

[243V: Incorporates alterations of 13 July 2022 [D2022/2, D2022/3 and R2022/37]]  
(replaces 27/7/2016 [R2016/144] version)

## **The Master Builders Association of Victoria**

I CERTIFY under section 161 of the *Fair Work (Registered Organisations) Act 2009* that the pages herein numbered 1 to 66 both inclusive contain a true and correct copy of the registered rules of The Master Builders Association of Victoria

GENERAL MANAGER  
FAIR WORK COMMISSION

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# Rules of The Master Builders Association of Victoria

## Contents

1 – DEFINITIONS.....	1
2 – NATURE OF ORGANISATION .....	4
3 – NAME OF ORGANISATION .....	4
4 – INDUSTRY .....	4
5 – REGISTERED OFFICE .....	5
6 – OBJECTS.....	5
7 – POWERS .....	8
8 – LOGO .....	8
9 – RELATIONSHIP WITH MASTER BUILDERS AUSTRALIA LIMITED.....	9
10 – MEMBERS.....	9
11 – REGISTERS .....	14
12 – GENERAL MEETINGS.....	15
13 – VOTING AT GENERAL MEETINGS .....	18
14 – MEMBERS’ AUTHORISED REPRESENTATIVES.....	20
15 – CHANGE OF STATUS OF MEMBER .....	21
16 – BOARD .....	22
17 – BOARD MAY APPOINT INDEPENDENT ADVISORS.....	26
18 – POWERS OF THE BOARD .....	26
19 – BOARD MEETINGS .....	27
20 – TRANSITIONAL BOARD .....	28
21 – MBV ELECTORAL COUNCIL .....	28
22 – TRANSITIONAL MBV ELECTORAL COUNCIL .....	33
23 – DIVISIONS .....	33
24 – DIRECT VOTING SYSTEM AS PART OF COLLEGIATE VOTING SYSTEM.....	34
25 – COMMITTEES.....	36
26 – PRESIDENT.....	39
27 – TRANSITIONAL PRESIDENT ROLE .....	40
28 – DEPUTY PRESIDENT .....	41
29 – TRANSITIONAL DEPUTY PRESIDENT ROLE.....	42
30 – MAXIMUM TERM IN OFFICE.....	43
31 – PROXY VOTES .....	43
32 – SCRUTINEER’S RIGHTS, AND ROLE AND FUNCTIONS.....	43
33 – CHIEF EXECUTIVE OFFICER .....	44
34 – COMPANY SECRETARY .....	44
35 – SECTIONS .....	44
36 – BY-LAWS .....	45
37 – CONFLICTS OF INTEREST.....	45
38 – CONFIDENTIAL INFORMATION .....	46
39 – LOANS, GRANTS AND DONATIONS .....	46
40 – INDEMNITIES AND INSURANCE .....	46
41 – EXECUTION OF DOCUMENTS.....	47
42 – FINANCIAL DISCLOSURES AND TRAINING .....	47
43 – ACCOUNTS, AUDIT AND RECORDS.....	48
44 – RIGHTS OF INSPECTION.....	48
45 – DISSOLUTION OF ASSOCIATION .....	49
46 – APPLICATION AND CONTROL OF FUNDS, PROPERTY .....	49
47 – REMUNERATION OF BOARD MEMBERS .....	49
48 – REIMBURSEMENT OF EXPENSES.....	49
49 – ALTERATION TO RULES WHERE SPECIAL RESOLUTION OF MEMBERS NOT REQUIRED .....	50
50 – ALTERATION TO RULES WHERE SPECIAL RESOLUTION OF MEMBERS IS REQUIRED.....	50
51 – NOTICES.....	51
52 – INTERPRETATION.....	52
53 – DATE OF EFFECT .....	53

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SCHEDULE.....	54
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Note: This table of contents has been generated by the Fair Work Commission as an aid to using the rulebook, however it does not form part of the registered rules of the organisation. No reliance should be placed on the table of contents in interpreting the rules.

RULES OF  
THE MASTER BUILDERS ASSOCIATION OF VICTORIA

**1 – DEFINITIONS**

1.1 In these Rules, unless the context requires otherwise:

- (a) **Act** means the *Fair Work (Registered Organisations) Act 2009* as amended from time to time;
- (b) **Affiliate** means an individual who is admitted to the Honorary Life, Provisional, Associate, Retired or Student Membership Categories, and who are not entitled to cast a vote at a meeting of Members;
- (c) **Application for Membership** means an application for membership of the Association which is in the form prescribed by the Board from time to time;
- (d) **Association** means The Master Builders Association of Victoria;
- (e) **Authorised Representative** means, in relation to a Member, the representative of the Member appointed under Rule 14;
- (f) **Board** means the Board of Directors of the Association elected by the MBV Electoral Council pursuant to the Collegiate Voting System;
- (g) **By-Laws** means by-laws made or adopted under Rule 36;
- (h) **CEO** means the Chief Executive Officer of the Association, appointed under Rule 33.1;
- (i) **Chairperson** means the individual entitled to preside as chair at a particular:
  - (i) general meeting, as determined under Rules 12.26 to 12.28;
  - (ii) MBV Electoral Council meeting, as determined under Rule 21.14;
  - (iii) Board meeting, as determined under Rule 26.4; and
  - (iv) Committee meeting, as determined under Rule 25.3;
- (j) **Close of Roll Day** means the day on which the roll of voters for the ballot is closed. Any Member who is eligible to vote on that day is included in the roll of voters. The **Close of Roll Day** is the date fourteen (14) days prior to the day on which nominations open as prescribed in section 143 of the Act.
- (k) **Code of Ethics** means the code of ethics of the Association adopted by the Board as amended from time to time;
- (l) **Collegiate Voting System** means the system of voting carried out pursuant to the requirements of the Act which requires that Voting Members elect the MBV Electoral Council by a Direct Voting System and at a subsequent stage, the MBV Electoral Council elects the Board.
- (m) **Committee** means the General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee, Housing Sub-Contractor Sector Committee, and any other committee appointed by the Board under Rule 25;
- (n) **Company Secretary** means the Company Secretary appointed by the Board who meets the requirements under the Corporations Act in relation to Company Secretaries;
- (o) **Corporations Act** means the Corporations Act 2001 (Cth);

- (p) **Council** means the persons who were elected at the date of adoption of these Rules whose role, into the future, will be carried out by the MBV Electoral Council;
- (q) **Deputy President** means the individual elected from time to time by the MBV Electoral Council pursuant to the Collegiate Voting System to carry out the role of Deputy President;
- (r) **Direct Voting System** means an electoral system in which all Voting Members may vote to appoint eligible members to the MBV Electoral Council, the general requirements of which are set out in Rule 24;
- (s) **Director** means an individual elected in accordance with these Rules (including an additional Director and Transitional Board Directors) to perform the duties required of an individual holding the role of Officer;
- (t) **Eligibility Criteria** means the criteria set out in Rule 16.6 which must be satisfied before an individual may be elected as a Director;
- (u) **Employers** means persons operating as sole traders, partnerships, corporations, body corporates, statutory bodies/authorities and organisations who carry on a business;
- (v) **Entrance fee** means the entrance fee prescribed by the Board from time to time;
- (w) **Financial Member** means a Member who was not in default in payment of any fees or charges which have been properly imposed by the Association and are due and owing;
- (x) **General Board Member** means one (1) Director, who is elected from the MBV Electoral Council to the Board after the election of the President, the Deputy President, the General Contracting Sector Committee Chairperson, Housing Sector Committee Chairperson, Specialist Contractor Sector Committee Chairperson, Materials Manufacturing and Supply Sector Committee Chairperson, Regional Sector Committee Chairperson and the Housing Sub-Contractor Sector Committee Chairperson;
- (y) **General Contracting Sector Committee** means a committee of the Association established to carry out the role set out in Rule 25.6;
- (z) **Government** means any local Government, state Government or Federal Government;
- (aa) **Housing Sub-Contractor** means a person substantially performing work as a sub-contractor in the erection of domestic dwellings in the housing and/or cottage industry, but who is not a Registered Builder (Unlimited) as defined by the *Building Regulations 2006* (Vic);
- (bb) **Industry** means The Building, Construction and Housing Industry as defined in Rule 4;
- (cc) **Master Builders Member** means a Member described in Rule 10.5;
- (dd) **MBV Electoral Council** means the Officers elected by the Voting Members via the Direct Voting System to carry out the role set out in Rule 21;
- (ee) **Melbourne Metropolitan Area** means that part of Melbourne which is surrounded by and includes the following Council areas: Wyndham, Melton, Hume, Whittlesea, Nillumbik, Manningham, Maroondah, Knox, Greater Dandenong, Frankston, Mornington Peninsula, Casey and Cardinia.
- (ff) **Member** means a Person who, at the relevant time, is a member of the Association in accordance with these Rules, whether a Voting Member or an Affiliate, unless otherwise specified;
- (gg) **Membership Fee** means the membership fee payable annually by each Member which is prescribed by the Board from time to time;

- (hh) **Office** has the meaning given to it by the Act and includes members of the Board and the MBV Electoral Council and any member of a collective body that has the power to do any of the following:
  - (i) manage the affairs of the Association;
  - (ii) decide the policy of the Association;
  - (iii) make, amend or repeal the Rules of the Association;
  - (iv) enforce the Rules of the Association.
- (ii) **Officer** has the meaning given to it by section 6 of the Act, being a person who holds an Office in the Association (including such a person when performing duties as a designed officer under Part 3 of Chapter 8 of the Act);
- (jj) **Persons** means and includes any natural person, any firm, partnership, association, corporation, incorporated or unincorporated body or bodies and trustees, whether incorporated pursuant to any Act of the Parliament of the State of Victoria or of the Commonwealth of Australia;
- (kk) **President** means the individual elected from time to time by the MBV Electoral Council pursuant to the Collegiate Voting System to carry out the role of President and is the Prescribed Officer and Designated Officer under the Act;
- (ll) **Regional Area** means an area situated outside the Melbourne Metropolitan Area;
- (mm) **Register** means the registers required to be kept by the Association under the Act, including the Register of Members and Register of Officers;
- (nn) **Returning Officer** means a person who does not hold Office, is not a Member or employee of the Association, and who is appointed by the Board to conduct the election process. However, in relation to elections conducted by the Australian Electoral Commission, the Returning Officer is an electoral official of the Australian Electoral Commission;
- (oo) **Rules** means this document as amended from time to time;
- (pp) **Section** means any section of the Association established in accordance with these Rules for the purpose of facilitating the work of the Association in the area of the Section;
- (qq) **Sector Committee** means the General Contracting Sector Committee, Housing Sector Committee, Housing Sub Contractor Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee, and Housing Sub-Contractor Sector Committee established under Rule 25;
- (rr) **Sector Committee Terms of Reference** means the terms of reference (if any) adopted from time to time regarding the Committees;
- (ss) **Sector Groups** means those sectors in respect of which Members may elect to take membership, which groups are represented by the Committees;
- (tt) **Special Resolution** has the meaning given in the Corporations Act;
- (uu) **Sub-Contractor** means a person or entity who primarily enters into contracts with a builder to carry out part of the work that is to be carried out under a domestic building contract;
- (vv) **Transitional Board** means the persons who were elected at the date of adoption of these Rules as the Board of the Association who will be appointed as Transitional Board Directors pursuant to Rule 20;
- (ww) **Transitional Board Director** means a Director who sits on the Transitional Board;

- (xx) ***Transitional Deputy President*** means the person referred to in Rule 29;
- (yy) ***Transitional President*** means the person referred to in Rule 27;
- (zz) ***Voting Members*** means Persons admitted as Master Builders Members, who have always been entitled to cast a vote at a meeting of Members pursuant to Rule 13, and who are not Affiliates.

## **2 – NATURE OF ORGANISATION**

- 2.1 The Master Builders Association of Victoria (the Association) is a public company limited by guarantee and an organisation carried on pursuant to the Act to protect and promote its Members' interests.
- 2.2 The liability of the Members is limited. Every Member undertakes to contribute Ten Dollars (\$10) to the assets of the Association if it is wound up while the person/organisation is a Member, or within one (1) year after the person/organisation ceases to be a Member.

## **3 – NAME OF ORGANISATION**

- 3.1 The Association shall be known as the 'The Master Builders Association of Victoria'.

## **4 – INDUSTRY**

- 4.1 The Industry in connection with which the Association is established is the Building, Construction and Housing Industry which includes any trade, industry, business, undertaking, work, service, handicraft, employment or industrial occupation concerned with or contracting for the building, making, assembling, erection, fabrication, prefabrication, demolition, alteration, repair maintenance or otherwise dealing with any buildings, dwelling houses, structures, roads, bridges, dams, reservoirs, development of land, civil engineering projects or other constructions, including the manufacture or supply of building materials and services connected directly or indirectly with any of the above mentioned.
- 4.2 Provided that nothing in this Rule shall be taken to extend to:
  - (a) any of the industries, callings, trades or matters which are within the application of the National Metal and Engineering On-Site Construction Industry Award 1989 save and except those callings, trades and matters which are also within the application of the following awards:
    - (i) National Building Trades Construction Award 1975;
    - (ii) National Building and Construction Industry Labourers (On-Site) Award 1986;
    - (iii) Plumbing Trades (Southern States) Construction Agreement 1979;
    - (iv) National Building and Construction Industry (FEDFA) Award 1987;
    - (v) Australian Workers' Union Construction and Maintenance Award 1989; or

## 6 – OBJECTS

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- (b) any industry, calling, trade or the like carried on or performed at a place other than a building construction site or civil construction project in connection with the manufacturing or dealing with metals or metallic articles or the like as set out in paragraph (a) of rule 5 of the rules of the Metal Trades Industry Association of Australia.
- 4.3 Extracts from the above mentioned awards containing application and scope clauses and an extract from the rules of the Metal Trades Industry Association of Australia containing paragraph (a) of rule 5 thereof, as in force on 16 March 1990, are set out in the Schedule of these Rules.

## 5 – REGISTERED OFFICE

- 5.1 The registered office of the Association shall be 332 Albert Street, East Melbourne in the State of Victoria, or such other place as the Board may decide from time to time.

## 6 – OBJECTS

6.1 **The Association is formed for the following purposes:**

- (a) To promote the interests of the Industry throughout the Commonwealth of Australia and its Territories.
- (b) To protect its Members against injustice or oppression in the fair and proper execution of such works as they may undertake from time to time.
- (c) To protect and advance the interests and status of builders, contractors, project and construction managers, sub-contractors, suppliers and other persons engaged in any capacity in the Industry and to secure the mutual support and co-operation of all builders, contractors, sub-contractors, suppliers, project and construction managers, and other persons engaged in any capacity in the Industry.
- (d) To maintain and enhance the reputation for skill, integrity and responsibility of the Members of the Association and to set the highest standards of skill, integrity and responsibility associated with Membership of the Association.
- (e) To provide an authoritative and representative voice for builders, contractors, project and construction managers, sub-contractors, suppliers and other persons engaged in the Industry on matters of common interest.
- (f) To establish codes of ethical conduct for builders, contractors, project and construction managers, sub-contractors, suppliers and other persons engaged in the Industry and to use every effort to ensure the observance of such codes by the Members of the Association.
- (g) To maintain and improve the relations of Members with their employees and the organisations or unions of such employees.
- (h) To support, encourage and maintain a practical system of apprenticeship combined with technical education.
- (i) To encourage and preserve by every means, skill in the Industry.
- (j) To take an active part in educating public opinion and assisting or opposing such public movements as may appear likely to affect its Members' interests in the carrying on of their business.



- (k) To enter into agreements with professional bodies, other Associations and public authorities, Commonwealth, State and Local Government Authorities and Lending Institutions for the purpose of improving and maintaining contractual conditions, conditions of tendering and the like.
- (l) To secure to its Members all the advantages of unity of action in any manner whatsoever.
- (m) To promote co-operation between Members as to the terms and conditions of contracts upon which they will undertake work within the Industry.
- (n) To act in the settlement of, and to deal with disputes between Members or affecting Members.
- (o) To prosecute or defend any suits, applications, and proceedings, before any court or tribunal whatsoever, as may be deemed necessary or expedient in the interests of the Association or its Members.
- (p) To encourage and facilitate economics of construction through co-operative action in matters pertaining to materials, supplies, labour, insurance and bonds, and to engage in any undertaking whatsoever which may further the aims and purposes of the Association.
- (q) To further technical, economic and general research and promotion on matters of interest to builders, contractors, project and construction managers, sub-contractors, suppliers and other persons engaged in the Industry and to provide and establish such competitions, scholarships, prizes and endowments as the Association thinks fit.
- (r) To establish or assist in the establishment and maintenance of technical and statistical libraries.
- (s) To originate, promote and support improvements in laws and regulations affecting builders, contractors, project and construction managers, sub-contractors, suppliers and other persons engaged in the Industry and the interest of the Community in relations thereto and to suggest support or oppose alterations therein or in the administration thereof and to make representations to the Crown or any legislative, administrative or other body or authority and to take such other steps or proceedings in connection with the foregoing as may be deemed expedient.
- (t) To print, publish, issue and circulate such periodicals, books, circulars, advertisements and other publications and films as may seem conducive to the interest of the Association and its Members.
- (u) To promote any measures and take any steps that may be considered advisable in the interests of the Members of the Association.
- (v) To promote exhibitions relevant to the interests of the Association or its Members.
- (w) To render such support and assistance to its Members as the Association may deem proper and advisable.
- (x) To purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements or property, real and personal, and any rights or privileges which may be requisite for the purposes or capable of being conveniently used in connection with, any of the objects of the Association and in furtherance of the objects of the Association to sell, improve, demolish, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Association and in such manner as is provided in these Rules. If the Association shall take or hold any property which may be subject to any trusts the Association shall only deal with the same in such manner as is allowed by law having regard to such trusts.

