry and against injustice or oppression in the fair and proper execution and construction of works as they may undertake from time to time to carry out;~~
- (~~c~~d) To establish and promote a Code of ethics and good business Conduct practice amongst members;
- (~~d~~e) To take an active part in assisting or opposing ~~by all lawful and proper means~~ such public movements as may appear likely to affect its members' interests ~~in the carrying on of their business or the building industry generally;~~
- (~~e~~f) To secure for its members all the advantages of unity of action ~~in any lawful and proper manner whatsoever;~~
- (~~f~~g) To consider, discuss, distribute information, make recommendations and determinations, and provide advice ~~consider make lawful determinations and recommendations in respect of~~ about all matters affecting the said building and construction industry and associated industries and activities and to ~~collect, distribute and disseminate such information relating thereto as may be calculated to be of use to members, producers and distributors of building materials, suppliers or auxiliary or specialist services, associated or special to the building industry and the public generally, provided that such collection, distribution and dissemination of information shall not be used in any way to limited or be in restraint of trade or competition;~~
- (~~g~~h) To affiliate with, appoint representatives to, or enter into any alliance with any organisation, firm, or like, either within the Commonwealth of Australia or overseas having objects similar to, or calculated to benefit, members generally and to acquire shares and interests in or lend money upon debentures or otherwise to such, and to appoint representatives to such;

4 - OBJECTS

- (~~hi~~) To adopt and carry out any lawful procedure, create any enterprise or business, or organise any event (including charitable events) that may be considered desirable in the interests of members ~~in the maintenance of private enterprise;~~
- (~~ij~~) To maintain, review and improve conditions of contract, forms of agreement, conditions of tendering and the like ~~and to enter into agreements with the Royal Australian Institute of Architects or similar bodies and public authorities, Commonwealth Authorities and lending institutions regarding or in relation to any such contract, agreement or conditions;~~
- (~~ik~~) ~~To support the Quantity System in connection with building works and to promote the provision of quantities for the use of tenderers for work;~~
- (~~jl~~) To secure, maintain and improve trade relations with all public authorities, manufacturers, suppliers or distributors of goods, materials, and/or services either within Australia or abroad;
- (~~km~~) To maintain and improve the relations of members with their employees and the registered organisations or registered unions of such employees;
- (~~ln~~) To act as an registered organisation ~~and/or industrial union~~ of employers ~~and/or trade unions~~ under the laws of the Commonwealth of Australia and its Territories;
- (~~m~~) To bring any industrial dispute or claims relating the industrial matters before the appropriate tribunal established by the Commonwealth and to represent the interests of employers in all sections of the building and construction industry or ~~any associated industries y auxiliary or special to the building industry~~ before courts, boards, conciliation committees, other tribunals or other bodies, ~~and at conferences with organisations or employers and other bodies of employees or employers;~~
- (~~np~~) To enter into agreements and negotiations with members' employees and/or their representatives relative to the terms and/or conditions of employment;
- (~~oq~~) To support all forms of education and training within and increase knowledge about the building and construction industry ~~practical system of apprenticeship combined with technical education;~~
- (~~pr~~) To encourage and preserve ~~by every lawful means~~, skill in the industry, quality building and construction and safe work practices;
- (~~s~~) ~~To establish or assist in the establishment of technical and statistical libraries;~~
- (~~qt~~) To institute and establish grants, scholarships, awards and other benefactions for the development and benefit of the building and construction industry and associated charitable events ~~To support all forms of education and especially technical colleges or universities and to establish or to contribute to bursaries, scholarships or prizes for education purposes;~~
- (~~ru~~) To purchase, take or lease, or license, or hire, or otherwise acquire, real or personal property of any kind in furtherance of the objects of the Association and to sell, exchange or otherwise dispose of any real or personal property on such terms as may be considered expedient, and in such manner as is provided in these Rules;
- (~~sv~~) To construct, maintain and alter buildings, works, plant and machinery necessary or convenient for the purposes of the Association, and to afford facilities to its members for the conduct of their business (~~other than~~ including office accommodation) and means for their relaxation (including social events);
- (~~tw~~) To raise money ~~by any means lawful~~, whether specially provided by these Rules or not, to further any of these objects;

5 - MEMBERSHIP

- (~~ux~~) To raise funds by means of subscriptions, fees, donations, and levies from or on members or otherwise, and impose fines on members, for all purposes and objects of the Association in such amounts and in such manner as is provided in these Rules;
- (~~vy~~) To do all ~~lawful~~ things as may appear to be incidental or conducive to the aforementioned objects or any of them and to adopt additional objects from time to time; provided that the Association shall not be carried on for profit or gain;
- (~~wz~~) The object specified in each of the paragraphs in this clause shall be regarded as independent objects, and accordingly shall not be limited or restricted by reference to or inference from the terms of any other object but may be carried out in the widest sense and no object herein specified shall be deemed subsidiary or ancillary to any other object, and it is hereby declared that in the interpretation of this clause, no object shall be affected by the meaning of any of the Association's other objects or by the juxtaposition of two or more objects and that in the event of any ambiguity this clause shall be constructed in such a way as to widen and not restrict the powers of the Association.

5 - MEMBERSHIP

- (a) The Association shall consist of an unlimited number of persons engaged in the building and construction industry or civil engineering works or any phase thereof including demolition or excavation work and the like, within the membership categories in Rule 5(b). ~~and employing any worker in any of the before mentioned work and the administration thereof.~~
- (b) The ~~a~~Association shall comprise the following classifications of membership:
 - (i) Commercial Builder Members - who shall be ~~members~~ persons operating as principal contractors ~~Master Builders in the commercial construction sector or Civil Engineering Contractors as principal contractors or project managers.~~
 - (ii) Civil Contractor Members – who shall be persons operating principal contractors in the civil construction sector.
 - (iii) Residential Builders Members – who shall be persons operating as principal contractors in the residential construction sector.
 - (~~iv~~) Supplier and Subcontractory Members - who shall be ~~members~~ persons supplying materials or manufactured goods to the building and construction industry or be members operating as contractors, tradesmen, building agents or pieceworkers (provided that these persons are not employees) to any person in the building and construction industry;
 - (~~iii~~) Specialist and Sub-Contract Members – who shall be ~~members~~ operating as contractors, tradesmen, building agents or pieceworkers (provided that these persons are not employees) to any member of the building industry operating as a head contractor or project manager.
 - (~~vi~~) Professional Members - who shall be ~~members~~ persons operating as professional or trade consultants to the building and construction industry, persons in the finance industry engaged in direct dealings with the building and construction industry or other persons (provided that these persons are not employees) who by virtue of their trade or the skills practised by them are engaged in advising or consulting to members of the building and construction industry.
 - (~~vi~~) Life Members - an Annual ~~g~~General Mmeeting or Special Meeting may on the recommendation of the ~~Peak Council~~ Executive Committee but not otherwise resolve that a life membership shall be conferred on any member who has rendered valuable service to

76 - ADMISSION OF MEMBERS

the Association and such member shall thereupon be deemed to have paid all ~~his~~their future subscriptions in advance.

Such life membership shall not affect ~~his~~their liability to pay any sums other than ~~his~~their subscriptions nor shall it affect the liability to pay subscriptions of any firm, partnership or company of which ~~he~~they are a member.

- (vi) Honorary ~~m~~Members - with a view to strengthening the Association by the influence of members who have retired from the building and construction industry or other appropriate persons who may otherwise be ineligible for membership, the ~~Peak Council~~Executive Committee may invite such persons to accept honorary membership and in the event of acceptance by such invitees, shall elect accordingly.

Honorary ~~m~~Members shall be entitled to attend all ~~meetings of the Association, to receive all the Association's publications and to make use of such recreational facilities as the Association may provide~~the privileges of membership but

~~An honorary member shall not be eligible to hold any office in the Association nor vote on any matter other than those of a social nature.~~

- (vii) Associate Members – persons who are otherwise ineligible for membership may apply for Associate Membership.

Associate Members shall be entitled to the privileges of membership but shall not be eligible to hold any office in the Association nor vote on any matter.

65A - PERSONS WHO MAY BE OFFERED SERVICES

Persons who are for the time being ineligible for membership may be offered the services of the Association from time to time ~~by the Peak Council~~ at fees to be set by the ~~Association~~Executive Director. Such persons shall not be entitled to call themselves members of the Association ~~nor to exercise any voting rights in the Association affairs.~~

76 - ADMISSION OF MEMBERS

- ~~(a) Subject to Rule 5 (a) hereof, the persons whose name appears in the Register of Members of the Master Builders' Association of the ACT at the 1st January 1987 shall be deemed to have fulfilled the requirement of this Rule and any other Rule relating to the qualifications of and admittance of members.~~

- (ba) Any person who is ~~trading as a master builder or is engaged in building or civil engineering work or related work and~~ is desirous of being admitted as a member of the Association shall lodge with the Executive Director -

- (i) an application in a form approved by the ~~Executive Director~~Peak Council, together with,
- (ii) an entrance fee in such amount as the ~~Executive Committee~~Peak Council shall determine from time to time and an amount equal to the first year's subscription.

- (eb) Where a firm, company or organisation makes application for admittance as a member of the Association -

- (i) such firm, company or organisation shall at the same time nominate a person to represent such firm, company or organisation;

76 - ADMISSION OF MEMBERS

- (ii) a person so nominated shall be a member, director, trustee ~~or executive or employee~~ of such firm, company or organisation ~~and shall possess the qualifications required;~~
- (iii) such firm, company or organisation may nominate for membership one additional representative but any firm, company or organisation ~~in its own right as a member and in one right of its representatives shall have a total of not more than two one~~ votes;
- (iv) ~~such additional representatives may be admitted without fulfilling all technical qualifications if at the discretion of the Peak Council, position and length of service is such as to justify admittance.~~ all representatives nominated by a member, where eligible, shall be entitled to become Office-Bearers.
- (~~dc~~) Upon receipt of an application fulfilling the requirements of (~~ba~~) and (~~be~~) (if applicable) hereof, the Executive Director shall acknowledge receipt of same and inform the applicant, in writing of:
- (i) the financial obligations arising from membership; and
- (ii) the circumstance, and the manner, in which a member may resign from the Association.
- (~~ed~~) The Executive Director shall circulate all applications for membership to ~~the Peak Council and the relevant Ordinary Council and the Executive Committee, which will either vote to accept, reject, or defer each application, provided that the final decision may be made by the Executive Committee.~~ Applications for Associate Membership may be determined by the Executive Director.
- (~~fe~~) The ~~Executive Committee~~Peak Council may -
- (i) require such documentary or otherwise evidence as it deems necessary in order to establish a candidate's eligibility of fitness for membership;
- (ii) circulate an application for membership to the full membership of the Association for comment.
- (~~gf~~) The ~~Executive Committee~~Peak Council may adjourn consideration of an application for membership for three months but no longer.
- (~~g~~) Where it comes to the attention of the Executive Director that the applicant -
- (i) is a natural person of general bad character;
- (ii) is a body corporate whose constituent documents make provisions inconsistent with the purposes for which the Association was formed;
- such matters will be referred by the Executive Director for investigation by a Committee formed by the Executive Committee for that purpose.
- (~~h~~) If the applicant is found by the Committee to meet the descriptions in Rule 7(g), the Executive Committee may in its absolute discretion either accept or reject the application for membership.
- (~~i~~) When the ~~Peak Council~~Executive Committee has made a final decision to accept or reject an application for membership -
- (i) the Executive Director shall notify the applicant in writing of such decision; and
- (ii) in the case of rejection the fees lodged with the application shall be refunded.
- (~~ij~~) When the ~~Peak Council~~Executive Committee has rejected an application -

87 - DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES.

- (i) the applicant may by notice in writing addressed to the Executive Director at the registered office of the Association within 30 days of notice of such rejection, appeal to the next Annual General Meeting of members and such meeting may accept or reject the application; and
 - (ii) the applicant shall be informed of the result of such appeal by notice in writing signed by the Executive Director.
- (j) Where an applicant has been admitted to membership -
- (i) the Executive Director shall forthwith advise the applicant accordingly in writing and at the same time forward ~~them~~ him a copy of these Rules and the Association's Code of Conduct;
 - (ii) the name of the applicant shall then be entered in the Register of Members; and
 - (iii) a membership certificate shall be issued to the applicant, ~~by the Council Management, being the Peak Council~~.
 - (iv) it is a condition of membership that a member abide by these Rules and the Association's Code of Conduct, as amended from time-to-time.

87 - DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES.

- (a) The person elected as the representative or additional representative of a member shall be responsible in all respects for ~~his~~ their acts and omissions to the Association and these Rules in so far as such acts or omissions are directly or indirectly related to or incidental to the business operations of the member.
- (b) The person elected as a representative or additional representative of a member shall be responsible personally for and liable for the acts and omissions to the Association and these Rules by the member that ~~he~~ they represents, in so far as such acts or omissions are directly or indirectly related or incidental to the business operations of the member.
- (c) The member shall be liable for the acts and omissions of the Association and these Rules by ~~his~~ their or its representative or additional representative, in so far as such acts or omissions are directly or indirectly related to or incidental to business operations of the member.
- (d) A member may withdraw the nomination of a representative or additional representative by written notice to the Executive Director, and -
 - ~~(i) if the member has a common seal as may be required by law then the notice shall bear such common seal thereof;~~
 - (ii) upon receipt of a notice as aforesaid and subject to Rule 98, the Executive Director shall forthwith cancel the ~~membership rights~~ of the representative or additional representative as the case may be;
 - (iii) the Executive Director shall then notify the representative concerned and report the matter to the ~~Peak Council~~ Executive Committee for record; and
 - (iv) in the event of the representative to be withdrawn being the sole representative then a new representative shall be nominated at the same time as the notice of withdrawal is given.

109 - TERMINATION OF MEMBERSHIP

- (e) Nothing in these Rules shall be deemed or construed to confer upon any person elected as a representative or additional representative any personal right or authority or benefits of membership of this Association as if ~~they~~he ~~are~~is also trading as an individual in ~~his~~their own right.

In such an event ~~he~~they shall make application for admittance to membership in ~~his~~their own right in the manner prescribed.

98 - RESIGNATION OF MEMBERS

- (a) A member may resign from membership by written notice ~~addressed and delivered~~ to the Executive Director.
- (b) A notice of resignation from membership takes effect:
- (i) where the member ceases to be eligible to become a member of the Association:
- (A) on the day on which the notice is received by the Association; or
- (B) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;
- whichever is later; or
- (ii) in any other case:
- (A) at the end of 2 weeks after the notice is received by the Association; or
- (B) on the day specified in the notice;
- whichever is the later.
- (c) Any dues payable but not paid by the former member in relation to a period before the member's resignation took effect, may be sued for and recovered in the name of the Association, in a court of competent jurisdiction, as a debt due to the Association.
- (d) A notice delivered to the Executive Director shall be taken to have received by the Association when it was delivered or otherwise received.
- (e) A notice of resignation that has been received by the Association is not invalid because it was not addressed and delivered ~~in accordance with sub-rule (a)~~.
- (f) A resignation from membership is valid even if it is not effected in accordance with this rule if the member is informed in writing by or on behalf of the Association that the resignation has been accepted.

109 - TERMINATION OF MEMBERSHIP

- (a) The membership of any member shall cease and determine upon -
- (i) the resignation of such member tendered and accepted pursuant to Rule ~~98~~;
- (ii) the death of such member;
- (iii) the withdrawal of the authority of such member as a representative pursuant to Rule 7 ~~8~~(d);

109 - TERMINATION OF MEMBERSHIP

- (iv) if such member is duly declared or certified according to law as an insane or incapable person; ~~or~~
- (v) if such member being a company or unincorporated body shall be dissolved; or
- (vi) if a member is found guilty of the conduct, act or acts described pursuant to Rule 34, and immediately upon becoming aware of such event the Executive Director shall remove such member's name from the Register of Members, and termination of membership shall operate from the time of removal of ~~his~~their name from such Register.
- (b) Except where the termination is made under Rule 34 or in cases in which the Peak Council Executive Director shall otherwise decide following compliance with the next succeeding sub-clause, the membership of any member shall cease and determine if -
- (i) such members being an individual person shall have ~~his~~their estate sequestrated in bankruptcy, or shall assign ~~his~~their estate for the benefit of ~~his~~their creditors generally.
- (ii) such member being a firm or partnership shall have its estate or the estate of each of its members sequestrated in bankruptcy or shall assign its estate or the estates of each of its members for the benefit of the creditors generally of such firm or partnership.
- (iii) a receiver or a receiver and manager is appointed to control or manage the business or business affairs of such a member, and
- unless otherwise ~~directed~~decided by the Executive Director by the Peak Council following compliance with the next succeeding sub-clause, the Executive Director shall remove the name of such member from the Register of Members and termination of ~~his~~their membership shall operate from the time of removal of ~~his~~their name from such Register.
- (c) Upon becoming aware of the happening of any of the events mentioned in the last preceding sub-clause, the Executive Director shall enquire from such member the circumstances of and leading up to such event, and upon receipt of such information (if furnished by or for such member), together with -
- (i) a request in writing (if so desired by such member) that ~~his~~their membership be not terminated in consequence of such event; and
- (ii) a certificate or report from the Official Receiver or Trustee (in the case of an individual person, a firm or a partnership) or from the liquidator or receiver or receiver and manager (in the case of a company) that all creditors of such member as at the date of the happening of such event are expected to be paid in full,
- the Executive Director shall ~~submit such information, request and certificate or report to the first regular meeting of the Peak Council~~ shall thereupon decide whether the membership of such member shall cease and determine as aforesaid or may continue either unconditionally or subject to compliance with such conditions as the Executive Director ~~Peak Council~~ may think fit to impose.
- (d) The member referred to in sub-clause (c) shall cause the information, request and such certificate or report to be furnished to the Executive Director within twenty-one (21) days after the happening of the said event, in default whereof the ~~Peak Council~~Executive Director may deal with the matter in the absence of the same.
- (e) In the event that a member's membership is terminated under this Clause, that member shall be notified in writing within fourteen (14) days of such termination which notification shall specify the ground on which the membership is terminated.

110 - ORDINARY COUNCILS

- (a) The following Ordinary Councils shall be elected ~~each year on two (2) yearly terms, to commence on alternate years to those of President and Treasurer, pursuant to Rule 15(b):~~
- (i) A Commercial Builder's Council which shall be elected by and from those members who are Commercial Builder ~~Members, Civil Contractors or Project Managers.~~
 - (ii) A Suppliers and Subcontractors Council which shall be elected by and from those members who are Supplier and Subcontractor Members~~the combined Supply Members, Specialist Contract Members and Sub-Contract Members.~~
 - (iii) A Residential Builders Council which shall be elected by and from those members who are Residential Builder Members.
 - (iv) The ~~Civile~~ Contractors Council which shall be elected by and from those members who are ~~civil engineering contractors~~Civil Contractor Members.
 - (v) A Professional ~~Consultants~~ Council which shall be elected by and from those members who are ~~Professional consultant M~~members.
- (b) Each Ordinary Council shall be composed of ~~a Chairman and~~ a minimum of ~~twelve five (5+2)~~ and a maximum of twenty (20) members (subject to Rule 15(1)) inclusive of a Chairman and an Alternate Chairman, the latter to be elected by and from the members of each Ordinary Council.
- (c) Each Ordinary Council may -
- (i) deliberate upon matters affecting its electors and upon matters affecting the Association at large;
 - (ii) may refer its decisions to the ~~Peak Council~~Executive Committee for further debate or with the recommendation that certain actions be instigated in relation to any matter; and
 - (iii) may appoint such office holders and Committees and maintain such records as sees fit.

11-12 - OFFICE-BEARERS, EXECUTIVE COMMITTEE AND THEIR POWERS AND DUTIES

- (a) The management of the Association shall be vested in the Executive Committee.
- (b) Office-Bearers - The Office-Bearers of the Association shall be -
- (i) the President, the Chairman of each Ordinary Council and the Treasurer, all of which positions shall be honorary; or
 - (ii) in the event of the unavailability of a Chairman from an Ordinary Council~~Office Bearer, other than the President and the Treasurer, the Alternate Chairman a nominee of any of the above from time to time, but such period not to exceed two consecutive calendar months, which nominee shall be appointed in writing by the absent Office Bearer and drawn from the same Council as the absent Office Bearer.~~

At least one of the President or the Treasurer shall be a Builder ~~M~~member of the Association and the ~~Peak Council~~Executive Committee shall nominate which position is to be held by a builder ~~m~~Member at the same time that it appoints a Returning Officer for each ~~annual~~ election. Persons other than builder ~~m~~Members shall be ineligible to nominate for the said position after the declaration.

(c) Executive Committee - Collectively the said Office-Bearers shall form the Executive Committee, and -

(i) the Executive Committee shall ~~decide all matters of importance to the Association~~ carry out such duties as may be delegated to them by the Peak Council and may in cases of emergency take such action as may be deemed necessary in the interests of the Association provided that such action shall be reported to the next meeting of the Peak Council;

(ii) meetings of the Executive Committee shall be called by the President; ~~and~~

(iii) four (4) shall form a quorum at Executive Committee Meetings; ~~and~~

(iv) the Executive Committee may also appoint at its discretion up to two (2) Extraordinary Executive Committee Members (whether they be non-members, Honorary Members or otherwise) on two (2) yearly terms, provided that Extraordinary Executive Committee Members shall not be eligible to vote at meetings of the Executive Committee.

(d) The President

(i) ~~shall be the Association's chief executive officer and shall preside at all meetings of the Association, the Peak Council~~ Executive Committee and may preside at all meetings of the Ordinary Councils and all Committees whether special or otherwise;

(ii) shall have all the authority vested in the chairman of any meeting;

(iii) shall keep order and direct the manner of debate upon all questions introduced and determine what questions shall be discussed and in what order questions shall be introduced;

(iv) shall have the right to vote on all questions and where voting is equal may exercise ~~his~~ their right to a casting vote by declaring the result of the voting;

(v) shall have power to cause any meeting of the Association, whether of its Executive Committee, Ordinary Councils, and or its Committees to be convened;

(vi) shall have power to cancel and appoint other dates of meetings;

(vii) shall have power to delegate ~~his~~ their authority and to direct the Executive Director and to suspend the Executive Director from office as provided in Rule ~~194~~8;

(viii) shall carry out such additional duties as may be delegated to ~~him~~ them by the ~~Council~~ Executive Committee or an Annual General Meeting or Special Meeting of the Association;

(ix) shall hold office for a period of ~~one~~ two (2) years from the date of ~~his~~ their election;

(x) shall retire at the second Annual General Meeting ~~next~~ following ~~his~~ their election but shall be eligible for re-election, pursuant to Rule 15(b).

(e) Chairmen of Ordinary Councils -

(i) In the absence of the President, the Chairman of the Commercial Builders' Council shall act as, and have rights and powers of the President, and shall carry out such other duties as may be delegated to ~~him~~ them by the President, the Executive Committee ~~Peak Council~~ or a meeting of the Association.

