

20 March 2019



**Master
Builders
Association**
New South Wales

Ms Bernadette O'Neil
General Manager
Fair Work Commission
PO Box 1994
MELBOURNE VIC 3001

Email: orgs@fwa.gov.au

Dear Ms O'Neil,

RE: MASTER BUILDERS ASSOCIATION OF NSW (MBA) – CHANGES TO MBA/NSW RULES

We write in accordance with our obligation under Section 159 of the Fair Work (Registered Organisations) Act 2009.

Please find attached the relevant information relating to the Association's Notice of the Alteration of Rules for your consideration.

The relevant information includes:

1. Application Notice of the Alteration of Rules of an organisation (Attachment 1).
2. A declaration of the applicant's authorised officer. (Attachment 2).

Should you have any enquiries please do not hesitate to contact me on 02-8586-3507 or mobile 0412-437-352.

Yours sincerely,

Brian Seidler
EXECUTIVE DIRECTOR

Attachs.

Fair Work (Registered Organisations) Act 2009 –s. 159
Fair Work (Registered Organisations) Regulation 2009 – Reg.126

FAIR WORK COMMISSION

NOTICE OF THE ALTERATION OF RULES OF AN ORGANISATION

Name:	Master Builders Association of NSW
Address:	52 Parramatta Road, Forest Lodge, NSW 2037
Contact Person:	Brian Seidler, Executive Director
Phone No:	02-8586-3555
Email address:	executive@mbansw.asn.au
Solicitor acting for Applicant:	N/A

Application is made by the Master Builders Association of New South Wales (the "Applicant") for consent to the alteration of the Rules of the organisation.

The provisions under which the application is made are:

- i) Section 159 of *Fair Work (Registered Organisations) Act 2009*, and
- ii) Regulation 126 of *Fair Work (Registered Organisations) Regulation 2009*.

The **alterations** give effect to the unanimous decision of the Applicant's Special Meeting of members held on Tuesday, 12 March 2019. The particulars of the alterations are contained in Attachment "A".

Grounds upon which the application is made:

1. The alterations to the Applicant's Rules, as set out in Attachment A, were unanimously adopted by an absolute majority of members at a Special Meeting of the Association held on 12 March 2019.
2. The alterations are permitted under the Applicant's Rules. Specifically, Rule 32 of the Applicant's Rules provides:

32 Alteration of Rules

- 32.1.3 The Council shall then direct that the matter be referred to a Special Meeting of members. 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.

3. The proposed alterations comply with s159 of the Fair Work (Registered Organisations) Act 2009. Specifically, the proposed alterations:
 - (a) comply with, and are not contrary to the Fair Work (Registered Organisations) Act 2009, the Fair Work Act 2009, modern awards and enterprise agreements; and
 - (b) are not otherwise contrary to law; and
 - (c) have been made under the rules of the Applicant organisation.
4. The Applicant undertakes to publish a notice that this application has been lodged on the Applicant's website. The Applicant's website address is www.mbansw.asn.au.

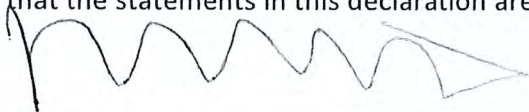
Attachment 2

Declaration:

I, Martin Patience of 52 Parramatta Road, Forest Lodge, NSW 2037 make the following declaration under the Statutory Declarations Act 1959:

- A. I am the President of the Master Builders Association of NSW (the "Applicant").
- B. I am authorised by the Applicant to notify Fair Work Commission ("FWC") of the particulars of alterations to the Applicant's Rules in the terms set out above and attached.
- C. The alterations are made in accordance with the Applicant's Rules.
- D. To the best of my knowledge and belief, the alterations comply with, and are not contrary to, the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work Act 2009*, modern awards and enterprise agreements, and are not otherwise contrary to law.
- E. To the best of my knowledge and belief the particulars set out in the Application are true and correct in every detail.

I, understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of *Statutory Declaration Act 1959*, and I believe that the statements in this declaration are true in every particular.