- (y) To support all forms of education and to establish or contribute to bursaries, scholarships or prizes for educational purposes.
- (z) To construct, improve, maintain, develop, work, manage, carry out, alter, demolish or control any houses, buildings, grounds, works or conveniences which may seem calculated directly or indirectly to advance the Association's interest and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carry out, alteration, demolition or control thereof.
- (aa) To enter into any negotiations or arrangements with any Government or authority, municipal, local or otherwise, that may seem conducive to the Association's objects or any of them; and to obtain from any such Government or authority any rights, privileges and concessions which the Association may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (bb) To appoint, employ, engage, remove or suspend such persons as may be necessary or convenient for the purposes of the Association.
- (cc) To establish and support or aid in the establishment and support of institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Association or the dependants or connections of any such person; and to grant pensions and allowances and to make payment towards insurance; and to subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object.
- (dd) To establish Sections and Section Offices and provide for the establishment of local or regional committees to deal with local or regional matters.
- (ee) To establish Sector Groups based upon recognisable industry sectors in order that Members may deal with sector specific matters in a direct manner, through Membership of Sector Groups.
- (ff) To co-operate, affiliate or join with any Organisation, Association, Company, 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 them and to appoint representatives to them.
- (gg) To borrow, raise or secure the payment of money in such manner as the Association may think fit and to secure the same or the repayment or performance of any debt liability contract guarantee or other engagement incurred or to be entered into by the Association in any way and in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Association's property (both present and future) and to purchase, redeem or pay off any such securities.
- (hh) To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- (ii) To take or hold mortgages, debentures, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the Association's property of whatsoever kind sold by the Association, or any money due to the Association from purchasers and others.
- (jj) To make any gift of property whether subject to any special trust or not, for any one or more of the objects of the Association.

- (kk) To raise funds by means of subscriptions, fees on turnover, fees on the value of particular works, donations, fees 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.
- (ll) To invest and deal with the monies of the Association not immediately required in such manner as may from time to time be determined upon fixed or other deposit in any Trading Bank or Savings Bank, and such other securities as the Association thinks fit and notes, stocks, shares, debentures or securities of any company whether public or private.
- (mm) To lend money with or without security to persons, firms or corporations, being Members or not and on such terms as may from time to time seem expedient.
- (nn) To act as an organisation and/or industrial union of employers under the laws of the Commonwealth of Australia and its Territories or any State within the Commonwealth.
- (oo) To initiate, defend or bring an industrial dispute or claim relating to industrial matters before the appropriate tribunal established under Commonwealth or State Law and to represent the interests of employers in all sections of the Industry or an industry auxiliary or special to the Industry before Courts, Boards, Conciliation Committees, other tribunals or other bodies and at conferences with organisations or employers and other bodies of employers or employees.
- (pp) To make agreements with Members' employees and/or their representatives, organisations, associations or unions relative to the terms and/or conditions of employment.
- (qq) To adopt whatever procedure that may be considered advisable in the interests of Members of the Association and in the maintenance of private enterprise.
- (rr) To do all such lawful things as may appear to be incidental or conducive to the beforementioned 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.

## **7 – POWERS**

- 7.1 The Association has the power to do all such acts, deeds, matters and things to enter into and make such arrangements as are incidental or conclusive to the attainment of any of the Association's objects.

## **8 – LOGO**

- 8.1 The Board shall cause to be designed a logo for the use by all Members of the Association under such conditions as the Board may decide.
- 8.2 The Board may withdraw authority to use the logo on any stationery or publication by a Member or former Member which may be used to indicate that the Member or former Member is a member of the Association. Where a Member continues to use the logo without authority of the Association, the Member shall be guilty of a breach of these Rules. Where a former or non Member uses the logo, the Association is entitled to take appropriate action to enforce its rights and protect the use of the logo.
- 8.3 The Board may register the logo as a registered trademark or design, the ownership of which is vested in the Association.

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## 9 – RELATIONSHIP WITH MASTER BUILDERS AUSTRALIA LIMITED

- 9.1 The Association is a member of Master Builders Australia Limited and must have regard to the requirements that it must satisfy as a member, pursuant to the terms of Master Builders Australia Limited's constitution, as amended from time to time.
- 9.2 If there is any inconsistency between the Association's Rules and the constitution of Master Builders Australia Limited, the Association's Rules will apply.
- 9.3 The Board will elect by agreement, or if more than one (1), by secret ballot, an individual to be appointed as the Association's representative to the Master Builders Australia Limited Board. On appointment, the appointee must be prepared to execute and be bound by all documents that govern the nature of the relationship between the Association and Master Builders Australia Limited.

## 10 – MEMBERS

### *Admission of Members*

- 10.1 Provided that they meet the eligibility rules for membership of the Association, the persons whose names have been entered in the Register of Members as at the date of adoption of these Rules, shall be deemed to have fulfilled the requirements of these Rules and be Members of the Association. The membership statuses of the persons whose names are in the Register of Members as at the date of adoption of these Rules, but cease to be eligible under these Rules, shall be reviewed and determined by the Board. All other applicants for membership shall be considered by the Board before admission to membership.

### *Unlimited number of Members*

- 10.2 The Association shall consist of an unlimited number of Members.

### *Classes of Membership*

- 10.3 There shall be two (2) classes of membership, Voting Members and Affiliates.

### *Membership Categories*

- 10.4 A Person may be admitted to membership of the Association as a Master Builders Member, Honorary Life Member, Provisional Member, Associate Member, Retired Member or Student Member.

### *Master Builders Members*

- 10.5 Master Builders Members shall be Employers who operate as Builders, Contractors, Project and/or Construction Managers, Sub-Contractors, Suppliers and other Employers engaged in any capacity in the Industry who are eligible for membership of one (1) of the Sector Groups referred to in Rule 10.6.
- 10.6 Subject to Rule 10.7, Master Builders Members shall elect to hold membership in one (1) of the following industry Sector Groups:
- (a) **General Contracting Sector Group** which shall represent persons who operate substantially as principal contractors for the construction of buildings for use other than as a dwelling;
  - (b) **Housing Sector Group** which shall represent persons engaged in the construction of houses and other buildings for use principally as dwellings;

- (c) **Specialist Contractor Sector Group** which shall represent persons who operate principally as contractors undertaking any one or more distinct trade or speciality components or elements of buildings or engineering works but not the construction of whole buildings or engineering works;
  - (d) **Materials Manufacturing and Supply Sector Group** which shall represent persons engaged in the manufacture or supply of building materials or products which are or may be used in the Building, Construction and Housing Industry;
  - (e) **Housing Sub-Contractor Sector Group** which shall represent persons engaged as Sub-Contractors in the construction of houses and other buildings for use principally as a dwelling;
  - (f) **Regional Sector Group** which shall represent persons engaged wholly or substantially in a Regional Area, in one or more of the sectors described in paragraphs (a) to (e) above.
- 10.7 Master Builders Members who are eligible for membership of the Regional Sector Group may elect to hold membership in either the Regional Sector Group or another Sector Group in respect of which they meet all relevant requirements, but not both.

#### ***Honorary Life Members***

- 10.8 Honorary Life Members shall be those individuals upon whom the Board decides to confer life membership in recognition of exceptional services rendered to the Association or to the Industry.
- 10.9 If the individual is the Authorised Representative of a Member, then such individual shall automatically be accorded membership as an Honorary Life Member in the Affiliate Membership Class in their own right. Their status as an Authorised Representative of a Member will remain unaffected.
- 10.10 Honorary Life Members shall not be entitled to vote in their capacity as an Honorary Life Member, but will otherwise have all the rights and privileges of Master Builders Members without payment of any fee, levy or subscription as an individual. Any partnership or body corporate for which the Honorary Life Member is a representative of will not be exempt from the payment of fees, levies or subscriptions. Honorary Life Members shall not be eligible to hold any office in the Association and shall not have voting rights in relation to any matter.

#### ***Provisional Members***

- 10.11 Provisional Members shall be any Persons, who are engaged in or associated with the Industry of the Association, who make an application as a Master Builders Member and whose activities are such that they are not yet eligible to be Master Builders Members.
- 10.12 Provisional Members shall only be granted membership for a period of no more than twenty-four (24) months after which a decision as to their eligibility to become a Master Builders Member shall be decided.
- 10.13 Provisional Members shall not be eligible to hold any office within the Association and shall not have voting rights in relation to any matter.

#### ***Associate Members***

- 10.14 Associate Members shall be any Persons, who are engaged in or associated with the Industry of the Association, but whose activities are such that they are not eligible to be Voting Members.
- 10.15 Associate Members shall not be eligible to hold any office within the Association and shall not have voting rights in relation to any matter.

***Honorary Members and Life Members***

10.16 All Honorary Members and Life Members of the Association as at the date of adoption of these Rules will automatically become Honorary Life Members of the Association on the basis detailed in Rule 10.10 above, and the categories of Honorary Member and Life Member will cease to exist.

***Retired Members***

10.17 Retired Members shall be ex-Master Builders Members who are no longer engaged in the Industry.

10.18 Retired Members shall be entitled to receive publications of the Association and to attend and participate in social and sporting activities of the Association. Retired Members shall not be eligible to hold any office in the Association and shall not have voting rights in relation to any matter.

***Student Members***

10.19 Student Members shall include trainees and apprentices whose course of training is sufficiently connected with a skill, trade or craft exercised in the Industry.

10.20 Student Members shall not be eligible to hold any office in the Association and shall not have voting rights in relation to any matter.

***Display of Membership***

10.21 Members shall be entitled to display their membership in the Association but must state their correct category of membership in such display.

***Application for Membership***

10.22 Membership is open to any person who:

- (a) is eligible for admission to the category of membership that they seek;
- (b) is not of general bad character;
- (c) completes, signs and lodges an Application for Membership and lodges it with the Chief Executive Officer of the Association, together with such other supporting information as may be required by the Board in order to evidence that they meet the requirements of these Rules in relation to the class of membership applied for;
- (d) pays the Entrance Fee and Membership Fee, if any, which has been prescribed by the Board to be paid at the time of lodging the Application for Membership; and
- (e) is accepted to membership by the Board.

***How Application for Membership must be dealt with***

10.23 In respect of each application for membership duly made in accordance with these Rules:

- (a) the Chief Executive Officer must provide the Application for Membership to the Board promptly after receipt of the application;
- (b) the Board or its duly authorised delegate must consider the Application for Membership promptly;
- (c) after the Board or its duly authorised delegate considers the Application for Membership, the Board must determine whether to accept or reject the application;

- (d) if the Application for Membership is accepted, the applicant must be admitted forthwith as a Member and the Chief Executive Officer must:
  - (i) notify the applicant in writing of the admission to membership and the class and category, if any, of that membership; and
  - (ii) issue a receipt for the Membership Fee paid by the Member; and
  - (iii) notify the applicant in writing of their financial obligations;
  - (iv) notify the applicant in writing of the circumstances and manner in which they may resign from membership; and
  - (v) cause the required details to be entered in the Register of Members;
- (e) if the Application for Membership is rejected due to the applicant not meeting the membership criteria, or is regarded as being of general bad character:
  - (i) the Chief Executive Officer must notify the applicant in writing of the rejection of the application; and
  - (ii) the Chief Executive Officer must refund in full the Membership Fee paid with the application.

***Members' obligations and rights***

10.24 The Members agree to be bound by the provisions of these Rules and the Code of Ethics.

10.25 For so long as a Member abides by the provisions of these Rules, the Member will enjoy the rights and privileges of their category and class of membership under the Act, these Rules and the By-Laws.

***Membership fees***

10.26 Each Member must pay the Entrance Fee and Membership Fee at the time or times and in the manner prescribed by the Board.

10.27 For the purpose of calculating the Entrance Fee and Membership Fee payable by a Member, a Member shall include the holding company of a corporation and all corporations that are subsidiaries of the holding company including trustee companies, unit trusts and discretionary trusts.

10.28 If a Member's Membership Fee or any part of it remains unpaid on the day following the due date for payment, the Member will cease to be a Financial Member, and the Board may give the Member a notice of default:

- (a) requiring the Member to pay the unpaid Membership Fee within three (3) months; and
- (b) informing the Member that their rights to receive services provided by the Association will be suspended pending payment; and
- (c) informing the Member that their other rights as a Member (under these Rules or otherwise) may be suspended (including the right to vote, if applicable) and they may be removed from membership if the Membership Fee remains unpaid within the time specified in the notice.

10.29 If a Member's Membership Fee or any part of it remains unpaid after the time specified in a notice given to the Member under Rule 10.28, the Board may suspend the Member's rights as a Member (under these Rules or otherwise) until such time as the Member has paid all arrears of Membership Fees and may exercise its rights of termination under Rule 10.38.

10.30 A Member who resigns or is removed from Membership or otherwise ceases to be a Member is not entitled to any refund of any Entrance Fee or Membership Fee paid by that Member.

***Other fees for services***

- 10.31 If a Member requires the Association to provide any specific and specialised service outside the scope of services provided to the category and class of membership that the Member holds, the fee for such service will become due and payable by the Member according to the contractual provisions entered into for the provision of any specific and specialised service provided to the Member.

***Levies***

- 10.32 On the recommendation of the Board, the MBV Electoral Council may impose such levies or other contributions upon Members as are deemed advisable for the purpose of meeting any special expenditure by the Association on account of any legal proceedings, trade disputes, or other claims on expenditure outside of the ordinary working expenses. Any levy must not exceed 50% of the Member's subscription in that year in any year. Such levies or contributions shall be due and payable within thirty (30) days of notification to Members of the decision to impose the same and such levies or contributions may be recovered in the same manner as these Rules provides for the recovery of Membership Fees.

***Legal Assistance***

- 10.33 No Member shall be entitled to legal assistance from the Association or assistance towards the expenses of same unless the Board determines, in its discretion, that legal assistance shall be afforded to a Member. Any such assistance under this Rule, legal or otherwise, shall not be available to any Member whose difficulties are caused by departure from Association policy, advice, or use of a form of contract which has not been approved by the Board.

***Resignation from membership***

- 10.34 A Member may resign from membership by giving written notice to the Chief Executive Officer or otherwise in accordance with the Act.
- 10.35 A Member's resignation takes effect at the time the notice is given to the Chief Executive Officer or such later date as may be specified in the notice.
- 10.36 Subject to section 178 of the Act, a Member's liability for any fees, subscriptions or other monies in arrears at the date of resignation continues until discharged by payment. Such monies 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.
- 10.37 On and from the day on which the resignation takes effect, the former Member must not use or display any site boards, membership certificate, stationery, advertising materials or other items which bear the name or logo of the Association which may tend to lead a person to believe that the former Member remains a Member of the Association.

***Removal from membership***

- 10.38 Subject to Rule 10.39, if a Member:
- (a) wilfully or negligently fails to comply with any of the provisions of these Rules and/or the Code of Ethics, which will be made readily available to the public; and/or
  - (b) wilfully fails to comply with a resolution of the Board; and/or
  - (c) fails to comply with a notice of default issued under Rule 10.28,
- the Member's membership may be terminated by the Board at a Board meeting duly convened and held by ordinary resolution of the Board.
- 10.39 A Member who has contravened Rules 10.38(a) to (c) may only have their membership terminated if:



- (a) the Board has first given at least fourteen (14) days written notice to the Member which:
  - (i) states the intention to terminate the Member’s membership;
  - (ii) sets out the grounds of the intended termination;
  - (iii) invites the Member to provide to the Board any written representations which the Member wishes to be put to the Board meeting;
  - (iv) specifies the time by which such written representations must be received;
- (b) the Board is provided with a copy of the Member’s written representations (unless the written representations were not provided by the Member in time to be included, in which case the written representations have, if required by the Member, been read out at the meeting);
- (c) whether or not the Member has provided written representations, the Member has been given a full and fair opportunity to address the Board at its meeting; and
- (d) an ordinary resolution is passed by the Board, confirming the removal of the Member’s membership.

10.40 If the Board does not pass an ordinary resolution to remove the Member’s membership, that Member’s membership remains unaffected.

***Other cessation of membership***

10.41 A Member ceases to be a Member immediately where the Member is no longer eligible to be a Member, and the Chief Executive Officer, after making appropriate enquiries and/or upon receipt of satisfactory evidence, will remove such Member from the Register of Members and advise any such Member. Removal of a Member may be made in circumstances where the Member:

- (a) fails to pay the Membership Fee, subject to the requirements of Rule 10.28 and Rule 10.29 above;
- (b) is an incorporated body, and that incorporated body is dissolved;
- (c) dies;
- (d) becomes prohibited from being a Member by reason of the Act, any order made under the Act or otherwise at law.

**11 – REGISTERS**

***Register of Members***

11.1 A Register of Members must be kept in accordance with the Act, and relevant details are to be lodged with the Commissioner in accordance with the Act.