12 - PEAK COUNCIL

- (ii) In the absence of both the President and the Chairman of the Commercial Builders' Council, the other Chairmen of Ordinary Councils shall appoint one of their number to have the rights and powers of the President.
 - (iii) Each Chairman of an Ordinary Council shall carry out such other duties as may be delegated to ~~him~~ them by the President, the ~~Council~~ Executive Committee or a meeting of the Association.
 - (iv) Each Chairman of an Ordinary Council shall have power to cause any meeting of the Ordinary Council to be convened.
- (f) The Treasurer - The Treasurer shall -
- (i) certify all accounts due by the Association;
 - (ii) see that the Executive Director causes all monies belonged to the Association to be paid to the credit of the Association without undue delay in a bank authorised by the Executive Committee;
 - (iii) cause to be kept and maintained such books of accounts as may be required by law;
 - (iv) certify the Association's balance sheets and ~~F~~financial ~~S~~statements and such other financial returns as may be required by law:
 - ~~(v) so far as practicable, authorise all cheques or bank withdrawals on behalf of the Association;~~
 - (vi) cause the books of accounts to be audited by a proper person and tabled at the Annual General Meeting; and
 - (vii) cause to be kept and maintained the register of all members of the Association;
 - ~~(viii) shall hold office for a period of two (2) years from the date of their election;~~
 - ~~(viii) shall retire at the second Annual General Meeting following their election but shall be eligible for re-election, pursuant to Rule 15(b).~~

12 - PEAK COUNCIL

- ~~(a) The Executive Committee shall consult with the Peak Council upon all matters of importance to the Association.~~
- ~~(b) The Peak Council shall consist of the Executive Committee and a number of other members who shall be elected, in accordance with these rules, as follows:~~
 - ~~(i) The Commercial Builders' Council shall elect six (6) of its members to the Peak Council.~~
 - ~~(ii) The Suppliers and Subcontractors Council shall elect four (4) of its members to the Peak Council.~~
 - ~~(iii) The Residential Builders' Council shall elect four (4) of its members to the Peak Council.~~
 - ~~(iv) The Civil Contractors Council shall elect four (4) of its members to the Peak Council.~~
 - ~~(v) The Professional Consultants Council shall elect four (4) of its members to the Peak Council.~~

- ~~(e) All members of the Peak Council shall have full and equal voting rights after having been duly and properly elected.~~
- ~~(d) The election of the other members of the Peak Council shall be in the hands of the respective Returning Officers appointed by each Ordinary Council under these Rules, and the following provisions shall apply:-~~
- ~~(i) The Returning Officer for each Council shall call for nominations by a notice directed to each member of his particular Council, and such notices shall specify an address at which the nominations will be received by him.~~
- ~~(ii) A member of the particular Ordinary Council may nominate or be nominated as a candidate for election to the Peak Council by submission in writing to the Returning Officer. The nomination of any member of some other member shall indicate the name of the nominator and the nominee's consent. If the Returning Officer conducting such election finds a nomination to be defective he shall, before rejecting the nomination, notify the persons concerned of the defect and, where it is practicable to do so, give him the opportunity of remedying the defect within a period of not less than 7 days after the person is notified.~~
- ~~(iii) Forthwith, after a ballot for any position relating to a particular Ordinary Council becomes necessary, the Returning Officer shall prepare, personally initial and forward, in such manner as to ensure that, so far as practicable, each person entitled to participate in any such ballot received such ballot paper, a ballot paper clearly setting out the positions being balloted together with the candidates' names in alphabetical order for each position. The method of voting shall also be clearly indicated. Where a person entitled to participate in any such ballot will be absent from his or her usual address during the ballot, such person may notify the Returning Officer accordingly, and nominate another address for the receipt of ballot papers. Where the Returning Officer has been so notified before the ballot opens, the Returning Officer shall forward a ballot paper to the person concerned at the nominated address.~~
- ~~(iv) The Returning Officer shall arrange for a post office box or other receptacle for the reception of all ballot papers. As soon as practicable after the closing of the Poll such post office box shall be opened by the Returning Officer in the presence of such scrutineers who are present and proceed to count the Poll. He shall declare the ballot and notify the Executive Committee in writing of the result. All returned ballot papers shall remain in the custody of the Returning Officer.~~
- ~~(v) The result of the poll shall be ascertained by scrutiny and in each case the candidate receiving the highest number of votes shall be declared elected.~~
- ~~(vi) In the event of an equality of votes between candidates for any position the candidate to be elected shall be determined by lot.~~
- ~~(vii) Each candidate shall be entitled to appoint a Scrutineer whose name shall be advised in writing to the Returning Officer by the candidate. Each Scrutineer shall have the right in the presence of the Returning Officer to inspect any work being done in connection with the ballot at any stage thereof. He shall conduct himself so as not to interfere with the functions of the ballot and shall immediately notify the Returning Officer of any irregularity which he may observe.~~
- ~~(viii) Successful candidates shall assume a position on the Peak Council on the declaration of the Poll and subject to the rules shall hold office until their successors are elected, and shall be eligible for re-election.~~

13 - POWERS OF EXECUTIVE COMMITTEE

- ~~(ix) The Returning Officer shall so conduct himself as to ensure, so far as is practicable, and to the best of his ability and foresight that no irregularity occurs in or in connection with the election. He shall observe the secrecy of the ballot and shall not attempt to influence any voter for or against any candidate.~~
- ~~(x) No error or omission in the carrying out or observance of any Rule shall invalidate an election if the error or omission is not of such a nature that the result of the election has been or may have been affected.~~

13 - POWERS OF EXECUTIVE COMMITTEE

- (a) Without in any way limiting the general powers conferred by these Rules or otherwise on the Executive Committee, it is hereby expressly declared that it shall have the following powers, that is to say, power -
 - (i) To adopt whatever lawful and proper measures as it, from time to time, deems expedient for the purpose of giving effect to the objects of the Association or any one of them;
 - (ii) To purchase, take in exchange, or on lease, or otherwise acquire, and for any estate or interest therein, any real or personal property, rights or privileges, which the Association is authorised to purchase or acquire and which it may deem requisite or expedient to acquire for the purpose of the Association's business, and at its discretion to sell, subdivide, let exchange, or dispose of any property of the Association on such terms as to credit or otherwise as it may think fit;
 - (iii) At its discretion, to pay for any property, rights, or privileges, acquired by or services rendered to the Association, either wholly or partially in case or in bonds, debentures, or other securities of the Association, and any such bonds, debentures, or other securities, may be either specifically charged upon or any part of the property of the Association, or in such other manner as it may think fit;
 - (iv) To secure the fulfilment of any contract or engagements entered into by the Association by mortgage or charge of all or any of the property of the Association for the time being or so charged;
 - (v) To raise or borrow money in the name or otherwise on behalf of the Association as it may from time to time think expedient, and to secure the repayment thereof or the fulfilment or discharge of any liability, guarantee, or obligation, or of any undertaking by the Association in such manner and upon such terms and conditions as it thinks fit, and in particular by the issue of bills or notes or debentures, by mortgage or charge of or on any of the property or assets of the Association, both present and future.
 - (vi) To institute, conduct, defend, compound, abandon, any legal proceedings by or against the Association or its Officers, or otherwise concerning the affairs of the Association, and also to compound and allow time for payment or satisfaction of any debts due, and of any claims or demands by or against the Association;
 - (vii) To refer any claims or demands by or against the Association to arbitration and observe and perform the awards;
 - (viii) To act on behalf of the Association in all matters relative to bankrupts and insolvents, assignments or liquidations;
 - (ix) To make and give receipts, releases, and other discharges, for money payable to the Association, and for the claims and demands of the Association;

13 - POWERS OF EXECUTIVE COMMITTEE

- (x) To draw, accept, make, endorse, transfer, discount, guarantee, and negotiate, such cheques, bills of exchange, and promissory notes, and give such indemnities and guarantees, and enter into such other obligations as may seem to it to be expedient for the purposes of the Association;
- (xi) To invest and deal with any monies of the Association not immediately required for the objects thereof upon such securities and in such manner as it may think fit, and from time to time to vary or release such investments;
- (xii) To enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute, and do all such acts, deeds, and things in any lawful and proper manner in the name and on behalf of the Association as it may consider expedient for or in relation to any of the matters aforesaid, or otherwise for the objects of the Association;
- (xiii) To entrust to, and confer upon, any member of the Executive Committee, Ordinary Council or any Committee ~~of the Peak Council~~, or ~~Officer-employee~~ of the Association, such of the powers exercisable by the Executive Committee under these Rules as it may think fit, and from time to time to revoke, withdraw, alter, or vary, all of any of such powers.
- (xiv) To affiliate the Association with any organisation, association or body, corporate or incorporate, having objects altogether or in part similar to those of the Association, upon such terms and conditions and subject to the payment of such fees or subscriptions (if any) as the ~~Peak Council~~Executive Committee may agree, and at any time to terminate or cancel such affiliation by the Association;
- (xv) To purchase, or otherwise acquire and undertake all or part of the property, assets, liabilities, and engagements, or any one or more of the associations, companies, firms or chambers with which this Association is authorised to amalgamate, affiliate, fuse or ally, and to transfer all or any part of the property, assets, liabilities, and engagements of this Association to any one or more of the associations, companies, firms, or chambers, with which this Association is authorised to amalgamate, affiliate, fuse or ally;
- (xvi) To appoint the Committees required under these Rules to be appointed, and ~~special~~ Committees from amongst its own number or otherwise to examine and inquire into any special matter in connection with the objects or business of the Association, and to appoint members of the Association to act with any such ~~Special~~ Committees whenever it may think proper, and generally to determine the Constitution, and regulation of the procedure of any Committee, ~~whether Special or appointed under these Rules~~;
- (xvii) From time to time to make and to alter, vary, and rescind, by-laws for the carrying out of these Rules, to put into effect the powers and authorities thereby vested in the ~~Peak Council~~Executive Committee and of regulating the conduct and proceedings of the Association and of the ~~Peak Council~~Executive Committee meetings and generally to provide for all such matters and things relating to the management of the property of the Association and to conduct of its business as are not inconsistent with or repugnant to these Rules or required to be done by the Association in Special or Annual General Meetings;
- (xviii) To bring any industrial disputes, claims, or matters before ~~the Australian Industrial Relations Commission, or any Committee, Board, or other Tribunal or other body whatsoever, appointed~~ empowered to deal with such disputes, claims or matters under the Industrial Relations Act 1988, or any Acts amending the said Act or made in substitution thereof or under any Act of Parliament laws of the Commonwealth;
- (xix) On behalf of the Association or any members thereof to make and take any legal steps to enforce any claims or demand relative to industrial matters upon any organisation, or

14 - RETIREMENT OR REMOVAL OF OFFICE-BEARERS AND MEMBERS OF ORDINARY COUNCILS

~~Industrial or Trade Union of Employees or Employers, or upon any individual employees or employers;~~

- (xx) To enter into industrial agreements with any ~~Trade or Industrial Union or Association of Employees or Employers;~~ all such agreements ~~shall be under the seal of the Association and~~ shall be executed by the President and Executive Director;
- (b) All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Association, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by the Executive Director (or their delegate) and the President (or other Office-Bearer so appointed by the President) or in such other manner as the Executive Committee determines (which may be by way of seal); provided always that the aforesaid powers shall be subject to the direction and control of the Association in Special or Annual General Meeting.
- (c) Any instrument required by law to be under seal shall be executed by the Executive Director (or their delegate) and the President (or other Office-Bearer so appointed by the President) or in such other manner as the Executive Committee determines such persons as the Executive Committee may appoint and shall be under the seal of the Association; Provided always that the Committee shall exercise the aforesaid powers shall be subject to the direction and control of the Association in Special or Annual General Meeting.

14 - RETIREMENT OR REMOVAL OF OFFICE-BEARERS AND MEMBERS OF ORDINARY COUNCILS

- (a) For the purpose of this Rule "Office-Bearer" shall mean any member of the Executive Committee ~~or of the Peak Council.~~
- (b) The Office-Bearers ~~and members of the Peak Council~~ and members of the Ordinary Councils shall retire every two years at an the Annual General Meeting but shall be eligible for re-election.
- (c) Any Office-Bearer who shall be found guilty, in accordance with these Rules, of misappropriation of the funds of the Association, a substantial breach of the Rules of the Association or gross misbehaviour or gross neglect of duty or has ceased, according to the Rules of the Association, to be eligible to hold the office, may by resolution of the Special Meeting concerned and notice of which has been given in accordance with these Rules be removed from such office.

In such case, the Executive Director shall ~~furnish~~ give notice to the Office-Bearer with a statement of the allegations made against ~~him-them~~ and ~~summon~~ request the Office-Bearer to appear before such Special Meeting to answer such allegations.

The Special Meeting shall consider such allegations and if a three fourths majority of the members present and entitled to vote at such Special Meeting shall decide that the Office-Bearer has been guilty of the conduct, act or acts alleged against ~~him-them~~ the Special Meeting may resolve to remove the Office-Bearer from office. The quorum at such a Special Meeting will be ten (10).

Where an Office-Bearer is also a Chairman of an Ordinary Council, their removal from office as an Office-Bearer under this Rule shall also remove them from office as a Chairman of the relevant Ordinary Council.

Should any such Office-Bearer fail to appear before such Special Meeting when ~~summoned requested~~ requested to appear then the Special Meeting may proceed ex-parte ~~and such failure to appear without written excuse on the part of the Office Bearer shall in itself be conduct which may be dealt with under the Rules.~~

15 - ELECTION OF OFFICE-BEARERS AND ORDINARY COUNCIL MEMBERS

~~A summons to appear in accordance with this Rule shall be served personally by the Executive Director or by registered post, direct to his last known address.~~

15 - ELECTION OF OFFICE-BEARERS AND ORDINARY COUNCIL MEMBERS

- (a) The Office-Bearers and members of the various Ordinary Councils shall be elected for two (2) yearly terms by secret ballot in the manner hereinafter prescribed by and from the financial members and life members who fall within the category of members entitled to vote for each Ordinary Council, except that the President and Treasurer shall be elected by and from all financial members and life members of the Association.
- (b) The terms of Chairmen and other members of the various Ordinary Councils shall commence on alternate years to the terms of the President and Treasurer.

(ba) Transitional provision

In the years 2013 to 2015 the elections for the President, Treasurer, Chairmen and other members of the various Ordinary Councils shall timed as follows:

- (i) in 2013 the President and Treasurer shall be elected for two (2) years and the Chairmen and other members of the various Ordinary Councils shall be elected for one (1) year;
- (ii) in 2014 the Chairmen and other members of the various Ordinary Councils shall be elected for two (2) years;
- (iii) in 2015 the President and Treasurer shall be elected for two (2) years.

thereafter the elections for the President, Treasurer, Chairmen and other members of the various Ordinary Councils shall be conducted every two (2) years upon the expiry of their terms.

- (bc) To conduct the elections of the President and Treasurer, a Returning Officer, not being the holder of any other office in nor being an employee of, the Association or a branch, section or division of the Association; shall be appointed by the tribunal or other body empowered to do so under the laws of the Commonwealth a meeting of the Peak Council, who will also be the Returning Officer ~~whereas~~ for the elections of the Chairmen and members of the various Ordinary Councils ~~these shall be in the hands of the Returning Officers, none of which shall be the holder of any office in, or an employee of, the Association, or a branch, section or division of the Association and one of which shall be appointed by each Ordinary Council.~~

- (ed) At least six (6) weeks before the Annual General Meeting in each election year, the Returning Officer shall forward by post to each financial member and life member a nomination form with a notification thereon or therewith of the closing date and time of such nomination.

The aforesaid nomination shall also state:

- (i) That nominations will not be received by ~~him~~ them after the closing date so fixed.
- (ii) The nomination will not be valid unless a written consent of the nominee is received on or before the closing date of nomination.
- (iii) The address to which the nomination and consents are to be forwarded.
- (iv) The class of members which the nominee represents in accordance with clause ~~105~~.
- (ee) A nomination shall in every case be in writing and shall be signed by the nominator (who may be the nominee or another representative of the nominee) and shall also be assented to in writing by the nominee.

(ef) Nominations and consents shall be forwarded to the Returning Officer so as to reach ~~him~~them not later than 4.00pm four (4) weeks prior to the Annual General Meeting.

(fg) The Returning Officer shall inspect the nominations and consents received at the closing date and time and satisfy ~~himself~~themselves as far as ~~he~~they reasonably can that each of them is in order.

Providing that if the Returning Officer finds a nomination to be defective ~~he~~they shall, before rejecting the nomination, notify the person concerned of the defect and shall allow ~~him~~them seven (7) days in which to remedy the defect.

(gh) If, in relation to any Ordinary Council, not less than ~~twelve~~five (125) and not more than twenty (20) valid nominations have been received for the next ensuing two years, the Returning Officer shall certify to the President that the said candidates have been elected unopposed.

The Returning Officer shall also declare the said candidates duly elected at the Annual General Meeting.

(hi) If more than the number of nominations required to fill any office is received an election therefore shall be taken by a postal ballot hereinafter provided -

(i) The Returning Officer shall prepare or cause to be prepared a sufficient number of ballot papers on which shall appear the full names of the candidates only in the order in which they shall have been drawn by the Returning Officer by ballot.

Any person so nominated, plus the Executive Committee, shall be notified of and have the right to be present at such ballot for positions.

The one ballot paper may contain provision for voting in respect of more than one election. The method of voting shall also be clearly indicated.

(ii) The Returning Officer shall within fourteen (14) days after the closing date for nominations, forward by prepaid post to every member entitled to vote at the election, a ballot paper bearing ~~his~~their initials, together with two envelopes. One envelope shall be a reply paid outer envelope addressed to the Returning Officer at an address arranged by ~~him~~them for the return of the ballot papers. The other envelope shall be a smaller declaration envelope, for the inclusion of the completed ballot paper, containing a removable label or flap with the following details printed on it:

- the name and postal address of the voter;
- the declaration stating that the voter -
 - “is the voter named on the envelope;
 - has voted on the ballot paper contained in the envelope; and
 - has not voted before in this ballot.”
- a place for the signature of the voter.

In a ballot to be conducted under this Rule the day on which the roll of voters is to be closed, shall be on the seventh day prior to the opening of nominations.

Where a person entitled to participate in any such ballot will be absent from ~~his~~their ~~or~~her usual address during the ballot, such person may notify the Returning Officer accordingly, and nominate another address for the receipt of ballot papers. Where the Returning Officer has been so notified before the ballot opens, the Returning Officer shall forward a ballot paper to the person concerned at the nominated address.

(iii) The Returning Officer shall advise all voters of the closing date for the receipt of returned ballot papers which shall be not later than 4.00pm on the second day prior to the Annual General Meeting.

- (iv) If the Returning Officer is satisfied that any ballot paper has been destroyed, lost, damaged or misused, and in the case of a damaged or misused ballot paper on receipt thereof, ~~he~~ they shall supply to the member to whom the original ballot paper was supplied, a substitute ballot paper which ~~he~~ they shall have initialled and also marked "'substitute ballot paper'".
- (v) ~~He~~ They shall not receive any ballot papers after the closing date provided, and shall mark any envelope received "'informal'", together with the date of its receipt, and shall not open such envelopes.
- (vi) After the appointed closing date the Returning Officer shall supervise the scrutiny of votes.

The Returning Officer is empowered to use the Association staff and/or employ other persons who are not members of the Association to assist in the scrutiny.

- (vii) The Returning Officer shall mark the following informal:
 - (A) A ballot paper that gives the identity of the voter.
 - (B) A ballot paper contained in an envelope that is unsigned, as provided in sub-clause (ii), and in this case the inner envelope shall not be opened.
 - (C) A ballot paper which is marked other than with consecutive numbers, and/or in which a first preference is not indicated.
 - (D) A ballot paper which does not bear the initials of the Returning Officer.
- (viii) In a ballot to which these Rules apply a voter shall record ~~his~~ their vote on a ballot paper by placing the figures 1,2,3,4 (and so on) against the names of each and every candidate so as to indicate by such numerical sequence the order of ~~his~~ their preference.
- (ix) The means of counting the votes cast shall be as follows:
 - (A) Each candidate shall receive a number of votes by treating ~~his~~ their numerical preference as ~~his~~ their total from each ballot paper (i.e. a number 3 preference counts as three votes and so on).
 - (B) The candidate or the candidates up to the required number receiving the lowest sum total or totals shall be declared elected.
 - (C) In the case of a tie the Returning Officer shall decide the ballot by drawing lots.
- (x) At the conclusion of the count the Returning Officer shall certify to the President the result of such ballot.

- (~~ix~~) A candidate for election as aforesaid may appoint one member to act as ~~his~~ their scrutineer.

The Returning Officer shall be advised in writing by the candidate of the person so appointed.

The scrutineer shall be entitled to observe the form and distribution of ballot papers, the collection of ballot papers on their return, the admission and counting of votes, the conduct of votes, the conduct of the determination of the election by lot (if any) and the declaration of the ballot.

In every case it shall be the right and duty of the scrutineer to observe any act performed or directed by the Returning Officer which may affect the result of the election and the Returning

16 - CASUAL VACANCIES - OFFICE-BEARERS AND/OR MEMBERS OF ORDINARY COUNCILS

Officer shall take all reasonable steps by notification or otherwise to enable each scrutineer to exercise all or any of such rights if ~~he~~they ~~has~~have had a reasonable opportunity to do so.

The scrutineer shall direct the attention of the Returning Officer to any irregularity ~~he~~they may detect in respect of any matter to be observed or done under these Rules in connection with the election. ~~He~~They shall conduct ~~himself~~themselves so as not to interfere with the functions of the ballot.

The scrutineer shall do all things necessary so that the conduct of an election shall conform to these rules and so that the secrecy of the ballot shall be observed.

(jk) At the Annual General Meeting the Returning Officer shall declare the result of the ballot or in cases where ~~he~~they ~~have~~has certified that the candidates have been elected unopposed declare them elected.

(kl) If less than the required number of nominations which are in order have been received by the Returning Officer -

(i) ~~he~~they shall as soon as possible thereafter furnish the President in writing with particulars of the nominations which are in order and at the Annual General Meeting the Returning Officer shall declare each such nominee elected; and

(ii) ~~subject to any direction by the relevant Council Executive Committee, the President or the Chairman of the Ordinary Council, as the case may be, shall~~ may at its discretion cause a fresh election to be conducted by the Returning Officer in the manner prescribed by this Rule, mutatis mutandis, to fill the remaining vacancies.

16 - CASUAL VACANCIES - OFFICE-BEARERS AND/OR MEMBERS OF ORDINARY COUNCILS

(a) Any casual vacancy in the office of any Office-Bearer or any casual vacancy in the office of a member of the various Ordinary Councils (including a vacancy resulting from the filling of a casual vacancy in the Office-Bearers) shall be filled by an election by members -

(i) in the case of the President or Treasurer, of the ~~Peak Council~~ Executive Committee; and

(ii) in the case of Chairmen ~~or other members of Peak Council~~ or members of Ordinary Councils, of the appropriate Ordinary Council,

conducted in the following manner and the person so elected shall hold office until the next Annual General Meeting when ~~he~~they shall be eligible for re-election. Provided that the person so elected shall not hold such office for so much of the unexpired part of the term of the last person elected to the office as exceeds ~~12 months~~three-quarters of the term of office.

(b) The Executive Director shall call for nominations in the notice calling the next meeting of the ~~relevant~~ Executive Committee or relevant Ordinary Council following the creation of such vacancy and any member of the Executive Committee or relevant Ordinary Council may in writing nominate any person eligible in accordance with these Rules for any office for which there is a vacancy and the candidate for office shall also sign the nomination.

(c) If only the required number of nominations to fill any office is received the Chairman of the meeting shall forthwith declare the person so nominated elected unopposed to the office for which ~~he~~was~~they~~were nominated.

(d) If more than the number of nominations required to fill any office is received, an election shall be taken by a secret ballot of all Executive Committee or relevant Ordinary Council members as hereinafter provided:

The Chairman of the Executive Committee or relevant Ordinary Council shall nominate a Returning Officer, not being a member of the Executive Committee or relevant Ordinary Council, for the purposes of the election.

- (e) If all members of the Ordinary Council are present, the Returning Officer shall -
- (i) Permit any duly nominated candidate to appoint any member of the Association ~~his~~ their scrutineer to represent ~~him~~ them at the election;
 - (ii) Inspect the nominations of candidates and satisfy ~~himself~~ themselves so far as ~~he~~ they reasonably can that such nominations are regular and valid;
 - (iii) Prepare or cause to be prepared such number of ballot papers as there are members entitled to vote upon which ballot papers the names of the duly nominated candidates shall appear in alphabetical order.
 - (iv) Supply to each member entitled to vote one (1) ballot paper which the Returning Officer shall have previously initialled;
 - (v) Direct each voting member to strike out on the ballot paper the name of each candidate for whom ~~he~~ they does not desire to vote and thereafter so fold the ballot so that the marking thereon is not visible until unfolded;
 - (vi) Collect the folded ballot papers and ensure that no person returns more ballot papers than ~~he~~ they ~~has~~ have votes;
 - (vii) Admit ballot papers properly marked and count the votes thereon indicated;
 - (viii) At the conclusion of the count declare to the meeting the candidate or candidates as the case may be receiving the majority of votes elected;
 - (ix) In the case of a tie between candidates draw lots.
- (f) If at that meeting all members entitled to vote are not present a postal ballot shall be held within thirty (30) days of the meeting, such ballot to be conducted in a manner consistent with Rule 15.