(Signature)

Declared at Sydney Artarmon on 21st
Of March (place) 2019,
(month) (day) (year)

Before me,



(Signature of Person Before Whom the Declaration is Made)

CHRISTOPHER SIMON POULTON COLLINS
(Insert Full Name of Witness)

LEVEL 3, 4 BROADCAST WAY, ARTARMON, 2064
(Insert Address of Witness)

Christopher Simon Poulton Collins
A Justice of the Peace in and for the
State of New South Wales
No. 193331

Qualification:

(Indicate the Basis Upon Which you are Authorised to Witness this Declaration)



Minutes of MBA NSW

Special Meeting of Members

Date : Tuesday, 12 March 2019 @ 2.00 pm
Venue : Master Builders Association of NSW

52 Parramatta Road
Forest Lodge NSW 2037
Auditorium, Ground Floor

1. ATTENDANCE AND APOLOGIES

Attendees

Simon Pilcher	Deputy President
Ross W Mitchell	Immediate Past President
Mike O'Donnell	Vice President
Mick Banks	Vice President
Bob Black	Vice President
John O'Neill	Vice President
Anthony Larter	ANL Constructions
Bill Taylor	Build & Civil Pty Ltd
David Campbell	David Campbell Building Pty Ltd
Dan Murphy	Fugen Holdings Pty Ltd
John Laby	Laby Building
John Worthington	John Worthington & Associates Pty Ltd
Frank Mamasioulas	Riverwall Construction
John Biazzo	State Developments (NSW) Pty Ltd
Leo Stanton	G&P Stanton Pty Ltd
Gordon Leggett	Maincorp Construction Group Pty Ltd
Colin Jewell	Jewell Builders Pty Ltd
Chris Reynell	Chris Reynell Pty Ltd
Brad Garrard	Building Contractor
Dave Dillon	DJ & LM Dillon
Stuart Crowfoot	Crowfoot Constructions
Brad Maggs	BDM Constructions
Merv Prendergast	Buildwise Certification
Adina Toumi Cussinet	Lend Lease
John Henderson	JS Henderson Pty Ltd
Chris Briggs	CM Briggs Building
Peter Carter	PCM Pty Ltd
Ken Austin	Ken Austin
Barry O'Mara	Life Member
Arthur Krust	Life Member
Brian Seidler	MBA/NSW
Craig Donovan	MBA/NSW
Stebre Delovski	MBA/NSW

Apologies

Martin Patience	President
Greg Hamlyn	Trades Coaching P/L
Peter Finnane	Finnane & Associates
Ian Anderson	Building Consultant
John Rostirolla	Roshills Constructions Pty Ltd
Rob Bevear	Accord Building & Design Pty Ltd
Bob Cole	Life Member
Ron Bracken	Life Member

Deputy President Simon Pilcher declared the Special Meeting of MBA/NSW members open @ 2pm.

The Deputy President welcomed members and advised that the meeting had been called in accordance with clauses 19.2 and 32 of the MBA/NSW Rules. A notice of meeting and an agenda have been forwarded to members of the Association by both post and email.

The Deputy President further advised that the Special Meeting had been called to consider proposed changes to the Association's Rules.

The Deputy President confirmed that the minimum number of members required by the Association's Rules for a quorum for a Special Meeting was in attendance, and that copies of the agenda and proposed changes to the rules for the meeting are available for those who require them.

The Deputy President recommended that each proposed rule change, as identified in the information provided to members, be discussed and a specific resolution made for the rule.

The Deputy President requested the Executive Director to speak to the proposed changes.

The Executive Director reported that members of the Association had been provided (by post) a notice of Special Meeting, correspondence and list of proposed changes to the MBA/NSW Rules in accordance with the Association's Rules.

The Executive Director also noted that members had also been advised by email of the Special Meeting and the list of proposed changes.

The Executive Director reported that following the last MBA/NSW election (E2017/123), the Association received a Post Election Report from the Australian Electoral Commission (AEC). The Report includes the Declaration of Results for the for both the MBA/NSW Executive Committee and Council of Management. The Report also contains a list of MBA/NSW Rules which the AEC suggested were "... difficult to apply / interpret ..." and a number of other related matters.

The Executive Director also reported that the AEC's Report can be found on the Association's website.

The Executive Director advised the AEC's Report was forwarded to the Association's Constitution Committee for its consideration and recommendations. The Committee met on a number of occasions during 2018 and provided a final report to the Council of Management meeting on 12 December 2018. The Council of Management endorsed the Constitution Committee's report and recommended that a Special Meeting of members be called to consider the proposed changes to the Association's Rules.

2.0 Proposed Alteration to Master Builders Association of NSW Rules

The Executive Director reported that a number of members had identified a typographical error in proposed Rule 14.25 "**Reason for the proposed change**". The word "...sufficient ...", should read "...insufficient...".