11.2 The following details must be entered and kept current in the Register of Members in respect of each Member:

- (a) the Member’s full name, business address, residential address, postal address, telephone number and e-mail address;
- (b) the date of admission to and cessation of membership;
- (c) the class of membership;
- (d) the category, if any, of membership; and
- (e) such other information as the Board requires.

## 12 – GENERAL MEETINGS

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- 11.3 Each Member is responsible for notifying the Chief Executive Officer of any change in that Member's name, residential address, postal address, telephone number or e-mail address and/or updating the details noted in the Register of Members (by updating an electronic database if one is available).

### *Register of Officers*

- 11.4 A Register of Officers must be kept in accordance with the Act and lodged with any relevant regulators once each year.
- 11.5 The following details must be entered and kept current in the Register of Officers in respect of each individual who held Office during the whole or part of the year for which the register is kept:
- (a) the individual's full name, residential address, postal address, telephone number and e-mail address;
  - (b) each office the individual holds or held;
  - (c) the day the individual was elected or appointed to each office; and
  - (d) if an individual ceased or ceases to hold an office, the day the office holding ceased or ceases.
- 11.6 Each Officer is responsible for notifying the Chief Executive Officer of any change in that Officer's name, residential address, postal address, telephone number or e-mail address and/or updating the details noted in the Register of Officers (by updating an electronic database if one is available).

## 12 – GENERAL MEETINGS

### *Annual General Meetings*

- 12.1 The Annual General Meeting of the Association shall take place within five (5) months from the end of the Association's financial year, unless the Board determines that it is in the best interests of the Association to hold the Annual General Meeting on another date. If that occurs, then the Annual General Meeting shall take place as near to that date as the Board determines.
- 12.2 At the Annual General Meeting, no business may be transacted other than the following:
- (a) the receipt and consideration of the accounts;
  - (b) reports of the Board;
  - (c) auditors' report;
  - (d) any other business which the Act or the Corporations Act requires to be transacted at an Annual General Meeting;
  - (e) the President's report on the Association's activities during the preceding year;
  - (f) notification of those elected to the MBV Electoral Council;
  - (g) notification of those elected to the Board;
  - (h) confirmation of the appointment of Officers to fill any casual vacancies, as required under the Act; and
  - (i) items of business submitted for consideration by a Member which the Board has approved and of which members have been given notice under Rule 12.9.
- 12.3 Notice of an Annual General Meeting must be given in accordance with Rules 12.9 and 12.10.

***Special General Meetings***

- 12.4 Special General Meeting of the Members of the Association shall be called:
- (a) by the Chief Executive Officer by virtue of a resolution of the Board;
  - (b) by the Chief Executive Officer on receipt of a written request signed by at least fifteen (15) Voting Members or 4% of Voting Members, whichever is the lesser, duly signed by each of the Voting Members requesting the meeting and clearly setting forth the subject to be discussed at such Special General Meeting;
  - (c) as otherwise required under the Corporations Act or the Act.
- 12.5 A Special General Meeting shall deal only with such special business for which it has been called.
- 12.6 Notice of a Special General Meeting must be given in accordance with Rules 12.9 and 12.10.

***Calling of general meetings***

- 12.7 General meetings of the Association may be called and held at the times and places and in the manner determined by the Board. For the avoidance of doubt, this includes meetings held by electronic means.
- 12.8 The Association must provide reasonable means by which Members have an adequate opportunity to raise with the Board concerns about the governance of the Association.

***Notice of general meetings***

- 12.9 Notice of every general meeting must be given to every Member, Director and the auditor for the time being of the Association. No other person is entitled to receive notices of general meetings.
- 12.10 Notice of a general meeting:
- (a) must be given not less than twenty-eight (28) days prior to the meeting; and
  - (b) must be given directly to each member by mail or by electronic mail; and
  - (c) must specify:
    - (i) the place, the date and the time of the meeting;
    - (ii) if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this;
    - (iii) the general nature of the business to be transacted;
    - (iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and
    - (v) any other matters required by the Act.
  - (d) in addition to (a) and (b), may also be given via newsletters, magazines, by advertisement in one (1) daily newspaper circulated generally throughout the State of Victoria or published on the Association's website home page.
- 12.11 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

***Business at general meetings***

- 12.12 Except as permitted by the Act or with the approval of the Board, no person may move at any general meeting any business of which notice has not been given under Rule 12.10.

- 12.13 No subject upon which a decision has been arrived at shall be reintroduced within three (3) calendar months immediately following such decision, unless circumstances have occurred which render such earlier decisions contrary to the interests of the Association and its objects.

***Quorum at general meetings***

- 12.14 No business may be transacted at a general meeting unless a quorum of Voting Members is present when the meeting proceeds to business.
- 12.15 A quorum for the purposes of all general meetings is fifteen (15) Voting Members.
- 12.16 For the purpose of calculation of a quorum, Voting Members must be regarded as present whether present personally or by proxy.
- 12.17 If a quorum is not present within thirty (30) minutes from the time appointed for the meeting or a longer period allowed by the Chairperson:
- (a) if the meeting was called or requisitioned by Voting Members, it must be dissolved; or
  - (b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the Board.
- 12.18 Notwithstanding any other provision of these Rules, if a general meeting is adjourned under Sub-Rule 12.17(b):
- a) not less than five (5) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting;
  - b) a quorum for the purpose of the adjourned meeting is the same as for any other general meeting; and
  - c) if a quorum is not present within thirty (30) minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

***Attendance at general meetings***

- 12.19 A person, whether a Member or not, who is invited or requested by the Board to attend a general meeting, is entitled to attend that general meeting.

***Adjournment of general meetings***

- 12.20 The Chairperson of any general meeting at which a quorum is present may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 12.21 The only business that may be transacted at any adjourned general meeting is the business left unfinished at the meeting from which the adjournment took place.
- 12.22 When a general meeting is adjourned under Rule 12.20 for thirty (30) days or more, notice of the adjourned meeting must be given in the same manner as in the case of an original meeting.
- 12.23 When a general meeting is adjourned under Rule 12.20 for less than thirty (30) days, it is not necessary to give a further notice of the adjourned meeting.

***Cancellation of general meetings***

- 12.24 The Board may cancel or postpone any general meeting (other than a meeting which has been called or requisitioned by Voting Members) at any time prior to the date on which it is to be held on the provision of twenty-four (24) hours' notice.
- 12.25 If a general meeting has been cancelled or postponed, notice of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

***Chairperson of general meetings***

- 12.26 The President is entitled to chair every general meeting.
- 12.27 The Directors present at a general meeting must elect the Deputy President to chair the meeting if any of the following apply:
- (a) there is no President;
  - (b) the President is not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
  - (c) the President is not willing to act.
- 12.28 The Voting Members present at a general meeting must elect one (1) of the Voting Members present to chair the meeting if there is no Deputy President or the Deputy President is not willing to act.
- 12.29 Except as provided by the Act, the order of business and general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the Chairperson, whose decision is final.
- 12.30 The Chairperson of a general meeting may, in their discretion, refuse admission to, or expel from, the meeting any person:
- (a) using a recording device;
  - (b) in possession of a placard or banner;
  - (c) in possession of an object considered by the Chairperson to be dangerous, offensive or liable to cause disruption;
  - (d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
  - (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (f) whose conduct, in the reasonable opinion of the Chairperson, is inappropriate; or
  - (g) who is not a Member, Director or auditor of the Association.

**13 – VOTING AT GENERAL MEETINGS**

***Voting Rules***

- 13.1 At all meetings of the Association, the Authorised Representative of a Master Builders Member, or an individual Master Builders Member, shall be entitled to one (1) vote per Membership Fee paid by that Voting Member.
- 13.2 At all meetings of the Association, Voting Members may appoint in writing, a person to vote by proxy, on any specific matter on the agenda.
- 13.3 The Chairperson of a general meeting is not entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.

***Resolutions Binding***

- 13.4 All resolutions, except those resolutions referred to in Rule 13.5 passed or adopted at a general meeting of the Association, shall be conclusive and binding on all Members and on the MBV Electoral Council, Board, Officers and staff of the Association.
- 13.5 Any resolution passed or adopted at a general meeting of the Association which affects the way in which a Member manages its industrial relations shall be advisory only and not binding on Members.

***Show of hands***

- 13.6 At a general meeting, a resolution put to the vote of the meeting must be decided by a majority vote of the Members present or represented and entitled to vote at the meeting on a show of hands, unless a poll is demanded in accordance with Rule 13.9. If the votes are equal, the question is decided in the negative.
- 13.7 For the avoidance of doubt, on a show of hands a Voting Member may exercise any proxy vote they hold in addition to their own vote.
- 13.8 If a poll is not duly demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

***Poll***

- 13.9 A poll may be demanded in respect of a resolution at a general meeting by:
- (a) at least five (5) Voting Members entitled to vote on the resolution; or
  - (b) Voting Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (c) the Chairperson.
- 13.10 A poll may be demanded in respect of a resolution at a general meeting:
- (a) before the vote on that resolution is taken; or
  - (b) before the voting result on a show of hands is declared.
- 13.11 Every Voting Member present in person or by proxy has
- (a) the right to join in the demand for a poll; and
  - (b) one (1) vote in the poll per Membership Fee paid.
- 13.12 The demand for a poll may be withdrawn.
- 13.13 If a poll is duly demanded, it must be:
- (a) secret;
  - (b) taken in the manner directed by the Chairperson;
  - (c) on a question of adjournment, taken immediately;
  - (d) on any other question, taken either at once or after an interval or adjournment or otherwise as directed by the Chairperson and does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.
- 13.14 In the case of any dispute as to the admission or rejection of a vote, the Chairperson's determination in respect of the dispute is final.
- 13.15 The result of the poll is the resolution that was adopted at the meeting at which the poll is demanded.

***Postal ballot***

- 13.16 Notwithstanding any other provision of these Rules, to the extent permitted by law, a resolution of the Voting Members decided by postal ballot conducted in accordance with these Rules is as valid and effective as if it had been passed at a general meeting duly called and constituted.
- 13.17 Without limiting the purposes for which the Board may conduct a postal ballot amongst the Voting Members, a postal ballot must be held for the election of the MBV Electoral Council.

13.18 All postal ballots must be held in such a manner as to provide a reasonable opportunity for the Voting Members to cast a vote and otherwise in the manner prescribed from time to time by the Board.

13.19 A postal ballot may be held by any means provided under the Act.

***Proxies***

13.20 A Voting Member at a general meeting may appoint one (1) Voting Member as their proxy, to attend and vote in their place at a general meeting.

13.21 The proxy must be appointed in writing, in the form from time to time required by the Board and the Corporations Act, signed by the Voting Member appointing the proxy.

13.22 A person attending a general meeting as proxy has all the rights and powers of the relevant Voting Member, except where expressly stated to the contrary in:

(a) the document appointing the proxy; or

(b) these Rules.

13.23 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

13.24 A document appointing a proxy is valid at any adjournment of a meeting to which the proxy relates, unless otherwise specified in the document.

13.25 A document appointing a proxy may appoint the proxy for a period of up to one (1) year, for all or stipulated general meetings during that period (standing proxy).

13.26 A document appointing a proxy (including a standing proxy) is invalid unless the document appointing the proxy:

(a) is received by the proxy holder at least forty-eight (48) hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote;

(b) is received by the Chairperson at least forty-eight (48) hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote; and

(c) appoints a specific individual as the proxy and specifies the manner in which the proxy holder is to vote.

13.27 A vote made under a proxy is valid despite any of the following facts, unless the Association receives written notice of the fact before the commencement of the meeting at which the vote is cast that the:

(a) Voting Member has died; or

(b) proxy or authority under which the proxy was signed has been revoked.

13.28 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

**14 – MEMBERS' AUTHORISED REPRESENTATIVES**

14.1 Members that are not natural persons must appoint an individual as an Authorised Representative to exercise all or any of the powers of the Member under these Rules or the Act or otherwise at law.

## 15 – CHANGE OF STATUS OF MEMBER

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- 14.2 An application must be forwarded to the Chief Executive Officer seeking the appointment of such Authorised Representative. An individual nominated shall be a director, member, or executive member of the company, firm, partnership or body which they are to represent as the case may be. The Authorised Representative must not be of general bad character.
- 14.3 The appointment of an Authorised Representative may be a standing one.
- 14.4 The Authorised Representative may exercise, on the Voting Member's behalf, all of the powers that the Voting Member could exercise at a meeting or in voting on a resolution.
- 14.5 Authorised Representatives of Members appointed under this Rule shall be subject to the same disciplinary procedures as Members. The Board will have the power to determine that an individual is not eligible to be an Authorised Representative of a Member.
- 14.6 The individuals who, at the date of adoption of these Rules appear in the Register of Members as Authorised Representatives, shall be deemed to be Authorised Representatives of the Members that they represent.
- 14.7 The individuals who are nominated as Authorised Representatives by Employers applying for membership during the period between the approval of these Rules by the Fair Work Commission and the adoption of these Rules by Members, will be deemed to be Authorised Representatives of the Members that they represent on the approval of these Rules by the Fair Work Commission.
- 14.8 The person nominated and approved as the Authorised Representative of an organisation may be removed by that organisation by notice given in writing and shall substitute another individual as its Authorised Representative.
- 14.9 Nothing in these Rules shall be deemed or construed to confer upon any person appointed as an Authorised Representative any personal rights or authority or benefits of membership of the Association if they are also trading as an individual. In those circumstances, an application for personal membership should be made.
- 14.10 A Member may only have one (1) individual as its Authorised Representative at any time.

## 15 – CHANGE OF STATUS OF MEMBER

- 15.1 A Member shall advise the Chief Executive Officer in writing of any change of the Member's business status.
- 15.2 Within fourteen (14) days after:
- (a) the business, or part of the business, of a Member is assigned or transferred to a person who is not a Member of the Association; or
  - (b) such a person succeeds to the business, or part of the business, of a Member,
- the Member shall notify the Chief Executive Officer in writing of the assignment, transfer or succession.
- 15.3 Notice of any such change of status shall contain all such information as would have been required had the Member applied for admission to Membership at the time such notice was given to the Association.
- 15.4 Upon becoming aware of any change of status of a Member or at such other time as may be required to verify the status of a Member as recorded, the Chief Executive Officer may request a Member to supply up to date information.



***Duties owed by Directors***

16.1 The Directors are subject to and must comply with duties owed at law, including but not limited to the duties prescribed by the Act, the Corporations Act and these Rules.

***Number of Directors***

16.2 Subject to the Transitional Board provisions in Rule 20, all Board positions shall be filled at each election (excluding by-elections). The number of Directors must not be less than six (6) and not more than nine (9) individuals elected from the members of the MBV Electoral Council.

16.3 If the number of Directors is reduced below the minimum number prescribed by these Rules, the continuing Director or Directors may act only:

- (a) in the event of offices being vacated, to appoint individuals subject to the casual vacancy requirements;
- (b) in the event of office roles not being filled due to insufficient nominations in an election process, to require the MBV Electoral Council to arrange for the election of additional Directors to the minimum number prescribed by these Rules; or
- (c) to convene a general meeting.

16.4 The Board must include:

- (a) the President;
- (b) the Deputy President;
- (c) the Chairperson of the General Contracting Sector Committee;
- (d) the Chairperson of the Housing Sector Committee;
- (e) the Chairperson of the Specialist Contractor Sector Committee;
- (f) the Chairperson of the Materials Manufacturing and Supply Sector Committee;
- (g) the Chairperson of the Regional Sector Committee;
- (h) the Chairperson of the Housing Sub-Contractor Sector Committee; and
- (i) one (1) General Board Member,

and election of those members will be undertaken sequentially in the above order provided that the Returning Officer may elect to carry out the election of each Chairperson contemporaneously.

***Invitees of the Board***

16.5 The Board may in its absolute discretion invite any persons to attend and speak at Board meetings. Such persons are not Directors, are not counted in the quorum of Directors and are not entitled to vote at Board meetings.

***Director Eligibility***

16.6 The following Eligibility Criteria must be satisfied before an individual is eligible for election as a Director:

- (a) the individual is a Voting Member or Voting Member's Authorised Representative;
- (b) the individual is elected to the MBV Electoral Council;
- (c) the composition requirements under Rule 16.4 are satisfied;

- (d) the individual is not an employee of the Association or of any related entity employing staff of the Association;
- (e) one of the following applies:
  - (i) the individual has served less than three (3) consecutive terms of office as a Director; or
  - (ii) if an individual has already served the maximum number of consecutive terms of office, at least one (1) term of office has elapsed since their last appointment (making an individual eligible to serve as a Director for a further three (3) consecutive terms of office as a Director);
- (f) the individual is not prohibited under these Rules or by law (including, without limitation, the Act, the Corporations Act and the *National Vocational Education and Training Regulator Act 2011* (Cth) and the associated Fit and Proper Person Requirements 2011 (Cth)) from being appointed to Office of the Association; and
- (g) the individual is a member of the relevant Sector Group.

16.7 A Director must notify the Board if any circumstances arise which have the potential to impact upon their eligibility to continue as a Director.