17 - COMMITTEES

- (a) The ~~Peak Council~~ Executive Committee and each Ordinary Council may appoint Committees from amongst its own number or otherwise to examine and enquire into any ~~special~~ matter in connection with the objects or business of the Association.
- (b) The ~~Peak Council~~ Executive Committee and Ordinary Councils shall review the personnel and function of all Committees so appointed ~~in September of each year~~ as necessary from time to time and shall re-appoint such Committees as it deems fit.
- (c) Any position within a Committee appointed by the ~~Peak Council~~ Executive Committee or an Ordinary Council shall not be a collective body of the Association that has powers of the kind in ~~paragraph (b) of the definition of "office" in subsection 4(1)9 of the Industrial Relations Act 1988~~ Fair Work (Registered Organisations) Act 2009 (Cth) (or any succeeding legislation).

18 - POWERS AND DUTIES OF MEMBERS OF COMMITTEES AND COUNCILS

Unless otherwise provided to the contrary, in addition to any powers and duties elsewhere provided in these Rules, each member of a Committee of the Association - including ~~Committees such as the Peak Council,~~ the Executive Committee and the various Ordinary Councils and Committees - shall have:

- (a) the right to vote on any Committee of which ~~he~~ they are is a member; and
- (b) the duty to regularly attend meetings of any Committee of which ~~he is~~ they are a member.

18-19 - EXECUTIVE DIRECTOR

- (a) The Executive Director shall be appointed by the Executive Committee and ~~his~~ their remuneration and conditions of employment shall be determined by the Executive Committee.
- (b) The Executive Director shall be responsible to the Executive Committee but shall act entirely under the direction of the President or, in the absence of the President, the Executive Committee member so acting.
- (c) The appointment of the Executive Director may be terminated by ~~not less than six (6) weeks' notice given by~~ the Executive Committee or the Executive Director and may be suspended by the President.

Termination of the Executive Director shall only become effective after ~~he~~ they ~~has~~ the opportunity to present written and oral submissions to the ~~Peak Council~~ Executive Committee relating to any decision to dismiss ~~him~~ them should ~~he~~ they choose to do so.

Any review of the decision to dismiss the Executive Director shall, upon the request of the Executive Director, be held at a special meeting of the ~~Executive Committee~~ Peak Council within three days of the notice of intention to dismiss being presented to the Executive Director by the President, at which time the Executive Director will have the opportunity to present the written and oral submissions previously referred to.

The decision taken at that special meeting of ~~Executive Committee~~ Peak Council shall be final and shall take effect immediately.

~~If six weeks' notice of termination is not given to the Executive Director, p~~ Pay in lieu of notice shall not be paid, ~~except~~ where gross negligence or misappropriation of funds or a substantial breach of the Rules of the Association or gross misbehaviour or gross neglect of duty is involved.

The vote to dismiss the Executive Director shall require a 60 per cent majority of those present and eligible to vote at the special meeting of the ~~Executive Committee~~ Peak Council and in any case shall be not less than 40 per cent of the entire membership of the ~~Executive Committee~~ Peak Council.

- (d) The Executive Director shall be the Association's Chief ~~Administrative Officer and~~ Executive Officer, and shall -
 - (i) be the Public Officer of the Association for all such purposes as may be required, and is the officer of the Association nominated by it to sue or be sued or to issue or accept legal process on behalf of the Association;
 - (ii) convene all meetings of the Association, including the Executive Committee, Ordinary Councils ~~the Peak Council~~ and Committees;

19 20 - ANNUAL GENERAL MEETING

- (iii) keep or cause to be kept a faithful record of the business transacted at all meetings of the Association, including of the Executive Committee, Ordinary Councils ~~its Council and Committees;~~
- (iv) collect all subscriptions, fees, levies, dues, or other liabilities payable to the Association by members or otherwise;
- (v) conduct correspondence on behalf of the Association and except as directed by the President the same shall be conducted in ~~his~~ their name;
- (e) The Executive Director shall -
 - (i) subject to the direction of the Executive Committee, engage the staff of the Association; and
 - (ii) have full charge and management of the Association's staff, and authority to delegate ~~his~~ their powers and duties to such staff.
- (f) The Executive Director shall, and is hereby authorised to (in a manner as may be directed by the Executive Committee) bring or defend, or cause to be brought or defended, any action, prosecution or complaint in any ~~c~~ Court or ~~t~~ Tribunal as may be established under any ~~I~~ Industrial or ~~A~~ Arbitration or any ~~G~~ General, ~~C~~ Civil or ~~C~~ Criminal ~~L~~ Law of the Commonwealth.
- (g) The Executive Director shall carry out such duties as may be required by these Rules or directed by the Executive Committee from time to time.
- (h) In the event of the office of the Executive Director becoming vacant for any cause, the Executive Committee shall have power to appoint a person to act as Executive Director, and a person so appointed shall be known as the Acting Executive Director.

The Acting Executive Director so appointed shall have the duties and authority of the Executive Director; however, ~~his~~ their appointment may be terminated in a manner and at the will of the Executive Committee.

~~Provided that where an Acting Executive Director is appointed the Peak Council shall be informed of the fact at its next regular meeting, and they shall confirm or reject such acting appointment.~~

19 20 - ANNUAL GENERAL MEETING

- (a) An Annual General Meeting of members shall take place no later than the second Tuesday in October of each year.

At this meeting the audited ~~B~~ balance ~~S~~ sheets and ~~R~~ revenue ~~S~~ statement shall be presented, together with a Presidential Report.

The election of Office-Bearers, ~~members of the Peak Council~~ and members of Ordinary Councils due for election in that year for the ensuing year shall be declared for the ensuing two years.
- (b) Such other business as the ~~Peak Council~~ Executive Committee may refer to this meeting shall also be dealt with at the Annual General Meeting; provided, however, that only that business which is clearly set forth on the notice of meeting shall be dealt with.
- (c) At least five (5) days prior to the date of the Annual General Meeting, the Executive Director shall ~~forward by pre-paid letter post a circular to~~ notify each member of the Association.

Such ~~circular notice~~ shall request the member's attendance at the meeting and shall clearly set forth the business to be transacted.

- (d) Ten (10) shall form a quorum at the Annual General Meeting.

20-21 - SPECIAL MEETINGS

- (a) A ~~s~~Special ~~m~~Meeting of members may be convened on the instructions of the President, the ~~Peak Council~~Executive Committee, by the Executive Director as required by Rule ~~3234~~, by requisition of three (3) members of the ~~Peak Council~~Executive Committee, or requisition of ~~ten~~twenty-five (25) members of the Association; provided that where a Special Meeting is requisitioned as beforementioned, such requisition shall be in writing and duly signed by each of the members concerned and shall clearly set forth the reasons for the requisition.

A Special Meeting shall deal only with such special business as may be referred to it.

- (b) Three (3) days prior to the date of the Special Meeting the Executive Director shall ~~forward by prepaid letter post a circular to~~ notify each member of the Association.

Such ~~circular notice~~ shall request the member's attendance at the meeting and shall clearly set forth the special business to be transacted.

- (c) Where the business of a Special Meeting is to consider any subject, or a notice of motion has not been submitted, then any motion or motions submitted at the said Special Meeting shall be received and may be debated, but shall not be determined.

Such motions shall be referred to a further Special Meeting to be convened within seven (7) days of the date of their receipt and shall be clearly set forth in the ~~circular notice~~ convening the further Special Meeting.

The further Special Meeting shall have power to determine the motions submitted to it and such motions shall be carried by a three-fourths majority of the members present and entitled to vote. Each member shall only be entitled to one vote.

On being adopted, such motions shall become Special Resolutions and shall be acted upon.

The provisions of this paragraph shall not apply when the Special Meeting is convened under Rule ~~3234~~.

- (d) In the event of a specific notice of motion being received for submission to any Special Meeting, then providing such notice of motion is clearly set forth on the ~~circular notice~~ convening such Special Meeting, then it shall be competent for the Special Meeting to determine such notice of motion without reference to a further Special Meeting.

Upon being adopted by a three-fourths majority of the members present and entitled to vote, such a resolution shall become a special resolution and shall be acted upon and shall be binding upon the Association, subject to Rule 21(f).

- ~~(e) A Special Meeting of members shall be the supreme authority of or in the Association.~~

- (fe) ~~Ten~~Fifty (450) shall form a quorum at any Special Meeting, except where otherwise provided in these Rules.

- (gf) Notwithstanding any other provision of this Rule, once any subject has been determined by a Special Meeting then such subject shall not be re-opened except upon review of the ~~Peak Council~~Executive Committee, which, notwithstanding the provisions of this Rule, shall have the absolute discretion as to whether a Special Meeting is to be convened to re-open or re-consider the subject sought to be re-opened.

- (hg) For the purpose of this sub-clause of this Rule, "Office-Bearers" shall mean any member of the Executive Committee ~~or any member of the Peak Council.~~

Subject to the provisions of Rule 14(c), a Special Meeting may by resolution (notice of which has been given in accordance with this rule) remove any Office-Bearer from such office.

In such case the resolution shall be passed by a majority of not less than three-fourths of the members present and entitled to vote at such Special Meeting.

Any vacancy occurring from the implementation of this Rule shall be filled as provided in these Rules.

21-22 - PEAK COUNCIL EXECUTIVE COMMITTEE MEETINGS

- (a) The ~~Peak Council~~ Executive Committee shall meet regularly on dates to be determined by the President as often as may be deemed necessary by the Peak Council or irregularly as required.

~~It shall meet regularly on the second Tuesday in each month for the dispatch of business except in the case of a public holiday or emergency when the President or in his absence the Chairman of the Commercial Builders' Council shall have the power to cancel the regular meeting and appoint a date for another meeting.~~

- (b) At all meetings of the ~~Peak Council~~ Executive Committee, the President shall be the Chairman, and in ~~his~~ their absence the Chairman of the Commercial Builders' Council, or failing that one of the other Chairmen of the Ordinary Councils.

In the event of the President and Chairmen not being present, the Executive Committee ~~Peak Council~~ shall elect a Chairman from amongst its members.

- (c) At least three days prior to the date of such meetings the Executive Director shall ~~forward to~~ give notice to each member of the ~~Council~~ Executive Committee, ~~by pre paid letter post a notice~~ requesting ~~his~~ their attendance at such ~~Council~~ meeting.

- ~~(d) A quorum for a Peak Council meeting shall be one third of the number comprising the Peak Council (where a fraction, to the nearest one above).~~

21A-23 - ORDINARY COUNCIL MEETINGS

- (a) Each Ordinary Council shall meet as often as may be deemed necessary by the Ordinary Council.
- (b) In the event of the Chairman not being present, the Alternate Chairman shall chair the meeting, or in the absence of both of the above the Ordinary Council shall elect a Chairman from amongst its members.
- (c) At least three days prior to the date of such meetings the Chairman shall ~~cause to be forwarded to~~ give notice to each member of the Ordinary Council, ~~by pre paid letter post a notice~~ requesting ~~his~~ their attendance at such Ordinary Council meeting.
- (d) A quorum for an Ordinary Council meeting shall be one third of the number comprising the Ordinary Council (where a fraction, to the nearest one above).

22-24 - QUORUM

If a quorum for any meeting be not present twenty (20) minutes after the appointed time for the meeting to commence, then the Chairman -

- (a) may permit discussion on the business without resolution;
- (b) ~~He~~they shall then adjourn the said meeting for not more than 14 days;
- (c) direct that a further notice be sent as provided, drawing attention to the fact that the prior meeting had adjourned for want of a quorum; and
- (d) in the event of a quorum not being present at the adjourned meeting, then the number of members present shall be the quorum required for the adjourned meeting and the business shall be decided, determined or resolved.

23-25 - RESOLUTIONS: CONDUCT OF MEETINGS

- (a) At any meeting (other than those provided in Rule ~~19~~20), unless a poll is required by these rules or is demanded, a declaration by the Chairman that a resolution has been carried or lost and an entry to that effect in the minutes or Report of the meeting shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (b) If a poll be demanded or necessary -
 - (i) every ~~Financial~~ Member shall have one vote and a simple majority shall determine the result of the poll, and such result shall be deemed to be the resolution.
 - (ii) other than in the case of the ballot for the election of an ~~Office-bearer~~, as prescribed in these Rules, then the Executive Director or other member of the staff of the Association, shall be the Returning Officer and shall be responsible for the issue of initialled ballot papers.
 - (iii) Two or more scrutineers may be appointed at the meeting to assist in conducting and determining the poll.
- (c) The authority covering the conduct of meetings shall be the latest edition of the publication "Joske's Law and Procedure at Meetings in Australia"~~The Law and Procedure at Meetings~~", by the late Honourable Sir Percy Joske.

24-26 - FINANCIAL YEAR

The Financial year of the Association shall commence on the 1st July in each year and end on the 30 June following.

27 - SUBSCRIPTIONS

- (a) The annual subscription and other fees payable by members shall be determined from time to time by the ~~Peak Council~~ Executive Committee, whether based on turnover (under Rule 27(b) or otherwise.

The subscription shall be paid yearly in advance and shall be due on 1st July each year (but may also be payable increments at the discretion of the Executive Director).

- (b) ~~Where the~~ subscription payable by ~~builder~~-members has been determined by the Executive Committee ~~shall to~~ be fixed on a system based on the turnover ~~of individual members~~, it shall be as follows:
- (i) The minimum amount payable by a ~~builder~~-member in respect of any year's turnover shall be determined by the ~~Peak Council~~Executive Committee.
 - (ii) Each ~~builder~~-member shall lodge with the Executive Director a declaration of ~~his~~-their turnover for the year as determined by the ~~Peak Council~~Executive Committee.
 - (iii) Any member not wishing to disclose ~~his~~-their amount of turnover shall pay the minimum amount determined by the Executive Committee.
 - (iv) The declaration of turnover lodged with the Executive Director shall be a confidential document and shall be in the custody of the Executive Director who shall not disclose its contents to any member or person other than the Association's auditor.
 - (v) A new ~~builder~~-member admitted during the financial year shall lodge a declaration as aforesaid covering ~~his~~-their turnover during the portion of the year in which ~~he~~-they became a member and shall pay a fee calculated on a pro-rata basis for the period, and the maximum amount provided herein shall also be applied pro-rata.
- (c) The annual subscriptions and other fees payable by members ~~shall be~~ as determined by the ~~Peak Council~~Executive Committee from time to time ~~and shall be set out in a schedule which shall be permanently available for members to inspect at the offices of the Association~~.
- (d) On election the fee shall be charged and shall be adjusted on a monthly basis from the first day of the month of admission, and any balance remaining at 30th June next ensuing shall be carried forward to the credit of the member in the following financial year.

28 - LEVIES, CONTRIBUTIONS

- (a) By recommendation of the ~~Peak Council~~Executive Committee, the Association in Special Meeting may impose such levies as are deemed advisable for the purpose of carrying on the work and objects of the Association.
- (b) The decision to impose such a levy or other contribution may also exempt or exclude any member, group of members or class of member from such levy or contribution.
- (c) Such levies or contributions, as may be resolved, shall be due and payable within thirty (30) days of the notification to members of the decision to impose same, and may be recovered, as provided in these Rules.

27-29 - RECOVERY OF SUBSCRIPTIONS AND OTHER AMOUNTS DUE TO THE ASSOCIATION

- (a) Any member failing to pay ~~his~~-their annual subscription in full within the three (3) months following ~~of its~~ becoming due shall be notified by registered mail of such default and at the same time the Executive Director shall suspend all services to the said member and report ~~his~~-their action to the ~~Peak Council~~Executive Committee, and -
- (i) in the event of the said member so notified not having paid ~~his~~-their subscription within thirty (30) days of the date of such notification, then the Executive Director shall report the fact to the ~~Peak Council~~Executive Committee.

28 30 - APPLICATION AND CONTROL OF FUNDS, PROPERTY

- (ii) in the event of no written explanation having been received from the member in default, the ~~Peak Council~~ Executive Committee may forthwith terminate the membership of such defaulting member.

The Executive Committee ~~Peak Council~~ may direct that the subscription outstanding be recovered or may direct that same be "written off" as a bad debt.

- (iii) In the event of a written explanation having been received from the member in fault, the Executive Committee ~~Peak Council~~ may and at its absolute discretion, extend the time for such member to meet ~~his~~ their obligations by a period not exceeding three (3) months, and during this period no services shall be made available to such member.

At the expiration of the extended time if payment has not been made, than sub-clause (ii) above shall be given effect to.

- (b) Any member failing to meet any other liability in full, due and payable to the Association, within the three (3) months following of the same becoming due shall be reported by the Executive Director to the Executive Committee ~~Peak Council~~ who may direct that such liability be recovered and may also direct the Executive Director to charge such member under Rule 34~~32~~.
- (c) Any member failing to pay ~~his~~ their annual subscription in full upon the date of its becoming due shall, after three (3) further months have passed, no longer be a Financial Member and shall have no voting rights in the affairs of the Association and shall be disentitled to hold office of the Association or sit on the Executive Committee, any Committee or Ordinary Council of the Association until the annual subscription is so paid.

~~(d) NOT CERTIFIED~~

- (ed) Regardless of whether any person is a current member of not, any fees due to the Association for any past period of membership shall remain due and payable and may be recovered by the Association as a liquidated debt.

28-30 - APPLICATION AND CONTROL OF FUNDS, PROPERTY

- (a) The funds of the Association shall be applied to the maintenance of the Association and the furtherance of its aims and objects.

However, the ~~Peak Council~~ Executive Committee by a three-fourths majority, may apply a portion of the funds to charity or to the recognition of special services rendered to the Association.

- (b) The ~~Peak Council~~ Executive Committee may also invite members to voluntarily subscribe to a fund for charitable or special purposes and in such cases shall apply such funds in full to the purpose for which they were subscribed.

In the event of any such fund officially closing prior to all such subscribed moneys being received by the Association, or in the case of a special purpose, the purpose ceasing to exist, then the ~~Peak Council~~ Executive Committee shall determine whether such late receipts or any surplus shall be -

- (i) deposited in a special account to be used for a similar purpose to the one for which such funds were collected; or
- (ii) be distributed as the Executive Committee ~~Peak Council~~ deems advisable.
- (c) The current funds of the Association shall be deposited in the name of the Association in such a bank as the Executive Committee ~~Peak Council~~ shall from time to time direct.

29 31 - APPOINTMENT OF AUDITORS AND AUDIT

All monies received shall be deposited in such bank, except that an amount as may be determined from time to time by the Executive Committee ~~Peak Council~~ shall be retained in cash in the Association's registered office for the purpose of petty cash.

- (d) All payments shall be certified by the Treasurer, ~~and approved or confirmed by the Peak Council.~~

All cheques shall be authorised by the Treasurer or in his absence the President or Chairman of the Commercial Builders' Council, and countersigned by the Executive Director and such additional countersigning officer, being an employee of the Association, as the Executive Committee may authorise.

- (e) Any portion of the Association's current funds may by resolution of the Executive Committee be invested for the benefit of the Association and on behalf of the Association.

- (f) No member shall have by reason of ~~his~~-their membership, any transmissible or assignable interest in the property of the Association.

On a member ceasing to be a member all ~~his~~-their interest shall survive, accrue and belong to the other members of the Association for the time being.

- (g) All property which may be acquired or be purchased with the monies of the Association or be donated to the Association shall be vested in the Association and the Executive Committee ~~Peak Council~~ shall have the power to control and invest the same in the name of the Association.

29 31 - APPOINTMENT OF AUDITORS AND AUDIT

- (a) The Executive Committee ~~Peak Council~~ shall ~~at its regular meeting~~ in August of each year appoint an auditor or auditors who shall be registered public accountants.

- (b) The auditor or auditors so appointed shall hold office from the time of their appointment until the date of the August meeting of Executive Committee ~~Peak Council~~ in the next ensuing year, at which time they shall retire with the effluxion of time.

The retiring auditor or auditors shall be eligible for re-appointment.

- (c) In the event of a vacancy occurring for any reason in the position of auditor or auditors, then such vacancy shall be filled at the next regular meeting of the Executive Committee ~~Peak Council~~ after the date of the vacancy occurring.

- (d) The fees of the auditor or auditors shall be approved by the Executive Committee ~~Peak Council~~.

- (e) The auditors shall conduct an annual audit which shall be completed no later than 30th September i.e. not later than three (3) months following the end of the financial year which is the subject of their audit.

The Executive Committee can at any time however, order additional full or partial audits if, in their opinion, it would be in the interests of the Association to do so.

Such audits can be confidential and need not be reported to the Executive Committee ~~Peak Council~~ or any member of staff until the end of the year auditor's report is presented.

- (f) The auditors shall also certify all financial returns required by law and requiring certification by such law.

- (g) The auditor or auditors shall, for audit purposes only, at all reasonable times have access to the books, minutes, and accounts of the Association, and the Executive Director shall make same available and the said auditor or auditors shall be entitled to examine the Office-Bearers, members

of the ~~Executive Committee~~Peak Council, Executive Director and the employees of the Association with regard thereto and to require such information or explanation as may appear necessary or proper, and may report from time to time to the ~~Executive Committee~~Peak Council with regard to such books and accounts.

30-32 - EXAMINING BOOKS, RECORDS AND ACCOUNTS BY MEMBERS

All members who are desirous of examining or investigating or inspecting all or any book, listing of members of the Association, documents, or records (with the exception of turnover declarations), shall on application to and with the authority of the ~~Executive Committee~~Peak Council, be permitted to have free access to the same for such purpose -

- (a) on any ordinary working day between the hours of 10 am to 4 pm in the daytime, or at such times as may be arranged with the applicant; and
- (b) such inspection shall be at the Registered Office and in the presence of the Executive Director or such member of the staff of the Association as ~~he~~they may delegate to be present.

31-33 - REGISTER OF MEMBERS

- (a) The Treasurer shall cause to be kept and maintained in one or more books or in a commercial system and in a manner required by law, a register of all members of the Association in alphabetical order in classes of membership and each individual entry shall show not less than the following particulars -
 - (i) The name and postal address of such member;
 - (ii) The date upon which the name of such member was entered in the register as a member;
 - (iii) The class of membership of each member;
 - (iv) The names of each representative of such member where applicable;
 - (v) The date upon which the member ceased to be a member, provided that in this case then all similar individual entries may be grouped together in the register.
- (b) It shall be the responsibility of each member to provide the Executive Director with written details of any material change in ~~his~~their particulars entered in the Register.
- (c) A member shall, within fourteen (14) days after;
 - (i) the business, or part of the business of that member is assigned or transferred to a person who is not a member of the Association; or
 - (ii) such a person succeeds to the business, or part of the business of that member;notify the Executive Director of the assignment, transfer or succession.
- (d) Each member shall be deemed to be properly served or notified of any information or documentation if that information or document is forwarded by the Association in accordance with the particulars of the Register.

32-34 - DISCIPLINARY POWERS

- (a) If it is brought or comes to the notice of the Executive Director that any member -

- (i) has been convicted of a felony or of any misdemeanour or offence under any Act, regulation, ordinance or other law arising out of or in the course of the conduct of ~~his~~their business; or
- (ii) has acted or is acting in a manner which appears to be opposed or contrary to the objects or policy of the Association; or
- (iii) has committed or is committing a breach of the Rules for the time being of the Association including its Code of Conduct; or
- (iv)~~ii~~) has engaged in, published or been party to, or permitted or supported any untrue, misleading, undignified or infamous communication, statement, advertisement, signed document or paper, either on ~~his~~their own behalf of as, or purporting to be on behalf of, an officer, representative or member of the Association,

the Executive Director shall furnish to the ~~Peak Council~~Executive Committee a report of the matters so brought or come to ~~his~~their notice at the first regular meeting of the ~~Peak Council~~Executive Committee thereafter or at a meeting of the ~~Peak Council~~Executive Committee convened for the purpose of receiving and considering such report.

If the ~~Executive Committee~~ ~~Peak Council~~ finds the allegations so reported to constitute a prima-facie case for such member to answer, the ~~Chairman~~President shall instruct the Executive Director to ~~inform~~give notice to such member ~~and to furnish him with~~including a copy of statement of the allegations and requesting them to summon him to appear before the ~~Executive Committee~~ ~~Peak Council~~ (or a Committee created by the Executive Committee for that purpose) on a day and at a time to be fixed by the ~~Executive Committee or Committee~~ ~~Peak Council~~ to answer the allegations and the Executive Director shall carry out such instructions.