The Executive Director took members through each proposed Rule Change,

- **Delete Rules 14.4.1 and 14.4.1.3, and substitute the following:**

- 14.4.1 At least (~~six~~ **eight**) weeks before the Annual Meeting in the election year the Returning Officer shall forward (~~with the Executive Newsbrief or~~) by pre-paid post, **email, or other electronic means**, a nomination form addressed to those members of the Association whose names appear on the Regional or Sector rolls a nomination form with a notification thereon of the opening date for nominations and closing date and time for receipt of such nomination and in addition the following information:
- 14.4.1.1 That nominations will not be received by the Returning Officer after the closing date so affixed.
- 14.4.1.2 That a nomination will not be valid unless a written consent of the nominee is received on or before the closing date for nomination.
- 14.4.1.3 The address to which the nominations and consents are to be forwarded. Nominations and consents shall be forwarded to the address of the Returning Officer which may include delivery by post, hand, facsimile, **email or other electronic means**, or as determined by the Returning Officer.

Reason for the proposed change:

The Council of Management believes it desirable that this will allow for more modern and efficient way of communication. Further, increasing the time to undertake the election process is also desirable.

Moved: Stuart Crowfoot

Seconded: John Laby

Deputy President declared this rule change carried unanimously.

- Insert New Rule 14.7.1, 14.7.2 and 14.7.3

14.7.1. A person nominating for any office may withdraw the nomination in writing to the Returning Officer by the close of the nomination period.

14.7.2 Notification of withdrawal: A member nominating for any office may withdraw the nomination by notice in writing to the returning officer up to, but not later than 7 days after the close of nominations.

14.7.3 The notification in writing referred to in the prior Rule must include the signed endorsement of the nominee and be in a form acceptable to the returning officer. Once a nominator has endorsed the nomination of another member for election to any office in the organisation, that nominator may not subsequently withdraw that endorsement.

Reason for the proposed change:

The rules currently have no provision for the withdrawal of nomination.

Moved: Dan Murphy

Seconded: John Laby

Deputy President declared this rule change carried unanimously.

- Delete Rule 14.8, and substitute the following new rule:

14.8 Returning Officer: The Returning Officer shall inspect the nomination and consents received at the closing date and time so as to be satisfied that each of them is in order and should the Returning Officer find a nomination or consent defective, the Returning Officer shall, before rejecting the nomination, notify the ~~(nominator and the)~~ **nominee** concerned of the defect and give them an opportunity of remedying the defect where practicable within seven days or their receipt of such notification.

For the purpose of this Constitution, the Returning Officer shall be appointed by the Council, not being an employee or office holder of the Association or a Division of the Association. However, whilst such elections will be conducted by the ~~(Electoral Commission of the Commonwealth of Australia)~~ **(Australian Electoral Commission)**, the Returning Officer shall be an employee of the Commission appointed by the Commission for such purpose.

Reason for the proposed change:

It is proposed that the reference to "nominator", be removed, as notifying the nominator will have no impact on the resolution of the defective nomination and could breach privacy issues if the defect applies to the nominee only. Other proposed changes update reference to appropriate authority.

Moved: Frank Mamasioulas

Seconded: John Biazzo

Deputy President declared this rule change carried unanimously.

- **Delete Rule 14.10 and substitute with the following new rule:**

If more than the required number of valid nominations is/are received, 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. A biography limited to 200 words of each of the candidates whose names appear on the ballot papers shall accompany those ballot papers.

Only biographies received before the close of nominations will be accepted for distribution. 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 method of voting as provided hereinafter shall also be printed on the ballot paper and also the invalidation of the ballot paper as hereinafter provided.

Reason for the proposed change:

The proposed rule classifies the date which biographies should be submitted.

Moved: John Blazzo

Seconded: Gordon Leggett

Deputy President declared this rule change carried unanimously.

- **Delete Rule 14.11 and substitute with the following new rule:**

The Returning Officer shall, within **fourteen days** after the closing date for nominations, forward by prepaid post to every member entitled to vote at the election, a ballot paper bearing the Returning Officer's initials, together with a declaration envelope with a removable flap or label, and a prepaid envelope. Both envelopes must comply with the forms prescribed by the **Fair Work (Registered Organisations) Act, 2009**.

Reason for the proposed change:

Allows the Returning Officer sufficient time for checking of eligibility of candidates and updates reference to appropriate legislation.

Moved: Frank Mamasioulas

Seconded: Anthony Larter

Deputy President declared this rule change carried unanimously.

