

Regulatory Guide for MFR Annual Financial Reporting (Categories 1-7)

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 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, excluding the 31 December 2019 annual reporting day, for which a separate regulatory guide applies. 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.

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.

Minimum financial requirements obligations

Pursuant to section 35(5)(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 MFR for the licence.

These MFR are set out in the MFR Regulation.

Pursuant to section 35(5)(b) of the QBCC Act, it is 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.

Non-lodgement of annual reporting information

The intention of annual financial reporting is to give the QBCC better visibility of the financial performance of licensees, so that it can intervene to minimise (where possible) the losses to subcontractors and suppliers caused by insolvency.

Failure to submit annual reporting compromises the effectiveness of the MFR framework. Accordingly, the QBCC treats failure to lodge annual reporting information by the due date as a serious matter.

Category 4-7 licensees have had two reporting days (31 March 2019 and 31 December 2019), and other licensees have had one reporting day (31 December 2019). All licensees should now be familiar with the obligation to lodge annual reporting information.

For category 1-7 licensees, the annual reporting day for 2020 is 31 December 2020. After that date, the QBCC will issue two reminders to licensees who have not lodged their financial information by the due date.

Following the second reminder¹, 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 risk, commencing with categories 4-7 licensees, and progressing through categories 1-3 licensees. However if another risk factor is identified, the QBCC may prioritise regulatory action against any licensee.

Penalty infringement notices

Failure to lodge annual reporting information is an offence for which the QBCC may issue a penalty infringement notice (approximately \$260 for an individual and approximately \$1,300 for a company). In addition to the steps set out above, the QBCC may elect to issue infringement notices against a licensee who fails to lodge the annual reporting information.

¹ And potentially also following issuance of a penalty infringement notice, if annual reporting information remains outstanding.

Extensions of time

Extensions of time to lodge annual reporting information will be granted only in exceptional circumstances, such as 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.

Failing to satisfy the MFR

Having sufficient net tangible assets to cover actual revenue and maintaining a current ratio of at least 1:1 are important ways of ensuring that a licensee is operating a financially sound business, thus minimising the risk of insolvency and consequent losses to subcontractors and suppliers.

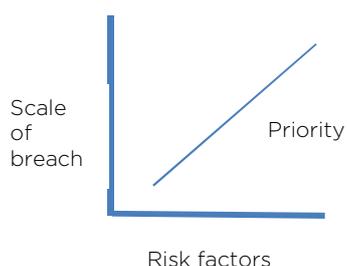
The QBCC has prepared a Guide [‘Complying with Minimum Financial Requirements – Common Problems’](#) setting out some examples where the QBCC has assessed a licensee as not meeting the MFR.

The QBCC will take a risk-based approach to regulatory action against licensees who do not satisfy the MFR. It will direct its resources towards the areas of greatest risk, with a view to preventing the greatest degree of harm to subcontractors, suppliers and consumers.

In general, the higher the category of licensee, the greater the consequence of insolvency. The degree by which a licensee fails to satisfy the MFR is also relevant to the risk involved (on the basis that the greater the deficiency in net tangible assets and/or current ratio, the greater the risk).

Also relevant to the QBCC’s risk assessment are considerations such as a licensee having recent monies-owed complaints made against it, unpaid adjudication amounts, outstanding rectification works or other non-compliance that may indicate financial distress.

Risk considerations will guide both how the QBCC allocates its resources (and which licensees it assesses for compliance with MFR), and how it responds to non-compliance (by responding in a way that is proportionate to risk). In general, the bigger the breach of MFR and the greater the number of other risk factors, the higher the priority for the QBCC and the stronger the regulatory response is likely to be. The diagram below shows the relationship between scale of breach, risk factors and priority:





For category 4-7 licensees, the QBCC will assess annual reporting information for all licensees due to the potentially catastrophic consequences if a licensee becomes insolvent. Where such licensees do not meet the MFR, the QBCC may issue a notice of intention to suspend the licence or a notice proposing a licence condition, allowing the licensee 21 days to respond. The QBCC will consider all representations made by the licensee in response to the notice, before making a decision about whether to suspend the licence or impose the condition.

If a licensee has its licence suspended, the QBCC will issue a show cause notice as to why the licence should not be cancelled. The QBCC's actions following any submission received in response to the show cause notice will be guided by similar considerations to a licence suspension.

For category 1-3 licensees, the QBCC will take regulatory action against those licensees that do not comply with MFR and/or pose a higher risk of insolvency based on the risk assessment considerations outlined above. For these licensees, the QBCC will follow a similar approach to that outlined for categories 4-7 licensees.