- (b) If a majority of the members present at such ~~Executive Committee~~ ~~Peak Council~~ or Committee ~~Meeting~~ shall decide and resolve that the member ~~summoned~~requested to appear has been guilty of the conduct, act or acts alleged against ~~him~~them, the ~~Executive Committee~~ ~~Peak Council~~ may (either following its own hearing or by way of endorsement of the findings of a Committee) do any (in whichever combination) or none of the following:

- (i) publicly reprimand the member; or
- (ii) impose a fine upon the member of a sum not exceeding three times their annual subscription payable for the current year; or
- (iii) suspend the member (for no longer than three (3) months); or
- (iv) expel them from membership.

~~impose a fine upon such member of a sum not exceeding three times his annual subscription payable for the current year, or may expel him from membership, or may impose both such penalties, P~~provided however, that a resolution suspending or expelling such member must be passed by a three-fourths majority of the members of the ~~Peak Council~~Executive Committee present at the meeting.

The member so dealt with may appeal to a ~~S~~Special Mmeeting of the Association against the ~~Peak Council~~Executive Committee's decision and resolution by lodging a notice of appeal with the Executive Director within fourteen (14) days whereupon the Executive Director shall convene a Special Meeting of the Association to hear and determine such appeal and decision of such Special Meeting on such appeal shall be final and binding on such member. The quorum at such a Special Meeting shall be ten (10).

36-38 - ASSOCIATION EMBLEM

Provided that any decision and resolution of such Special Meeting to suspend or expel such member or to cancel or confirm any suspension or expulsion already imposed must be passed by a three-fourths majority of the members present and entitled to vote at such meeting.

All fines shall go to the general fund of the Association and shall be paid to the Treasurer within seven (7) days after notice thereof shall have been given by ~~registered letter~~ notice to the person liable to pay the same.

(c) Should any such member fail to appear before the ~~Peak Council~~ Executive Committee or a Special Meeting, as the case may be when ~~summoned~~ requested to appear, then the ~~Peak Council~~ Executive Committee or Special Meeting may proceed ex-parte and such failure to appear without written excuse on the part of the member shall in itself be conduct which may be dealt with under this rule.

~~(d) A summons to appear in accordance with this Rule shall be served personally by the Executive Director or by registered post, on the member concerned.~~

33-35 - MEMBERS' ASSENT TO RULES

(a) The Constitution and Rules of the Association, duly registered in accordance with the laws of the Commonwealth shall be kept at the Association office.

(b) Every member on notification of ~~his~~ their admittance to membership shall be forwarded, under registered post or by electronic means, a copy ~~thereof~~ of the Association's Rules and Code of Conduct and ~~he~~ they shall be deemed to have assented thereto and agreed to be bound by them.

34-36 - INDEMNIFICATION OF MEMBERS, OFFICE-BEARERS AND EMPLOYEES

Every Office-Bearer, Councillor, Member, or employee of the Association shall be indemnified against (and shall be the Association's duty out of its funds to pay) all costs, losses, charges and expenses which any such Office-bearer, Councillor, Member or employee of the Association may incur or become liable for by reason of any contract entered into, or act or deed done by ~~him~~ them in the discharge of any duty in accordance with these Rules.

35-37 - COMMON SEAL

(a) A Common Seal of the Association shall be made with the Association's name inscribed thereon.

(b) It shall be in the custody of the Executive Director, ~~and shall not be used or affixed to any document except as authorised by the Peak Council, and every document to which such seal is affixed shall be countersigned by the President and Executive Director, or the person or persons for the time being acting in their stead in accordance with these Rules.~~

36-38 - ASSOCIATION EMBLEM

(a) The Association Emblem shall be in a form determined by the ~~Peak Council~~ Executive Committee and -

(i) shall be used on Association ~~S~~stationery and all Association ~~P~~ublications;

(ii) may be used for publicity purposes by the Association; and

(iii) its use or reproduction by members shall not be permitted.

~~37~~ 39 - MEMBERSHIP EMBLEM

- (a) The Association Membership Emblem shall be in a form determined by the Executive Committee~~Council~~.
- (b) Its form, production or use by members of the Association may be determined by the Executive Committee and shall only be permitted to be produced or used by a signed agreement entered into by the Financial Mmembers, and the Executive Director on behalf of the Association, provided—
 - ~~(i) the purposes for which the membership emblem may be produced or used shall be determined by law of the Peak Council; and~~
 - ~~(ii) the form of the agreement beforementioned shall be approved by the Peak Council as a by-law of the Peak Council.~~

~~38~~ - UNAUTHORISED USE OF ASSOCIATION SEAL OR EMBLEM

- ~~(a) Where any member makes reproduction of or use of the design of the Membership Emblem of the Association without the authority of the Peak Council, or of the Common Seal or the Association Emblem, then such members shall be guilty of a breach of these Rules and shall be proceeded against under Rule 32.~~
- ~~(b) Where any person not being a member makes or causes to be made a reproduction of, or the use of the design of the Common Seal of the Association, the Association Emblem, or the Membership Emblem without the express written authority of the Peak Council through the Executive Director -~~
 - ~~(i) the Executive Director shall seek legal advice on such steps as may be taken by law to prevent such unauthorised or improper reproduction or use; and~~
 - ~~(ii) shall report such advice to the Peak Council~~

39 40 - CONCILIATION AND ARBITRATION, AUTHORISED AGREEMENTS

- (a) The Executive Committee ~~Peak Council (or if time does not permit the placing of the matter before the Peak Council, then in such case, the Executive Committee)~~ may by resolution give the consent of the Association to the submission of an industrial dispute to conciliation and arbitration before the appropriate tribunal established by Commonwealth law.

Thereupon such dispute shall be so submitted and the Association may be represented therein by the Executive Director or by such person as may be determined by the Executive Committee ~~Peak Council~~ (or Executive Committee).

- (b) No industrial agreement, or other instrument, shall be executed by or on behalf of the Association, unless -
 - (i) there shall be present at the meeting of the Executive Committee ~~Peak Council~~ with respect thereto, at least ten (10) members of such Executive Committee ~~Peak Council~~, and resolution to that effect has been passed; and
 - (ii) in execution, the Common Seal of the Association shall be affixed to such agreement or other instrument, and

in the case of an Industrial Agreement, it shall first be approved by a Special Meeting of members. The quorum at such a Special Meeting shall be twenty-five (25).

- (c) Subject to the provision of any ~~a~~Award of any ~~c~~Court of ~~i~~Industrial ~~a~~Arbitration or other competent Commonwealth ~~i~~Industrial tribunal, the members of the Association shall observe any resolutions of the Association that may be made relative to the terms and conditions of employment of any tradesman or labourers engaged by them in the building industry and any ~~A~~award, industrial agreement, or other instrument by which the Association is bound or to which it is a party.

40-41 - ANNUAL REPORT

The President shall cause an Annual Report to be prepared for presentation at the Annual General Meeting.

41-42 - NOTICES

- (a) Except where provided elsewhere in these Rules, a notice may be served by the Association upon any member ~~either~~ by any of the following means:
- (i) personally;
 - (ii) ~~or~~ by sending it through the post in a prepaid envelope or wrapper addressed to such member at ~~his~~ their registered place of address;
 - (iii) by electronic means to their registered address.
- (b) Each member shall from time to time notify to the Executive Director an electronic address and a physical address in the ACT which shall be deemed ~~his~~ their registered address for the purpose of these Rules.
- (c) Any notice sent by post shall be deemed to have been served on the day following that on which the letter, envelope or wrapper containing the same is posted, and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and stamped and put into the post office. Any notice sent by electronic means shall be deemed to have been served on the day that it was sent and in proving such service it shall be sufficient to prove that it was properly addressed.
- (d) A certificate in writing signed by the Executive Director that the ~~letter, envelope wrapper containing the~~ notice was so addressed and where applicable, stamped and posted, shall be conclusive evidence thereof.
- (e) The signature to any notice to be given by the Association may be written or printed.
- (f) Where a given number of days' notice, or notice extended over any other period is required to be given, the day of service shall unless it is otherwise provided be counted in such number of days or other period.
- (g) Except where provided elsewhere in these Rules, a notice to be served upon the Association by a member may be served:
- (i) personally on the Executive Director;
 - (ii) by sending it through the post to the Association's registered place of address;
 - (iii) by sending it by electronic means addressed to the Executive Director.
- (h) A notice served upon the Association by a member shall be deemed to have been received on the day it was received.

43 - POLICY

- (a) The policy of the Association on any matter may be determined by the Executive Committee, ~~Peak Council~~, the Annual General Meeting or a Special Meeting from time to time, provided that such policy shall not be applied in any way to limit or be in restraint of trade or competition.
- (b) Within seven (7) days of the determination of the Association's policy on any matter, the Executive Director shall notify all members in writing of such determination.

43-44 - ALTERATIONS TO RULES

The Rules may be amended, added to or repealed in the following manner -

- (a) It shall be competent for any member, or group of members acting as a Committee appointed by the ~~Peak Council~~ Executive Committee, to give notice in writing to the Executive Director of his ~~their~~ or its request for an alteration to these Rules, setting out in full the desired alteration and the reasons for the request.
- (b) The Executive Director shall then convey the request to the Executive Committee, which ~~Peak Council~~ shall then direct that the matter be referred to a Special Meeting or Annual General Meeting of members.
- (c) If three-quarters of the members present at such Special Meeting or Annual General Meeting of members vote in favour of the proposed amendment, then the Rules shall be amended accordingly; provided that such amendment is in accordance with any law under which the Association is registered.
- (d) In the event of the adopted amendment not complying with the said law, then such refusal to register the said amendment under law shall be referred back to the ~~Peak Council~~ Executive Committee, who shall have power to frame the proposed amendment in order that it shall comply with the said laws for registration, without recourse to a further Special Meeting or Annual General Meeting, but shall not be entitled to make new amendments unrelated to the refusal of registration-
- (e) The amendment to the Rules, upon registration, shall be advised to all members in writing by the Executive Director.

44-45 - DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved or wound up only by Special Resolution and thereupon, if there remains after the satisfaction of all its debts and liabilities any property whatsoever the same may by special resolution be transferred -

- (a) to some other ~~a~~ Association, ~~c~~ Corporation or ~~i~~ Institution having objects wholly or in part similar to the objects of this Association; or
- (b) may be sold and the proceeds therefrom donated -
 - (i) to the Australian Institute of Building; or
 - (ii) in the form of a Master Builders' Research and Scholarship Foundation, to the School of Environmental Design, University of Canberra.

45-46 - LOANS, GRANTS AND DONATIONS

The Association shall not make a loan, grant or donation unless the Executive Committee of the Association -

- (a) has satisfied itself -
 - (i) that the making of the loan, grant, or donation is in accordance with the other Rules of the Association; and
 - (ii) in the case of a loan - that, in the circumstances, the security proposed to be given for the repayment of the loan in adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
- (b) has approved the making of the loan, grant or donation.

*****END OF RULES*****

28 September 2012

Dear Member

Changes to the Master Builders' Rules

In early March of 2012, a sub-committee was formed by Master Builders' Executive Committee to investigate modernising the Association's Rules and to suggest a redraft. The broad intention was to come up with new Rules that better reflected the administrative structures that have evolved within the Association over time. That working group has now reported on its proposed changes, which are attached to this letter.

The most significant proposed changes are the abolition of the Peak Council, which would be subsumed into the Executive Committee to provide for more streamlined decision-making (a diagram illustrating the proposed structure is attached). Other major changes include making elections two-yearly and renaming the Association as the 'Master Builders Association of the Australian Capital Territory' (our current name is the somewhat cumbersome 'Master Builders Construction and Housing Association of the Australian Capital Territory').

Any changes to Master Builders' Rules must be approved by three-quarters of members present at a Special Meeting convened to consider the amendments. As notified by Member Alert on 14 September 2012, a Special Meeting will be held in conjunction with Master Builders' Annual General Meeting on 9 October 2012, where a vote will be held on whether to approve the attached draft changes to the Association's Rules.

In order to fully inform you of the suggested changes Master Builders' Rules (in accordance with Rule 20(b) of the current Rules) the table below summarises the draft amendments, with explanatory comments for each major change. Also attached is a copy of Master Builders' Rules, showing the draft amendments in tracked-changes. Note that references to Rules in the summary table refer to their numbers under the redrafted (not the current) Rules. A copy of the current Rules can be found at: <http://www.e-airc.gov.au/241v/>.

As Master Builders is a registered association of employers under the *Fair Work (Registered Organizations) Act 2009* (Cth) ('**the Act**') any changes to our Rules that are approved by members at the Special Meeting on 9 October 2012 must also be certified by Fair Work Australia. Fair Work Australia may decline to certify some of the changes where they fail to comply with the Act, in which case the Executive Committee may redraft the rules to comply with the Act and resubmit them for certification (see Rule 43(e) of the current Rules).

I commend to you the draft changes and invite you to attend the Special Meeting of members to be held on 9 October 2012, to cast your vote on this important issue.

Regards,

A handwritten signature in black ink, appearing to read 'J. Miller', written over a large, stylized circular flourish.

John Miller
Executive Director

Summary of changes to Rules		
Rule	Effect of change	Reason/explanation
1	<p>Where terms are defined under the current Rules, a reference has been added to Rule 1.</p> <p>The name of the Association changed from the 'Master Builders Construction and Housing Association of the Australian Capital Territory' to the 'Master Builders Association of the Australian Capital Territory'.</p> <p>The definition of 'Master Builder' has been removed and replaced with a definition of 'Builder Member'.</p>	<p>Defined terms have been included in Rule 1 for ease of reference.</p> <p>The name of the Association has been changed to reflect the name publicly used.</p> <p>This definition of 'Builder Member' replaces the definition of 'Builder Member'. The definition of a 'Master Builder' has been removed on the basis that it was redundant, as 'Builder Members' were already defined (in a roundabout way) in Rules 5 and 11 in essentially the same terms as 'Master Builders'.</p> <p>Rule 1 now includes a reference to the definition of 'Builder Members' in Rule 5(b), which subsumes the definition of 'Master Builders'. By reference to Rule 5(b) 'Builder Members' are defined as principal contractors in the commercial, residential and civil sectors, which in turn are the members eligible to be elected to the Commercial Builders Council, Residential Builders Council and the Civil Contractors Council.</p> <p>These changes clarify the current effect of Rules, with one important exception: that the new definition will exclude project managers from being Builder Members (and hence from eligibility</p>

		to be elected to the Commercial Builders Council, Residential Builders Council and the Civil Contractors Council. See further commentary at Rules 5(b) and 11.
2	Name of the Association changed.	To better reflect the name publicly used.
4	Language modernised and simplified, with the objects expanded in some areas.	The objects of the Association used antiquated language and in some respects (e.g. rental of office space to members) were unduly restrictive or omitted important concerns (such as reference to work health and safety).
5	Membership categories redrafted, with the inclusion of Associate Membership. The eligibility of sole traders has also been clarified.	Rule 5 has been redrafted to better reflect the current membership categories (i.e. based on the various Ordinary Councils at Rule 11). The changes largely clarify the effect of the current rules. However, note that Commercial Builder Members, Civil Contractor Members and Residential Members are now defined as <u>principal contractors only</u> and no longer include project managers. Project managers would instead be Professional Members or Subcontractor Members. This means that project managers would only be eligible to be elected onto the Professional Council and the Suppliers and Subcontractors Council (see further commentary at Rule 11). It would also mean that they would be restricted from being one

		<p>of either of the Treasurer or President in an election year (as one must be a 'Builder Member' – see Rule 12(b)). 'Builder Members' are defined as Commercial Builder Members, Civil Contractor Members and Residential Members – see discussion above regarding Rules 1 and 5.</p> <p>The reference to 'employing any worker' in Rule 5(a) has also been removed to make it clear that sole traders can be members (pursuant to section 18(a)(4) of the Act).</p> <p>Associate Membership has been included to allow persons who are otherwise ineligible to apply for membership, which would allow them to advertise as members and enjoy member services but not vote. Associate Membership is distinguishable from Honorary Membership (which also extends membership to persons who are otherwise ineligible) in that Honorary Membership would be by way of invitation, while Associate Membership by way of application.</p>
7	<p>Rule 7(c)(iii) has been changed to allow for only one vote per member (instead of two) although two representatives may still be nominated to represent a member and both may apply to be Office-Bearers (i.e. members of the Executive Committee and Chairmen</p>	<p>It was considered that one vote per member (instead of the current two) allowed for more equitable power distribution, although both representatives will still be able to be Office-Bearers and hence influence policy making on bodies such as the Executive Committee</p>

	<p>of Ordinary Councils).</p> <p>Rule 7(h) also allows for membership applications to be refused, on the grounds set out at section 166(5) of the Act) (i.e. character grounds).</p> <p>Rule 7(l) also makes it explicit that members must abide by the Rules and the Association's Code of Conduct.</p>	<p>with up to two votes.</p> <p>Rule 7(h) also allows for membership applications to be refused, in order to preserve the Master Builders 'brand'. It is essential that that membership conveys trustworthiness to consumers.</p> <p>By making it an explicit condition of membership that members abide by the Association's Code of Conduct, members may also be expelled for unethical business practices (see Rule 34).</p>
8	Removal of requirement for use of seal for withdrawal of a member's representative.	For ease of administration.
11	<p>Rule 10 has been redrafted to:</p> <ul style="list-style-type: none"> - exclude Civil Contractor Members from membership of the Commercial Builders Council; - remove eligibility for project managers to be elected as members of the Commercial Builders Council, the Civil Contractors Council and the Residential Contractors Council (project managers would instead be eligible for election to the Suppliers and Subcontractors Council or the 	<p>Some of these changes are aimed at clarifying current practices (e.g. use of Alternate Chairmen for Ordinary Councils as replacements for absent Chairmen on the Executive Committee) or to remove anomalies, such as the eligibility of Civil Contractor Members to the Commercial Builders Council (Civil Contractor Members have their own Ordinary Council, the Civil Contractors Council).</p> <p>Others amendments enhance ease of administration (e.g. reducing the minimum number of members on an Ordinary Council, or making elections two-yearly). Note that the two-yearly elections would be staggered (see Rule 15(b)) such that the Chairman</p>

	<p>Professional Council);</p> <ul style="list-style-type: none"> - explicitly provide for Alternate Chairmen (this was already the effect of Rules 11(c)(iii) and 12(b)(ii)). - explicitly allow Ordinary Councils to form their own committees; - make elections two-yearly on a staggered basis; - make the minimum number of members on an Ordinary Council five, though this would be subject to Rule 15(l), i.e. if less than 5 members were elected, a further election would only be called at the discretion of the Executive Committee. 	<p>would be elected on an alternate year to other members of an Ordinary Council, to provide for continuity.</p> <p>Other changes are more structural, such as the restriction of election to membership on the Commercial Builders Council, the Civil Contractors Council and the Residential Contractors Council to principal contractors only, thereby excluding project managers (who are currently eligible to be elected to such Ordinary Councils).</p> <p>This is based on the idea that project managers' business structures and interests are more akin to those of Supplier and Subcontractor Members or Professional Members rather than principal contractors, such that they would be more appropriately elected to the Suppliers and Subcontractors Council or the Professional Councils.</p> <p>Note that this change only affects the eligibility of project managers to be <u>elected to and vote on the</u> Commercial Builders, the Civil Contractors and the Residential Contractors Councils, as they would always in practice be entitled to simply attend such Ordinary Council meetings.</p>
12	Rule 12 has been redrafted to:	Alternate Chairmen already replaced absent Ordinary Council Chairmen under Rule 12(b)(ii) – the

	<ul style="list-style-type: none"> - explicitly refer to the use of Alternate Chairmen; - give the Executive Committee greater control over decision-making (by abolishing the Peak Council); - allow for Extraordinary Members to be appointed to the Executive Committee; - provide for two-yearly elections for the President and Treasurer, on a staggered basis (see Rule 15(b)). 	<p>amendment simply makes the procedure clearer. Alternate Chairmen are appointed by the Chairmen of an Ordinary Council.</p> <p>In a major change, the Peak Council has been replaced by the Executive Committee, to provide for streamlined decision making. Previously the Peak Council played an advisory role to the Executive Committee and was responsible for a range of other matters, such as membership admission. Between the Ordinary Councils, Executive Committee and Peak Council, the Association's tripartite collective structure did not suit a small jurisdiction such as the Australian Capital Territory.</p> <p>In order to obtain the expertise of appropriate persons on the Executive Committee, the facility to include two Extraordinary Members has been inserted, whose positions would be honorary (i.e. they would not vote, only advise).</p> <p>Elections for the President and Treasurer would be two yearly (for ease of administration and better tenure) but would be staggered for continuity (see Rule 15(b)). This would mean that the President and Treasurer would be elected on alternate years to the other members of the Executive Committee (i.e. the Chairmen of the Ordinary Councils).</p>
--	--	--

13	Language modernised and the method for executing legally binding documents clarified, to allow for execution of such documents by signature of both the Executive Director (or their delegate) and the President, with the use of a seal discretionary.	For administrative ease.
14	This change would clarify that the removal of an Ordinary Council Chairman from the Executive Committee for misconduct would also remove them from their role as a Chairman on their Ordinary Council.	These changes are designed to clarify the effect of a dismissal of a member of the Executive Committee. Note that such dismissal is by way of Special Meeting (see Rule 21) which can be convened by members or the Executive Committee (with a quorum of 10 and requiring a three-quarters majority vote).
15	Elections made two-yearly on a staggered basis. Members enabled to self-nominate for office.	Elections two yearly for administrative ease but staggered for continuity. The President and Treasurer would be elected on alternate years to the other members of the Executive Committee (i.e. the Chairmen of the Ordinary Councils) and the other members of Ordinary Councils. Members enabled to self-nominate for office to facilitate greater participation.
18	Language modernised and clarified.	For ease of interpretation.
19	Rule simplified to remove redundant clauses or matters that would be better dealt with in an Executive Director's contract of employment.	

21	This Rule has been changed to increase the number of members required to call a Special Meeting (from 10 to 25) and the quorum from 10 to 50). Language also clarified/modernised.	The number of members required to call a Special Meeting has been increased (along with the quorum) to better reflect expanded membership and provide for more democratic control. The reference to a Special Meeting being the 'supreme authority' of the Association has also been removed, as this was somewhat ambiguous. The fact that a successful resolution of a Special Meeting is binding on the Association (see Rule 21(d)) better describes the probable intent of the description of a Special Meeting as a 'supreme authority'.
22	Meeting dates for Executive Committee made more flexible.	For administrative ease.
23	Explicit reference made to Alternate Chairmen.	For clarity.
27	This Rule has been amended to allow for all members (including Builder Members) to be charged subscriptions based on turnover or otherwise, as the Executive Committee determines.	To allow for more flexibility in the manner that subscriptions are charged.
29	This change would mean that Members whose subscriptions are up to 3 months late would still be 'Financial Members', which would mean that they could still vote under the Act.	To clarify the definition of a 'Financial Member' and members voting rights.
34	Rule redrafted to make it clear that membership can be terminated where a member has breached the	The ability to remove members (or otherwise discipline them) where they engage in unethical

	Association's Rules, in particular the obligation to abide by its Code of Conduct (see also Rules 7(k)(iv) and 35(b)).	business practices is essential for the maintenance of the Master Builder's 'brand' and the protection of consumers.
39	This Rule has been changed to allow for use of the Association Membership Emblem by Financial Members without entering into an agreement with the Association, i.e. so that Emblem use is simply a right of any Financial Member.	To reflect current practice.
40	Redrafted to allow for notice by electronic means.	For administrative ease and better resource management.
44	Rule generally altered to clarify the current rule amendment mechanism, without substantive changes.	For clarity.