- **Delete Rule 14.24 and substitute with the following new rule:**

14.24 In the event of the same candidate being elected to represent both a Region and a Sector then that candidate shall elect to the Annual General Meeting ~~(or within seven (7) days thereafter)~~ whether he or she will remain as the Regional or Sector representative **but not both**. Such election shall create a vacancy on the Council of

Management in respect of the Region or Sector against which the election was made. The Returning Officer shall then declare the candidate with the second greatest number of votes from the Sector or Region referred to elected as Councillor representing that Region or Sector. If the Councillor who makes the election in accordance with this rule is the sole candidate then the vacancy shall be filled in accordance with rule 14.25.

Reason for the proposed change:

Removes incompatibility of rules.

Moved: John Laby

Seconded: Merv Prendergast

Deputy President declared this rule change carried unanimously.

• **Delete Rule 14.25 and substitute with the following new rule:**

14.25 If less than the required number of nominations which are in order have been received, the Returning Officer shall, at the Annual Meeting in the election year, call for nominations from those present and eligible to fill the remaining vacancies, such nominations to be proposed by a member eligible to be a candidate for such position before the candidate has signified acceptance or rejection of the nomination.

If only the required number of candidates are nominated, then such candidates shall be declared elected. If a greater number of nominations are received than required to fill the vacancy or vacancies, then a postal ballot shall be held by the Returning Officer in accordance with this rule provided that candidates whose nominations are defective shall be given an opportunity to correct the defect in accordance with the Rule 14.8.

If, following the procedures in this Rule, insufficient nominations have been received so that vacant positions remain, those positions may be filled as casual vacancies in accordance with rule 15.6.

Reason for the proposed change:

A mechanism should be available to allow the Council to fill a vacancy if there are insufficient nominations

Moved: Leo Stanton

Seconded: John Blazzo

Deputy President declared this rule change carried unanimously.

- Delete Rule 15, and substitute the following new rule:

15 Vacation of Office and Filling of Vacancies on the Council

15.1 The office of any Councillor shall be declared vacant by the Council if:

15.1.1 The Councillor resigns from office in writing; or dies;

15.1.2 The Councillor ceases to be a builder member or life member of the Association.

15.1.3 The Councillor ceases to be a representative or additional representative of a member which no longer holds that representation in accordance with Rule 8.4.

15.1.4 The position of Councillor has not been filled as a result of an election conducted in accordance with clause 14.

Reason for the proposed change:

Clarifies the situation where a “representative” or “additional representative” ceases to be employed by a member.

Moved: John Laby

Seconded: Gordon Leggett

Deputy President declared this rule change carried unanimously.

- Delete Rule 18.2 and substitute with the following new rule:

18.2 The President: The President shall be elected by and from among the members of the Council of Management, bi-annually. Such election shall take place by the October meeting of the Council in an election year. At least **(six) eight** weeks prior to the October meeting of Council in an election year, the Returning Officer shall invite written nominations for the office of President. Such nominations shall be proposed by a member of the Council and be supported by the signed consent of the nominee. Such nominations shall be in the hands of the Returning Officer by 10 am on the 28th day prior to the October meeting of the Council in that election year.

In the event of more than one nomination being received, then the Returning Officer shall prepare or cause to be prepared a sufficient number of ballot papers on which will appear the full name of the candidates only in the order in which they shall have been drawn by the Returning Officer by ballot. The Returning Officer shall, within **(ten) fourteen** days after the closing date for nominations, forward by pre-paid post to members of the Council, a ballot paper bearing the Returning Officer's initials, together with an envelope marked "Ballot Paper Only", suitable to contain the ballot paper of each member and not disclosing otherwise any identification, and a further business reply paid envelope to contain the before mentioned envelope, addressed to the Returning Officer at an address arranged by the Returning Officer for the return of the ballot paper by post by the voter without expense to them. This envelope shall also provide the signature of the voter. The Returning Officer shall advise all voters of the

closing date for the receipt of return of ballot papers, which shall be not later than 10 am on the day prior to the October Meeting of Council. The Returning Officer shall arrange for a suitable postal box or other receptacle to which ballot papers may be returned to the Returning Officer. The Returning Officer 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. Where more than two nominations are received, the ballot shall be determined by the preferential method of counting votes in accordance with Rule 19.9.

Reason for the proposed change:

Allows more time for the election process.

Moved: Merve Prendergast

Seconded: Colin Jewell

Deputy President declared this rule change carried unanimously.