#### ***Election of Directors***

16.8 Directors are elected by and from the MBV Electoral Council as follows:

- (a) any Voting Member elected to the MBV Electoral Council may nominate to be elected as a Director;
- (b) the Returning Officer must call for nominations from the MBV Electoral Council at least fourteen (14) days before the Annual General Meeting;
- (c) the nomination must be:
  - (i) in the form prescribed by the Board;
  - (ii) signed by the nominee; andgiven to the Returning Officer in the manner and within the time prescribed by the Returning Officer;
- (d) if the number of eligible candidates who nominate for election is less than or equal to the number of vacancies, those candidates are declared elected as Directors to take office from the close of the MBV Electoral Council meeting immediately following the Annual General Meeting;
- (e) if the number of eligible candidates who nominate for election is less than the number of vacancies, and/or no nominations are received, then the Returning Officer shall declare elected those candidates who have nominated and shall call for further nominations at the MBV Electoral Council meeting. If the number of eligible candidates is equal to the number of vacancies for which nominations have been called at the MBV Electoral Council meeting, those candidates will be declared elected as Directors from the close of the meeting;
- (f) if, however, the number of eligible nominations received at any close of nominations is more than the number of vacancies, then the MBV Electoral Council must hold a secret ballot in accordance with the process set out in (g) below;
- (g) if the number of candidates who are eligible for election in accordance with the Eligibility Criteria is more than the number of vacancies:
  - (i) a list of the names of all eligible candidates who have nominated must be provided

- to all members of the MBV Electoral Council at its meeting;
- (ii) an MBV Electoral Council member may appoint another MBV Electoral Council member as their proxy if unable to vote in person;
- (iii) the method of voting and deciding the result of the ballot shall be a first past the post system;
- (iv) in the event of an equality of votes, the matter must be determined by the drawing of lots;
- (v) an individual elected shall not be eligible to be elected in more than one (1) capacity, and if elected as President or Deputy President, the Returning Officer will remove the candidate from the election for other positions, with the higher office prevailing;
- (vi) each eligible candidate may appoint one (1) scrutineer who is not themselves an eligible candidate to carry out the duties and functions set out in Rule 32;
- (vii) each member of the MBV Electoral Council who is eligible to vote may vote for such number of candidates as there are vacant positions of Directors;
- (h) at the meeting, the Returning Officer must announce which individuals have been elected as Directors under this Rule.

***Committee role***

16.9 Nothing prohibits an individual who is elected as a Director from being appointed as a Committee member.

***Term***

16.10 Each Director will serve for a term of three (3) years commencing from the close of the MBV Electoral Council meeting at which the Director was elected (subject always to the provisions of Rule 20.3), and concluding at the declaration of the scheduled election at the end of that term. However, a person is eligible for re-election as a Director if not disqualified by these Rules or the Act from being re-elected.

16.11 The maximum term that a director may serve as a Director is three (3) consecutive terms of three (3) years duration each.

***Resignation from office***

16.12 A Director may resign from office by giving written notice to the President and/or Chief Executive Officer.

16.13 A Director's resignation takes effect at the time the notice is given to the President and/or Chief Executive Officer or such later date as may be specified in the notice.

16.14 Notice of a Director's resignation must be provided to the President in accordance to Rule 51. In the case of the President resigning, the written notice of the resignation must be provided to the Company Secretary.

***Removal from office***

16.15 The MBV Electoral Council may, by ordinary resolution, remove any Director from office, in circumstances where:

- (a) the Director ceases to meet the Eligibility Criteria during their term of office;
- (b) has been found guilty by the MBV Electoral Council of:
  - (i) misappropriation of the organisation's funds; or
  - (ii) a substantial contravention of the Rules; or

- (iii) gross misbehaviour or gross neglect of duty in the office;
  - (c) has a material personal interest that is regulated by the Act or the Corporations Act about which the Director has wilfully failed to comply and such failure amounts to a substantial breach of the Rules and/or gross misbehaviour or gross neglect of duty.
- 16.16 At any meeting of the MBV Electoral Council at which it is proposed to remove a Director under Rule 16.15, the Director must be given the opportunity to present their case, orally or in writing or by both of those means.
- 16.17 A decision made by the MBV Electoral Council under Rule 16.15 is binding unless the Director requests in writing to the President within three (3) days, that their removal be put to a general meeting of members. If the general meeting does not pass an ordinary resolution confirming the removal of the Director, the MBV Electoral Council resolution is of no effect.
- 16.18 A Director who is removed under Rule 16.15 retains office until the dissolution or adjournment of the meeting at which the Director is removed.
- 16.19 Subject to the requirements of the Act and the provisions set out in Rule 16.17 and Rules 16.22 to 16.25, the MBV Electoral Council may, by ordinary resolution, appoint an individual to take the place of the Director who has been removed under Rule 16.15.
- 16.20 The term of appointment of a Director appointed under Rule 16.19 continues until the meeting at which the individual who was removed from office would have been required to retire pursuant to these Rules if they had not been removed.

***Eligibility to hold office***

- 16.21 The office of a Director becomes vacant, subject to review by the MBV Electoral Council, if the Director:
- (a) becomes prohibited from being a director of the Association by reason of the Act, any order made under the Act or otherwise at law;
  - (b) ceases to be the Authorised Representative of the Member they were elected to represent;
  - (c) becomes an employee of the Association or any related entity employing staff of the Association;
  - (d) fails to pay any debt outstanding to the Association and that debt remains due and owing to the Association for a period exceeding thirty (30) days and the Chief Executive Officer has issued a further notice in writing to the Director advising that the debt is payable within thirty (30) days and if it has not been paid by the end of that thirty (30) day period then the Director's office will become vacant;
  - (e) fails to attend three (3) consecutive meetings without leave of absence from the Board (which would amount to a gross neglect of duty under Rule 16.15);
  - (f) the Director misses a total of five (5) meetings in any one (1) year without adequate reason given in writing to the Board (which would amount to a gross neglect of duty under Rule 16.15);
  - (g) the MBV Electoral Council resolves that the office of that Director be vacated under Rule 16.15.

***Casual vacancies***

- 16.22 Subject to Rule 16.24, if a casual vacancy arises in relation to a Director, the Board may appoint an individual who is eligible for appointment in accordance with the Eligibility Criteria as Director to fill the casual vacancy until the next meeting of the MBV Electoral Council. There is no requirement

## 18 – POWERS OF THE BOARD

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for a casual vacancy to be filled unless the minimum number of Directors required under these Rules is no longer met, or the vacancy is for the office of the President or the Deputy President.

- 16.23 Subject to Rule 16.24, the next meeting of the MBV Electoral Council must include the appointment of an individual to fill the vacancy. Any individual appointed under Rule 16.22 must be eligible to be a candidate in that election, if not, they will be disqualified by these Rules or the Act.
- 16.24 Notwithstanding anything to the contrary in these Rules, a casual vacancy may not be filled other than by election by the MBV Electoral Council, if the unexpired part of the term from the date on which the office becomes vacant is longer than the greater of:
- (a) one (1) year; or
  - (b) three-quarters ( $\frac{3}{4}$ ) of the term of office,
- which, whilst three (3) year terms remain, will require that a casual vacancy that arises within nine (9) months after the election of the office in question, be filled by calling for an election and in circumstances where a casual vacancy arises after nine (9) months from election of the office in question, the Board may appoint an eligible individual.
- 16.25 The term of appointment of a Director appointed or elected continues until the meeting at which the individual who vacated office early would have been required to retire pursuant to these Rules if they had not vacated office early.

## 17 – BOARD MAY APPOINT INDEPENDENT ADVISORS

- 17.1 The Board may appoint Independent Advisors, who must demonstrate that they support the objects of the Association, to assist the Board in carrying out their duties and functions.
- 17.2 Appointment of Independent Advisors must be made on the basis that appointees are of suitable character, appropriately qualified and sufficiently experienced.
- 17.3 An Independent Advisor:
- (a) need not be a Member of the Association;
  - (b) will not be an officer under the Act;
  - (c) has no voting power;
  - (d) will serve for a term to be agreed by a majority of the Board;
  - (e) may be removed on a majority vote of the Board, and will have no ground to appeal their removal by the Board.

## 18 – POWERS OF THE BOARD

- 18.1 The governance of the Association is the responsibility of the Board duly appointed under and in accordance with these Rules.
- 18.2 The Board may exercise all the powers of the Association which are not, by the Corporations Act, the Act or by these Rules, required to be exercised by the Association in general meetings.
- 18.3 The President must give notice of the existence or likelihood of industrial disputes in the way required by the Act.

- 18.4 If the Association holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board, Chief Executive Officer and/or their delegates may exercise any and all voting rights conferred by the membership, shares or interests in any manner it considers fit.

## 19 – BOARD MEETINGS

### *Convening of Board meetings*

- 19.1 Subject to the provisions of the Act, the Corporations Act and these Rules, the Board may meet for the dispatch of business and regulate its meetings as it thinks fit.
- 19.2 The Board must meet at least five (5) times in each financial year.
- 19.3 Any three (3) or more Directors may request the President and/or Chief Executive Officer to convene a Board meeting at any time and the President and/or Chief Executive Officer must comply with such request.

### *Notice of Board meetings*

- 19.4 Notice of each Board meeting requested under Rule 19 must be given to each Director at least three (3) days before the meeting or otherwise as determined by the Board, except all Directors may waive in writing the required period of notice for a particular meeting.
- 19.5 Notice of each Board meeting may be given to a Director by:
- (a) mail or delivery to the usual place of residence of the Director; or
  - (b) mail, delivery, facsimile transmission or e-mail or other technology to any other address, facsimile number or e-mail address or other contact details for use of other technology given by the Director to the Chief Executive Officer for that purpose (unless and until the Director informs the Chief Executive Officer that they may not be contacted at that other address, facsimile number or e-mail address).

### *Mode of Board meetings*

- 19.6 A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable time before the meeting.

### *Quorum at Board meetings*

- 19.7 A quorum for the purposes of a Board meeting is five (5) Directors.
- 19.8 If a quorum is not present within thirty (30) minutes from the time appointed for a Board meeting or a longer period allowed by the Chairperson:
- (a) the meeting must be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Chairperson may determine; and
  - (b) if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting lapses.

### *Voting at Board meetings*

- 19.9 Questions arising at a Board meeting must be decided by a majority vote of Directors present and voting. If the votes are equal, the question is decided in the negative.
- 19.10 The Chairperson does not have a second or casting vote at Board meetings.

### *Minutes*

19.11 The Board must cause minutes of all proceedings (except resolutions in writing treated as determinations of the Board) of meetings of the Board to be signed by the Chairperson of the meeting at which the proceedings took place, or by the Chairperson of the next succeeding meeting, PROVIDED ALWAYS that the minutes are entered within one (1) month after the relevant meeting is held, in books kept for the purpose.

***Resolution in writing (Circular Resolution)***

19.12 The Directors may pass a resolution in writing without holding a meeting if the following conditions are met:

- (a) all Directors who are entitled to vote on the resolution are provided with a copy of the resolution;
- (b) reasonable attempts have been made to contact all Directors to obtain their response;
- (c) at least 80% of all Directors (excluding Directors who have been given leave of absence) sign the document or documents or identical copies of it or them; and
- (d) a copy of any resolution passed in writing is provided to those Directors who did not respond.

19.13 A resolution in writing may consist of several documents in like form, including facsimile and email copies, each signed by one (1) or more Directors and the resolution takes effect on the latest date on which a Director affixes their signature.

19.14 For the purpose of this Rule, a resolution bearing an electronic copy of a signature is deemed to be signed.

19.15 The resolution will be valid and effectual as if it had been passed at a Board meeting duly convened and held.

## **20 – TRANSITIONAL BOARD**

***Appointment and composition of Transitional Board***

20.1 The Transitional Board are the individuals who sat on the Board at the date of adoption of these Rules, who will be appointed on an interim basis to carry out the role of the Board.

***Transitional provisions for Transitional Board***

20.2 The individuals on the Transitional Board will hold office until they are required to retire under this Rule.

20.3 The Transitional Board members must retire at the time that they would have been required to do so had these Rules not been adopted and notwithstanding the provisions of Rule 16.10, the term for each Director elected at the first elections following adoption of this Constitution will commence at the time the Transitional Board members must retire. This will be at the end of the MBV Electoral Council meeting following the Annual General Meeting in 2022.

20.4 Notwithstanding anything to the contrary, for so long as a Transitional Board member sits on the Transitional Board, that Transitional Board member is deemed to be elected until such time as they are required to resign under this Rule.

20.5 The President will not serve as the Immediate Past President after the adoption of these Rules.

## **21 – MBV ELECTORAL COUNCIL**

***MBV Electoral Council election***

- 21.1 All members of the MBV Electoral Council must be elected by Voting Members who are Financial Members by secret postal ballot via the Direct Voting System.
- 21.2 Despite anything else contained in these Rules, a person is eligible to vote in the ballot if they are, on Close of Roll Day, a Voting Member who is a Financial Member or an Authorised Representative of a Voting Member who is a Financial Member.
- 21.3 The successful candidates will be notified by email as soon as possible following the declaration of their election to the MBV Electoral Council and the Members will be notified at the Annual General Meeting.

***MBV Electoral Council roles and powers***

- 21.4 The MBV Electoral Council shall be a representative body of the Members, the powers of which shall be limited to those matters detailed in Rule 21.5 below.
- 21.5 The role of the MBV Electoral Council is to:
- (a) act as the Electoral Council under the Collegiate Voting System; and
  - (b) provide an arena for ongoing review and involvement of stakeholders through an annual information sharing forum at which it is provided with an update on the governance of the Association and the development of guidelines, processes, procedures and policies of the Association; and
  - (c) make decisions in relation to proposals to make, add to, amend rescind or otherwise alter the Rules of the Association in accordance with Rule 49 and Rule 50.
- 21.6 The MBV Electoral Council shall have the following powers:
- (d) to elect the Officers set out in Rule 16.4;
  - (e) to fill casual vacancies under Rule 16.23 and Rule 21.25(a), subject always to the requirements of the Act and the Corporations Act; and
  - (f) to share its views with the Board at the annual information sharing forum on issues set out in Rule 21.5(b) above.

***Composition of the MBV Electoral Council***

- 21.7 The number of MBV Electoral Council members shall be a minimum of thirty-six (36) and a maximum of forty-two (42) individuals. Any casual vacancies arising after the appointment of thirty-six (36) members need not be filled.
- 21.8 Members of each Sector Group may elect up to seven (7) members of their respective Sector Group (who are otherwise eligible for election in accordance with these Rules) to the MBV Electoral Council.
- 21.9 Following completion of the second stage of voting under the Collegiate Voting System, the MBV Electoral Council will include:
- (a) the President;
  - (b) the Deputy President;
  - (c) the Chairperson of the General Contracting Sector Committee;
  - (d) the Chairperson of the Housing Sector Committee;
  - (e) the Chairperson of the Specialist Contractor Sector Committee;
  - (f) the Chairperson of the Materials Manufacturing and Supply Sector Committee;



- (g) the Chairperson of the Regional Sector Committee;
- (h) the Chairperson of the Housing Sub-Contractor Committee;
- (i) up to one (1) General Board Member;
- (j) up to thirty-three (33) additional members who will also be Sector Committee members.

***Term***

- 21.10 Each MBV Electoral Council member will take office at the commencement of the MBV Electoral Council meeting immediately following the declaration of their election and will serve a term of three (3) years, subject to the timing of the relevant election declaration.
- 21.11 The maximum term that a MBV Electoral Council member may serve is three plus three plus three (3+3+3) year consecutive terms.

***Eligibility for election to MBV Electoral Council***

- 21.12 An individual is only eligible for election as a MBV Electoral Council member if:
- (a) they are a Voting Member or an Authorised Representative of a Voting Member;
  - (b) they are a Voting Member who is a Financial Member or an Authorised Representative of a Voting Member who is a Financial Member;
  - (c) they are not an employee of the Association or of any related entity employing staff of the Association; and
  - (d) starting from the time the individual was elected to the MBV Electoral Council:
    - (i) the individual has served less than three (3) consecutive terms of office as a MBV Electoral Council member; or
    - (ii) if an individual has already served the maximum number of consecutive terms of office, at least one (1) term of office has elapsed since their last appointment (making an individual eligible to serve as a MBV Electoral Council member for a further three (3) consecutive terms of office as a MBV Electoral Council member); and
  - (e) the individual is not prohibited under these Rules or by law from being appointed to Office of the Association.

***Chairperson of the MBV Electoral Council***

- 21.13 At the first meeting of the MBV Electoral Council immediately following the declaration of the results of the annual election only, the Company Secretary will be the Chairperson only until election of the Board.
- 21.14 Following election of the Board, the incoming President or, in their absence, a member of the MBV Electoral Council, shall preside as Chairperson at every meeting of the MBV Electoral Council.
- 21.15 If for any reason there is not a Chairperson present within fifteen (15) minutes of the time nominated for the MBV Electoral Council meeting to start, the MBV Electoral Council members who are present and entitled to vote at the meeting shall select one of their numbers to chair the meeting.

***Resignation from office***

- 21.16 A MBV Electoral Council member may resign from office by giving written notice to the Chairperson of the MBV Electoral Council and/or Chief Executive Officer.
- 21.17 A MBV Electoral Council member's resignation takes effect at the time the notice is given to the Chairperson of the MBV Electoral Council and/or Chief Executive Officer or such later date as may be specified in the notice.