Diagram of current Association structure

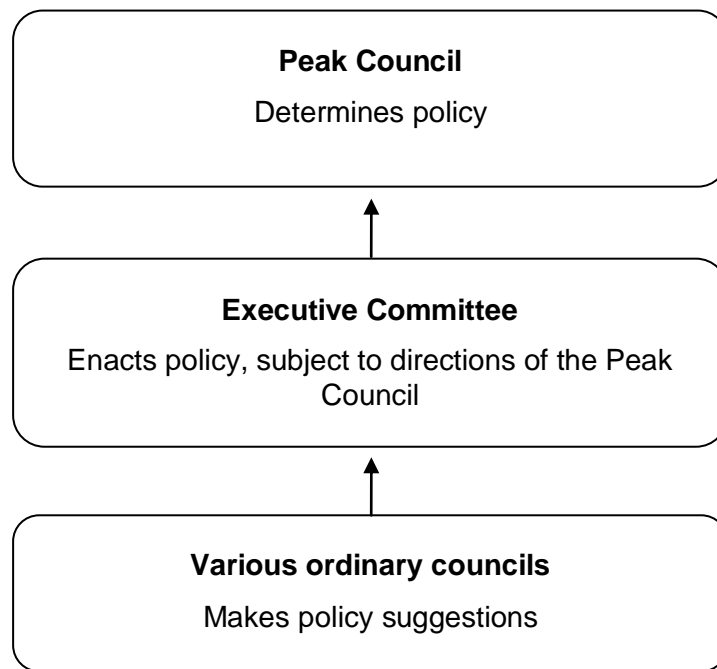
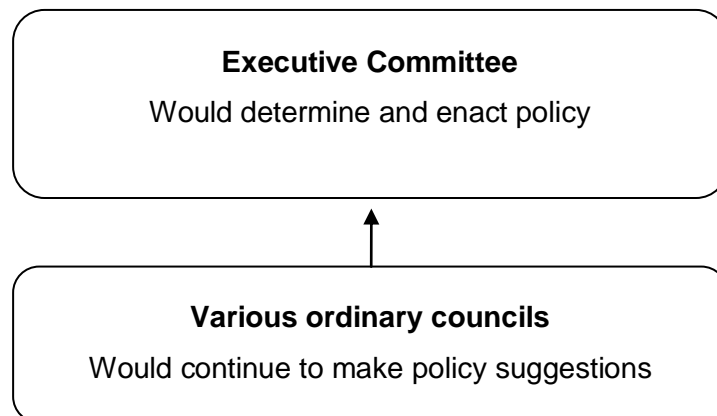


Diagram of proposed Association structure



[241V: Incorporates alterations of 24/05/2004 [R2004/233]]

I CERTIFY under section 161 of Schedule 1B of the Workplace Relations Act 1996 that the pages herein numbered 1 to 35 both inclusive contain a true and correct copy of the registered rules of the Master Builders' Construction and Housing Association of the Australian Capital Territory

DEPUTY INDUSTRIAL REGISTRAR

Rules of the MBCHAACT

Contents

1 - INTERPRETATION	1
2 - NAME OF ASSOCIATION AND INDUSTRY CONCERNED	1
3 - REGISTERED OFFICE	2
4 - OBJECTS	2
5 - MEMBERSHIP	4
5A - PERSONS WHO MAY BE OFFERED SERVICES	5
6 - ADMISSION OF MEMBERS.....	5
7 - DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES.	6
8 - RESIGNATION OF MEMBERS	7
9 - TERMINATION OF MEMBERSHIP.....	8
10 - ORDINARY COUNCILS	9
11 - OFFICE-BEARERS, EXECUTIVE COMMITTEE AND THEIR POWERS AND DUTIES	10
12 - PEAK COUNCIL	12
13 - POWERS OF EXECUTIVE COMMITTEE.....	13
14 - RETIREMENT OR REMOVAL OF OFFICE-BEARERS AND COUNCIL	16
15 - ELECTION OF OFFICE-BEARERS AND COUNCIL MEMBERS	16
16 - CASUAL VACANCIES - OFFICE-BEARERS AND/OR MEMBERS OF COUNCILS.....	20
17 - COMMITTEES	21
17A - POWERS AND DUTIES OF MEMBERS OF COMMITTEES.....	21
18 - EXECUTIVE DIRECTOR.....	21
19 - ANNUAL MEETING	23
20 - SPECIAL MEETINGS	23
21 - PEAK COUNCIL MEETINGS	24
21A - ORDINARY COUNCIL MEETINGS.....	25
22 - QUORUM	25
23 - RESOLUTIONS: CONDUCT OF MEETINGS	25
24 - FINANCIAL YEAR	26
25 - SUBSCRIPTIONS.....	26
26 - LEVIES, CONTRIBUTIONS	27
27 - RECOVERY OF SUBSCRIPTIONS AND OTHER AMOUNTS DUE TO THE ASSOCIATION.....	27
28 - APPLICATION AND CONTROL OF FUNDS, PROPERTY	28
29 - APPOINTMENT OF AUDITORS AND AUDIT	29
30 - EXAMINING BOOKS, RECORDS AND ACCOUNTS BY MEMBERS	29
31 - REGISTER OF MEMBERS.....	30
32 - DISCIPLINARY POWERS.....	30
33 - MEMBERS' ASSENT TO RULES	31
34 - INDEMNIFICATION OF MEMBERS, OFFICE-BEARERS AND EMPLOYEES	31
35 - COMMON SEAL.....	32
36 - ASSOCIATION EMBLEM.....	32
37 - MEMBERSHIP EMBLEM	32
38 - UNAUTHORISED USE OF ASSOCIATION SEAL OR EMBLEM	32
39 - CONCILIATION AND ARBITRATION, AUTHORISED AGREEMENTS	33
40 - ANNUAL REPORT	33
41 - NOTICES	33
42 - POLICY.....	34
43 - ALTERATIONS TO RULES.....	34
44 - DISSOLUTION OF THE ASSOCIATION.....	34
45 - LOANS, GRANTS AND DONATIONS	35

1 - INTERPRETATION

In the interpretation of these Rules and this Constitution, the following words and expressions shall have the meaning hereinafter specified unless the context otherwise requires -

- (a) Association means the Master Builders' Construction and Housing Association of the Australian Capital Territory.
- (b) Association's Office means the registered office of the time being of the Association.
- (c) Peak Council means the Peak Council as provided for under Rule 12.
- (d) Executive Director means the person appointed in accordance with Rule 18 and shall also include any other person acting as Executive Director from time to time in accordance with the said Rule.
- (e) Master Builder means any person who is qualified by training and/or experience to control and direct building construction or civil engineering works.
- (f) Member means any person who has been admitted to membership and includes a representative or additional representative, and Financial Member means a member not being in default in accordance with and as provided in Rule 27.
- (g) "Person" shall also mean firms, partnerships, associations, corporations, incorporated or unincorporated bodies, trustees, companies or any body duly registered under the Companies Act or similar Act of the Commonwealth or any State therein, societies, agencies or other organisations or businesses thereof.
- (h) Register of Members means that Register of Members as required by Rule 31.
- (i) Rule includes by-law.
- (j) Turnover means the gross amount expended on labour, materials, goods, services and sub-contracts in all phases of building-construction, civil engineering works, excavation work, demolition work and the like, whether under written contract or not, and shall include amounts paid to other contractors.
- (k) Words importing the singular number include the plural number and vice-versa.
- (l) Words importing the masculine gender include the feminine and neuter gender.

2 - NAME OF ASSOCIATION AND INDUSTRY CONCERNED

The Association shall be known as the "Masters Builders' Construction and Housing Association of the Australian Capital Territory", and is formed by employers in the Building Construction Industry for the purposes hereinafter set out.

3 - REGISTERED OFFICE

The registered office of the Association shall be at such place in the Australian Capital Territory as the Council may from time to time determine.

4 - OBJECTS

The association is formed for the following purposes:

- (a) To promote by all lawful and proper means the interests of the building industry in the Australian Capital Territory.
- (b) To safeguard by lawful and proper means the interests of its members in their regular business as master builders or such activities as are ancillary to and in which they are engaged with as principal, agent or consultant in the building construction industry;
- (c) To protect and use all lawful means for the protection of its members in carrying out any work in the building industry and against injustice or oppression in the fair and proper execution and construction of works as they may undertake from time to time to carry out;
- (d) To establish a code of ethics and good business practice amongst members;
- (e) To take an active part in assisting or opposing by all lawful and proper means such public movements as may appear likely to affect its members' interests in the carrying on of their business or the building industry generally;
- (f) To secure for its members all the advantages of unity of action in any lawful and proper manner whatsoever;
- (g) To discuss, consider make lawful determinations and recommendations in respect of all matters affecting the said industry and to collect, distribute and disseminate such information relating thereto as may be calculated to be of use to members, producers and distributors of building materials, suppliers or auxiliary or specialist services, associated or special to the building industry and the public generally, provided that such collection, distribution and dissemination of information shall not be used in any way to limited or be in restraint of trade or competition;
- (h) To affiliate with, or enter any alliance with any organisation, firm, or like, either within the Commonwealth of Australia or overseas having objects similar to, or calculated to benefit, members generally and to acquire shares and interests in or lend money upon debentures or otherwise to such, and to appoint representatives to such;
- (i) To adopt and carry out any lawful procedure that may be considered desirable in the interests of members in the maintenance of private enterprise;
- (j) To maintain review and improve conditions of contract, forms of agreement, conditions of tendering and the like and to enter into agreements with the Royal Australian Institute of Architects or similar bodies and public authorities, Commonwealth Authorities and lending institutions regarding or in relation to any such contract, agreement or conditions;
- (k) To support the Quantity System in connection with building works and to promote the provision of quantities for the use of tenderers for work;

4 - OBJECTS

- (l) To secure, maintain and improve trade relations with all public authorities, manufacturers, suppliers or distributors of goods, materials, and/or services either within Australia or abroad;
- (m) To maintain and improve the relations of members with their employees and the registered organisations or registered unions of such employees;
- (n) To act as an organisation and/or industrial union of employers and/or trade unions under the laws of the Commonwealth of Australia and its Territories;
- (o) To bring any industrial dispute or claims relating the industrial matters before the appropriate tribunal established by the Commonwealth and to represent the interests of employers in all sections of the building industry or any industry auxiliary or special to the building industry before courts, boards, conciliation committees, other tribunals or other bodies, and at conferences with organisations or employers and other bodies of employees or employers;
- (p) To enter into agreements with members' employees and/or their representatives relative to the terms and/or conditions of employment;
- (q) To support a practical system of apprenticeship combined with technical education;
- (r) To encourage and preserve by every lawful means, skill in the industry;
- (s) To establish or assist in the establishment of technical and statistical libraries;
- (t) To support all forms of education and especially technical colleges or universities and to establish or to contribute to bursaries, scholarships or prizes for education purposes;
- (u) To purchase, take or lease, or license, or hire, or otherwise acquire, real or personal property of any kind in furtherance of the objects of the Association and to sell, exchange or otherwise dispose of any real or personal property on such terms as may be considered expedient, and in such manner as is provided in these Rules;
- (v) To construct, maintain and alter buildings, works, plant and machinery necessary or convenient for the purpose of the Association, and to afford facilities to its members for the conduct of their business (other than office accommodation) and means for their relaxation;
- (w) To raise money by any means lawful, whether specially provided by these Rules or not, to further any of these objects;
- (x) To raise funds by means of subscriptions, fees, donations, and levies from or on members or otherwise, and impose fines on members, for all purposes and objects of the Association in such amounts and in such manner as is provided in these Rules;
- (y) To do all lawful things as may appear to be incidental or conducive to the aforementioned objects or any of them and to adopt additional objects from time to time; provided that the Association shall not be carried on for profit or gain;

- (z) The object specified in each of the paragraphs in this clause shall be regarded as independent objects, and accordingly shall not be limited or restricted by reference to or inference from the terms of any other object but may be carried out in the widest sense and no object herein specified shall be deemed subsidiary or ancillary to any other object, and it is hereby declared that in the interpretation of this clause, no object shall be affected by the meaning of any of the Association's other objects or by the juxtaposition of two or more objects and that in the event of any ambiguity this clause shall be constructed in such a way as to widen and not restrict the powers of the Association.

5 - MEMBERSHIP

- (a) The Association shall consist of an unlimited number of persons engaged in the building construction industry or civil engineering works or any phase thereof including demolition or excavation work and the like and employing any worker in any of the before mentioned work and the administration thereof.
- (b) The association shall comprise the following classifications of membership:
- (i) Builder Members - who shall be members operating as Master Builders or Civil Engineering Contractors as principal contractors or project managers.
 - (ii) Supply Members - who shall be members supplying materials or manufactured goods to the building industry.
 - (iii) Specialist and Sub-Contract Members - who shall be members operating as contractors, tradesmen, building agents or pieceworkers (provided that these persons are not employees) to any member of the building industry operating as a head contractor or project manager.
 - (iv) Professional Members - who shall be members operating as professional or trade consultants to the building industry, persons in the finance industry engaged in direct dealings with the building industry or other persons (provided that these persons are not employees) who by virtue of their trade or the skills practised by them are engaged in advising or consulting to members of the building industry.
 - (v) Life Members - a general meeting may on the recommendation of the Peak Council but not otherwise resolve that a life membership shall be conferred on any member who has rendered valuable service to the Association and such member shall thereupon be deemed to have paid all his future subscriptions in advance.

Such life membership shall not affect his liability to pay any sums other than his subscriptions nor shall it affect the liability to pay subscriptions of any firm, partnership or company of which he is a member.
 - (vi) Honorary members - with a view to strengthening the Association by the influence of members who have retired from the building and construction industry or other appropriate persons, the Peak Council may invite such persons to accept honorary membership and in the event of acceptance by such invitees, shall elect accordingly.

Honorary members shall be entitled to attend all meetings of the Association, to receive all the Association's publications and to make use of such recreational facilities as the Association may provide.

An honorary member shall not be eligible to hold any office in the Association nor vote on any matter other than those of a social nature.

5A - PERSONS WHO MAY BE OFFERED SERVICES

Persons who are for the time being ineligible for membership may be offered the services of the Association from time to time by the Peak Council at fees to be set by the Association. Such persons shall not be entitled to call themselves members of the Association or to exercise any voting rights in the Association affairs.

6 - ADMISSION OF MEMBERS

- (a) Subject to Rule 5 (a) hereof, the persons whose name appears in the Register of Members of the Master Builders' Association of the ACT at the 1st January 1987 shall be deemed to have fulfilled the requirement of this Rule and any other Rule relating to the qualifications of and admittance of members.
- (b) Any person who is trading as a master builder or is engaged in building or civil engineering work or related work and is desirous of being admitted as a member of the Association shall lodge with the Executive Director -
 - (i) an application in a form approved by the Peak Council, together with,
 - (ii) an entrance fee in such amount as the Peak Council shall determine from time to time and an amount equal to the first year's subscription.
- (c) Where a firm, company or organisation makes application for admittance as a member of the Association -
 - (i) such firm, company or organisation shall at the same time nominate a person to represent such firm, company or organisation;
 - (ii) a person so nominated shall be a member, director, trustee or executive of such firm, company or organisation and shall possess the qualifications required;
 - (iii) such firm, company or organisation may nominate for membership one additional representative but any firm, company or organisation in its own right as a member and in one right of its representatives shall have a total of not more than two votes;
 - (iv) such additional representatives may be admitted without fulfilling all technical qualifications if at the discretion of the Peak Council, position and length of service is such as to justify admittance.
- (d) Upon receipt of an application fulfilling the requirements of (b) and (c) (if applicable) hereof, the Executive Director shall acknowledge receipt of same and inform the applicant, in writing of:

7 - DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES.

- (i) the financial obligations arising from membership; and
- (ii) the circumstance, and the manner, in which a member may resign from the Association.
- (e) The Executive Director shall circulate all applications for membership to the Peak Council and the Council will either vote to accept, reject, or defer each application.
- (f) The Peak Council may -
 - (i) require such documentary or otherwise evidence as it deems necessary in order to establish a candidate's eligibility of fitness for membership;
 - (ii) circulate an application for membership to the full membership of the Association for comment.
- (g) The Peak Council may adjourn consideration of an application for membership for three months but no longer.
- (h) When the Peak Council has made a final decision to accept or reject an application for membership -
 - (i) the Executive Director shall notify the applicant in writing of such decision; and
 - (ii) in the case of rejection the fees lodged with the application shall be refunded.
- (i) When the Peak Council has rejected an application -
 - (i) the applicant may by notice in writing addressed to the Executive Director at the registered office of the Association within 30 days of notice of such rejection, appeal to the next general meeting of members and such meeting may accept or reject the application; and
 - (ii) the applicant shall be informed of the result of such appeal by notice in writing signed by the Executive Director.
- (j) Where an applicant has been admitted to membership -
 - (i) the Executive Director shall forthwith advise the applicant accordingly in writing and at the same time forward him a copy of these Rules;
 - (ii) the name of the applicant shall then be entered in the Register of Members; and
 - (iii) a membership certificate shall be issued to the applicant by the Council Management, being the Peak Council.

7 - DUTIES, RESPONSIBILITIES AND WITHDRAWAL OF REPRESENTATIVES AND ADDITIONAL REPRESENTATIVES.

- (a) The person elected as the representative or additional representative of a member shall be responsible in all respects for his acts and omissions to the Association and these Rules in so far as such acts or omissions are directly or indirectly related to or incidental to the business operations of the member.

8 - RESIGNATION OF MEMBERS

- (b) The person elected as a representative or additional representative of a member shall be responsible personally for and liable for the acts and omissions to the Association and these Rules by the member that he represents, in so far as such acts or omissions are directly or indirectly related or incidental to the business operations of the member.
- (c) The member shall be liable for the acts and omissions of the Association and these Rules by his or its representative or additional representative, in so far as such acts or omissions are directly or indirectly related to or incidental to business operations of the member.
- (d) A member may withdraw the nomination of a representative or additional representative by written notice to the Executive Director, and -
 - (i) if the member has a common seal as may be required by law then the notice shall bear such common seal thereof;
 - (ii) upon receipt of a notice as aforesaid and subject to Rule 8, the Executive Director shall forthwith cancel the membership of the representative or additional representative as the case may be;
 - (iii) the Executive Director shall then notify the representative concerned and report the matter to the Peak Council for record; and
 - (iv) in the event of the representative to be withdrawn being the sole representative then a new representative shall be nominated at the same time as the notice of withdrawal is given.
- (e) Nothing in these Rules shall be deemed or construed to confer upon any person elected as a representative or additional representative any personal right or authority or benefits of membership of this Association as if he is also trading as an individual in his own right.

In such an event he shall make application for admittance to membership in his own right in the manner prescribed.

8 - RESIGNATION OF MEMBERS

- (a) A member may resign from membership by written notice addressed and delivered to the Executive Director.
- (b) A notice of resignation from membership takes effect:
 - (i) where the member ceases to be eligible to become a member of the Association:
 - (A) on the day on which the notice is received by the Association; or
 - (B) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;whichever is later; or
 - (ii) in any other case:
 - (A) at the end of 2 weeks after the notice is received by the Association; or

(B) on the day specified in the notice;

whichever is the later.

- (c) Any dues payable but not paid by the former member in relation to a period before the member's resignation took effect, may be sued for and recovered in the name of the Association, in a court of competent jurisdiction, as a debt due to the Association.
- (d) A notice delivered to the Executive Director shall be taken to have been received by the Association when it was delivered.
- (e) A notice of resignation that has been received by the Association is not invalid because it was not addressed and delivered in accordance with sub-rule (a).
- (f) A resignation from membership is valid even if it is not effected in accordance with this rule if the member is informed in writing by or on behalf of the Association that the resignation has been accepted.

9 - TERMINATION OF MEMBERSHIP

- (a) The membership of any member shall cease and determine upon -
 - (i) the resignation of such member tendered and accepted pursuant to Rule 8;
 - (ii) the death of such member;
 - (iii) the withdrawal of the authority of such member as a representative pursuant to Rule 7 (d);
 - (iv) if such member is duly declared or certified according to law as an insane or incapable person; or
 - (v) if such member being a company or unincorporated body shall be dissolved, andimmediately upon becoming aware of such event the Executive Director shall remove such member's name from the Register of Members, and termination of membership shall operate from the time of removal of his name from such Register.
- (b) Except in cases in which the Peak Council shall otherwise decide following compliance with the next succeeding sub-clause, the membership of any member shall cease and determine if -
 - (i) such members being an individual person shall have his estate sequestrated in bankruptcy, or shall assign his estate for the benefit of his creditors generally.
 - (ii) such member being a firm or partnership shall have its estate or the estate of each of its members sequestrated in bankruptcy or shall assign its estate or the estates of each of its members for the benefit of the creditors generally of such firm or partnership.
 - (iii) a receiver or a receiver and manager is appointed to control or manage the business or business affairs of such a member, and

unless otherwise directed by the Peak Council following compliance with the next succeeding sub-clause, the Executive Director shall remove the name of such member from the Register of Members and termination of his membership shall operate from the time of removal of his name from such register

- (c) Upon becoming aware of the happening of any of the events mentioned in the last preceding sub-clause, the Executive Director shall enquire from such member the circumstances of and leading up to such event, and upon receipt of such information (if furnished by or for such member), together with -
- (i) a request in writing (if so desired by such member) that his membership be not terminated in consequence of such event; and
 - (ii) a certificate or report from the Official Receiver or Trustee (in the case of an individual person, a firm or a partnership) or from the liquidator or receiver or receiver and manager (in the case of a company) that all creditors of such member as at the date of the happening of such event are expected to be paid in full,
- the Executive Director shall submit such information, request and certificate or report to the first regular meeting of the Peak Council shall thereupon decide whether the membership of such member shall cease and determine as aforesaid or may continue either unconditionally or subject to compliance with such conditions as the Peak Council may think fit to impose.
- (d) The member referred to in sub-clause (c) shall cause the information, request and such certificate or report to be furnished to the Executive Director within twenty-one (21) days after the happening of the said event, in default whereof the Peak Council may deal with the matter in the absence of the same.
- (e) In the event that a member's membership is terminated under this Clause, that member shall be notified in writing within fourteen (14) days of such termination which notification shall specify the ground on which the membership is terminated.

10 - ORDINARY COUNCILS

- (a) The following Councils shall be elected each year:
- (i) A Commercial Builder's Council which shall be elected by those members who are Commercial Builders, Civil Contractors or Project Managers.
 - (ii) A Suppliers and Subcontractors Council which shall be elected by the combined Supply Members, Specialist Contract Members and Sub-Contract Members.
 - (iii) A Residential Builders Council which shall be elected by those members who are Residential Builder Members.
 - (iv) The Civic Contractors Council which shall be elected by those members who are civil engineering contractors.
 - (v) A Professional Consultants Council which shall be elected by those members who are professional consultant members.
- (b) Each Council shall be composed of a Chairman and a minimum of twelve (12) and a maximum of twenty (20) members.

- (c) Each Council may -
 - (i) deliberate upon matters affecting its electors and upon matter affecting the Association at large;
 - (ii) may refer its decisions to the Peak Council for further debate or with the recommendation that certain actions be instigated in relation to any matter: and
 - (iii) may appoint such office holders and maintain such records as sees fit.

11 - OFFICE-BEARERS, EXECUTIVE COMMITTEE AND THEIR POWERS AND DUTIES

- (a) The management of the Association shall be vested in the Executive Committee.
- (b) Office-Bearers - The Office-Bearers of the Association shall be -
 - (i) the President, the Chairman of each Ordinary Council and the Treasurer, all of which positions shall be honorary; or
 - (ii) in the event of the unavailability of an Office-Bearer, other than the President and the Treasurer, a nominee of any of the above from time to time, but such period not to exceed two consecutive calendar months, which nominee shall be appointed in writing by the absent Office-Bearer and drawn from the same Council as the absent Office-Bearer.

At least one of the President or the Treasurer shall be a builder member of the Association and the Peak Council shall nominate which position is to be held by a builder member at the same time that it appoints a Returning Office for each annual election. Persons other than builder members shall be ineligible to nominate for the said position after the declaration.

