

# COMPANIES AND LICENSING

Something which often causes problems for licensees is understanding how their business is organised by their legal or business advisor and the implications these business structures have under the provisions of the Queensland Building and Construction Commission Act 1991 (“the QBCC Act”).

## What is a company?

A company is, in the eyes of the law, an independent legal entity, with many attributes of the natural (human) person. The Corporations Law provides that it has the separate legal capacity of a natural person, and certain other powers, such as the power to issue and allot shares, to enter into contracts, to buy and sell property, to borrow funds and to sue and be sued by others.

Companies are registered with the Australian Securities and Investments Commission (ASIC) and allocated a unique Australian Company Number (ACN). Companies are obliged to keep separate financial records and bank accounts and may also act as trustees of trust funds.

## Companies under the QBCC Act

Where a company is entering into contracts to carry out building work, it is required to hold a licence. While there are some exemptions under the QBCC Act, the majority of cases where the value of the building work exceeds \$3,300 (including labour and materials), the company will require its own licence under the QBCC Act.

It is not sufficient to employ an individual or have a director who is licensed with QBCC and use their licence number on contracts. As the company is a separate legal entity, it must have its own licence to carry out building work.

Under this section a person (including a company) is deemed to have carried out, or undertaken to carry out, building work where they:

- directly or indirectly cause building work to be carried out
- provide advisory, administrative, management or supervisory services in relation to building work.
- enter into a contract or submit a tender for building work, or offer to carry out building work.

For example, a company may be taken to have carried out building work if it receives payment, or arranges materials and labour, or prepares plans and specifications, or obtains engineers’ or soil reports. A company which is the principal contractor will be deemed to have carried out building work even where the work is carried out under a subcontract with another licensee.

The QBCC may take disciplinary action against companies for unlicensed contracting in: the Magistrates Court, the Queensland Civil and Administrative Tribunal, or by infringement notice/ticket.

## How does a company get a licence?

Before a company may be granted a Builder or Trade Contractor licence they must complete the relevant application form and meet the following requirements:

- registration – hold appropriate Company Registration with ASIC.
- financial details – financial requirements set out in the published Policy for the proposed levels of licence. Full details are contained in the relevant application form and on our website.

- Nominee Supervisor – every company is required to have a nominee licensed in the same class of licence as being applied for by the company. This licensee provides on-site supervision of the work undertaken by the company. The nominee must be an employee or director of the company. In the event the nominee does not already hold a licence, they will have to apply for a licence.

The QBCC also undertakes appropriate checks to confirm the directors, or any other persons who are in a position to control the company's conduct, are fit and proper.

#### Need more information?

Call QBCC on 139 333 and we can assist you with any questions.

Requirements for obtaining a Builder, Trade Contractor, Nominee or Site Supervisor licence are contained in the relevant application forms available from your nearest QBCC office or our website at [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au)

For information concerning company structures, and the law relating to them, you should seek legal advice.