***Removal from office***

- 21.18 The MBV Electoral Council may, by ordinary resolution, remove any MBV Electoral Council member from office, in circumstances where:
- (a) the MBV Electoral Council member ceases to meet the eligibility criteria set out in Rule 21.12; or
  - (b) has been found guilty by the MBV Electoral Council of:
    - (i) misappropriation of the organisation’s funds; or
    - (ii) a substantial contravention of the Rules; or
    - (iii) gross misbehaviour or gross neglect of duty in the office.
- 21.19 At any meeting of the MBV Electoral Council at which it is proposed to remove a MBV Electoral Council member under Rule 21.18, the MBV Electoral Council member must be given the opportunity to present their case, orally or in writing or by both of those means.
- 21.20 There is no right of appeal from any decision made by the MBV Electoral Council.
- 21.21 A MBV Electoral Council member who is removed under Rule 21.18, retains office until the dissolution or adjournment of the meeting at which the MBV Electoral Council member is removed.
- 21.22 Subject to the requirements of Rule 21.26 in relation to casual vacancies, the MBV Electoral Council may, by ordinary resolution, appoint an individual to take the place of the MBV Electoral Council member who has been removed under Rule 21.18. Replacement of an MBV Electoral Council member is not mandatory unless MBV Electoral Council membership falls below the minimum number of members prescribed by these Rules.
- 21.23 The term of appointment of a MBV Electoral Council member appointed under Rule 21.22 continues until the MBV Electoral Council meeting immediately following the Annual General Meeting at which the individual who was removed from office would have been required to retire pursuant to these Rules if they had not been removed.

***Vacation of office***

- 21.24 The office of a MBV Electoral Council member becomes vacant, subject to review by the MBV Electoral Council, if the MBV Electoral Council member:
- (a) becomes prohibited from holding office within the Association by reason of the Act or the Corporations Act or any order made under the Act, the Corporations Act or otherwise at law;
  - (b) [*intentionally left blank*]
  - (c) ceases to be the Member’s Authorised Representative of the Member they were elected to represent;
  - (d) becomes an employee of the Association or any related entity employing staff of the Association;
  - (e) fails to pay any debt outstanding to the Association and that debt remains due and owing to the Association for a period exceeding thirty (30) days, and the Chief Executive Officer has issued a further notice in writing to the MBV Electoral Council member advising that the debt is payable within thirty (30) days, and if it has not been paid by the end of that thirty (30) day period, then the MBV Electoral Council member’s office will become vacant;
  - (f) the MBV Electoral Council resolves that the office of that MBV Electoral Council member be vacated under Rule 21.18.

***Casual vacancies of MBV Electoral Council members***

- 21.25 Subject to Rule 21.26, if a casual vacancy arises in relation to a MBV Electoral Council member:
- (a) the MBV Electoral Council may appoint an individual to fill the casual vacancy until the next MBV Electoral Council election after their appointment provided that the individual is not disqualified from being appointed by law or by these Rules;
  - (b) their appointment as a MBV Electoral Council member shall be submitted to a vote of the Voting Members conducted by postal ballot in accordance with these Rules;
  - (c) the individual's appointment to fill the casual vacancy shall be deemed to be confirmed if supported by the Voting Members in the postal ballot; and
  - (d) that individual shall then be eligible for re-election provided that they are not otherwise disqualified by law or by these Rules.
- 21.26 Notwithstanding anything to the contrary in these Rules, a casual vacancy may not be filled other than by election by the Voting Members, if the unexpired part of the term from the date on which the office becomes vacant is longer than the greater of:
- (a) one (1) year; or
  - (b) three-quarters ( $\frac{3}{4}$ ) of the term of office,
- which, whilst three (3) year terms remain, will require that a casual vacancy that arises within nine (9) months from election of the office in question, to be filled by calling for an election by the Voting Members, and in circumstances where a casual vacancy arises after nine (9) months from election of the office in question, the MBV Electoral Council may appoint an eligible individual.
- 21.27 The eligible individual's appointment or election to the MBV Electoral Council shall commence from the close of the MBV Electoral Council Meeting at which they are elected. The eligible individual will serve the remainder of the term as if the office had not been vacated.

***Proceedings of MBV Electoral Council***

- 21.28 The MBV Electoral Council shall meet at least annually prior to the Annual General Meeting of the Association.
- 21.29 The Chairperson or any other fifteen (15) MBV Electoral Council members may request the Chief Executive Officer to convene a meeting of the MBV Electoral Council at any time and the Chief Executive Officer must comply with such request.
- 21.30 Notice of each meeting of the MBV Electoral Council must be given to each MBV Electoral Council members at least three (3) days before the meeting, or otherwise as determined by resolution of the MBV Electoral Council members, except in the case of a MBV Electoral Council member who is out of Australia or who has been given leave of absence from the MBV Electoral Council.
- 21.31 A MBV Electoral Council meeting may be called or held using any technology. The MBV Electoral Council members may otherwise regulate their meetings as they think fit.

***Quorum and voting at MBV Electoral Council meetings***

- 21.32 A quorum for the purposes of a meeting of the MBV Electoral Council is half plus one ( $\frac{1}{2}+1$ ) of the MBV Electoral Council as then constituted present either personally or by proxy.
- 21.33 Questions arising at a meeting of the MBV Electoral Council must be decided in the manner from time to time determined by the MBV Electoral Council, and in the absence of any such agreement, by a majority of votes of MBV Electoral Council cast by those present and voting (in person or by proxy).

***No casting vote of Chairperson***

21.34 The Chairperson has no casting vote at meetings of the MBV Electoral Council.

***Minutes***

21.35 The MBV Electoral Council must cause minutes of all proceedings (except resolutions in writing treated as determinations of the MBV Electoral Council) to be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting, PROVIDED ALWAYS they are entered within one (1) month after the relevant meeting is held, in books kept for the purpose.

***Resolution in writing***

21.36 The MBV Electoral Council may pass a resolution in writing without holding a meeting if the following conditions are met:

- (a) all MBV Electoral Council members who are entitled to vote on the resolution are provided with a copy of the resolution;
- (b) reasonable attempts have been made to contact all MBV Electoral Council members to obtain their response;
- (c) at least eighty (80%) of all MBV Electoral Council members (excluding MBV Electoral Council members who have been given leave of absence) sign the document or documents or identical copies of it or them; and
- (d) a copy of any resolution passed in writing is provided to those MBV Electoral Council members who did not respond.

21.37 A resolution in writing may consist of several documents in like form, including facsimile and email copies, each signed by one (1) or more MBV Electoral Council members and the resolution takes effect on the latest date on which a MBV Electoral Council member affixes their signature.

21.38 For the purpose of this Rule, a resolution bearing an electronic copy of a signature, or an email signifying endorsement, is deemed to be signed.

21.39 The resolution will be valid and effectual as if it had been passed at a MBV Electoral Council meeting duly convened and held.

**22 – TRANSITIONAL MBV ELECTORAL COUNCIL**

***Appointment and composition of MBV Electoral Council***

22.1 The individuals appointed to the MBV Electoral Council as at the date of adoption of these Rules shall carry out the role of the Transitional MBV Electoral Council on an interim basis.

***Transitional provisions for MBV Electoral Council***

22.2 The individuals on the Transitional MBV Electoral Council will hold office until they are required to retire under this Rule. The Transitional MBV Electoral Council members must retire at the time that they would have been required to do so had these Rules not been adopted.

22.3 Notwithstanding anything to the contrary, for so long as a Transitional MBV Electoral Council member sits on the Transitional MBV Electoral Council, that Transitional MBV Electoral Council member is deemed to be elected until such time as they are required to resign under this Rule.

***Existing Divisions***

23.1 No Divisions exist at the date of these Rules.

***New Divisions***

23.2 In accordance with the objects of the Association, the Board may create Divisions of the Association in such localities or on any other basis as it may from time to time in its absolute discretion determine.

23.3 At the same time as a Division is created, the Board shall define the boundaries of the locality for which such Division is created.

23.4 All members of a Division must be Members of the Association.

***Boundaries***

23.5 The Board may from time to time in its absolute discretion alter, amend, vary, and/or add to the boundaries of the locality of any Division.

***Division By-Laws***

23.6 The Board shall have the power to make By-Laws not inconsistent with these Rules and/or the Act and/or the Corporations Act covering the conduct of Divisions and may from time to time in its absolute discretion alter, amend or substitute such By-Laws.

**24 – DIRECT VOTING SYSTEM AS PART OF COLLEGIATE VOTING SYSTEM**

***Notice Requirements***

24.1 Notice calling for nominations for MBV Electoral Council positions shall be sent to each Voting Member by the Returning Officer of the Association and published in the Association's official journal and/or general newsletters circulated amongst its Members at least seventy (70) days prior to the date of the Annual General Meeting. Such notice must state that nominations have been called and the way a Voting Member or the Authorised Representative of a Voting Member of the organisation may nominate.

24.2 Nominations for MBV Electoral Council and positions shall open on a date at least sixty-eight (68) days prior to the date of the Annual General Meeting, shall be in writing, and signed by the nominee. Nominations shall be delivered to the Returning Officer at least fifty-four (54) days prior to the date of the Annual General Meeting, provided that the period during which nominations may be lodged is at least fourteen (14) days.

24.3 If only the required number of nominations is received for each Sector Group, the Returning Officer shall forthwith declare the individual or individuals so nominated elected unopposed to the office for which the individual or individuals were nominated.

24.4 In the event of insufficient nominations being received to meet the minimum size requirements, under these Rules for the MBV Electoral Council, another election must be held to fill the relevant MBV Electoral Council position or positions.

24.5 Notwithstanding anything to the contrary, only Financial Members within a Sector Group, may vote for their respective Sector Group representatives on the MBV Electoral Council.

***Postal Ballot Requirements***

24.6 In the event of there being more nominations for any position than the number required, a secret postal ballot shall be held for the Voting Members who are Financial Members of the Association and the following provisions shall apply:

- (a) the conduct of the election shall be in the hands of the Returning Officer;
- (b) the Returning Officer who finds a nomination to be defective, before rejecting the nomination, is to notify the individual concerned of the defect and where practicable give the individual the opportunity of remedying the defect within such period as is practicable, but must not be less than seven (7) days after the individual is notified;
- (c) the Returning Officer shall be supplied with a roll of Financial Members entitled to vote, containing the names and addresses of such Members. Should such an individual be absent from their address, they may notify the Returning Officer of an alternative address;
- (d) the Returning Officer shall have printed a sufficient number of ballot papers to ensure that every Financial Member entitled to vote is provided with a ballot paper and shall obtain a Certificate from the printer as to the number of ballot papers printed;
- (e) the ballot papers shall contain all the names of candidates nominated for positions in respect to which a ballot is required to be held and directions as to the manner in which the Financial Members entitled to vote shall record their vote and the date and time fixed for the return of ballot papers;
- (f) the Returning Officer shall at least thirty-nine (39) days prior to the date of the Annual General Meeting post to every Financial Member entitled to vote, a ballot paper together with an envelope for the return of such ballot paper shall be addressed to the Returning Officer;
- (g) the ballot papers when received by the Returning Officer shall be sealed and remain in the possession of the Returning Officer, and such ballot papers shall not be opened until after the closing time for the return of ballot papers and in the presence of any scrutineers who may have been appointed;
- (h) the Returning Officer shall notify each candidate for election of the date, time and place fixed for the counting of the ballot papers at least seven (7) days prior to the date;
- (i) the Ballot shall close at least twenty-eight (28) days after it opens, and before the scheduled time of the Annual General Meeting;
- (j) the Returning Officer shall mark the roll of Financial Members entitled to vote, so as to indicate each Financial Member entitled to vote to whom a ballot paper is posted. At the discretion of the Returning Officer, if any Financial Member entitled to vote indicates to the Returning Officer prior to the posting of the ballot, that the Financial Member entitled to vote will be unavailable to vote during the period of the ballot, the Returning Officer shall, as far as is practicable, allow the Financial Member entitled to vote to be permitted to cast a vote prior to the posting of the ballot papers, and shall mark the roll accordingly. Any ballot paper marked by such Financial Member entitled to vote shall be kept in a secure place by the Returning Officer.

24.7 Candidates will be provided equal opportunity to express their views to Financial Members entitled to vote of the Association in a statement that is:

- (a) given to each Financial Member entitled to vote with the ballot papers for the election; and
- (b) at no cost to the candidate; and
- (c) published in the same way as the notice calling for nominations; and
- (d) complies in all respects with any requirements for such statements published by the Board from time to time.

***Result, Method of Voting and Irregularities***

24.8 The method of voting and deciding the result of the ballot shall be a first past the post system.

- 24.9 The Returning Officer shall ensure, as far as practicable, that no irregularities occur in relation to an election. If an irregularity does occur, the Returning Officer shall remedy such irregularity by taking necessary steps as prescribed by the Act.
- 24.10 In the event of a tie in the ballot, the Returning Officer shall determine the outcome by lot.
- 24.11 Notwithstanding anything to the contrary contained in these Rules, Voting Members may not vote by show of hands with respect to the election of MBV Electoral Council members.
- 24.12 The Returning Officer shall forthwith declare the results of the election and declare the individual or individuals so elected to the office.

***Right of inspection after declaration of result***

- 24.13 Any candidate or Member has rights to inspect the roll of voters under the Act and regulations.

**25 – COMMITTEES**

- 25.1 At the date of adoption of these Rules, the Association will have six (6) permanent Committees which will be advisory committees that conform to the directions of the Board:
- (a) General Contracting Sector Committee;
  - (b) Housing Sector Committee;
  - (c) Specialist Contractor Sector Committee;
  - (d) Materials Manufacturing and Supply Sector Committee;
  - (e) Regional Sector Committee; and
  - (f) Housing Sub-Contractor Committee.
- 25.2 Members of Committees and/or Committees collectively have no power to:
- (a) manage the affairs of the Association;
  - (b) decide the policy of the Association;
  - (c) enforce the Code of Ethics, these Rules and/or any other rules of the Association.

***Elections of Chairpersons***

- 25.3 As the Chairpersons of the General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee and Housing Sub-Contractor Sector Committee will be Directors, they will be Officers and must be elected by the MBV Electoral Council as follows:
- (a) any Member elected to the MBV Electoral Council may be eligible to be elected as Chairperson of their respective Sector Committee – being either the General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee and Housing Sub-Contractor Sector Committee;
  - (b) the Returning Officer must call for nominations from the MBV Electoral Council at least fourteen (14) days before the Annual General Meeting;
  - (c) the nomination must be:
    - (i) in the form prescribed by the Board;
    - (ii) signed by the nominee; and

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given to the Returning Officer in the manner and within the time prescribed by the Returning Officer;

- (d) if the number of candidates who are eligible for election in accordance with the Eligibility Criteria is less than or equal to the number of vacancies, the candidate/s are declared elected to the role of Chairperson of the relevant Committee from the close of the MBV Electoral Council meeting immediately following the Annual General Meeting;
- (e) if the number of eligible candidates who nominate for election is less than the number of vacancies, and/or no nominations are received, then the Returning Officer shall first declare elected those persons who nominated and shall then call for further nominations to be provided in writing, in a form approved by the Board, at the MBV Electoral Council meeting in order to fill the remaining vacancies. If the number of candidates is equal to the number of vacancies, the individuals will be automatically elected as the Chairpersons from the close of the meeting. If, however, the number of nominations received is more than the number of vacancies, then the MBV Electoral Council must hold a secret ballot in accordance with the process set out in Rule 16.8(g) above;
- (f) if the number of candidates who are eligible for election is more than one (1):
  - (i) a list of the names of all nominees for election must be provided to all members of the MBV Electoral Council at its meeting;
  - (ii) the MBV Electoral Council must hold a secret ballot for the election of the Chairpersons at the MBV Electoral Council meeting;
  - (iii) the method of voting and deciding the result of the ballot shall be a first past the post system;
  - (iv) in the event of an equality of votes, the matter must be determined by the drawing of lots;
  - (v) an individual elected shall not be eligible to be elected in more than one (1) capacity and once elected, the Returning Officer will remove the candidate from the election for other positions;
  - (vi) each candidate may appoint one (1) scrutineer, who is not themselves a candidate for that particular office, who may carry out the duties and functions set out in Rule 32;
- (g) at the meeting, the Returning Officer must announce who has been elected as Chairpersons of the General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee and Housing Sub- Contractor Sector Committee under this Rule.

25.4 Upon election, the Chairpersons of the General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing, Regional Sector Committee and Housing Sub-Contractor Sector Committee will automatically be appointed as Directors to the Board.

***Elections and appointment of General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee and Housing Sub-Contractor Sector Committee members***

25.5 The Committees for each Sector Group will be appointed as follows:

- (a) the Chairperson of each Sector Committee will be elected by the MBV Electoral Council in accordance with Rule 25.3;



- (b) the Sector Group members elected to the MBV Electoral Council and not elected to the role of President, Deputy President, General Board Member or Chairperson of a Sector Committee will automatically become ordinary members of their respective Sector Committees; and
- (c) the Board may co-opt additional Sector Group members to each relevant Sector Committee in the Board's discretion, up to the maximum total number of members for each Sector Committee, in accordance with the Sector Committee's Terms of Reference.

***Role of Sector Committees***

25.6 Without limiting the scope of the role of the Sector Committees, the Sector Committees will be advisory committees that conform to the directions of the Board for:

- (a) identifying, discussing and recommending courses of action in relation to local and industry issues;
- (b) providing recommendations to the Board on policy and industry-wide issues, such as proposed or recommended changes to the law, codes and regulations; and
- (c) industry issues that affect the Sector Committee.