- (c) Executive Committee - Collectively the said Office-Bearers shall form the Executive Committee, and -
 - (i) the Executive Committee shall carry out such duties as may be delegated to them by the Peak Council and may in cases of emergency take such action as may be deemed necessary in the interests of the Association provided that such action shall be reported to the next meeting of the Peak Council;
 - (ii) meetings of the Executive Committee shall be called by the President; and
 - (iii) four (4) shall form a quorum at Executive Committee Meetings.
- (d) The President
 - (i) shall be the Association's chief executive officer and shall preside at all meetings of the Association, the Peak Council and all committees whether special or otherwise;
 - (ii) shall have all the authority vested in the chairman of any meeting;
 - (iii) shall keep order and direct the manner of debate upon all questions introduced and determine what questions shall be discussed and in what order questions shall be introduced;

- (iv) shall have the right to vote on all questions and where voting is equal may exercise his right to a casting vote by declaring the result of the voting;
 - (v) shall have power to cause any meeting of the Association, its Council and its Committees to be convened;
 - (vi) shall have power to cancel and appoint other dates of meetings;
 - (vii) shall have power to delegate his authority and to direct the Executive Director and to suspend the Executive Director from office as provided in Rule 18;
 - (viii) shall carry out such additional duties as may be delegated to him by the Council or an Annual or Special Meeting of the Association;
 - (ix) shall hold office for a period of one year from the date of his election;
 - (x) shall retire at the Annual General Meeting next following his election but shall be eligible for re-election.
- (e) Chairmen of Councils -
- (i) In the absence of the President, the Chairman of the Commercial Builders' Council shall act as, and have rights and powers of the President, and shall carry out such other duties as may be delegated to him by the President, the Peak Council or a meeting of the Association.
 - (ii) In the absence of both the President and the Chairman of the Commercial Builders' Council, the other Chairmen of Ordinary Councils shall appoint one of their number to have the rights and powers of the President.
 - (iii) Each Chairman of an Ordinary Council shall carry out such other duties as may be delegated to him by the President, the Council or a meeting of the Association.
 - (iv) Each Chairman of an Ordinary Council shall have power to cause any meeting of the Ordinary Council to be convened.
- (f) The Treasurer - The Treasurer shall -
- (i) certify all accounts due by the Association;
 - (ii) see that the Executive Director causes all monies belonged to the Association to be paid to the credit of the Association without undue delay in a bank authorised by the Executive Committee;
 - (iii) cause to be kept and maintained such books of accounts as may be required by law;
 - (iv) certify the Association's balance sheets and Financial Statements and such other financial returns as may be required by law;
 - (v) so far as practicable, authorise all cheques or bank withdrawals on behalf of the Association;
 - (vi) cause the books of accounts to be audited by a proper person and tabled at the Annual General Meeting; and

- (vii) cause to be kept and maintained the register of all members of the Association.

12 - PEAK COUNCIL

- (a) The Executive Committee shall consult with the Peak Council upon all matters of importance to the Association.
- (b) The Peak Council shall consist of the Executive Committee and a number of other members who shall be elected, in accordance with these rules, as follows:
 - (i) The Commercial Builders' Council shall elect six (6) of its members to the Peak Council.
 - (ii) The Suppliers and Subcontractors Council shall elect four (4) of its members to the Peak Council.
 - (iii) The Residential Builders' Council shall elect four (4) of its members to the Peak Council.
 - (iv) The Civil Contractors Council shall elect four (4) of its members to the Peak Council.
 - (v) The Professional Consultants Council shall elect four (4) of its members to the Peak Council.
- (c) All members of the Peak Council shall have full and equal voting rights after having been duly and properly elected.
- (d) The election of the other members of the Peak Council shall be in the hands of the respective Returning Officers appointed by each Ordinary Council under these Rules, and the following provisions shall apply:-
 - (i) The Returning Officer for each Council shall call for nominations by a notice directed to each member of his particular Council, and such notices shall specify an address at which the nominations will be received by him.
 - (ii) A member of the particular Ordinary Council may nominate or be nominated as a candidate for election to the Peak Council by submission in writing to the Returning Officer. The nomination of any member of some other member shall indicate the name of the nominator and the nominee's consent. If the Returning Officer conducting such election finds a nomination to be defective he shall, before rejecting the nomination, notify the persons concerned of the defect and, where it is practicable to do so, give him the opportunity of remedying the defect within a period of not less than 7 days after the person is notified.
 - (iii) Forthwith, after a ballot for any position relating to a particular Ordinary Council becomes necessary, the Returning Officer shall prepare, personally initial and forward, in such manner as to ensure that, so far as practicable, each person entitled to participate in any such ballot received such ballot paper, a ballot paper clearly setting out the positions being balloted together with the candidates' names in alphabetical order for each position. The method of voting shall also be clearly indicated. Where a person entitled to participate in any such ballot will be absent from his or her usual address during the ballot, such person may notify the Returning Officer accordingly, and nominate another address for the receipt of ballot papers. Where the Returning Officer has been so notified before the ballot opens, the Returning Officer shall forward a ballot paper to the person concerned at the nominated address.

- (iv) The Returning Officer shall arrange for a post office box or other receptable for the reception of all ballot papers. As soon as practicable after the closing of the Poll such post office box shall be opened by the Returning Officer in the presence of such scrutineers who are present and proceed to count the Poll. He shall declare the ballot and notify the Executive Committee in writing of the result. All returned ballot papers shall remain in the custody of the Returning Officer.
- (v) The result of the poll shall be ascertained by scrutiny and in each case the candidate receiving the highest number of votes shall be declared elected.
- (vi) In the event of an equality of votes between candidates for any position the candidate to be elected shall be determined by lot.
- (vii) Each candidate shall be entitled to appoint a Scrutineer whose name shall be advised in writing to the Returning Officer by the candidate. Each Scrutineer shall have the right in the presence of the Returning Officer to inspect any work being done in connection with the ballot at any stage thereof. He shall conduct himself so as not to interfere with the functions of the ballot and shall immediately notify the Returning Officer of any irregularity which he may observe.
- (viii) Successful candidates shall assume a position on the Peak Council on the declaration of the Poll and subject to the rules shall hold office until their successors are elected, and shall be eligible for re-election.
- (ix) The Returning Officer shall so conduct himself as to ensure, so far as is practicable, and to the best of his ability and foresight that no irregularity occurs in or in connection with the election. He shall observe the secrecy of the ballot and shall not attempt to influence any voter for or against any candidate.
- (x) No error or omission in the carrying out or observance of any Rule shall invalidate an election if the error or omission is not of such a nature that the result of the election has been or may have been affected.

13 - POWERS OF EXECUTIVE COMMITTEE

- (a) Without in any way limiting the general powers conferred by these Rules or otherwise on the Executive Committee, it is hereby expressly declared that it shall have the following powers, that is to say, power -
 - (i) To adopt whatever lawful and proper measures as it, from time to time, deems expedient for the purpose of giving effect to the objects of the Association or any one of them;
 - (ii) To purchase, take in exchange, or on lease, or otherwise acquire, and for any estate or interest therein, any real or personal property, rights or privileges, which the Association is authorised to purchase or acquire and which it may deem requisite or expedient to acquire for the purpose of the Association's business, and at its discretion to sell, subdivide, let exchange, or dispose of any property of the Association on such terms as to credit or otherwise as it may think fit;

- (iii) At its discretion, to pay for any property, rights, or privileges, acquired by or services rendered to the Association, either wholly or partially in case or in bonds, debentures, or other securities of the Association, and any such bonds, debentures, or other securities, may be either specifically charged upon or any part of the property of the Association, or in such other manner as it may think fit;
- (iv) To secure the fulfilment of any contract or engagements entered into by the Association by mortgage or charge of all or any of the property of the Association for the time being or so charged;
- (v) To raise or borrow money in the name or otherwise on behalf of the Association as it may from time to time think expedient, and to secure the repayment thereof or the fulfilment or discharge of any liability, guarantee, or obligation, or of any undertaking by the Association in such manner and upon such terms and conditions as it thinks fit, and in particular by the issue of bills or notes or debentures, by mortgage or charge of or on any of the property or assets of the Association, both present and future.
- (vi) To institute, conduct, defend, compound, abandon, any legal proceedings by or against the Association or its Officers, or otherwise concerning the affairs of the Association, and also to compound and allow time for payment or satisfaction of any debts due, and of any claims or demands by or against the Association;
- (vii) To refer any claims or demands by or against the Association to arbitration and observe and perform the awards;
- (viii) To act on behalf of the Association in all matters relative to bankrupts and insolvents, assignments or liquidations;
- (ix) To make and give receipts, releases, and other discharges, for money payable to the Association, and for the claims and demands of the Association;
- (x) To draw, accept, make, endorse, transfer, discount, guarantee, and negotiate, such cheques, bills of exchange, and promissory notes, and give such indemnities and guarantees, and enter into such other obligations as may seem to it to be expedient for the purposes of the Association;
- (xi) To invest and deal with any monies of the Association not immediately required for the objects thereof upon such securities and in such manner as it may think fit, and from time to time to vary or release such investments;
- (xii) To enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute, and do all such acts, deeds, and things in any lawful and proper manner in the name and on behalf of the Association as it may consider expedient for or in relation to any of the matters aforesaid, or otherwise for the objects of the Association;

- (xiii) To entrust to, and confer upon, any member of the Executive, or any Committee of the Peak Council, or Officer of the Association, such of the powers exercisable by the Committee under these Rules as it may think fit, and from time to time to revoke, withdraw, alter, or vary, all of any of such powers.
- (xiv) To affiliate the Association with any organisation, association or body, corporate or incorporate, having objects altogether or in part similar to those of the Association, upon such terms and conditions and subject to the payment of such fees or subscriptions (if any) as the Peak Council may agree, and at any time to terminate or cancel such affiliation by the Association;
- (xv) To purchase, or otherwise acquire and undertake all or part of the property, assets, liabilities, and engagements, or any one or more of the associations, companies, firms or chambers with which this Association is authorised to amalgamate, affiliate, fuse or ally, and to transfer all or any part of the property, assets, liabilities, and engagements of this Association to any one or more of the associations, companies, firms, or chambers, with which this Association is authorised to amalgamate, affiliate, fuse or ally;
- (xvi) To appoint the Committees required under these Rules to be appointed, and special Committees from amongst its own number or otherwise to examine and inquire into any special matter in connection with the objects or business of the Association, and to appoint members of the Association to act with any such Special Committees whenever it may think proper, and generally to determine the Constitution, and regulation of the procedure of any Committee, whether Special or appointed under these Rules;
- (xvii) From time to time to make and to alter, vary, and rescind, by-laws for the carrying out of these Rules, to put into effect the powers and authorities thereby vested in the Peak Council and of regulating the conduct and proceedings of the Association and of the Peak Council meetings and generally to provide for all such matters and things relating to the management of the property of the Association and to conduct of its business as are not inconsistent with or repugnant to these Rules or required to be done by the Association in Special or Annual Meetings;
- (xviii) To bring any industrial disputes, claims, or matters before the Australian Industrial Relations Commission, or any Committee, Board, or other Tribunal whatsoever, appointed under the Industrial Relations Act 1988, or any Acts amending the said Act or made in substitution thereof or under any Act of Parliament of the Commonwealth;
- (xix) On behalf of the Association or any members thereof to make and take any legal steps to enforce any claims or demand relative to industrial matters upon any organisation, or Industrial or Trade Union of Employees or Employers, or upon any individual employees or employers;
- (xx) To enter into industrial agreements with any Trade or Industrial Union or Association of Employees or Employers; all such agreements shall be under the seal of the Association and shall be executed by the President and Executive Director;

- (b) Any instrument required by law to be under seal shall be executed by such persons as the Executive Committee may appoint and shall be under the seal of the Association; Provided always that the Committee shall exercise the aforesaid powers subject to the direction and control of the Association in Special or Annual Meeting.

14 - RETIREMENT OR REMOVAL OF OFFICE-BEARERS AND COUNCIL

- (a) For the purpose of this Rule "Office-Bearer" shall mean any member of the Executive Committee or of the Peak Council.
- (b) The Office-Bearers and members of the Peak Council and members of the Ordinary Councils shall retire at the Annual Meeting but shall be eligible for re-election.
- (c) Any Office-Bearer who shall be found guilty, in accordance with these Rules, of misappropriation of the funds of the Association, a substantial breach of the Rules of the Association or gross misbehaviour or gross neglect of duty or has ceased, according to the Rules of the Association, to be eligible to hold the office, may by resolution of the Special Meeting concerned and notice of which has been given in accordance with these Rules be removed from such office.

In such case, the Executive Director shall furnish the Office-Bearer with a statement of the allegations made against him and summon the Office-Bearer to appear before such Special Meeting to answer such allegations.

The Special Meeting shall consider such allegations and if a three fourths majority of the members present and entitled to vote at such Special Meeting shall decide that the Office-Bearer has been guilty of the conduct, act or acts alleged against him the Special Meeting may resolve to remove the Office-Bearer from office.

Should any such Office-Bearer fail to appear before such Special Meeting when summoned to appear then the Special Meeting may proceed ex-parte and such failure to appear without written excuse on the part of the Office-Bearer shall in itself be conduct which may be dealt with under the Rules.

A summons to appear in accordance with this Rule shall be served personally by the Executive Director or by registered post, direct to his last known address.

15 - ELECTION OF OFFICE-BEARERS AND COUNCIL MEMBERS

- (a) The Office-Bearers and members of the various Ordinary Councils shall be elected by secret ballot in the manner hereinafter prescribed by and from the financial members and life members who fall within the category of members entitled to vote for each Council except that the President and Treasurer shall be elected by and from all financial members and life members of the Association.
- (b) To conduct the elections of the President and Treasurer, a Returning Officer, not being the holder of any other office in nor being an employee of, the Association or a branch, section or division of the Association; shall be appointed by a meeting of the Peak Council, whereas for the elections of the Chairmen and members of the various Ordinary Councils these shall be in the hands of the Returning Officers, none of which shall be the holder of any office in, or an employee of, the Association, or a branch, section or division of the Association and one of which shall be appointed by each Ordinary Council.

- (c) At least six (6) weeks before the Annual Meeting in each year, the Returning Officer shall forward by post to each financial member and life member a nomination form with a notification thereon or therewith of the closing date and time of such nomination.

The aforesaid nomination shall also state:

- (i) That nominations will not be received by him after the closing date so fixed.
 - (ii) The nomination will not be valid unless a written consent of the nominee is received on or before the closing date of nomination.
 - (iii) The address to which the nomination and consents are to be forwarded.
 - (iv) The class of members which the nominee represents in accordance with clause 10.
- (d) A nomination shall in every case be in writing and shall be signed by the nominator and shall also be assented to in writing by the nominee.
- (e) Nominations and consents shall be forwarded to the Returning Officer so as to reach him not later than 4.00pm four (4) weeks prior to the Annual Meeting.
- (f) The Returning Officer shall inspect the nominations and consents received at the closing date and time and satisfy himself as far as he reasonably can that each of them is in order.

Providing that if the Returning Officer finds a nomination to be defective he shall, before rejecting the nomination, notify the person concerned of the defect and shall allow him seven (7) days in which to remedy the defect.

- (g) If, in relation to any Council, not less than twelve (12) and not more than twenty (20) valid nominations have been received for the next ensuing year, the Returning Officer shall certify to the President that the said candidates have been elected unopposed.

The Returning Officer shall also declare the said candidates duly elected at the Annual Meeting.

- (h) If more than the number of nominations required to fill any office is received an election therefore shall be taken by a postal ballot hereinafter provided -
- (i) The Returning Officer shall prepare or cause to be prepared a sufficient number of ballot papers on which shall appear the full names of the candidates only in the order in which they shall have been drawn by the Returning Officer by ballot.

Any person so nominated, plus the Executive Committee, shall be notified of and have the right to be present at such ballot for positions.

The one ballot paper may contain provision for voting in respect of more than one election. The method of voting shall also be clearly indicated.

- (ii) The Returning Officer shall within fourteen (14) days after the closing date for nominations, forward by prepaid post to every member entitled to vote at the election, a ballot paper bearing his initials, together with two envelopes. One envelope shall be a reply paid outer envelope addressed to the Returning Officer at an address arranged by him for the return of the ballot papers. The other envelope shall be a smaller declaration envelope, for the inclusion of the completed ballot paper, containing a removable label or flap with the following details printed on it:
- the name and postal address of the voter;
 - the declaration stating that the voter -
 - “is the voter named on the envelope;
 - has voted on the ballot paper contained in the envelope; and
 - has not voted before in this ballot.”
 - a place for the signature of the voter

In a ballot to be conducted under this Rule the day on which the roll of voters is to be closed, shall be on the seventh day prior to the opening of nominations.

Where a person entitled to participate in any such ballot will be absent from his or her usual address during the ballot, such person may notify the Returning Officer accordingly, and nominate another address for the receipt of ballot papers. Where the Returning Officer has been so notified before the ballot opens, the Returning Officer shall forward a ballot paper to the person concerned at the nominated address.

- (iii) The Returning Officer shall advise all voters of the closing date for the receipt of returned ballot papers which shall be not later than 4.00pm on the second day prior to the Annual Meeting.
- (iv) If the Returning Officer is satisfied that any ballot paper has been destroyed, lost, damaged or misused, and in the case of a damaged or misused ballot paper on receipt thereof, he shall supply to the member to whom the original ballot paper was supplied, a substitute ballot paper which he shall have initialled and also marked "substitute ballot paper".
- (v) He shall not receive any ballot papers after the closing date provided, and shall mark any envelope received "informal", together with the date of its receipt, and shall not open such envelopes.
- (vi) After the appointed closing date the Returning Officer shall supervise the scrutiny of votes.

The Returning Officer is empowered to use the Association staff and/or employ other persons who are not members of the Association to assist in the scrutiny.

- (vii) The Returning Officer shall mark the following informal:
- (A) A ballot paper that gives the identity of the voter.
 - (B) A ballot paper contained in an envelope that is unsigned, as provided in sub-clause (ii), and in this case the inner envelope shall not be opened.
 - (C) A ballot paper which is marked other than with consecutive numbers, and/or in which a first preference is not indicated.

- (D) A ballot paper which does not bear the initials of the Returning Officer.
- (viii) In a ballot to which these Rules apply a voter shall record his vote on a ballot paper by placing the figures 1,2,3,4 (and so on) against the names of each and every candidate so as to indicate by such numerical sequence the order of his preference.
- (ix) The means of counting the votes cast shall be as follows:
 - (A) Each candidate shall receive a number of votes by treating his numerical preference as his total from each ballot paper (i.e. a number 3 preference counts as three votes and so on).
 - (B) The candidate or the candidates up to the required number receiving the lowest sum total or totals shall be declared elected.
 - (C) In the case of a tie the Returning Officer shall decide the ballot by drawing lots.
- (x) At the conclusion of the count the Returning Officer shall certify to the President the result of such ballot.
- (i) A candidate for election as aforesaid may appoint one member to act as his scrutineer.

The Returning Officer shall be advised in writing by the candidate of the person so appointed.

The scrutineer shall be entitled to observe the form and distribution of ballot papers, the collection of ballot papers on their return, the admission and counting of votes, the conduct of votes, the conduct of the determination of the election by lot (if any) and the declaration of the ballot.

In every case it shall be the right and duty of the scrutineer to observe any act performed or directed by the Returning Officer which may effect the result of the election and the Returning Officer shall take all reasonable steps by notification or otherwise to enable each scrutineer to exercise all or any of such rights if he has had a reasonable opportunity to do so.

The scrutineer shall direct the attention of the Returning Officer to any irregularity he may detect in respect of any matter to be observed or done under these Rules in connection with the election. He shall conduct himself so as not to interfere with the functions of the ballot.

The scrutineer shall do all things necessary so that the conduct of an election shall conform to these rules and so that the secrecy of the ballot shall be observed.

- (j) At the Annual Meeting the Returning Officer shall declare the result of the ballot or in cases where he has certified that the candidates have been elected unopposed declare them elected.
- (k) If less than the required number of nominations which are in order have been received by the Returning Officer -
 - (i) he shall as soon as possible thereafter furnish the President in writing with particulars of the nominations which are in order and at the Annual Meeting the Returning Officer shall declare each such nominee elected; and
 - (ii) subject to any direction by the relevant Council, the President or the Chairman of the Ordinary Council, as the case may be, shall cause a fresh election to be conducted by the Returning Officer in the manner prescribed by this Rule, mutatis mutandis, to fill the remaining vacancies.

16 - CASUAL VACANCIES - OFFICE-BEARERS AND/OR MEMBERS OF COUNCILS

- (a) Any casual vacancy in the office of any Office-Bearer or any casual vacancy in the office of member of the various Councils (including a vacancy resulting from the filling of a casual vacancy in the Office-Bearers) shall be filled by an election by members -

- (i) in the case of the President or Treasurer, of the Peak Council; and
- (ii) in the case of Chairmen or other members of Peak Council or members of Ordinary Councils, of the appropriate Ordinary Council,

conducted in the following manner and the person so elected shall hold office until the next Annual Meeting when he shall be eligible for re-election. Provided that the person so elected shall not hold such office for so much of the unexpired part of the term of the last person elected to the office as exceeds 12 months.

- (b) The Executive Director shall call for nominations in the notice calling the next meeting of the relevant Council following the creation of such vacancy and any member of the Council may in writing nominate any person eligible in accordance with these Rules for any office for which there is a vacancy and the candidate for office shall also sign the nomination.
- (c) If only the required number of nominations to fill any office is received the Chairman of the meeting shall forthwith declare the person so nominated elected unopposed to the office for which he was nominated.
- (d) If more than the number of nominations required to fill any office is received, an election shall be taken by a secret ballot of all Council members as hereinafter provided:

The Chairman of the Council shall nominate a Returning Officer, not being a member of the Council, for the purposes of the election.

- (e) If all members of the Council are present, the Returning Officer shall -
- (i) Permit any duly nominated candidate to appoint any member of the Association his scrutineer to represent him at the election;
 - (ii) Inspect the nominations of candidates and satisfy himself so far as he reasonably can that such nominations are regular and valid;
 - (iii) Prepare or cause to be prepared such number of ballot papers as there are members entitled to vote upon which ballot papers the names of the duly nominated candidates shall appear in alphabetical order.
 - (iv) Supply to each member entitled to vote one (1) ballot paper which the Returning Officer shall have previously initialled;
 - (v) Direct each voting member to strike out on the ballot paper the name of each candidate for whom he does not desire to vote and thereafter so fold the ballot so that the marking thereon is not visible until unfolded;
 - (vi) Collect the folded ballot papers and ensure that no person returns more ballot papers than he has votes;
 - (vii) Admit ballot papers properly marked and count the votes thereon indicated;

- (viii) At the conclusion of the count declare to the meeting the candidate or candidates as the case may be receiving the majority of votes elected;
- (ix) In the case of a tie between candidates draw lots.
- (f) If at that meeting all members entitled to vote are not present a postal ballot shall be held within thirty (30) days of the meeting, such ballot to be conducted in a manner consistent with Rule 15.

17 - COMMITTEES

- (a) The Peak Council may appoint Committees from amongst its own number or otherwise to examine and enquire into any special matter in connection with the objects or business of the Association.
- (b) The Peak Council shall review the personnel and function of all Committees so appointed in September of each year as necessary from time to time and shall re-appoint such Committees as it deems fit.
- (c) Any Committee appointed by the Peak Council shall not be a collective body of the Association that has powers of the kind in paragraph (b) of the definition of "office" in subsection 4(1) of the Industrial Relations Act 1988.

17A - POWERS AND DUTIES OF MEMBERS OF COMMITTEES

Unless otherwise provided to the contrary, in addition to any powers and duties elsewhere provided in these Rules, each member of a Committee of the Association - including Committees such as the Peak Council, the Executive Committee and the various Ordinary Councils - shall have:

- (a) the right to vote on any Committee of which he is a member; and
- (b) the duty to regularly attend meetings of any Committee of which he is a member.

18 - EXECUTIVE DIRECTOR

- (a) The Executive Director shall be appointed by the Executive Committee and his remuneration and conditions of employment shall be determined by the Executive Committee.
- (b) The Executive Director shall be responsible to the Executive Committee but shall act entirely under the direction of the President or, in the absence of the President, the Executive Committee member so acting.
- (c) The appointment of the Executive Director may be terminated by not less than six (6) weeks' notice given by the Executive Committee or the Executive Director.

Termination of the Executive Director shall only become effective after he has the opportunity to present written and oral submissions to the Peak Council relating to any decision to dismiss him should he choose to do so.

Any review of the decision to dismiss the Executive Director shall, upon the request of the Executive Director, be held at a special meeting of the Peak Council within three days of the notice of intention to dismiss being presented to the Executive Director by the President, at which time the Executive Director will have the opportunity to present the written and oral submissions previously referred to.

The decision taken at that special meeting of Peak Council shall be final and shall take effect immediately.

If six weeks' notice of termination is not given to the Executive Director, pay in lieu of notice shall be paid, except where gross negligence or misappropriation of funds or a substantial breach of the rules of the Association or gross misbehaviour or gross neglect of duty is involved.

