



QUEENSLAND BUILDING AND
CONSTRUCTION COMMISSION

MINIMUM FINANCIAL REQUIREMENTS (ANNUAL REPORTING) REGULATORY GUIDE

For the 31 December 2019 Annual Reporting Day



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PURPOSE OF THE REGULATORY GUIDE

The Queensland Building and Construction Commission (“**QBCC**”) is a statutory body established under the *Queensland Building and Construction Commission Act 1991* (Qld) (“**QBCC Act**”).

The *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (“**MFR Regulation**”) is made pursuant to the QBCC Act.

The MFR Regulation sets out the minimum financial requirements (“**MFR**”) a contractor licensee must meet for the allowable turnover and the annual and other financial reporting requirements for contractor licensees.

This regulatory guide has been produced to inform QBCC licensees with a contractor-grade licence about the QBCC’s decision-making process in relation to compliance and enforcement of the obligations under the MFR Regulation.

This regulatory guide governs the approach by the QBCC to annual reporting for the 31 December 2019 annual reporting day.

The QBCC’s ‘Guide to Annual Financial Reporting’ available on the QBCC website and at qbcc.build/annualreporting has been prepared to assist QBCC licensees understand their obligations in relation to MFR and annual reporting.

This document contains general statements based on typical circumstances. Where exceptional circumstances exist the QBCC may depart from its usual process.

ANNUAL REPORTING OBLIGATIONS

Persons holding a contractor-grade licence under the QBCC Act must provide financial information every year to the QBCC demonstrating the licensee meets the MFR.

The QBCC has prepared a ‘Guide to Annual Financial Reporting’ explaining key terms and setting out information to assist licensees understand annual reporting.

MINIMUM FINANCIAL REQUIREMENTS (MFR) OBLIGATIONS

Pursuant to s. 35(3)(a) of the QBCC Act, it is a condition of a contractor’s licence that the licensee’s financial circumstances must at all times satisfy the minimum financial requirements for the licence.

These minimum financial requirements (MFR) are set out in the MFR Regulation.

The first reporting year under the MFR Regulation is 2019. The ‘annual reporting day’ for all licensees was set at 31 December 2019. Licensees may change their annual reporting day on application to the QBCC for the 2020 calendar year.

ASSESSMENT OF RISK

The QBCC considers licensees in categories SC1 and SC2, and categories 1 - 3 (having a maximum allowable turnover from \$1 to \$30M) to have less potential to cause catastrophic harm to the industry through financial failure. Licensees in these categories are likely to undertake projects with fewer subcontractors than those with greater turnover.

Licensees in categories 4-7 are considered to have the potential to cause greater harm to the industry should financial failure occur due to their size and likelihood of working on larger projects with more subcontractors.

From a regulatory perspective, licensees will be dealt in two groups, namely:

- SC1, SC2, categories 1 to 3; and
- Categories 4 to 7.

For the reasons set out above, the QBCC will take a facilitative approach to licensees in categories SC1 – category 3, allowing these licensees until 31 December 2020 to meet the required working capital for their licence class before any regulatory action is taken. This is subject to those licensees cooperating with the QBCC, and not having outstanding monies owing to subcontractors or other serious breaches of the law.

The QBCC will take a more strict regulatory approach for licensees in categories 4-7, detailed in this document.

REGULATORY APPROACH – CATEGORIES SC1, SC2 AND CATEGORIES 1 TO 3

This section of the Regulatory Guide sets out the QBCC's compliance and enforcement processes for contractor-grade licensees in categories SC1, SC2 and categories 1 to 3 in relation to the 2019 annual reporting day.

Failure to lodge financial information by the 'annual reporting day'

If licensees in these categories fail to provide any financial information¹ pursuant to the MFR Regulation by the annual reporting day, the QBCC will generally adopt the following cascading actions, in order:

- The QBCC will make at least two attempts to contact the licensee after the annual reporting day has passed. Such contact may include telephone or email but at least one contact attempt will be by telephone with a message left where possible;
- The QBCC will notify the licensee of a proposed condition on its licence² that no new contracts can be entered into until annual reporting is lodged³. However, such notification will not be given prior to 1 April 2020;
- The QBCC will impose the licence condition and give notice to show cause why the licence should not be suspended⁴;
- The licence will be suspended and a notice to show cause why the licence should not be cancelled will be given⁵;
- The licence will be cancelled.

¹ If a licensee makes an attempt to lodge some information but it is not all that is required, this will not be considered a failure to lodge financial information for licensees in categories SC1 – category 3 for the 2019 annual reporting day.