25.7 The membership of Sector Committees must comprise up to ten (10) members, of which one (1) must be the Chairperson elected under Rule 25.3.

***Other Committees***

25.8 The Board may appoint one (1) or more other Committees consisting of such Directors or other Members as the Board thinks fit. In those circumstances, the Board may appoint any member of a committee as Chairperson of that committee, but if it does not do so, the members of the Committee present must elect a Chairperson.

***Terms of Reference***

25.9 The Board may adopt terms of reference with guidelines as to the role, operations, purpose, responsibilities and reporting expected of the General Contracting Sector Committee, Housing Sector Committee, Specialist Contractor Sector Committee, Materials Manufacturing and Supply Sector Committee, Regional Sector Committee, Housing Sub-Contractor Sector Committee and any other committee that it appoints.

***Delegation of powers to committees***

25.10 The Board may delegate tasks to a Committee.

25.11 In carrying out its role, a Committee must:

- (a) conform to the directions of the Board;
- (b) report to the Board; and
- (c) otherwise conduct its meetings and proceedings in accordance with the provisions of these Rules, as far as practicable, as if they were meetings and proceedings of the Board.

***Meetings and Minutes***

25.12 A Committee must meet for a minimum of four (4) times per year, and may hold additional meetings as otherwise required.

25.13 Meetings of Committees may be called by at least seven (7) days' written notice from the respective Chairperson of each Committee to the other members of the Committee.

- 25.14 A Committee must cause minutes of all proceedings of meetings to be signed by the Chairperson of the meeting at which the proceedings took place, or by the Chairperson of the next succeeding meeting, PROVIDED ALWAYS that the minutes are entered within one (1) month after the relevant meeting is held, in books kept for the purpose.

***Joint Committee Meetings***

- 25.15 One (1) or more Committees may meet jointly to carry out their role.
- 25.16 At joint Committee meetings, the Chairpersons of the Committees represented will agree amongst themselves as to who will carry out the role of Chairperson for the joint Committee meeting.
- 25.17 One (1) set of minutes will be prepared for adoption by the Committees represented at the joint Committee meeting.

***Invitees of Committees***

- 25.18 Committees may invite any individuals to attend and speak at their meetings. Such individuals are not members of the Committees, are not counted in the quorum of Committees, and are not entitled to vote at meetings.

**26 – PRESIDENT**

***Eligibility for election to role of President***

- 26.1 To be eligible for election as President, an individual must not have served as President for more than one (1) term of three (3) years.
- 26.2 If an individual has served as President, at least one (1) term of office must have elapsed since the individual's last appointment, before an individual is eligible to serve as a President for a further term of office as President.

***Election of President***

- 26.3 The President is elected by the MBV Electoral Council as follows:
- (a) any Member elected to the MBV Electoral Council may be elected as President;
  - (b) the Returning Officer must call for nominations at least fourteen (14) days before the date of the Annual General Meeting;
  - (c) the nomination must be:
    - (i) in the form prescribed by the Board;
    - (ii) signed by the nominee; andgiven to the Returning Officer in the manner and within the time prescribed by the Returning Officer;
  - (d) if only one (1) candidate is received and that candidate is eligible for election in accordance with the Eligibility Criteria, the candidate is automatically elected as President from the close of the MBV Electoral Council meeting immediately following the Annual General Meeting;
  - (e) if no candidate is eligible for election in accordance with the Eligibility Criteria, and/or no nomination is received, then the Returning Officer may call for nominations to be provided in writing, in a form approved by the Board, at the MBV Electoral Council meeting. If only one (1) candidate is nominated at the meeting, that person will be declared elected as President from the close of the meeting.

- (f) if the number of nominations received is more than the number of vacancies, then the MBV Electoral Council must hold a secret ballot in accordance with the process set out in (g) below;
- (g) if the number of candidates who are eligible for election is more than one (1):
  - (i) a list of the names of all candidates who are eligible for election must be provided to all members of the MBV Electoral Council at its meeting;
  - (ii) a MBV Electoral Council member may appoint another MBV Council member as their proxy and may direct how that proxy is to be exercised;
  - (iii) the MBV Electoral Council must hold a secret ballot for the election of the President at the MBV Electoral Council meeting;
  - (iv) the method of voting and deciding the result of the ballot shall be a first past the post system;
  - (v) in the event of an equality of votes, the matter must be determined by the drawing of lots;
  - (vi) an individual elected shall not be eligible to be elected in more than one (1) capacity and once elected, the Returning Officer will remove the candidate from the election for other positions;
  - (vii) each candidate may appoint one (1) scrutineer who may carry out the duties and functions set out in Rule 32;
- (h) at the meeting, the Returning Officer must declare who has been elected as President under this Rule.

***Role of the President***

26.4 Subject to the terms set out in these Rules, upon election, the President:

- (a) is a member of the Board;
- (b) will preside as Chairperson at every Board meeting;
- (c) will preside as Chairperson at every meeting of Members; and
- (d) may hold the role as a Committee member but may not act as a Committee Chairperson.

***Term of office***

26.5 A President holds office until the:

- (a) expiration of that President's current term of office; or
- (b) President ceases to be a Director in accordance with these Rules; or
- (c) President resigns or is removed from the office in accordance with these Rules.

***No casting vote of President***

26.6 The President is not entitled to a second or casting vote on any resolution.

**27 – TRANSITIONAL PRESIDENT ROLE**

- (e) Where a defective nomination is received for any office or position, the procedures as provided in Rule 28(c) shall be followed.

- 27.1 The individual who at the time of adoption of these Rules holds the role of President must, on an interim basis, carry out the role of the President until they are required to retire at the time that they would have been required to do so had these Rules not been adopted.
- 27.2 Notwithstanding anything to the contrary, for so long as the Transitional President holds office, the Transitional President is deemed to be elected until such time as they are required to resign under this Rule.

## **28 – DEPUTY PRESIDENT**

- (c) 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. Where the Returning Officer finds a nomination to be defective he shall, before rejecting the nomination, notify the person concerned of the defect and, where it is practicable to do so, give such person the opportunity of remedying the defect within not less than seven days after being so notified.

### ***Eligibility for election to role of Deputy President***

- 28.1 To be eligible for election as Deputy President, an individual must not have served as Deputy President for more than one (1) consecutive term of three (3) years.

### ***Election of Deputy President***

- 28.2 The Deputy President is elected by the MBV Electoral Council as follows:
- (a) any Member elected to the MBV Electoral Council may be elected as Deputy President;
  - (b) the Returning Officer must call for nominations at least fourteen (14) days before the date of the Annual General Meeting;
  - (c) the nomination must be:
    - (i) in the form prescribed by the Board;
    - (ii) signed by the nominee; andgiven to the Returning Officer in the manner and within the time prescribed by the Returning Officer;
  - (d) if only one (1) candidate is received and that candidate is eligible for election in accordance with the Eligibility Criteria, the candidate is automatically elected as Deputy President from the close of the MBV Electoral Council meeting immediately following the Annual General Meeting;
  - (e) if no candidate is eligible for election in accordance with the Eligibility Criteria, and/or no nomination is received, then the Returning Officer may call for nominations to be provided in writing, in a form approved by the Board, at the MBV Electoral Council meeting. If only one (1) candidate is nominated at the meeting, that person will be declared elected as Deputy President from the close of the meeting.
  - (f) if the number of nominations received is more than the number of vacancies, then the MBV Electoral Council must hold a secret ballot in accordance with the process set out in (g) below;

- (g) if the number of candidates who are eligible for election is more than one (1):
  - (i) a list of the names of all candidates who are eligible for election must be provided to all members of the MBV Electoral Council at its meeting;
  - (ii) a MBV Electoral Council member may appoint another MBV Electoral Council member as their proxy and may direct how that proxy is to be exercised;
  - (iii) the MBV Electoral Council must hold a secret ballot for the election of the Deputy President at the MBV Electoral Council meeting;
  - (iv) the method of voting and deciding the result of the ballot shall be a first past the post system;
  - (v) in the event of an equality of votes, the matter must be determined by the drawing of lots;
  - (vi) an individual elected shall not be eligible to be elected in more than one (1) capacity and once elected, the Returning Officer will remove the candidate from the election for other positions;
  - (vii) each candidate may appoint one (1) scrutineer who may carry out the duties and functions set out in Rule 32;
- (h) at the meeting, the Returning Officer must declare who has been elected as Deputy President under this Rule.

***Role of the Deputy President***

28.3 Subject to the terms set out in these Rules, upon election, a Deputy President:

- (a) will preside as Chairperson at every Board meeting at which the President is not present;
- (b) may hold the role as a Committee member but may not act as a Committee Chairperson.

***Term of office***

28.4 A Deputy President holds office until the:

- (a) expiration of that Deputy President's current term of office as Deputy President;
- (b) Deputy President ceases to be a Director in accordance with these Rules;
- (c) Deputy President resigns or is removed from the office in accordance with these Rules.

**29 – TRANSITIONAL DEPUTY PRESIDENT ROLE**

29.1 The individual who at the time of adoption of these Rules holds the role of Deputy President until they are required to retire under this Rule. The Transitional Deputy President must retire at the time that they would have been required to do so had these Rules not been adopted.

29.2 Notwithstanding anything to the contrary, for so long as a Transitional Deputy President holds office, that Transitional Deputy President is deemed to be elected until such time as they are required to resign under this Rule.

**30 – MAXIMUM TERM IN OFFICE**

- 30.1 Notwithstanding anything to the contrary, for the avoidance of doubt, an individual may only serve a maximum term in any Office role, or combination of Office roles, for a maximum term of three plus three plus three (3+3+3) consecutive years (excluding any casual vacancy term).
- 30.2 Any term served in any Office role prior to the adoption of these Rules will not be counted for the purpose of Rule 30.1.

**31 – PROXY VOTES**

- 31.1 A MBV Electoral Council member may appoint another MBV Electoral Council member as proxy to attend and vote in their place.
- 31.2 The proxy must be appointed in writing, in the form from time to time required by the Board, and signed by the MBV Electoral Council member appointing the proxy.
- 31.3 If the document appointing a proxy specifies the manner in which the proxy is to vote, the proxy is not entitled to vote on the resolution except in the manner specified in the document.
- 31.4 A document appointing a proxy is invalid unless the document appointing the proxy is received by the Returning Officer no later than twenty-four (24) hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.
- 31.5 A vote made under a proxy is valid despite any of the following facts, unless the Returning Officer receives written notice of the fact before the commencement of the meeting at which the vote is cast the:
  - (a) MBV Electoral Council member has died; or
  - (b) proxy or authority under which the proxy was signed has been revoked.

**32 – SCRUTINEER’S RIGHTS, AND ROLE AND FUNCTIONS**

***Scrutineer’s Role and Functions***

- 32.1 Any candidate may appoint one (1) scrutineer to oversee the counting of a ballot. Such appointment shall be notified by the candidate to the Returning Officer not later than forty-eight (48) hours before the closing of the ballot.
- 32.2 Each scrutineer in the candidate's place shall be entitled to be present at the opening of the ballot papers and at any time that ballot papers are counted or recounted, but shall not be entitled to handle or take into their possession any ballot paper at any time.
- 32.3 If a candidate appoints a scrutineer, the candidate shall not be entitled to personally attend at the opening of the ballot papers or counting of the ballot, unless the Returning Officer permits the candidate to do so.

***Scrutineer’s Rights***

- 32.4 Before votes are counted, a scrutineer may advise the Returning Officer that the scrutineer considers an error has been made in conducting the ballot.

- 32.5 If a scrutineer objects under Rule 32.4, the Returning Officer must:
- (a) decide whether the error has been made; and
  - (b) if appropriate, direct action to correct or mitigate the error.
- 32.6 When votes are counted, a scrutineer may:
- (c) object to a ballot paper being admitted as formal or rejected as informal by the Returning Officer; or
  - (d) advise the Returning Officer that the scrutineer considers an error has been made in conducting the ballot or counting votes.
- 32.7 If a scrutineer objects under Rule 32.6, the Returning Officer must:
- (e) decide whether the ballot paper is to be admitted or rejected; and
  - (f) note the decision on the ballot paper and initial the note.

### **33 – CHIEF EXECUTIVE OFFICER**

- 33.1 The Board may appoint an individual to the position of Chief Executive Officer for the period and on the terms and conditions (including as to remuneration) the Board sees fit, provided that the Chief Executive Officer's employment may only be terminated only by a resolution of the Board passed by a two-thirds ( $\frac{2}{3}$ ) majority (rounded up to the next whole number).
- 33.2 The Board may, upon terms and conditions and with any restrictions it sees fit, require the Chief Executive Officer to carry out duties in accordance with the policy and budget of the Association.
- 33.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the Chief Executive Officer.

### **34 – COMPANY SECRETARY**

- 34.1 The Company Secretary shall be appointed by the Board and need not be a Member of the Association.
- 34.2 The Company Secretary is not the holder of any office under the Act.

### **35 – SECTIONS**

- 35.1 The Sections in existence as at the date of adoption of these Rules shall be deemed to have been formed by the Board in accordance with these Rules, subject always to the Board's powers pursuant to Rule 35.2.
- 35.2 The Board may form, vary and disband such Sections of the Association as it sees fit and shall determine the districts in which such Sections may be formed and operate. The purpose of the Sections shall be for the purpose of enabling Members to meet and discuss local problems, to enable social intercourse between Members and to enable Section Members to consider matters of mutual interest.
- 35.3 The Board may adopt, vary and revoke by-laws or policies governing the operations and conduct of the Sections. Any by-laws in relation to the Sections in effect at the date of adoption of these Rules will remain in effect unless varied by the Board pursuant to this Rule 35.3.

### **36 – BY-LAWS**

- 36.1 The Board may make, adopt, amend and repeal By-Laws (not inconsistent with the Act or the Corporations Act) with respect to any matter or thing for the purposes of giving effect to any provision of these Rules or generally for the purposes of carrying out the objects of the Association, which By-Laws are binding on the Members.
- 36.2 To the extent of any inconsistency, these Rules prevails over the By-Laws.

### **37 – CONFLICTS OF INTEREST**

- 37.1 The Act and the Corporations Act apply where a Director has a material personal interest in a matter that is being considered at a Board meeting and operate to limit that Director being present while the matter is being considered, and voting.
- 37.2 The Board must agree from time to time in writing on the regulation of conflicts of interest, within the Association which reflects the requirements of the Act and the Corporations Act.
- 37.3 At a minimum, the regulation of conflicts of interest must provide:
- (a) the need to disclose material personal interests under and act in accordance with the Act and the Corporations Act;
  - (b) that it binds all individuals who hold Office within the Association, including without limitation, the President, Board members and MBV Electoral Council members;
  - (c) if there are not enough Directors to form a quorum as a result of one (1) or more Directors having an interest which disqualifies them from voting, then one (1) or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting and the Association in general meeting may pass a resolution to deal with the matter; and
  - (d) that a Director may only be engaged to provide goods or services to or on behalf of the Association if such engagement complies with the requirements of the Corporations Act and otherwise:
    - (i) that Director is for bona fide reasons considered by the Board and agreed to be a suitable person to provide, such goods or services;
    - (ii) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
    - (iii) the goods or services are provided on arms-length terms;
    - (iv) the provision of the goods and services is disclosed clearly and expressly to the Members in the Association's annual report; and
    - (v) the Board agrees, by ordinary resolution excluding the interested Director, to the provision of the goods or services by the Director.
- 37.4 Notwithstanding anything set out in these Rules, but subject always to the requirements of the Corporations Act, nothing shall preclude a member of the Board or MBV Electoral Council from being engaged to perform services for the Association on normal commercial terms.



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**38 – CONFIDENTIAL INFORMATION**

- 38.1 All Board related documents and materials and all matters discussed or business transacted at meetings of the Board is confidential information and must remain confidential unless otherwise resolved by the Board.
- 38.2 Confidential information may only be disclosed if:
- (a) reasonable notice is given to the Association to allow the Association to legally challenge the required disclosure; and
  - (b) it is required to comply with an applicable law or legally binding order of any court, Government or semi-government authority, administrative or judicial body, or a requirement of a regulator.
- 38.3 Confidential information may also be disclosed if it is information available in the public domain otherwise than as a result of a breach of this Rule or other obligation of confidence.

**39 – LOANS, GRANTS AND DONATIONS**

- 39.1 The Association must not make a donation, grant or loan of an amount exceeding One Thousand Dollars (\$1,000) unless the Board:
- (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.

**40 – INDEMNITIES AND INSURANCE**

***Officers' liabilities to third parties***

- 40.1 Every Officer and past Officer of the Association is indemnified against a liability incurred by that person as an Officer, other than a liability:
- (a) to the Association or a related body corporate;
  - (b) for a pecuniary penalty under section 1317G of the Corporations Act or section 306 of the Act or for compensation under section 1317H of the Corporations Act or section 307 of the Act;
  - (c) which arises from conduct that involves a lack of good faith; or
  - (d) otherwise prohibited by law from being the subject of an indemnity.