The vote to dismiss the Executive Director shall require a 60 per cent majority of those present and eligible to vote at the special meeting of the Peak Council and in any case shall be not less than 40 per cent of the entire membership of the Peak Council.

- (d) The Executive Director shall be the Association's Chief Administrative Officer and Executive Officer, and shall -
 - (i) be the Public Officer of the Association for all such purposes as may be required, and is the officer of the Association nominated by it to sue or be sued or to issue or accept legal process on behalf of the Association;
 - (ii) convene all meetings of the Association, the Peak Council and Committees;
 - (iii) keep or cause to be kept a faithful record of the business transacted at all meetings of the Association, its Council and Committees;
 - (iv) collect all subscriptions, fees, levies, dues, or other liabilities payable to the Association by members or otherwise;
 - (v) conduct correspondence on behalf of the Association and except as directed by the President the same shall be conducted in his name;
- (e) The Executive Director shall -
 - (i) subject to the direction of the Executive Committee, engage the staff of the Association; and
 - (ii) have full charge and management of the Association's staff, and authority to delegate his powers and duties to such staff.
- (f) The Executive Director shall, and is hereby authorised to (in a manner as may be directed by the Executive Committee) bring or defend, or cause to be brought or defended, any action, prosecution or complaint in any Court or Tribunal as may be established under any Industrial or Arbitration or any General, Civil or Criminal Law of the Commonwealth.
- (g) The Executive Director shall carry out such duties as may be required by these Rules or directed by the Executive Committee from time to time.
- (h) In the event of the office of the Executive Director becoming vacant for any cause, the Executive Committee shall have power to appoint a person to act as Executive Director, and a person so appointed shall be known as the Acting Executive Director.

The Acting Executive Director so appointed shall have the duties and authority of the Executive Director; however, his appointment may be terminated in a manner and at the will of the Executive Committee.

Provided that where an Acting Executive Director is appointed the Peak Council shall be informed of the fact at its next regular meeting, and they shall confirm or reject such acting appointment.

19 - ANNUAL MEETING

- (a) An Annual Meeting of members shall take place no later than the second Tuesday in October of each year.

At this meeting the audited Balance Sheets and Revenue Statement shall be presented, together with a Presidential Report.

The election of Office-Bearers, members of the Peak Council and members of Ordinary Councils for the ensuing year shall be declared.

- (b) Such other business as the Peak Council may refer to this meeting shall also be dealt with at the Annual Meeting; provided, however, that only that business which is clearly set forth on the notice of meeting shall be dealt with.
- (c) At least five (5) days prior to the date of the Annual Meeting, the Executive Director shall forward by pre-paid letter post a circular to each member of the Association.

Such circular shall request the member's attendance at the meeting and shall clearly set forth the business to be transacted.

- (d) Ten (10) shall form a quorum at the Annual Meeting.

20 - SPECIAL MEETINGS

- (a) A special meeting of members may be convened on the instructions of the President, the Peak Council by the Executive Director as required by Rule 32, by requisition of three members of the Peak Council, or requisition of ten members of the Association; provided that where a Special Meeting is requisitioned as beforementioned, such requisition shall be in writing and duly signed by each of the members concerned and shall clearly set forth the reasons for the requisition.

A Special Meeting shall deal only with such special business as may be referred to it.

- (b) Three days prior to the date of the Special Meeting the Executive Director shall forward by prepaid letter post a circular to each member of the Association.

Such circular shall request the member's attendance at the meeting and shall clearly set forth the special business to be transacted.

- (c) Where the business of a Special Meeting is to consider any subject, or a notice of motion has not been submitted, then any motion or motions submitted at the said Special Meeting shall be received and may be debated, but shall not be determined.

Such motions shall be referred to a further Special Meeting to be convened within seven (7) days of the date of their receipt and shall be clearly set forth in the circular convening the further Special Meeting.

The further Special Meeting shall have power to determine the motions submitted to it and such motions shall be carried by a three-fourths majority of the members present and entitled to vote.

On being adopted, such motions shall become special resolutions and shall be acted upon.

The provisions of this paragraph shall not apply when the Special Meeting is convened under Rule 32.

- (d) In the event of a specific notice of motion being received for submission to any Special Meeting, then providing such notice of motion is clearly set forth on the circular convening such Special Meeting, then it shall be competent for the Special Meeting to determine such notice of motion without reference to a further Special Meeting.

Upon being adopted by a three-fourths majority of the members present and entitled to vote, such a resolution shall become a special resolution and shall be acted upon.

- (e) A Special Meeting of members shall be the supreme authority of or in the Association.
- (f) Ten (10) shall form a quorum at any Special Meeting.
- (g) Notwithstanding any other provision of this Rule, once any subject has been determined by a Special Meeting then such subject shall not be re-opened except upon review of the Peak Council, which, notwithstanding the provisions of this Rule, shall have the absolute discretion as to whether a Special Meeting is to be convened to re-open or re-consider the subject sought to be re-opened.
- (h) For the purpose of this sub-clause of this Rule, "Office-Bearers" shall mean any member of the Executive Committee or any member of the Peak Council.

Subject to the provisions of Rule 14(c), a Special Meeting may by resolution (notice of which has been given in accordance with this rule) remove any Office-Bearer from such office.

In such case the resolution shall be passed by a majority of not less than three-fourths of the members present and entitled to vote at such Special Meeting.

Any vacancy occurring from the implementation of this Rule shall be filled as provided in these Rules.

21 - PEAK COUNCIL MEETINGS

- (a) The Peak Council shall meet as often as may be deemed necessary by the Peak Council.

It shall meet regularly on the second Tuesday in each month for the dispatch of business except in the case of a public holiday or emergency when the President or in his absence the Chairman of the Commercial Builders' Council shall have the power to cancel the regular meeting and appoint a date for another meeting.

23 - RESOLUTIONS: CONDUCT OF MEETINGS

- (b) At all meetings of the Peak Council, the President shall be the Chairman, and in his absence the Chairman of the Commercial Builders' Council, or failing that one of the other Chairmen of the Ordinary Councils.

In the event of the President and Chairmen not being present, the Peak Council shall elect a Chairman from amongst its members.

- (c) At least three days prior to the date of such meetings the Executive Director shall forward to each member of the Council by pre-paid letter post a notice requesting his attendance at such Council meeting.
- (d) A quorum for a Peak Council meeting shall be one third of the number comprising the Peak Council (where a fraction, to the nearest one above).

21A - ORDINARY COUNCIL MEETINGS

- (a) Each Ordinary Council shall meet as often as may be deemed necessary by the Ordinary Council.
- (b) In the event of the Chairman not being present, the Ordinary Council shall elect a Chairman from amongst its members.
- (c) At least three days prior to the date of such meetings the Chairman shall cause to be forwarded to each member of the Ordinary Council by pre-paid letter post a notice requesting his attendance at such Ordinary Council meeting.
- (d) A quorum for an Ordinary Council meeting shall be one third of the number comprising the Ordinary Council (where a fraction, to the nearest one above).

22 - QUORUM

If a quorum for any meeting be not present twenty (20) minutes after the appointed time for the meeting to commence, then the Chairman -

- (a) may permit discussion on the business without resolution;
- (b) He shall then adjourn the said meeting for not more than 14 days;
- (c) direct that a further notice be sent as provided, drawing attention to the fact that the prior meeting had adjourned for want of a quorum; and
- (d) in the event of a quorum not being present at the adjourned meeting, then the number of members present shall be the quorum required for the adjourned meeting and the business shall be decided, determined or resolved.

23 - RESOLUTIONS: CONDUCT OF MEETINGS

- (a) At any meeting (other than those provided in Rule 19), unless a poll is required by these rules or is demanded, a declaration by the Chairman that a resolution has been carried or lost and an entry to that effect in the minutes or Report of the meeting shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (b) If a poll be demanded or necessary -

- (i) every financial member shall have one vote and a simple majority shall determine the result of the poll, and such result shall be deemed to be the resolution.
 - (ii) other than in the case of the ballot for the election of an office-bearer, as prescribed in these Rules, then the Executive Director or other member of the staff of the Association, shall be the Returning Officer and shall be responsible for the issue of initialled ballot papers.
 - (iii) Two or more scrutineers may be appointed at the meeting to assist in conducting and determining the poll.
- (c) The authority covering the conduct of meetings shall be the latest edition of the publication "The Law and Procedure at Meetings", by the late Honourable Sir Percy Joske.

24 - FINANCIAL YEAR

The Financial year of the Association shall commence on the 1st July in each year and end on the 30 June following.

25 - SUBSCRIPTIONS

- (a) The annual subscription payable by members shall be determined from time to time by the Peak Council.

The subscription shall be paid yearly in advance and shall be due on 1st July each year.

- (b) The subscription payable by builder members shall be fixed on a system based on the turnover of individual members as follows:
- (i) The minimum amount payable by a builder member in respect of any year's turnover shall be determined by the Peak Council.
 - (ii) Each builder member shall lodge with the Executive Director a declaration of his turnover for the year as determined by the Peak Council.
 - (iii) Any member not wishing to disclose his amount of turnover shall pay the minimum amount determined.
 - (iv) The declaration of turnover lodged with the Executive Director shall be a confidential document and shall be in the custody of the Executive Director who shall not disclose its contents to any member or person other than the Association's auditor.
 - (v) A new builder member admitted during the financial year shall lodge a declaration as aforesaid covering his turnover during the portion of the year in which he became a member and shall pay a fee calculated on a pro-rata basis for the period, and the maximum amount provided herein shall also be applied pro-rata.
- (c) The annual subscriptions and other fees payable by members shall be as determined by the Peak Council from time to time and set out in a schedule which shall be permanently available for members to inspect at the offices of the Association.
- (d) On election the fee shall be charged and shall be adjusted on a monthly basis from the first day of the month of admission, and any balance remaining at 30th June next ensuing shall be carried forward to the credit of the member in the following financial year.

26 - LEVIES, CONTRIBUTIONS

- (a) By recommendation of the Peak Council, the Association in Special Meeting may impose such levies as are deemed advisable for the purpose of carrying on the work and objects of the Association.
- (b) The decision to impose such a levy or other contribution may also exempt or exclude any member, group of members or class of member from such levy or contribution.
- (c) Such levies or contributions, as may be resolved, shall be due and payable within thirty days of the notification to members of the decision to impose same, and may be recovered, as provided in these Rules.

27 - RECOVERY OF SUBSCRIPTIONS AND OTHER AMOUNTS DUE TO THE ASSOCIATION

- (a) Any member failing to pay his annual subscription in full within three (3) months of its becoming due shall be notified by registered mail of such default and at the same time the Executive Director shall suspend all services to the said member and report his action to the Peak Council, and -
 - (i) in the event of the said member so notified not having paid his subscription within thirty (30) days of the date of such notification, then the Executive Director shall report the fact to the Peak Council.
 - (ii) in the event of no written explanation having been received from the member in default, the Peak Council may forthwith terminate the membership of such defaulting member.

The Peak Council may direct that the subscription outstanding be recovered or may direct that same be "written off" as a bad debt.
 - (iii) In the event of a written explanation having been received from the member in fault, the Peak Council may and at its absolute discretion, extend the time for such member to meet his obligations by a period not exceeding three (3) months, and during this period no services shall be made available to such member.

At the expiration of the extended time if payment has not been made, than sub-clause (ii) above shall be given effect to.
- (b) Any member failing to meet any other liability in full, due and payable to the Association, within three (3) months of same becoming due shall be reported by the Executive Director to the Peak Council who may direct that such liability be recovered and may also direct the Executive Director to charge such member under Rule 32.
- (c) Any member failing to pay his annual subscription in full upon the date of its becoming due shall have no voting rights in the affairs of the Association and shall be disentitled to hold office of the Association or sit on any Committee or Council of the Association until the annual subscription is so paid.
- (d) NOT CERTIFIED

- (e) Regardless of whether any person is a current member or not, any fees due to the Association for any past period of membership shall remain due and payable and may be recovered by the Association as a liquidated debt.

28 - APPLICATION AND CONTROL OF FUNDS, PROPERTY

- (a) The funds of the Association shall be applied to the maintenance of the Association and the furtherance of its aims and objects.

However, the Peak Council by a three-fourths majority, may apply a portion of the funds to charity or to the recognition of special services rendered to the Association.

- (b) The Peak Council may also invite members to voluntarily subscribe to a fund for charitable or special purposes and in such cases shall apply such funds in full to the purpose for which they were subscribed.

In the event of any such fund officially closing prior to all such subscribed moneys being received by the Association, or in the case of a special purpose, the purpose ceasing to exist, then the Peak Council shall determine whether such late receipts or any surplus shall be -

- (i) deposited in a special account to be used for a similar purpose to the one for which such funds were collected; or
 - (ii) be distributed as the Peak Council deems advisable.
- (c) The current funds of the Association shall be deposited in the name of the Association in such a bank as the Peak Council shall from time to time direct.

All monies received shall be deposited in such bank, except that an amount as may be determined from time to time by the Peak Council shall be retained in cash in the Association's registered office for the purpose of petty cash.

- (d) All payments shall be certified by the Treasurer and approved or confirmed by the Peak Council.

All cheques shall be authorised by the Treasurer or in his absence the President or Chairman of the Commercial Builders' Council, and countersigned by the Executive Director and such additional countersigning officer, being an employee of the Association, as the Executive Committee may authorise.

- (e) Any portion of the Association's current funds may by resolution of the Executive Committee be invested for the benefit of the Association and on behalf of the Association.
- (f) No member shall have by reason of his membership, any transmissible or assignable interest in the property of the Association.

On a member ceasing to be a member all his interest shall survive, accrue and belong to the other members of the Association for the time being.

- (g) All property which may be acquired or be purchased with the monies of the Association or be donated to the Association shall be vested in the Association and the Peak Council shall have the power to control and invest the same in the name of the Association.

29 - APPOINTMENT OF AUDITORS AND AUDIT

- (a) The Peak Council shall at its regular meeting in August of each year appoint an auditor or auditors who shall be registered public accountants.
- (b) The auditor or auditors so appointed shall hold office from the time of their appointment until the date of the August meeting of Peak Council in the next ensuing year, at which time they shall retire with the effluxion of time.

The retiring auditor or auditors shall be eligible for re-appointment.

- (c) In the event of a vacancy occurring for any reason in the position of auditor or auditors, then such vacancy shall be filled at the next regular meeting of the Peak Council after the date of the vacancy occurring.
- (d) The fees of the auditor or auditors shall be approved by the Peak Council.
- (e) The auditors shall conduct an annual audit which shall be completed no later than 30th September i.e. not later than three (3) months following the end of the financial year which is the subject of their audit.

The Executive Committee can at any time however, order additional full or partial audits if, in their opinion, it would be in the interests of the Association to do so.

Such audits can be confidential and need not be reported to the Peak Council or any member of staff until the end of the year auditor's report is presented.

- (f) The auditors shall also certify all financial returns required by law and requiring certification by such law.
- (g) The auditor or auditors shall, for audit purposes only, at all reasonable times have access to the books, minutes, and accounts of the Association, and the Executive Director shall make same available and the said auditor or auditors shall be entitled to examine the Office-Bearers, members of the Peak Council, Executive Director and the employees of the Association with regard thereto and to require such information or explanation as may appear necessary or proper, and may report from time to time to the Peak Council with regard to such books and accounts.

30 - EXAMINING BOOKS, RECORDS AND ACCOUNTS BY MEMBERS

All members who are desirous of examining or investigating or inspecting all or any book, listing of members of the Association, documents, or records (with the exception of turnover declarations), shall on application to and with the authority of the Peak Council, be permitted to have free access to the same for such purpose -

- (a) on any ordinary working day between the hours of 10 to 4 in the daytime, or at such times as may be arranged with the applicant; and
- (b) such inspection shall be at the Registered Office and in the presence of the Executive Director or such member of the staff of the Association as he may delegate to be present.

31 - REGISTER OF MEMBERS

- (a) The Treasurer shall cause to be kept and maintained in one or more books or in a commercial system and in a manner required by law, a register of all members of the Association in alphabetical order in classes of membership and each individual entry shall show not less than the following particulars -
- (i) The name and postal address of such member
 - (ii) The date upon which the name of such member was entered in the register as a member;
 - (iii) The class of membership of each member
 - (iv) The names of each representative of such member where applicable;
 - (v) The date upon which the member ceased to be a member, provided that in this case then all similar individual entries may be grouped together in the register.
- (b) It shall be the responsibility of each member to provide the Executive Director with written details of any material change in his particulars entered in the Register.
- (c) A member shall, within 14 days after;
- (i) the business, or part of the business of that member is assigned or transferred to a person who is not a member of the Association; or
 - (ii) such a person succeeds to the business, or part of the business of that member;
- notify the Executive Director of the assignment, transfer or succession.
- (d) Each member shall be deemed to be properly served or notified of any information or documentation if that information or document is forwarded by the Association in accordance with the particulars of the Register.

32 - DISCIPLINARY POWERS

- (a) If it is brought or comes to the notice of the Executive Director that any member -
- (i) has been convicted of a felony or of any misdemeanour or offence under any Act, regulation, ordinance or other law arising out of or in the course of the conduct of his business; or
 - (ii) has committed or is committing a breach of the Rules for the time being of the Association; or
 - (iii) has engaged in, published or been party to, or permitted or supported any untrue, misleading, undignified or infamous communication, statement, advertisement, signed document or paper, either on his own behalf of as, or purporting to be on behalf of, an officer, representative or member of the Association,

the Executive Director shall furnish to the Peak Council a report of the matters so brought or come to his notice at the first regular meeting of the Peak Council thereafter or at a meeting of the Peak Council convened for the purpose of receiving and considering such report.

If the Peak Council finds the allegations so reported to constitute a prima-facie case for such member to answer, the Chairman shall instruct the Executive Director to inform such member and to furnish him with a copy of statement of the allegations and to summon him to appear before the Peak Council on a day and at a time to be fixed by the Peak Council to answer the allegations and the Executive Director shall carry out such instructions.

- (b) If a majority of the members present at such Peak Council Meeting shall decide and resolve that the member summoned to appear has been guilty of the conduct, act or acts alleged against him, the Peak Council may impose a fine upon such member of a sum not exceeding three times his annual subscription payable for the current year, or may expel him from membership, or may impose both such penalties, provided however, that a resolution expelling such member must be passed by a three-fourths majority of the members of the Peak Council present at the meeting.

The member so dealt with may appeal to a special meeting of the Association against the Peak Council's decision and resolution by lodging a notice of appeal with the Executive Director within fourteen (14) days whereupon the Executive Director shall convene a Special Meeting of the Association to hear and determine such appeal and decision of such Special Meeting on such appeal shall be final and binding on such member.

Provided that any decision and resolution of such Special Meeting to expel such member or to conform any expulsion already imposed must be passed by a three-fourths majority of the members present and entitled to vote at such meeting.

All fines shall go to the general fund of the Association and shall be paid to the Treasurer within seven (7) days after notice thereof shall have been given by registered letter to the person liable to pay the same.

- (c) Should any such member fail to appear before the Peak Council or a Special Meeting, as the case may be when summoned to appear, then the Peak Council or Special Meeting may proceed ex-parte and such failure to appear without written excuse on the part of the member shall in itself be conduct which may be dealt with under this rule.
- (d) A summons to appear in accordance with this Rule shall be served personally by the Executive Director or by registered post, on the member concerned.

33 - MEMBERS' ASSENT TO RULES

- (a) The Constitution and Rules of the Association, duly registered in accordance with the laws of the Commonwealth shall be kept at the Association office.
- (b) Every member on notification of his admittance to membership shall be forwarded, under registered post, a copy thereof and he shall be deemed to have assented thereto and agreed to be bound by them.

34 - INDEMNIFICATION OF MEMBERS, OFFICE-BEARERS AND EMPLOYEES

Every Office-Bearer, Councillor, Member, or employee of the Association shall be indemnified against (and shall be the Association's duty out of its funds to pay) all costs, losses, charges and expenses which any such Office-bearer, Councillor, Member or employee of the Association may incur or become liable for by reason of any contract entered into, or act or deed done by him in the discharge of any duty in accordance with these Rules.

35 - COMMON SEAL

- (a) A Common Seal of the Association shall be made with the Association's name inscribed thereon.
- (b) It shall be in the custody of the Executive Director and shall not be used or affixed to any document except as authorised by the Peak Council, and every document to which such seal is affixed shall be countersigned by the President and Executive Director, or the person or persons for the time being acting in their stead in accordance with these Rules.

36 - ASSOCIATION EMBLEM

- (a) The Association Emblem shall be in a form determined by the Peak Council and -
 - (i) shall be used on Association Stationery and all Association Publications;
 - (ii) may be used for publicity purposes by the Association; and
 - (iii) its use or reproduction by members shall not be permitted.

37 - MEMBERSHIP EMBLEM

- (a) The Association Membership Emblem shall be in a form determined by the Council.
- (b) Its production or use by members of the Association shall only be permitted by a signed agreement entered into by the member and the Executive Director on behalf of the Association, provided -
 - (i) the purposes for which the membership emblem may be produced or used shall be determined by by-law of the Peak Council; and
 - (ii) the form of the agreement beforementioned shall be approved by the Peak Council as a by-law of the Peak Council.

38 - UNAUTHORISED USE OF ASSOCIATION SEAL OR EMBLEM

- (a) Where any member makes reproduction of or use of the design of the Membership Emblem of the Association without the authority of the Peak Council, or of the Common Seal or the Association Emblem, then such members shall be guilty of a breach of these Rules and shall be proceeded against under Rule 32.
- (b) Where any person not being a member makes or causes to be made a reproduction of, or the use of the design of the Common Seal of the Association, the Association Emblem, or the Membership Emblem without the express written authority of the Peak Council through the Executive Director -
 - (i) the Executive Director shall seek legal advice on such steps as may be taken by law to prevent such unauthorised or improper reproduction or use; and
 - (ii) shall report such advice to the Peak Council

39 - CONCILIATION AND ARBITRATION, AUTHORISED AGREEMENTS

- (a) The Peak Council (or if time does not permit the placing of the matter before the Peak Council, then in such case, the Executive Committee) may by resolution give the consent of the Association to the submission of an industrial dispute to conciliation and arbitration before the appropriate tribunal established by Commonwealth law.

Thereupon such dispute shall be so submitted and the Association may be represented therein by the Executive Director or by such person as may be determined by the Peak Council (or Executive Committee).

- (b) No industrial agreement, or other instrument, shall be executed by or on behalf of the Association, unless -
- (i) there shall be present at the meeting of the Peak Council with respect thereto, at least ten (10) members of such Peak Council, and resolution to that effect has been passed; and
- (ii) in execution, the Common Seal of the Association shall be affixed to such agreement or other instrument, and

in the case of an Industrial Agreement, it shall first be approved by a Special Meeting of members.

- (c) Subject to the provision of any Award of any Court of Industrial Arbitration or other competent Commonwealth Industrial tribunal, the members of the Association shall observe any resolutions of the Association that may be made relative to the terms and conditions of employment of any tradesman or labourers engaged by them in the building industry and any Award, industrial agreement, or other instrument by which the Association is bound or to which it is a party.

40 - ANNUAL REPORT

The President shall cause an Annual Report to be prepared for presentation at the Annual Meeting.

41 - NOTICES

- (a) Except where provided elsewhere in these Rules, a notice may be served by the Association upon any member either personally or by sending it through the post in a prepaid envelope or wrapper addressed to such member at his registered place of address.
- (b) Each member shall from time to time notify to the Executive Director an address in the ACT which shall be deemed his registered address for the purpose of these Rules.
- (c) Any notice sent by post shall be deemed to have been served on the day following that on which the letter, envelope or wrapper containing the same is posted, and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and stamped and put into the post office.
- (d) A certificate in writing signed by the Executive Director that the letter, envelope wrapper containing the notice was so addressed, stamped and posted, shall be conclusive evidence thereof.
- (e) The signature to any notice to be given by the Association may be written or printed.

- (f) Where a given number of days' notice, or notice extended over any other period is required to be given, the day of service shall unless it is otherwise provided be counted in such number of days or other period.

42 - POLICY

- (a) The policy of the Association on any matter may be determined by the Executive Committee, Peak Council, the Annual Meeting or a Special Meeting from time to time, provided that such policy shall not be applied in any way to limit or be in restraint of trade or competition.
- (b) Within seven (7) days of the determination of the Association's policy on any matter, the Executive Director shall notify all members in writing of such determination.

