

REGULATORY GUIDE FOR MINIMUM FINANCIAL REQUIREMENTS AND ANNUAL REPORTING

CATEGORIES SC1 AND SC2,
AND CATEGORIES 1 TO 7



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

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

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

This document contains general statements based on typical circumstances. Where circumstances warrant a different approach, the QBCC may depart from its usual process.

Scope

This regulatory guide sets out the QBCC’s approach to all contractor licensees. It replaces previous guides that dealt separately with SC1-2 and category 1-7 licensees.

This guide deals separately with two aspects of the MFR Regulation – annual reporting, and compliance with the MFR and other obligations in the Regulation.

Purpose of the MFR Regulation.

The minimum financial requirements play an important part in ensuring that Queensland has a sustainable building and construction industry, that people in the industry are paid for the work that they do and that consumers and clients of licensees are able to have their work completed.

The financial requirements help to manage the risk that a licensee will become insolvent and will be wound up or become bankrupt. They do this by setting out minimum requirements for assets and working capital, as well as by requiring licensees to tell QBCC about certain changes to their financial position. By meeting these requirements, licensees will be in a better financial position and less likely to go out of business.

Annual reporting

Licensees are required to provide the QBCC with financial information annually. For most category 1- 7 licensees the information is due by 31 December each year. For most SC1-2 licensees the information is due by 31 March each year. In most cases the financial information will be as at 30 June.

Annual reporting is an important part of the MFR scheme. It allows the QBCC to identify licensees who may not meet MFR and who might be at risk of insolvency. It also gives licensees a chance to review their financial position and check that they have a financially sound business that meets the MFR.

The QBCC’s approach to ensuring compliance with annual reporting is based on education, opportunity and enforcement.

Education

The QBCC has developed a range of resources to help licensees to comply with their annual reporting requirements. These are available on our website. The QBCC also works with accountants and their professional bodies to ensure that they can support licensees to submit their annual reporting on time.

Opportunity

The QBCC allows licensees to lodge their annual reporting online, by email, by post or in person. The range of lodgement methods makes it easier for licensees to comply by ensuring that there is a method that suits everyone.

The QBCC also reminds licensees and their accountants about upcoming lodgement dates. We send emails both before the lodgement date and after it has passed. We may also use social media and other methods to remind licensees.

Extensions of time for lodgements

Extensions of time to lodge annual reporting information will be granted only in exceptional circumstances, such as natural disasters or where serious illness or injury have prevented the licensee from lodging. To obtain an extension of time, the licensee must explain the reason for seeking the extension and provide substantiating evidence. Licensees will be expected to seek the extension in a timely manner.

Enforcement

The QBCC will generally send at least two reminders by email to licensees who have not lodged, before it will start enforcement action. Because the information given by annual reporting is important to the QBCC, the QBCC takes a failure to lodge the information seriously. At the same time, the QBCC provides a number of chances for a licensee to comply with their obligations before serious enforcement action (suspension or cancellation of a licence) is taken. This escalation path is important in providing fairness and an opportunity for licensees to comply.

As a first step in the enforcement process, the QBCC will propose imposing a condition on a licence. The condition will prevent a licensee from taking on new work until the financial information is provided, and will set a date by which the information must be given. This condition is important in allowing QBCC to manage the risk that a licensee continues to incur debts, despite the QBCC not knowing about its financial position.

Licensees will have 21 days from when they receive the notice of proposed condition to respond, either by providing their financial information or by making submissions about why the condition should not be imposed.

The QBCC will consider any submissions received, and may decide to impose a condition or to allow further time for the financial information to be provided (see below). If the QBCC does not receive either a submission or the financial information, it will usually impose the condition on the licence.

An imposition of a condition on a licence is publicly available information and will show on the licensee's licence history.

The imposed condition will set out a date for the financial information to be given to the QBCC. If that date passes and no financial information has been given, the licensee will have breached the condition and the QBCC will have grounds to suspend the licence. If this happens, the QBCC will issue a notice to the licensee to show cause why the licence should not be suspended.