***Officers' costs and expenses***

- 40.2 Every Officer and past Officer of the Association is indemnified by the Association against a liability for costs and expenses incurred by that person as an Officer, other than legal costs incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under Rule 40.1;

- (b) in defending or resisting proceedings in which judgement is made against the person or the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-Rule does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order);  
or
- (e) in connection with any application in relation to those proceedings in which the Court denies relief to the person.

***Insurance premiums***

- 40.3 The Association may pay the premium on a contract insuring a person who is or has been an Officer of Association against:
- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an Officer, whether civil or criminal and whatever their outcome; and
  - (b) any other liability incurred by the person as an Officer of the Association, except a liability which arises from conduct that involves a wilful breach of duty in relation to the Association or a contravention of sections 182, 183 or 184(2) or 184(3) of the Corporations Act or sections 287, 288 and 290A of the Act.

**41 – EXECUTION OF DOCUMENTS**

- 41.1 The Board shall cause to be designed and produced a common seal for the Association, which shall be in the custody of the Chief Executive Officer and shall not be used or affixed to any document except as authorised by the Board.
- 41.2 Every document shall be signed in accordance with the provisions of the Act, the Corporations Act and any other relevant legislation.

**42 – FINANCIAL DISCLOSURES AND TRAINING**

***Compliance with the Act***

- 42.1 The Board must ensure the financial disclosure obligations under the Act and any other legislation are complied with at all times.

***Financial Training***

- 42.2 All Officers whose duties relate to financial management must undertake an approved course of training within six (6) months of taking office or such earlier time as required under the Act.

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**43 – ACCOUNTS, AUDIT AND RECORDS*****Financial year***

- 43.1 The financial year of the Association commences on the 1st day of July and ends on the 30th day of June in the following calendar year.

***Investment of funds***

- 43.2 Any portion of the Association's current funds not required immediately for expenditure may, upon resolution of the Board, be invested for the benefit of the Association and on behalf of the Association in any security or investment.

***Accounts, records and reports***

- 43.3 The Board must cause proper accounting and other records to be kept in accordance with the Act and the Corporations Act and must comply with the requirements of the Act and the Corporations Act in respect of reporting and providing accounts to Members.
- 43.4 The Board must provide for the safe custody of the books, records, documents, instruments of title and securities of the Association.

***Audit***

- 43.5 A competent person must be appointed as auditor to the Association by the Board to undertake annual audits of the Association's accounts.
- 43.6 The auditor may be appointed by the Board for a period of up to five (5) years (unless a lesser period is prescribed by legislation) and may exercise all the powers provided under the Act and the Corporations Act, and must carry out their duties (including the making of an audit report within four (4) months after the end of each financial year) in accordance with the Act and the Corporations Act, subject to the Corporations Act.
- 43.7 The auditor shall hold office until the Board determines (by an absolute majority resolution) to remove the auditor from office, subject to the Corporations Act.
- 43.8 The auditor or their representative is entitled to attend any general meeting and be heard on any part of the business of the meeting which concerns the auditor. The auditor or their representative, if present at the meeting, may be questioned by the Members about the audit.

***Expenditure policies***

- 43.9 The Board must ensure that the Association and, if applicable, each of its branches develop and implement policies relating to the expenditure of the Association and, if applicable, any branches, in accordance with all requirements of the Act.

**44 – RIGHTS OF INSPECTION**

- 44.1 Subject to the Act and the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Association or any of them are open to the inspection of Members. A Member does not have the right to inspect any document of the Association except as provided by the Act and the Corporations Act or authorised by the Board.

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## 45 – DISSOLUTION OF ASSOCIATION

- 45.1 In the event of dissolution of the Association, any remainder of its net assets after discharge of all its just debts and other legal and moral obligations, shall not be distributed to its members but shall be distributed to some other organisation that has similar restrictions upon distribution of assets to its members as may be approved by the membership.

## 46 – APPLICATION AND CONTROL OF FUNDS, PROPERTY

- 46.1 The income and property of the Association shall be applied solely towards the promotion of the objects of the Association, and no portion thereof shall be paid or transferred directly or indirectly, by way of dividends, bonus or otherwise howsoever by way of profit or gain to the individual members of the Association. However, the Board by majority may apply a portion of the funds to charity or to the recognition of special services rendered to the Association.
- 46.2 The current funds of the Association shall be deposited in the name of the Association in such a bank or invested in such financial institutions as is from time to time directed by the Board. All monies received shall be so deposited or invested provided that such amount as decided by the Board shall be retained in cash in the Association's registered office for the purpose of petty cash.
- 46.3 All payments shall be confirmed by the chief financial officer or in their absence or under delegation by the Chief Executive Officer. Where practicable all cheques shall be signed by the chief financial officer, or in their absence some other office bearer, and countersigned by the Chief Executive Officer. In the absence of the chief financial officer or other office bearer, the Chief Executive Officer and any such additional countersigning officer, being an employee of the Association as the Board may authorise from time to time by resolution.
- 46.4 No Member shall have by reason of their Membership any transmissible or assignable interest in the property of the Association. On a Member ceasing to be a Member all their interests shall survive, accrue, and belong to the other Members of the Association for the time being.
- 46.5 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 Board shall have power to control and invest the same in the name of the Association.

## 47 – REMUNERATION OF BOARD MEMBERS

- 47.1 Members of the Board shall be entitled to the payment of meeting fees as set out in the approved Board policy but shall not otherwise be remunerated.

## 48 – REIMBURSEMENT OF EXPENSES

- 48.1 Directors and MBV Electoral Council members may be entitled to be paid all reasonable travelling, accommodation and other expenses properly incurred by them in attending and returning from meetings or otherwise in the execution of their duties, provided that such expenses are incurred in accordance with the approved Board policy.

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**49 – ALTERATION TO RULES WHERE SPECIAL RESOLUTION OF MEMBERS NOT REQUIRED**

- 49.1 Where a Special Resolution of Members is not required under the Act or the Corporations Act, the MBV Electoral Council shall have the sole power to make, add to, amend, rescind or otherwise alter the Rules of the Association by a resolution carried out by a majority of members of the MBV Electoral Council voting at a meeting of the MBV Electoral Council.
- 49.2 Proposals to make, add to, amend, rescind or otherwise alter the Rules of the Association must be submitted to the Chief Executive Officer at least twenty-one (21) days before the MBV Electoral Council meeting at which they will be considered. The Chief Executive Officer shall forward the proposals to each member of the MBV Electoral Council at least fourteen (14) days before the MBV Electoral Council meeting at which they will be considered.
- 49.3 In the event of the adopted proposals not complying with the law, then such refusal to register the changes shall be referred back to the MBV Electoral Council, who shall have the power to frame any changes to comply with the law to enable registration.
- 49.4 The Rules may be amended by a resolution of the MBV Electoral Council where such amendments are required by the Fair Work Commission to effect compliance with the provisions of the law for continued registration.
- 49.5 The amendment to the Rules, upon registration, shall be advised to all Members in writing by the Chief Executive Officer. It shall be permissible to advise all Members of any such Rule change by notice in the Association’s official magazine with reference to changes made on the Association’s website.

**50 – ALTERATION TO RULES WHERE SPECIAL RESOLUTION OF MEMBERS IS REQUIRED**

- 50.1 Where a Special Resolution of Members is required under the Act or the Corporations Act in order to make, add to, amend, rescind or otherwise alter the Rules of the Association the following process will apply:
- (a) the proposal to make, add to, amend rescind or otherwise alter the Rules of the Association must be approved by a resolution carried out by a majority of members of the MBV Electoral Council voting at a meeting of the MBV Electoral Council; and
  - (b) the proposal to make, add to, amend, rescind or otherwise alter the Rules of the Association must be approved by a Special Resolution of Members in accordance with the requirements of the Act or the Corporations Act.
- 50.2 Proposals to make, add to, amend, rescind or otherwise alter the Rules of the Association must be submitted to the Chief Executive Officer at least twenty-one (21) days before the MBV Electoral Council meeting at which they will be considered. The Chief Executive Officer shall forward the proposals to each member of the MBV Electoral Council at least fourteen (14) days before the MBV Electoral Council meeting at which they will be considered.
- 50.3 In the event of the adopted proposals not complying with the law, then such refusal to register the changes shall be referred back to the MBV Electoral Council and the process in Rule 50.1 will apply to further amendments to the Rules.
- 50.4 The amendment to the Rules, upon registration, shall be advised to all Members in writing by the Chief Executive Officer. It shall be permissible to advise all Members of any such Rule change by notice in the Association’s official magazine with reference to changes made on the Association’s website.

## 51 – NOTICES

### *Persons authorised to give notices*

- 51.1 A notice given under these Rules may be given:
- (a) on behalf of the Association by a solicitor for the Association, the Chief Executive Officer or a Director; or
  - (b) on behalf of a Member by a solicitor, Chief Executive Officer or Director of the Member.
- 51.2 The signature of a person on a notice given by the Association or a Member may be written, printed or stamped.

### *Method of giving notices*

- 51.3 A notice by the Association or a Member may be given under these Rules by any of the following means:
- (a) by delivering it to the street address of the addressee;
  - (b) by sending it by prepaid ordinary post (or by airmail if outside Australia) to the street or postal address of the addressee; or
  - (c) by sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

### *Address for notices*

- 51.4 For the purposes of Rule 51.3:
- (a) the street and postal address of the Association is the registered office of the Association, or such other address as was last formally notified by the Association to the Member;
  - (b) the facsimile number and e-mail address of the Association are the details last formally notified by the Association to the Member;
  - (c) the street and postal addresses, facsimile number and e-mail address of a Member are the details noted in the Register of Members.

### *Time notice is given*

- 51.5 A notice given in accordance with these Rules is deemed to be given, served and received at the following times:
- (a) if delivered to the street address of the addressee, at the time of delivery;
  - (b) if sent by post to the street or postal address of the addressee, on the 3rd business day (or 5th business day if outside Australia) after posting; or
  - (c) if sent by facsimile or e-mail, at the time transmission is completed unless it is sent after 3pm in which it will be deemed to have been received the next business day.

***Proof of giving notices***

- 51.6 The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:
- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
  - (b) a print out of an acknowledgement of receipt of the e-mail or equivalent proof that the email was successfully transmitted.

***Electronic Mail***

- 51.7 Other than the election of Officers, if a Member or a Person on a Register has provided an electronic mail address, notice or correspondence required pursuant to the Act, the Corporations Act or these Rules may be forwarded by electronic mail to the electronic mail address as nominated by that person. Notice sent by such electronic means shall comply with these Rules and satisfy any written notice requirement.

***Replaceable rules***

- 51.8 Each of the provisions of the Corporations Act which would, but for this Rule, apply to the Association as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Association.

**52 – INTERPRETATION**

- 52.1 In these Rules, unless the context requires otherwise:
- (a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;
  - (b) a reference to these Rules, where amended, means these Rules as so amended;
  - (c) a reference to a Rule, sub-Rule or schedule is a reference to a Rule, sub-Rule or schedule of these Rules;
  - (d) a word which denotes:
    - (i) the singular denotes the plural and vice versa; and
    - (ii) any gender denotes the other genders;
  - (e) where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
  - (f) an expression used but not defined in these Rules has the same meaning as given in the Act or, where applicable, the Corporations Act;
  - (g) writing includes any mode of representing or reproducing words in a visible form; and
  - (h) a reference to 'dollars' or '\$' means Australian dollars.
- 52.2 Headings and any table of contents must be ignored in the interpretation of these Rules.

***Calculation of time***

52.3 In these Rules, unless the context requires otherwise:

- (a) a reference to a time of day means that time of day in the State of Victoria where the Association’s registered office is located;
- (b) a reference to a business day means a day during which banks are open for general banking business in Victoria;
- (c) for the purposes of determining the length of a period (but not its commencement) a reference to:
  - (i) unless otherwise stated, a day means a period of time commencing at midnight and ending twenty-four (24) hours later; and
  - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one (1) of the twelve (12) months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month;
- (d) where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event; and
- (e) a provision of these Rules, except that specifying the time for deposit of proxies with the Association, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

**53 – DATE OF EFFECT**

53.1 These Rules shall take effect on and from the later of:

- (a) the date of certification by the Fair Work Commission pursuant to the *Fair Work (Registered Organisation) Act 2009* (Cth); and
- (b) where a Special Resolution of Members is required, the date of the Special Resolution.



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**SCHEDULE**

Extracts from awards, and Rules of the Metal Trades Industry Association of Australia, referred to in Rule 4.

**A) NATIONAL METAL AND ENGINEERING ON-SITE CONSTRUCTION INDUSTRY AWARD 1989**

**PART I - GENERAL**

1. TITLE

This Award shall be known as the National Metal and Engineering On-Site Construction Industry Award 1989.

2. APPLICATION

- a) This Award shall apply in the States of New South Wales, Victoria, South Australia, Tasmania, Queensland and in the Australian Capital Territory.
- b) Subject to the exceptions and exemptions specified in this Award, this Award shall apply to persons employed in the classification specified in this Award on 'on-site construction work' (as defined) who are in the Metal and Engineering Construction Industry as defined in Clause 3 - Incidence of Award - of the Metal Industry Award 1984 as it existed prior to the making of Appendix A On-Site Construction Work (which incidence is set out in Appendix A hereto) and interpreted in accordance with Clause 2(c) of this Award.

"On-site construction work" shall mean:

- (i) Metal trades work (as described in sub-clause 2(c) herein) performed in the work of construction, fabrication, erection and/or installation work or work incidental thereto when it is carried out at a construction site which is specifically established for the purpose of constructing, fabricating, erecting and/or installing the following:
  1. Power stations, oil refineries, terminals and depots; chemical, petro-chemical and hydrocarbon plants; and associated plant, plant facilities and equipment;
  2. Major industrial and commercial undertakings and associated plant, plant facilities and equipment including undertakings for the processing and/or smelting of ferrous and non-ferrous metals, the processing of forest products and associated by-products, acid and fertiliser plants, cement and lime works, and other major industrial undertakings of a like nature;
  3. Plant, plant facilities and equipment in connection with the extraction, refining and/or treatment of minerals, chemicals and the like;
  4. Transmission and similar towers, transmission lines and associated plant, plant facilities and equipment;
  5. Lifts and Escalators as prescribed in Part II;
  6. Metal Trades work on other engineering projects.

## SCHEDULE

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- (ii) Maintenance and/or repair and/or servicing work carried out on site by the employees of contractors or sub-contractors in connection with contracts for on-site construction work referred to in subclause (i).
- (iii)(a) Provided that it shall not include any work which is incidental to or of a minor nature in relation to the work normally performed by an employee of an employer not engaged substantially in metal and engineering construction, including any such work associated with the installation or servicing of any of the following equipment or systems:
- telephone
  - telegraphic
  - alarms
  - surveillance
  - electronic cash registers
  - intercommunication
  - sound
  - internal security systems
  - safes or other equipment designed to protect valuable items
  - signs including illuminated signs.
- (b) This Award shall not apply to:
1. work carried out within a permanently established place of employment such as a workshop, factory or warehouse where products are manufactured or services rendered; or
  2. for Queensland only:
    - (a) civil engineering projects which include dams, bridges, irrigation channels and roadworks,
    - (b) work performed on Mt. Isa Mines' leases within 32 kilometres of the Mt. Isa Post Office.
- (iv)(a) Nothing in this Award shall operate so as to interfere with the continuation of the practice of regulating wages and conditions on major engineering projects by site agreements registered with either the Australian Industrial Relations Commission or an appropriate State tribunal.
- (b) This sub-clause records that there is an understanding between the parties that in establishing this Award to deal more specifically with provisions to apply to "on-site construction work" (as defined) it has been necessary to include Award provisions which prior to the making of this Award may have been spelt out in whole or in part in agreements applicable to various construction sites where this Award applies.

## SCHEDULE

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On established construction sites where the Award will apply, and the rates of pay and allowances already determined exceed the rates of pay and allowances prescribed in this Award, the parties understand and agree that there will not be any justification for the rates of pay and allowances actually paid on such sites to be increased or decreased as a result of the introduction of this Award. Further, it is understood that the composition of the rates of pay and allowances paid on such sites prior to the introduction of this Award vary from site to site and it is recognised that each particular case will require discussions between the parties so that the terms of the new Award can be implemented and where necessary amendments made to the structure of previous agreements which may have applied.

- (c) Nothing in this Award shall be construed so as to disturb custom and practice and the status quo in the construction industry in relation to work allocation between employees and demarcation between organisations of employees engaged in the construction industry and any of the industries, callings or activities referred to elsewhere in this clause where construction work or work incidental thereto is undertaken. Nor will this Award disturb the status quo of such work allocation or the demarcation of such work between various organisations of employees, nor shall it affect the right of any person or persons to work in classifications under existing construction awards or agreements or awards or agreements made in lieu thereof.

Further, the definition herein of "on-site construction work" shall not, either expressly or impliedly, extend or enlarge or widen the application and incidence of this Award and should any demarcation dispute arise as to work allocation and or award coverage the question of that work which could be done under this Award shall be decided by reference to Clause 3 - Incidence of Award - of the Metal Industry Award 1984 as it existed prior to the making of Appendix A On-Site Construction Work of the Metal Industry Award (which incidence is prescribed in Appendix A hereto).

- (d) Electrical Trades - Employers in the State of New South Wales as to the employment of persons in connection with wiring contracting and the installation of electric light and power plants are exempt from this Award. This exemption shall not apply to employers who are manufacturers or vendors of plant or equipment who install or maintain the said plant and equipment in high and low tension power stations and/or sub-stations for the generation and/or transmission of electric power.