- **Delete Rule 19.1 and substitute with the following new rule:**

19.1 Annual Meetings:

An Annual Meeting of members shall take place on the second Tuesday in December of each year. At this meeting the audited Balance Sheet and Revenue Statement shall be presented, together with a Presidential Report.

In an election year, the Ballot for election of members of the Council for the ensuing two years shall be declared and the President Elect shall be installed in office; provided, however, that this installation shall be the last item of business.

Such other business as the 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.

Seven days prior to the date of the Annual Meeting, the Executive Director shall forward by prepaid **letter** post, **email or other electronic means**, a circular to each member of the Association. Such circular shall request the members' attendance at the meeting and shall clearly set forth the time and place of the meeting and the business to be transacted. Ten members shall form a quorum at the Annual Meeting.

Reason for the proposed change:

The Council of Management believes it desirable that this will allow for more modern and efficient way of communication

Moved: Leo Stanton

Seconded: Anthony Larter

Deputy President declared this rule change carried unanimously.

- Delete Rule 19.2 and substitute with the following new rule:

19.2 Special Meeting:

A Special Meeting of members may be convened on the instructions of the President, the Council, the Executive Director, as required by Rule 29, requisition of five members of the Council or requisition of ten members of the Association. Provided that where a Special Meeting is requisitioned as before mentioned, 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.

Not less than seven days prior to the date of the Special Meeting the Executive Director shall forward by prepaid **letter** post, **email or other electronic means**, a circular to each member of the Association. Such circular shall request the members' attendance at the meeting and shall clearly set forth the time and place of the meeting and the special business to be transacted.

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 to the said Special Meeting shall be received and may be debated, but shall not be determined. Such motion shall be referred to a further Special Meeting to be convened within seven 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 (with the exception of motions to alter this Constitution or dissolve the Association) such motions shall be carried by a simple majority of members present and entitled to vote.

Motions to alter this Constitution or dissolve the Association shall be carried by a majority of three fourths of the members present and entitled to vote. On being adopted, such motions shall become special resolutions and may be acted upon. The provisions of this paragraph shall not apply when the special meeting is convened under Rule 29.

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, it shall be competent for the Special Meeting to determine such notice of motion without reference to a further Special Meeting. With the exception of motions to alter this Constitution or dissolve the Association, upon being adopted by a simple majority of members present such motion shall become a special resolution and may be acted upon. Motions to alter this Constitution and Rules or dissolve the Association upon being adopted by a three fourths majority of members present shall become special resolutions and may be acted upon.

The President shall have the option of directing that a Special Meeting be summoned by **way of prepaid post, email or other electronic means, advertisements in one daily paper circulating generally throughout New South Wales, or such other means as may be expedient, in the case of disrupted postal services, either in lieu of or in addition to the circular referred to, and in such advertisements the business to be transacted may be in a general form if such a course is considered desirable by the President notifying members of the business to be transacted at the Special Meeting.**

A Special Meeting of members shall be the supreme authority of or in the Association.

Twenty five members shall form a quorum at any Special Meeting.

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 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.

Reason for the proposed change:

The Council of Management believes it desirable that this will allow for a more modern and efficient way of communication.

Moved: John Blazzo

Seconded: Frank Mamasioulas

Deputy President declared this rule change carried unanimously.

• **Delete Rule 19.9, and substitute the following new rule:**

19.9 Election of Executive Officers or Representatives of the Association:

The following method shall be used to determine the election of Executive Officers, where more than two nominations are received for any one position.

Councillors shall record their preference for the candidates by marking their ballot papers with consecutive numbers (1, 2, 3 and so on).

The result shall be determined in the following manner:

Each candidate shall receive a number of votes by treating numerical preference as the candidates total from each ballot paper (i.e. a number three preference counts as three votes). The candidate receiving the lowest sum total of votes shall be declared elected.

By resolution this method of voting may be used by the Council or its committees or an Annual or Special meeting of the Association to elect a delegate or other representative for the Association, where more than two nominations are received for the position.

In the case of a tie the Returning Officer shall decide the ballot by drawing lots.

Reason for the proposed change:

Current rule does not determine how to resolve a tied vote.

Moved: Colin Jewell

Seconded: Dan Murphy

Deputy President declared this rule change carried unanimously.

The Deputy President thanked the meeting and directed the Executive Director to process the changes in accordance with the relevant Regulations of the Fair Work Act 2009.

3. GENERAL BUSINESS

No General Business reported.

Meeting closed at 1437.



Brian Seidler
EXECUTIVE DIRECTOR