Licensee will have 21 days from when they receive the show cause notice to either provide the financial information or make submission about why the licence should not be suspended. The QBCC will consider any submissions received and may decide to suspend the licence or to allow further time for the financial information to be provided (see below). If the QBCC does not receive either a submission or the financial information, we will usually suspend the licence.

If the licence is suspended we will then issue a notice asking the licensee to show cause why the licence should not be cancelled. We will follow the process outlined above for suspension, and will usually cancel the licence if financial information is not provided or if submissions received from the licensee are not accepted.

Suspension and cancellation actions are also publicly available information and will show on the licensee's licence history.

Risk-based approach

The QBCC takes a risk-based approach to regulation, focusing its resources on areas where the risk of financial loss to licensees or consumers is the greatest.

It will prioritise enforcement action for non-lodgement accordingly.

In any given year, the QBCC may choose not to take enforcement action against a particular cohort if there are greater priorities. The annual financial compliance plan published on our website will have more information about the QBCC's priorities for financial compliance.

Failing to meet MFR

Licensees that do not meet MFR are at greater risk of becoming insolvent and causing financial loss to creditors and consumers than those that do meet MFR. Accordingly, it is appropriate for the QBCC to take enforcement action against licensees that do not meet MFR.

The goal in taking enforcement action is to reduce the risk of the licensee becoming insolvent through either returning to compliance with the MFR or ceasing to incur further debts unless or until it is back in compliance. The QBCC will generally not accept an outcome where a licensee remains indefinitely in breach of the MFR.

Risk-based approach

Again, the QBCC takes a risk based approach to both deciding whether to take enforcement action and what its response should be.

The QBCC will generally prioritise category 4-7 licensees for enforcement action for failing to meet MFR over other categories, especially when reviewing annual financial information. This is because the risk of serious losses to a large number of creditors is greater for these licensees. Similarly, we will prioritise category 1-3 licensees over SC1-2 licensees.

When considering how to prioritise licensees for enforcement action, the QBCC considers a number of other factors including:

- Size of the breach
- Presence of risk factors (such as monies-owed complaints, defective or incomplete work or court action against them)
- Previous financial compliance history.

Choice of enforcement action

Failure to meet the MFR is a breach of a licence condition and is a ground for considering suspension or cancellation of a licence. A licensee that does not meet MFR may also provide grounds for the QBCC to impose a condition on its licence.

In deciding which enforcement response to choose, the QBCC will take the action that best reduces the risk of financial losses due to the insolvency of the licensee. We will consider a number of factors including:

- Size of the breach
- Likelihood that the licensee may become insolvent if the breach is not rectified
- Size of the likely financial losses to creditors and consumers
- Which response will be most effective at returning the licensee to compliance and reducing risk.

Decision to take action

Having issued a notice to show cause to suspend or a notice proposing a condition, the QBCC will consider any response received from the licensee. When deciding whether to proceed with the suspension or the condition, we will consider a number of factors including:

- Whether the licensee has provided a credible plan to return to compliance within a reasonable timeframe
- The risk of the licensee becoming insolvent while the plan is implemented, and the likely impact on creditors and consumers if it does
- The impact on the licensee, creditors and consumers if the action (suspension or imposing a condition) is taken

If the QBCC receives no response from the licensee, or if its response does not provide a credible plan for returning to compliance, we will usually suspend the licence or impose the condition. Any suspension or condition will remain in place until the licensee demonstrates that it meets MFR.

Requests for more time to respond

A licensee that receives a show cause notice or a notice proposing a condition will sometimes ask for more time to respond to it. The QBCC will consider requests for extensions of time, and will usually only allow them if:

- The extension being requested is for a reasonable period of time;
- The extension is needed because of reasons beyond the licensee's control (such as a natural disaster or serious illness) or
- The extension is needed to prepare a credible proposal for returning to compliance, and the licensee provides a reasonable explanation as to why it cannot be prepared within the time allowed in the notice

The licensee must also show how any risk of it becoming insolvent during the period of the extension will be managed.

Need more information?

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