## **PART II - LIFT INDUSTRY**

### 1. TITLE

This Part shall be known as Part II - Lift Industry.

### 2. APPLICATION

- a) Subject to any exceptions and exemptions specified herein, this Part shall only apply to electrical and metal tradesmen and their assistants who perform work in connection with the installation, major modernisation, servicing, repairing and/or maintenance of lifts and escalators.
- b) The terms of this part shall not operate so as to interfere with the continuation of the Lift Industry Agreement made on 8 January 1985 and lodged with the Australian Conciliation and Arbitration Commission.

## SCHEDULE

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### **PART III - FOREMEN AND SUPERVISORS**

#### 1. TITLE

This part shall be known as - Part III - Foremen and Supervisors.

#### 2. DELETED

#### 3. APPLICATION

- (a) Subject to any exceptions and exemptions specified herein, this part shall only apply to Foremen and Supervisors of Employees engaged on work as prescribed by Clause 2 of Part I.
- (b) Deleted.
- (c) Provided that this part shall not apply to any sole trader, partnership, firm, company or corporation where, as at the date of this Award the total number of employees, irrespective of the location employed by that sole trader, partnership, firm, company or corporation, is less than thirty.

## APPENDIX A

### INCIDENCE OF AWARD

Subject to the exceptions and exemptions prescribed by this Award, the industries and callings covered by this Award are the engineering, metal working and fabricating industries in all their branches, and all industries allied thereto and include:

1. Mechanical and electrical engineering
2. Shipbuilding and repairing
3. Smithing
4. Boilermaking and erection and repairing
5. Bridge and girder construction and erection and repairing
6. Steel fabrication, construction and erection and repairing
7. Welding
8. Tool, die, gauge and mould making
9. Sheet metal working
10. Metal moulding
11. Diecasting
12. Stovemaking and repairing
13. Agricultural implement making and repairing
14. Metal pressing and stamping
15. Porcelain enamelling

## SCHEDULE

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16. Manufacture of porcelain enamels, oxides, glazes and similar materials
17. Metal machining
18. Ironworking
19. Iron and steel pipe making and fabrication
20. Window frame making and repairing
21. Safe and strong-room making and repairing
22. The manufacture, erection and installation, maintenance and repair of all forms of electrical machinery, apparatus and appliances, including valve and globe manufacturing
23. Radio, telephone and x-ray manufacturing, maintaining and repairing
24. Manufacture of insulation materials and articles
25. Wet and dry battery manufacturing and repairing
26. Manufacture, erection, installation, maintenance and repair of electrical advertising equipment including neon signs
27. Manufacture, erection, installation, maintenance and repair of fluorescent lighting
28. The drawing and insulation of wire for the conducting of electricity
29. The manufacture and repair of recording, measuring and controlling devices for electricity, fluids, gases, heat, temperature, pressure, time, etc.
30. The production by mechanical means of industrial gases (other than coal gas)
31. The making of canisters, drums and other metallic containers
32. Galvanising, tinning and pickling
33. Electroplateware manufacturing
34. Electroplating of all types
35. Processing of metals such as sherardizing and bonderizing
36. Lift and elevator making, repairing and maintenance
37. Plastic moulding, casting or fabricating in synthetic resins, or similar materials and including the production of synthetic resins, powders, tablets, etc., as used in such processes.
38. Melting and smelting of metals
39. Refrigerator manufacturing, maintaining and repairing
40. Perambulator manufacturing and repairing
41. Making, manufacture, installation, maintenance and repair of ventilating and air-conditioning plant and equipment

## SCHEDULE

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42. Metal furniture manufacturing and repairing
43. Kitchenware manufacturing
44. Metallic toy and sporting goods manufacturing
45. The making, assembling, repairing and maintenance of vehicles (except where such work is at present covered by another Federal Award)
46. The manufacture of bolts, nuts, screws, rivets, washers and similar articles
47. The manufacture of bright steel bars, rods, shafting, etc
48. Making, manufacture, installation, maintenance and repair of scales and machines for measuring mass and equipment
49. Making, manufacture, installation, maintenance and repair of watches and clocks, including cases
50. Making, repairing, reconditioning and maintenance of motor engines, and/or parts thereof, and of the mechanical and electrical parts including the transmission and chassis of motor cars, motor cycles and other motor driven vehicles
51. The making of metal motor body parts
52. Japanning, enamelling, painting, etc. of metallic articles
53. Hand and machine engraving
54. Badge and name-plate manufacturing, including chemical engraving
55. Manufacture, testing and repair of water fittings
56. Manufacture of any article or articles from metal wire
57. Installation of all classes and types of electrical wiring equipment and plant, and the repair and maintenance thereof
58. Generation and distribution of electric energy
59. Manufacture of ceramic articles for use in the metal trades industries
60. Making, manufacture, treatment, installation, maintenance, repair and reconditioning of any articles, part or components, whether of metal and/or other material in any of the foregoing industries
61. Sorting, packing, despatching, distribution and transport in connection with any of the foregoing
62. Making, manufacture, installation, construction, maintenance, repair and reconditioning of plant, equipment, buildings and services (including power supply) in establishments connected with the industries and callings described herein and maintenance work generally
63. Every operation, process, duty and function carried on or performed in or in connection with or incidental to any of the foregoing industries.

All descriptions of industry or calling set out in this Clause wherever expressed may be read either alternatively or collectively in any combination whatsoever.

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**B) THE NATIONAL BUILDING TRADES CONSTRUCTION AWARD 1975**

6. SCOPE

6.1 Subject to the exceptions and modifications contained in this Award, this Award applies to the employment of persons engaged on construction work (as defined) of the classifications contained in this Award.

Provided that this Award shall not apply to the following:

- (a) the making of implements of agriculture;
- (b) the work of ship carpenters or ship joiners or of seagoing carpenters on articles;
- (c) in Victoria and South Australia, the construction or repair of wharves, jetties, piers or bridges, other than construction or repair of wharves, jetties, piers or bridges which are wholly or substantially built of concrete and in respect of which the performance of formwork requires the exercise of a substantial amount of the knowledge and skill of a tradesman carpenter;
- (d) In Queensland:
  - (i) the construction or repair of wharves, jetties, piers or bridges covered by and subject to the provisions of the Bridge Wharf and Pier Construction Award - State.
  - (ii) the construction or repair of bulk sugar terminals and sugar mills covered by and subject to the provisions of the Building Trades Award - State.
- (e) Employees classified in this Award who are employed by a mixed enterprise in a maintenance and/or ancillary capacity.

6.2 EXEMPTIONS AND MODIFICATION

Where employees bound by this Award are employed on a project where the majority of employees are covered by the Australian Workers' Union Construction and Maintenance Consolidated Award 1969 to 1974, or by the General Construction and Maintenance Civil and Mechanical Civil and Mechanical Engineering (New South Wales) Award then the relevant provisions of those Awards relating to Hours of Work, Shift Work, Rest Periods, Camping Allowance and Accommodation on Distant Jobs, Amenities and First Aid Provisions shall apply in lieu of similar provisions in this Award.

8.10 "Construction Work" means all work performed under this award in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures, including the making, assembling or fixing of woodwork and fittings in connection therewith, the making, preparing, assembling and fixing of any material necessitating the use of tradesmen's tools or machines including all work performed by stonemasonry classifications (provided that in the States of South Australia, Victoria and Western Australia work in stonemasonry yards and/or shops and in cemeteries shall not be regarded as construction work) and the prefabricating or a building in an open yard.

For this purpose of this definition "maintenance" is confined to tradesmen employed by Building and Construction Industry employers respondent to this award.

## SCHEDULE

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### 9. RATES OF PAY

(List of classifications)

Carpenter-diver

Carver

Special class tradesman

Letter cutter

Marker or Setter out

Signwriter

Artificial stoneworkers, bricklayers bride and wharf carpenter, carpenter and/or joiner, caster, fixer, floorlayer specialist, floorsander (Tasmania), glazier, marble and slateworker, painter, plasterer, quarrymen, rooftiler, slate ridge or roof tiler, shophand, stonemason, tilelayer

Machinist

Plasterer's terazzo or stonemason's assistant (including assistant in factory - NSW)

Stonemason assistant (Factory only Qld. and Tas.)

### **C) THE NATIONAL BUILDING AND CONSTRUCTION INDUSTRY LABOURERS (ON SITE) AWARD 1986**

#### 6. SCOPE

- 6.1 This Paid Rates Award (as defined) applies in the States of Victoria and New South Wales (as defined) and only in respect of the employment of persons eligible to be members of the respondent unions (as defined) as builders' labourers about any building or assisting any bricklayer, mason, plasterer, carpenter, plumber or any tradesman engaged in building operations or employed on any making or contracting job in wood, stone, brick, concrete, iron or steel or combination of those or other materials incidental to building construction, repair, demolition or removal of buildings or as a scaffolder, rigger, gear hand, gantry hand or crane hand, dogman, powder monkey, pile driver, jack hammerman, winch, or hoist driver, tackle hand, mixer driver, operator or motorised dump barrows, monorail skips, vibrators for packing concrete, concrete screeders on any building site and any labourer assisting a tradesman on building sites in placing pre-stressed or pre-cast concrete components, or in placing curtain walling or in work in connection with the lift slab method of erection, and any labourer on building sites erecting in New South Wales or dismantling elsewhere than in New South Wales, steel formwork or supports thereto, any labourer excavating ground for foundations and basements of buildings or levelling ground on the site of and within the alignment of the actual building to be erected or doing concrete work, or mortar or concrete mixing in connection with or incidental to the foregoing operations and including all builders' labourers employed as such in connection with all work of the Building Industry performed on the site thereof.
- 6.2 Provided that this award shall not apply to any builder's labourer employed solely assisting any plumber or, employed by a plumbing contractor on plumbing work or, in the State of Victoria, persons employed as bricklayer's labourers, Plasterers Labourers assisting fibrous plasterers, plasterers labourers assisting solid plasterers and concrete finishers.



## SCHEDULE

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Further provided that this award shall not apply to any work on the additional Digesters at Carrum, Victoria.

8.7 "Construction Work" means all work performed under this award in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures.

For the purposes of this definition "maintenance" is confined to persons employed by private building and constructions industry employers respondent to this award.

### **D) PLUMBING TRADES (SOUTHERN STATES) CONSTRUCTION AGREEMENT 1979**

#### **4. PARTIES AND PERSONS BOUND**

This Agreement applies to and is binding upon -

- (a) The Plumbers and Gasfitters Employees' Union of Australia;
- (b) The employers and organizations of employers listed in the Schedule to this agreement in respect of their employees engaged in the industry of the occupations, businesses or enterprises of plumbers, gasfitters, roof plumbers, lead burners, ship plumbers and heating, air conditioning or ventilation plumbers and in South Australia and Tasmania drainers engaged on site or in construction work (as defined) whether members of the Plumbers and Gasfitters Employees' Union of Australia or not.

Provided that this Agreement shall not apply -

1. to the employment of sprinkler fitters by an employer respondent to the Sprinkler Pipe Fitters Award 1975;
2. to employees principally engaged in installing automatic fire protection systems;
3. the employment of weekly engaged employees fully employed in workshops off site by employers respondent to the Metal Industry Award 1971

#### **7. SCOPE**

Subject to the exceptions and modifications contained herein, this Agreement applies to the parties and persons bound as prescribed in Clause 4, whether members of the Plumbers and Gasfitters Employees' Union of Australia or not who are employed or usually employed in the plumbing industry in executing any plumbing, gasfitting, pipe fitting or domestic engineering work, whether prefabricated or not, or who execute any work in or in connection with -

- (a) sheet lead, galvanised iron or other classes of sheet metal or any other materials which supersede the materials usually fixed by plumbers;
- (b) lead, wrought, cast or sheet iron, copper, brass or other classes of pipework;
- (c) water (hot or cold), steam, gas, air, vacuum, heating or ventilation appliances, fittings, services or installations;
- (d) house, ship, sanitary, chemical or general plumbing or drainage.

## SCHEDULE

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### 8. DEFINITIONS

"Construction Work" means all work performed under this Agreement in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures, including the prefabrication of work performed in plumbing workshops.

For the purpose of this definition 'Maintenance' is confined to employees employed by Building and Construction Industry employers respondent to this Agreement.

### E) NATIONAL BUILDING AND CONSTRUCTION INDUSTRY (FEDFA) AWARD 1987

### 3. APPLICATION OF AWARD

#### Locality

- (a) This Award shall apply in Victoria, Tasmania and South Australia.

#### Parties Bound

- (b) This Award shall be binding on:
  - (i) The Federated Engine Drivers' and Firemen's Association of Australasia, and its members; and
  - (ii) The employers or employer organisations listed on the list of respondents attached to this Award.

#### Scope

- (c) Subject to the exemptions and modifications contained in this Award, this Award applies to the employment of persons employed in a classification contained in Clause 30 of this Award when engaged on construction, maintenance, alteration, repair or demolition work.

#### Exemptions and modifications

- (d) This Award shall not apply to work performed under the following Award:  
The National Building and Construction Industry Labourers (On Site) Award 1986.

#### Supersession

- (e) This Award supersedes the Award known as The Engine Drivers' and Firemen's (General) Award, 1968 and all variations thereto, but no right, obligation or liability accrued or incurred under such awards or variations shall be affected by such supersession.

No employee shall be reduced in status or position nor have his/her rate of remuneration reduced or any of his/her conditions of employment adversely affected merely as a consequence of the making of this Award.

## SCHEDULE

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### 30. WAGE RATES

#### Weekly Base Rates

- (b) The following amounts shall be applied where appropriate for the purposes of the calculation in sub-clause 9(g) of this Award of the hourly rate to apply under this Award:

The weekly base rate for the purpose of the above-mentioned calculation for the respective classifications shall be in accordance with the following table:-

#### Classification

Tower Crane Driver

Winch drivers

Fork-lift driver           - Lifting Capacity  
                                  - up to 5000 kg  
                                  - over 5000 kg

Mobile Hydraulic Platforms Operator

Crane Driver               - Lifting Capacity  
                                  - up to 8 tonnes  
                                  - 8 to 15 tonnes  
                                  - 15 to 40 tonnes  
                                  - 40 to 80 tonnes  
                                  - 80 to 100 tonnes  
                                  - 100 to 140 tonnes  
                                  - 140 to 180 tonnes  
                                  - 180 to 220 tonnes  
                                  - over 220 tonnes

Crane Driver               - Manitowoc 4600 Series 4  
                                  - Manitowoc 4600 Series 3

Mechanical Plant Operators   - Group 1  
                                  - Group 2  
                                  - Group 3

## SCHEDULE

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- Group 4

- Group 5

- Group 6

### **F) AUSTRALIAN WORKERS' UNION CONSTRUCTION AND MAINTENANCE AWARD 1989**

#### 4. Application of Award

Subject to the provisions of Clause 5 hereof, this award shall apply to the employment of persons engaged in or in connection with the industries or callings of:

- (a) The construction, repair, maintenance or demolition of:
  - (i) civil and/or mechanical engineering projects;
  - (ii) power transmission, light, television, radio, communication, radar, navigation, observation towers or structures;
  - (iii) power houses, chemical plants, hydrocarbons and/or oil treatment plants or refineries;
  - (iv) silos, excepting grain silos in Tasmania and South Australia;
  - (v) sports and/or entertainment complexes;
  - (vi) car parks excepting car park buildings and car parks within the alignment of a building;
  - (vii) railways, tramways, roads, freeways, causeways, aerodromes, drains, dams, weirs, bridges, overpasses, underpasses, channels, waterworks, pipe tracks, tunnels, water and sewerage works, conduits, and all concrete work and preparation incidental thereto.
- (b) The industry or calling of either or both catering and cleaning for or at premises provided for persons mentioned in sub-clause (a) hereof.

#### 5. Exceptions and Limitations

This award shall not apply to the employment of:

- (a) any building tradesman;
- (b) any builder's labourer or plumber's labourer employed on a building or building-type structure which is for the purpose of housing persons, goods or workshop equipment (other than mechanical or electrical plant).

#### 6. Locality

This award shall apply in the States of Victoria, South Australia and Tasmania.

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**G) METAL TRADES INDUSTRY ASSOCIATION OF AUSTRALIA - RULES**

5. The Association shall consist of an unlimited number of individuals, firms, partnerships, companies, corporations and unincorporated bodies, engaged in or employing any worker within the Commonwealth of Australia and its territories in any of the metal trades industries, which shall mean and include any trade, industry, business, undertaking, work, service, handicraft, employment, or industrial occupation, upon land, on or under water, or in the air, wholly or in part concerned or connected with or incidental to -
- (a) manufacturing, making, repairing, maintaining, fabricating, erecting, assembling, altering, servicing, melting, smelting, treating, processing (electro and otherwise), coating, painting, japanning, enamelling and similarly treating, vitreous enamelling, and otherwise dealing with, any metals, metallic articles or goods, machinery, mechanical and electrical apparatus, appliances and plant, structures, ships or vessels, vehicles for rail, road or air transport, plastics, industrial gases produced by mechanical means (other than coal gas), and any other articles or things of a metallic or substantially metallic nature and includes other industries, insofar as engine driving, boilerfiring, crane driving and allied occupations are carried on.

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