² See s. 36(1) of the QBCC Act

³ There is no requirement in the licence condition for the annual reporting to meet the MFR for these licensees.

⁴ See s.49 and s. 48(1)(h) of the QBCC Act

⁵ As above

Failure to comply with MFR

The QBCC will assess a licensee's financial information to determine compliance with the MFR Regulation.

For **SC1, SC2 and category 1 to 3** licensees who do not comply with the MFR Regulation, the QBCC will take an educative approach, provided the licensee is responsive to reasonable requests from the QBCC and does not have unpaid debts to subcontractors or other serious breaches of law⁶.

The QBCC will contact these licensees to offer assistance and guidance as to how they can meet the MFR.

For the 2019 annual reporting day, these licensees will be given 12 months, until 31 December 2020, to strengthen their businesses and meet the MFR.

Where SC1 – category 3 licensees fail to comply with MFR after 31 December 2020, consideration will be given to taking regulatory action such as the following:

- Issue a notice of intention to suspend the licence allowing at least 21 days for the licensee to make written representations to the QBCC on the matter⁷;
- If the response to the show cause notice does not demonstrate compliance with the MFR Regulation, but does demonstrate a genuine attempt to meet the MFR, the QBCC may extend time to respond to the notice and/or impose licence conditions on the licensee;

- If the response to the show cause notice does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will suspend the licence and issue a notice of intention to cancel the licence;
- If the response to the show cause notice regarding cancellation does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will cancel the licence.

The QBCC will retain discretion in appropriate cases to impose a licence condition prohibiting a licensee from engaging in new work until it can demonstrate to the QBCC it meets MFR, rather than suspend the licence⁸.

⁶ For example, significant safety breaches or failure to comply with directions to rectify issued by the QBCC.

⁷ As above

⁸ See s.36(1) of the QBCC Act

REGULATORY APPROACH – CATEGORIES 4 TO 7

This section of the Regulatory Guide sets out the QBCC's compliance and enforcement processes for contractor-grade licensees in categories 4 to 7 in relation to the 2019 annual reporting day.

Failure to lodge financial information by the 'annual reporting day'

If licensees in these categories fail to provide financial information as required by s. 9A of the MFR Regulation by the annual reporting day, the QBCC will generally adopt the following cascading actions, in order:

- The QBCC will make at least two attempts to contact the licensee after the annual reporting day has passed. Such contact may include telephone or email;
- The QBCC will notify the licensee of a proposed condition on its licence⁹ that no new contracts can be entered into until the annual report is lodged demonstrating the MFR is met;
- The QBCC will impose the licence condition and give notice to show cause why the licence should not be suspended¹⁰;
- The licence will be suspended and a notice to show cause why the licence should not be cancelled will be given¹¹;
- The licence will be cancelled.

Failure to comply with MFR

The QBCC will assess a licensee's financial information to determine compliance with the MFR Regulation.

For category 4-7 licensees where the QBCC has determined failure to meet the requirements of the MFR Regulation, the QBCC will adopt the following cascading process:

- The QBCC will issue a notice of intention to suspend the licence allowing at least 21 days for the licensee to make written representations to the QBCC on the matter;¹²
- If the response to the show cause notice does not demonstrate compliance with the MFR Regulation, but does demonstrate a genuine attempt to meet the MFR, the QBCC may extend time to respond to the notice and/or impose licence conditions on the licensee;
- If the response to the show cause notice does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will suspend the licence and issue a notice of intention to cancel the licence;
- If the response to the show cause notice regarding cancellation does not demonstrate compliance or any genuine attempt to comply, or no response is received, the QBCC will cancel the licence.

OTHER MATTERS

Penalties

Under the MFR Regulation there are various offences with penalties attached, including failing to provide financial information by the annual reporting day¹³ and failing to notify the QBCC of certain decreases in net tangible assets¹⁴. The QBCC will only consider imposing a penalty where a licensee's behaviour warrants this additional step¹⁵.

⁹ See s. 36(1) of the QBCC Act

¹⁰ See s.49 and s. 48(1)(h) of the QBCC Act

¹¹ As above

¹² As above

¹³ Section 9A, maximum 20 penalty units

¹⁴ Section 13, maximum 20 penalty units

¹⁵ For example, providing deliberately false and misleading information to the QBCC, which is also an offence under the QBCC Act.

Document Control

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Disclaimer	This regulatory guide is of an informative nature only and does not constitute the provision of legal advice.

Need more information?

Visit qbcc.qld.gov.au or call us on 139 333.

