

REGULATORY GUIDE FOR MFR ANNUAL FINANCIAL REPORTING (SC1 - SC2 LICENSEES)



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 maximum revenue (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 in categories self-certifying 1 (“SC1”) and self-certifying 2 (“SC2”) 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 category SC1 and SC2 licensees, excluding the 31 December 2019 annual reporting day, for which a separate regulatory guide applies. A separate guide has been produced for annual reporting for category 1-7 licensees and is available on the QBCC website.

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.

RISK-BASED APPROACH

The QBCC takes a risk-based approach to regulating the building and construction industry. The regulatory approach set out in this regulatory guide differs in some respects from the approach in the regulatory guide for categories 1-7 licensees. This is because SC1 and SC2 licensees have a different risk profile compared with category 1-7 licensees, should an insolvency occur.

ANNUAL REPORTING OBLIGATIONS

Individuals and companies holding a contractor-grade licence under the QBCC Act must provide financial information every year to the QBCC to demonstrate that the licensee meets the MFR. This obligation is set out in the MFR Regulation.

The QBCC's 'Guide to Annual Financial Reporting' explains key terms and sets out information to assist licensees understand annual reporting.

For SC1 and SC2 licensees, the annual reporting day is 31 March each year, commencing on 31 March 2021. This is the day by which they must submit their financial information for the previous financial year (usually the year ended 30 June).

MINIMUM FINANCIAL REQUIREMENTS OBLIGATIONS

Section 35(5)(a) of the QBCC Act makes it a condition of a contractor's licence that the licensee's financial circumstances must at all times satisfy the MFR for the licence.

These MFR are set out in the MFR Regulation.

Section 35(5)(b) of the QBCC Act makes it a condition of a contractor's licence that variations of the contractor's turnover and assets must be notified, or notified and approved, in accordance with the MFR for the licence.

USE OF ANNUAL REPORTING INFORMATION

The QBCC will use annual reporting information from SC1 and SC2 licensees in a number of ways, consistent with the risk profile of those licensees and its risk-based approach to regulation.

Firstly, the annual reporting information will be used to identify licensees whose actual annual turnover places them in licence categories 1-7. The regulatory approach to such licensees is described below.

Secondly, the annual reporting information will be used to identify licensees who appear not to meet the MFR and who have significant risk factors for becoming insolvent (such as multiple moneys-owed complaints). Again, the regulatory approach for these licensees is set out below.

Thirdly, the annual reporting information will be used to gain insights into the financial performance of this sector of the industry, identify common problems, and inform a strategic approach to improving compliance with MFR by SC1 and SC2 licensees.

The older that financial information is, the less likely it is to present an accurate picture of a licensee's current financial position. Therefore the QBCC will generally not rely on annual reporting information after more than six months has passed since the annual reporting day.

NON-LODGE OF ANNUAL REPORTING INFORMATION

Failure to submit annual reporting compromises the effectiveness of the MFR framework and makes it more difficult for the QBCC to identify the matters referred to above. Accordingly, the QBCC treats failure to lodge annual reporting information by the due date as a serious matter.

Where SC1 and SC2 licensees fail to lodge their financial information by the due date, the QBCC will issue two reminders to those licensees.

Following the second reminder, the QBCC will take the following steps until the information is lodged:

- Notify the licensee of a proposed condition on its licence that no new contracts may be entered into until their annual reporting information is lodged. A date for lodgement will be specified in the condition.
- Impose the licence condition.
- After the date in the condition has passed, give a notice to show cause why the licence should not be suspended.
- Consider whether to exercise the discretion to suspend the licence.
- Where a licence has been suspended and the licensee remains in breach of the reporting obligations, give a notice to show cause why the licence should not be cancelled.
- Consider whether to exercise the discretion to cancel the licence.

The QBCC will prioritise regulatory action based on the licensee's lodgement history. It will prioritise action against those licensees who also failed to lodge for the previous annual reporting day, followed by those who failed to lodge for the current annual reporting day.

EXTENSIONS OF TIME

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.

REGULATORY APPROACH – LICENSEES IN THE WRONG CATEGORY

Where the financial information submitted to the QBCC for the annual reporting obligation shows that, based on the licensee's actual turnover, the licensee should be classified as a category 1 or higher, the QBCC will take regulatory action.

Licensees whose annual turnover places them in category 1 or above may also not have enough net tangible assets to support their turnover, placing them at higher risk of insolvency. Licensees that should correctly be categorised as category 1 or higher will have breached the condition of their licence that requires a licensee to apply to the QBCC to increase their maximum revenue when their actual revenue exceeds their maximum revenue by greater than 10%.

As a general approach, where an SC1 licensee exceeds the maximum revenue for that category by more than 450%, or where an SC2 licensee exceeds the maximum revenue for that category by more than 200% (\$900,000 and \$1.6million respectively), the QBCC will take regulatory action as set out below. Where the exceedance is less than that, the QBCC may provide the licensee with an opportunity to apply to increase their maximum revenue before taking regulatory action.

For such licensees, the QBCC will:

- Give a notice to show cause why the licence should not be suspended for breaching that condition.
- Consider whether to exercise the discretion to suspend the licence following expiry of the show cause period.
- If the licence is suspended and the licensee has not applied for and been approved an increase in its maximum revenue, give a notice to show cause why the licence should not be cancelled.
- Consider whether to exercise the discretion to cancel the licence following expiry of the show cause period.

REGULATORY APPROACH – CONTRACTORS WITH RISK FACTORS

The QBCC will prioritise regulatory action against licensees who do not meet MFR by turnover, pose a potential risk of financial harm to suppliers and subcontractors and present other risk factors (such as moneys-owed complaints).

In these cases, the QBCC will undertake a financial audit and request information which may include an MFR report from the licensee to demonstrate the licensee meets the MFR.

If the licensee fails to demonstrate it meets the MFR as a result of a financial audit process, the QBCC will consider whether the licensee has breached the statutory licence condition referred to above. If the QBCC determines a breach of that condition, the QBCC will:

- Give a notice to show cause why the licence should not be suspended for breaching that condition.
- Consider whether to exercise the discretion to suspend the licence following expiry of the show cause period.

- If the licence is suspended and the licensee has not applied for and been approved an increase in its maximum revenue, give a notice to show cause why the licence should not be cancelled.
- Consider whether to exercise the discretion to cancel the licence following expiry of the show cause period.

In addition to the above action, the QBCC may exercise its discretion to issue fines for failure to comply with a provision of the MFR Regulation carrying a financial penalty. The QBCC does not intend to issue fines across all SC licensees who fail to comply with the MFR Regulation requirements set out in this regulatory guide. The QBCC may issue targeted fines to particular SC licensees if the QBCC considers this to be the most effective regulatory approach for a particular non-compliance.

DEVELOPING STRATEGIC RESPONSES

The QBCC will analyse the financial information submitted by SC1 and SC2 licensees, to gain insights into the financial performance of this sector. Such insights may include rates of compliance with MFR, the average deficiency in net tangible assets or current ratio, and any trends or patterns within different licence categories.

The QBCC will use this analysis to inform a strategic regulatory approach aimed at addressing the underlying reasons for non-compliance with MFR at the sector level. Examples of this approach might include education materials, communications campaigns or joint activities with industry stakeholders aimed at improving the financial management of licensees. The exact approach will be determined following analysis of the financial management information and in consultation with stakeholders.

Need more information?

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