43 - ALTERATIONS TO RULES

The Rules may be amended, added to or repealed in the following manner -

- (a) It shall be competent for any member, or group of members acting as a Committee appointed by the Peak Council, to give notice in writing of his or its request for an alteration to these Rules, setting out in full the desired alteration and the reasons for the request.
- (b) The Peak Council shall then direct that the matter be referred to a Special Meeting of members.
- (c) If three-quarters of the members present at such Special Meeting of members vote in favour of the proposed amendment, then the Rules shall be amended accordingly; provided that such amendment is in accordance with any law under which the Association is registered.
- (d) In the event of the adopted amendment not complying with the said law, then such refusal to register the said amendment under law shall be referred back to the Peak Council, who shall have power to frame the proposed amendment in order that it shall comply with the said laws for registration.
- (e) The amendment to the Rules, upon registration, shall be advised to all members in writing by the Executive Director.

44 - DISSOLUTION OF THE ASSOCIATION

The Association may be dissolved or wound up only by Special Resolution and thereupon, if there remains after the satisfaction of all its debts and liabilities any property whatsoever the same may by special resolution be transferred -

- (a) to some other Association, Corporation or Institution having objects wholly or in part similar to the objects of this Association; or
- (b) may be sold and the proceeds therefrom donated -
 - (i) to the Australian Institute of Building; or
 - (ii) in the form of a Master Builders' Research and Scholarship Foundation, to the School of Environmental Design, University of Canberra.

45 - LOANS, GRANTS AND DONATIONS

The Association shall not make a loan, grant or donation unless the Executive Committee of the Association -

- (a) has satisfied itself -
 - (i) that the making of the loan, grant, or donation is in accordance with the other Rules of the Association; and
 - (ii) in the case of a loan - that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
- (b) has approved the making of the loan, grant or donation.

*****END OF RULES*****

MBA-ACT CONSTITUTIONAL REVIEW COMMITTEE**Terms of Reference****1. Objective**

The objective of the MBA Constitutional Review Committee is to support the Executive Committee of the Master Builders Association of the ACT (MBA-ACT) in proposing to the membership of the Association that the Constitution of MBA-ACT requires significant change in order for the organization to function more efficiently and effectively in keeping with the present day governance environment in which members operate.

In the light of these greater requirements and advances around Corporate Governance, and in line with the size and status of MBA-ACT, the objective is to have the new Constitution available, if possible, for consideration by the 2012 AGM.

2. Terms of Reference

The Committee shall:

- 2.1 Assist the Executive Committee in reviewing the existing Constitution and, subject to further agreement through Sector Council consultation and, as directed by the Executive Committee, prepare a new draft Constitution for presentation to the membership for consideration by the 2012 AGM.
- 2.2 Proceed by preparing a preliminary document to be provided to the Sector Councils for comment that includes the following:
 - A brief historical perspective of MBA-ACT
 - The relationship of MBA-ACT with MBA Ltd
 - An overview of the current Constitution including but not limited to objectives, Sector Council involvement, voting rights, committee hierarchy, CEO appointment and decision making
 - Outlines why changes are necessary
 - Describes processes for changing the Constitution if a decision is taken to proceed
 - Details of a proposed model structure under which MBA-ACT would be Constituted
 - Any other information considered essential in reporting the proposed changes to the membership through the Sector Councils.
- 2.3 In preparation of the preliminary document take all legal advice necessary to clearly enunciate the processes and actions required to complete any change as well as take legal advice on the most appropriate structure under which to re-constitute the organization in order to modernize its governance.
- 2.4 Examine the processes undertaken and the changes made by MBA Ltd. in recently amending its Constitution.
- 2.5 Consult with other Master Builders Associations to identify any issues experienced when/if considering changing their Constitutions.
- 2.6 Investigate through Fair Work Australia and any other government agency matters that need to be considered in undertaking Constitutional change.

2.7 Present to the Executive Committee, by no later than 2 April 2012, a timeline of processes, actions and estimated cost that will achieve the implementation of a new Constitution by no later than the 2012 AGM.

3. Mandate

- 3.1 The Constitutional Review Committee is an advisory committee of the Executive Committee and remains subordinate to it.
- 3.2 The Committee shall report its assessments and recommendations to the Executive Committee at times and in a manner specified by the Executive Committee.
- 3.3 The Committee shall meet as often as the Committee deems necessary to undertake its role effectively.
- 3.4 Committee meetings may be held by any technological means allowing its members to participate in discussions even if all of them are not physically present in the same place. A member who is not physically present but participating by technological means is taken to be present.
- 3.5 The Committee has no authority to make binding decisions for MBA-ACT, or to spend money, unless explicitly empowered by the Executive Committee.
- 3.6 The Committee must keep minutes of its meetings.
- 3.7 Minutes of each Committee meeting must be included in the papers for the next full Executive Committee meeting after each meeting of the Committee.
- 3.8 Minutes, agenda and supporting papers of the Committee are to be made available to Directors upon request to the chair of the Committee, except if there is a conflict of interest.
- 3.9 Membership of the Committee shall be determined by the Executive Committee and must include:
- Chair of the Committee, who shall be a member of the Executive Committee (other than the President of the Executive Committee)
 - The chairs of the Commercial and Civil Sector Councils
 - The President and Treasurer of MBA-ACT
 - Other persons with relevant experience in governance and change management.
- 3.10 In addition to the members included in Clause 3.9 above, consideration should be given to inviting at least one life member of MBA-ACT on the Committee.
- 3.11 The duration of appointment to this Committee shall be from the date of approval by the Executive Committee to establish the advisory committee until implementation of a new Constitution as per the date shown in Clause 2.7 if it is agreed to proceed, or a later date as ratified by the Executive Committee.
- 3.12 The Committee may invite any person it regards as appropriate to attend meetings of the Committee, but not necessarily for the full duration of the meeting.
- 3.13 The Committee shall advise the Executive Committee of the professional services it considers necessary to retain to effectively support the process of constitutional change, as well as any information it considers necessary to fulfill its responsibilities, and shall provide the Executive Committee with estimates of cost,.
- 3.14 The Committee has access to:
- management to seek explanations and information from management; and

- staff as determined by the Executive Director to assist the Committee in its administrative obligations such as dissemination of information, minute taking and preparation and arranging meetings.

3.15 The Executive Committee may change these Terms of Reference from time to time by resolution.

3.16 These Terms of Reference were approved by the Executive Committee on and adopted by the Committee on:

Date _____

Signed _____
[President, MBA-ACT]



2
3
4
5
6
7
8
9
10
11
1

Item 11 – MBA Work Health & Safety Report	
<p>A Work, Health & Safety session is to be included at national meetings in Hobart next week and more information on this will be available at the next Exec meeting.</p> <p>A building inspection will be undertaken this week by the MBA WH&S Committee where all WH&S hazards or issues will be noted. These will then be remedied in order of priority.</p>	
Item 12 – Other Business	
<p>Start time for Exec meetings: Andy Crompton is unable to stay after 5pm due to family commitments and requested the Executive Committee consider moving the meetings to an earlier starting time. This was discussed and the Committee decided not to alter the start time of the meetings.</p> <p>Format of meetings: There were some suggestions as to how other Boards present agendas and meeting papers and some discussion around this. For now, the current format will not be changed.</p> <p>However, there will be an additional agenda item, as a trial for next meeting. Each sector council Chair will provide up to a 10-minute talk about issues or concerns for their sector and it will be decided next meeting how to continue with this agenda item; whether it be a written or oral report.</p> <p>Constitution Review: John Miller presented his draft Terms of Reference for the MBA Constitution Review Committee. It is expected this review will commence immediately and the first Committee meeting will be arranged for as soon as possible. The Committee will consist of Ross Barrett, Simon Butt, Gareth Powell, Valdis Luks, Andy Crompton, John Nikolic and an MBA Life Member (to be decided at first meeting).</p> <p>Motion – The Executive Committee were asked to adopt the Terms of Reference for the MBA Constitution Review Committee.</p> <p>It was agreed by the Executive Committee to adopt the ToR, once a few agreed minor changes are made.</p> <p>Moved – Hans Sommer Seconded – Alan Seymour</p> <p>Actew trading terms for builders: It would seem this is finally happening, with a three-payment system being put in place.</p> <p>MBA Organisational Chart: It was suggested we should include the Group Apprenticeship Board on the Organisation Chart.</p> <p>AI. Add the GAS Board to the MBA Organisation Chart</p> <p>There being no further business, the meeting closed at 5.50pm.</p>	Sue Barker

NEXT MEETING – 4.00pm Monday 02 April 2012

Draft Minutes from MBA Executive Committee meeting held 05 March 2012

Strictly Confidential

Page 5 of 5



MINUTES – MBA Executive Committee Meeting
Master Builders Association ACT
Held at the Master Builders Association
1 Iron Knob Street Fyshwick ACT

MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY

05 March 2012

DRAFT

PRESENT:

Ross Barrett (President)
Simon Butt (Treasurer) – left meeting at 5.45pm
Valdis Luks (Chair, Commercial Council)
Andy Crompton (Chair, Civil Council) – left meeting at 5.05pm
Grace Ferreira (Chair, Sub/Suppliers Council)
Frank Porreca (Chair, Residential Council)
Alan Seymour (Commercial Council)
Nigel Forde (Civil Council)
Hans Sommer (Chair, Professional Council)
David Howarth (Residential Council)
David Morgan (Sub/Suppliers Council)

APOLOGIES:

Gareth Powell (Professional Council)

IN ATTENDANCE:

John Miller (MBA Executive Director)
Sue Barker (minutes)

Draft Minutes from MBA Executive Committee meeting held 05 March 2012

Strictly Confidential

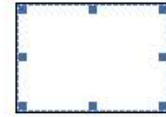
Page 1 of 5

Appendix 3: Member alert
including 1st notice of
Special Meeting

From: Master Builders Member Alert [<mailto:dleitch@mba.org.au>]
Sent: Friday, 14 September 2012 3:08 PM
To: vntait@bigpond.com
Subject: Member Alert #197 - Annual General Meeting

[View an online version of this email](#)

MASTER BUILDERS
MEMBER ALERT
#197



Good Afternoon Neigel

RSVP Required - Annual General Meeting

4.45pm – Tuesday, 9th October 2012

This is to advise the 2012 AGM of the Master Builders Association of the ACT will be held as follows:

4.45pm – Tuesday, 9th October 2012

Master Builders Association of the ACT 1 Iron Knob Street, Fyshwick.

Your RSVP would be appreciated.

Following the AGM there will be drinks and nibbles for attendees who wish to stay and chat for a while.
As per the Fair Work Australia (Registered Organisations) Act 2009 a copy of the Association's Financial Statements for the 2011/12 year are provided, along with a copy of the draft agenda and draft 2011 AGM minutes.

To view the documents please click the headings below.

- [Draft MBA AGM agenda 2012](#)

- [Draft AGM Minutes 2011](#)

- [Financial Statements 2011/12](#)

- [Advice of Proposed Special meeting](#)

Please RSVP to Sue Barker, either by telephone on 6175 5944 or email sbarker@mba.org.au.

Regards,
David Leitch
Senior Manager - Marketing & Membership Services



ADVICE OF PROPOSED SPECIAL MEETING

It is proposed that a Special Meeting will be held in conjunction with the Annual General Meeting of the Master Builders Association of the ACT on 9th October 2012 to consider and vote on changes to the Constitution of the Association as recommended by a Constitution Review Committee established to review the current Constitution.

This notification is advance advice of that Special Meeting and to advise that documentation and explanatory material will be provided to all members as appropriate and in accordance with the conduct of a Special Meeting. Where the conduct of a Special Meeting usually requires three days notice, the Executive Committee has instructed that all information relating to proposed changes be provided no less than seven days in advance of the meeting.

John Miller
Executive Director



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY

Special Meeting of the Master Builders Association
4.15 pm Tuesday 2nd October 2012
Training Rooms 5A and 5B
1 Iron Knob Street, Fyshwick ACT

AGENDA

1. Welcome and introduction.
2. Vote upon the proposed changes to the Rules of the Association.
3. Other Business.



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY

NOTICE OF SPECIAL MEETING

VOTE ON PROPOSED RULE CHANGES

As previously notified by way of Member Alert on 14 September 2012, a Special Meeting has been convened to be held conjunction with the Annual General Meeting of the Master Builders Association of the ACT on 9th October 2012.

The Special Meeting will vote upon the whether the proposed changes to the Rules of the Association are to be approved, which are attached to this notice.

The Special Meeting will be held at the Master Builders Association's offices at 1 Iron Knob St Fyshwick ACT, in training rooms 5A and 5B, at the commencement of the Annual General Meeting at 4.30 pm on 9th October 2012.

I invite you to attend the Special Meeting to vote on whether you approve the attached proposed changes to the Rules of the Association.

Regards

A handwritten signature in black ink, appearing to read 'John Miller', with a large, stylized initial 'J'.

John Miller

Executive Director

28 September 2012



ABN 37 059 249 455

Date: 15/10/2012
Account No: 574
Invoice No: 32629
Quote No: 11961
Payment Terms: 14 Days

EFT Preferred
BSB 082 902
Acct 79574 5726

Masters Builders Association of the ACT
 PO Box 1211
 FYSHWICK ACT 2609

TAX INVOICE**Attention: Richard Boyce**

**PREPARATION AND DISTRIBUTION OF
 Special Meeting of the Master Builders Association
 Documents Oct 2012**

1087 Recipients**A: Computer & Fulfilment Services**

Download emailed recipient data & format
 Download emailed document texts & format (x2)
 Print (black ink duplex)39pp generic document on 80gsm white bond
 Print (black ink duplex)12pp generic document on 80gsm white bond
 Print (black ink simplex) 1pp generic document on 80gsm white bond(2x types)
 Collate & staple documents top left
 Supply NMM C4 envelope
 Direct address C4 envelope
 Set up to process job
 Collate components

- *Changes to the Master Builders Rules*
- *Special Meeting of the Master Builders Association Oct 2012*
- *Notice of Special Meeting*
- *Deputy Industrial Registrar*

 Insert
 Seal
 Prepare for post
 Lodgement date 2nd October 2012
 APO lodgement & documentation
 Delivery from the 3rd October 2012

B: Distribution Services

1087	Large Letter	126 - 250 gms	\$1,956.60
------	--------------	---------------	------------

Sub Total A	\$4,952.80
Sub Total B	\$1,956.60

INVOICE TOTAL	\$6,909.40
<i>Includes GST amount of</i>	\$628.13

11 TRALEE STREET HUME ACT 2620
 PO BOX 7077 CANBERRA BC 2610
Phone: 02 6269 1000 Fax: 02 6260 2770
Email: nmm@nationalmailing.com.au

From: Master Builders Member Alert [mailto:dleitch@mba.org.au]
Sent: Thursday, 4 October 2012 4:36 PM
To: John Nikolic
Subject: Member Alert #203

[View an online version of this email](#)



MASTER BUILDERS
MEMBER ALERT
#203



Good Afternoon John

Annual General Meeting to vote upon proposed changes to Master Builders' Rules

When: 4.30pm Tuesday, October 9

Where: Master Builders Skills Centre, Fyshwick

At 4.30 pm on Tuesday 9 October 2012, a Special Meeting will be convened in conjunction with the Annual General Meeting to vote upon proposed changes to Master Builders' Rules. The documents below contain:

- the final redraft of [Master Builders' Rules in tracked changes](#);
- [a letter from John Miller, Executive Director, explaining the changes](#); and
- a [Notice](#) and [Agenda](#) for the Special Meeting.

The documents have also been posted to members by mail. You are invited to attend the Special Meeting at Master Builders' offices at **4.30 pm on Tuesday 9 October 2012** to vote on this important issue.

Regards,

David Leitch
Senior Manager, Marketing & Membership Services



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY

DRAFT

**Master Builders Association of the ACT
Minutes of Special Meeting
held at 4.30pm Tuesday 09 October 2012
1 Iron Knob Street, Fyshwick**

The Meeting opened at 4.30pm and President, Ross Barrett, welcomed all present.

ATTENDANCE

Ross Barrett, President	Richard Corver, ABC Constructions
Grace Ferreira, Pacific Formwork	Sam Delorenzo, Delorco Pty Ltd
Andy Crompton, Chincivil Pty Ltd	Nigel Forde, Cord Civil
Hans Sommer, Village Building Co.	Gareth Powell, Powell Holdings
Frank Porreca, Benchmark Projects	Tony Seesink, Boral
Tony Toscan	Graham Reilly, Huon Management
Kurt Meier, Meier Construction Pty Ltd	Ross Burke, Modern Plaster Pty Ltd
Valdis Luks, G E Shaw	Jason Burgess, Jobbinshill
Peter Leary, Peak Consulting	Bryan Ahern, Eastcliff Pty Ltd
Leang Ly, L & S Building Services	John Miller, MBA
Mike Baldwin, MBA	John Nikolic, MBA
Sue Barker, MBA (minutes)	

APOLOGIES

Peter Middleton, Woden Contractors	Nick Zardo, Guideline Pty Ltd
David Colbertaldo, Hindmarsh	Simon Butt, Manteena Pty Ltd
Jason Tanchevski, Classic Constructions	Jerry Howard, MBA

Ross Barrett provided an overview of why the MBA decided to form a committee to review and make amendments to the MBA's Constitution. It was decided early on to change some of the main points that required change and some of the lesser important points could be amended later on. It was felt that some of the points in the current Constitution were impacting decisions being made and the Constitution needed changes to make it more in line with the way the MBA is currently operating.

One attendee produced a substantial list of reasons why he felt the draft Constitution should not be accepted at this meeting and there was considerable discussion around these points.

Gareth Powell, Chair of the MBA Constitution Review Committee and John Nikolic, member of the Committee, explained that we are seeking approval from attendees of the Special Meeting to forward the current amended changes to Fair Work Australia for their approval. Other lesser rule changes can then be made at a later date.

With regard to proposed changes, another attendee questioned why Project Managers should be excluded from election to the Commercial, Civil and Residential Sector Councils. It was explained that principal contractors (who would be the only members eligible for election to the Commercial, Civil and Residential Sector Councils) had a different risk structure from project managers and that their interests were therefore relevantly different. While Project Managers could request to attend any Sector Council meetings they wished, they would not be able to be elected to the Commercial, Civil and Residential Sectors and would instead be eligible to be elected to the Professional Sector Council.

The adoption of the following resolution was passed:

“To approve the current rule changes as proposed and forward to Fair Work Australia for approval.”

All were in favour of the resolution, excluding one abstention.

Moved: Hans Sommer
Seconded: Grace Ferreira

Motion carried.

Fair Work Australia may come back with some minor changes and these can be approved by the Peak Council without having to call another Special Meeting.

Ross Barrett thanked Gareth Powell for taking on the role as Chair of the MBA Constitution Review Committee and all committee members for their input.

There being no further business, the meeting closed at 4.55pm.

CHANGES TO MASTER BUILDERS' NAME, ELIGIBILITY AND OTHER RULES

Posted on 15 Oct 2012

On Tuesday 9 October 2012, members in a Special Meeting voted to approve proposed changes to Master Builders' name, eligibility and other Rules. The proposed changes were sent to members by mail on Tuesday 2 October 2010. An application under sections 158 and 159 of the Fair Work Registered Organisations) Act 2009 (Cth) has now been made to Fair Work Australia for approval of the changes.

For more information go to: <http://www.e-airc.gov.au/241v/> or call Master Builders on 02 6175 5921.



MASTER BUILDERS
AUSTRALIAN CAPITAL TERRITORY

ELLIOTT, Mark

From: ANDERSON, Eve
Sent: Monday, 7 January 2013 11:49 AM
To: OHALLORAN, Andrea
Subject: FW: Application to change rules - Master Builders ACT
Attachments: form_f67 - Application to change name - Master Builders Construction and Housing Association ACT - 20.12.12 - with attachments.pdf; form_f68 - Application to change eligibility rules - Master Builders Construction and Housing Association ACT - 20.12.12 - with attachments.pdf; Application - Changes to other rules - Master Builders Construction and Housing Association ACT - 20.12.12 - with attachments.pdf

EVE ANDERSON

Principal Adviser
Regulatory Compliance Branch

The Fair Work Commission

Tel: (03) 8661 7929

Fax: (03) 9655 0410

eve.anderson@fwc.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwc.gov.au

From: Research Fax
Sent: Thursday, 20 December 2012 3:41 PM
To: OHALLORAN, Andrea
Subject: FW: Application to change rules - Master Builders ACT

Hi Andrea

I believe you are waiting for these.

Regards

EVE ANDERSON

Principal Adviser
Regulatory Compliance Branch

Fair Work Australia

Tel: (03) 8661 7929

Fax: (03) 9655 0410

eve.anderson@fwa.gov.au

11 Exhibition Street, Melbourne Victoria 3000
GPO Box 1994, Melbourne Victoria 3001

www.fwa.gov.au

From: John Nikolic [<mailto:jnikolic@mba.org.au>]
Sent: Thursday, 20 December 2012 1:15 PM
To: Research Fax
Subject: Application to change rules - Master Builders ACT

Good afternoon,

Further to the originating applications to vary the Master Builders Construction and Housing Association of the Australian Capital Territory's name and eligibility rules lodged on 9 November 2012 and 19 November 2012, as requested by Andrea O'Halloran, please find attached some amended fresh applications.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: John Nikolic

Sent: Monday, 19 November 2012 10:26 AM

To: 'orgs@fwa.gov.au'

Subject: RE: Application to change rules - Master Builders ACT

Good morning,

Further to the originating applications to vary the Master Builders Construction and Housing Association of the Australian Capital Territory's name and eligibility rules lodged on 9 November 2012, as requested by Andrea, please find attached some amended fresh applications.

Kind regards,

John Nikolić

SENIOR ADVISOR INDUSTRIAL RELATIONS

Master Builders Association of the ACT

1 Iron Knob St, Fyshwick ACT 2609

PO Box 1211, Fyshwick ACT 2609

Tel: (02) 6175 5921

Fax: (02) 6249 8374

Mob: 0413 978 387

jnikolic@mba.org.au

www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.

From: John Nikolic

Sent: Friday, 9 November 2012 12:06 PM

To: 'orgs@fwa.gov.au'

Cc: 'cynthia.lobooth@fwa.gov.au'; 'eve.anderson@fwa.gov.au'; John Miller
Subject: Application to change rules - Master Builders ACT

Good afternoon,

Please find attached some originating applications seeking approval and consent to some changes to the registered Rules of the Master Builders Construction and Housing Association of the Australian Capital Territory ('Draft Rules'). The Draft Rules were approved by members at a Special Meeting held on 9 October 2012. Any notices or other documentation in relation to the applications should be sent to me at: jnikolic@mba.org.au.

Please note that we previously submitted a prior version Draft Rules to Ms Eve Anderson on 5 September 2012, for Fair Work Australia's informal advice on the proposals. However, as I explained to Ms Cynthia Lo-Booth, Master Builders (probably unfortunately!) pressed ahead with a vote by members on the draft changes without waiting for an informal response from Fair Work Australia, in order to take advantage of the (relatively) large meeting of members at the Annual General Meeting also held on 9 October 2012.

Nevertheless, the Draft Rules contained in the attached applications are similar to those submitted to Ms Anderson on 5 September 2012. Attached is a document showing the differences (in tracked-changes) between the version given to Ms Anderson and the Draft Rules, which we hope assists in comparing the Draft Rules against any work done in relation to the prior version.

Please do not hesitate to call me if you have any questions about the applications or require further documentation.

Kind regards,

John Nikolić
SENIOR ADVISOR INDUSTRIAL RELATIONS
Master Builders Association of the ACT
1 Iron Knob St, Fyshwick ACT 2609
PO Box 1211, Fyshwick ACT 2609
Tel: (02) 6175 5921
Fax: (02) 6249 8374
Mob: 0413 978 387



jnikolic@mba.org.au
www.mba.org.au

The information contained in this email is industrial relations advice only. It may not deal with all of the aspects of your specific situation and is not legal advice. You may not have had all the matters relevant to your situation have been considered. Master Builders does not accept any legal liability arising from or connected to the accuracy, reliability, currency or completeness of the information in this email.

The information in this email is private and confidential and should not be distributed to any other party.