



*Queensland Building and Construction Commission Act 1991*

# **Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018**

**Current as at 1 January 2019**

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Queensland

# Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018

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# Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018*.

### 2 Commencement

This regulation commences on 1 January 2019.

### 3 Purpose

This regulation prescribes, for section 116(2)(ab) of the Act, the minimum financial requirements for a licensee who holds a contractor's licence.

### 4 Definitions

The dictionary in schedule 1 defines particular words used in this regulation.

## Part 2 Exemptions

### 5 Exemption for holders of particular classes of contractor's licence

This regulation does not apply to a licensee if the licensee—

- (a) holds a contractor's licence of a following class under the *Queensland Building and Construction Commission Regulation 2018*, schedule 2—
  - (i) building design—low rise licence;
  - (ii) building design—medium rise licence;
  - (iii) building design—open licence;
  - (iv) hydraulic services design licences;
  - (v) site classifier licences; and
- (b) holds professional indemnity insurance that—
  - (i) covers the scope of work for the class mentioned in the *Queensland Building and Construction Commission Regulation 2018*, schedule 2; and
  - (ii) complies with the requirements for professional indemnity insurance under the continued MFR policy; and
- (c) carries out work that is solely within the scope of work for the licence class.

## **6 Exemption for holders of builder—project management services class of contractor's licence**

This regulation does not apply to a licensee if the licensee—

- (a) holds a licence of the class builder—project management services under the *Queensland Building and Construction Commission Regulation 2018*, schedule 2; and
- (b) holds professional indemnity insurance that—
  - (i) covers the scope of work for the class mentioned in the *Queensland Building and Construction Commission Regulation 2018*, schedule 2, part 6, section 2; and
  - (ii) provides for a minimum limit of indemnity for a claim of at least \$1M; and

- (iii) otherwise complies with the requirements for professional indemnity insurance under the continued MFR policy; and
- (c) carries out work that is solely within the scope of work for the licence class.

## **7 Exemption for special purpose vehicles**

This regulation does not apply to a licensee that is a special purpose vehicle to the extent the licensee carries out building work under the public-private partnership for which the special purpose vehicle was established.

# **Part 3 Requirement to give financial information**

## **8 Licensee must give commission financial information**

A licensee must, on or before the licensee's annual reporting day, give the commission the financial information mentioned in section 9 for the most recent reporting year ending before the annual reporting day.

Maximum penalty—20 penalty units.

## **9 Relevant financial information for a licensee**

- (1) For section 8, the financial information for a licensee is the following—
  - (a) for a category SC1 or SC2 licensee under the continued MFR policy—a declaration, in the approved form, about the licensee's revenue and net tangible assets;
  - (b) for a category 1, 2 or 3 licensee under the continued MFR policy—all of the following reports about the licensee's financial position prepared under the Australian Accounting Standards—

- (i) a profit and loss statement;
  - (ii) a balance sheet;
  - (iii) a debtors and creditors report;
  - (iv) a statement of cashflows;
  - (c) for a category 4, 5, 6 or 7 licensee under the continued MFR policy—signed financial statements.
- (2) In this section—

*signed financial statements*, for a licensee, means all of the following—

- (a) all financial statements required by the Australian Accounting Standards, including the following—
  - (i) a profit and loss statement;
  - (ii) a balance sheet;
  - (iii) a debtors and creditors report;
  - (iv) a statement of cashflows;
- (b) notes to the financial statements containing notes required by the Australian Accounting Standards;
- (c) a written declaration verifying the information contained in the documents mentioned in paragraphs (a) and (b);
- (d) a description of the measurement, within the meaning of the Australian Accounting Standards, on which the financial statements mentioned in paragraph (a) are based and the accounting policies or reports relevant to those financial statements.

## 10 Licensee's annual reporting day

- (1) If the commission grants a licence under the Act, the commission must, when the licence is granted, give the licensee a written notice stating the licensee's annual reporting day.



- (2) The commission may, on application by the licensee, change the licensee's annual reporting day.

## 11 Deemed compliance with s 8 in particular circumstances

- (1) This section applies if a licensee—
- (a) is required to do either of the following in relation to carrying out building work under the licensee's licence—
    - (i) lodge a report under the Corporations Act, section 319 for a reporting year;
    - (ii) give the ASX copies of ASX annual documents for a reporting year; and
  - (b) complies with the requirement mentioned in paragraph (a); and
  - (c) gives the commission a copy of the report or documents within 30 days after complying with the requirement mentioned in paragraph (a).
- (2) The licensee is taken to have complied with section 8 for the reporting year, to the extent the licensee carries out building work under the licence.
- (3) In this section—

**ASX** means ASX Limited ACN 008 624 691.

**ASX annual documents** means the annual documents required to be given to the ASX under chapter 4, section 4.5 of the ASX listing rules.

**ASX listing rules** means rules made by the ASX for the listing of corporations on the Australian stock exchange.

## **Part 4                      Net tangible assets**

### **Division 1                      Preliminary**

#### **12                      Relationship of part with continued MFR policy**

- (1) This part applies despite the continued MFR policy, part 2.
- (2) To remove any doubt, it is declared that the continued MFR policy, part 2 continues to apply in relation to a matter for which this part does not provide.

*Example—*

The continued MFR policy, part 2.7 continues to apply for working out whether a licensee may rely on a deed of covenant and assurance in relation to the licensee's net tangible assets.

### **Division 2                      When licensee must give information**

#### **13                      Licensees must give commission information about particular decreases in net tangible assets**

- (1) This section applies to a licensee if—
  - (a) the licensee has given the commission written notice of the licensee's net tangible assets; and

*Examples of how a licensee may have notified the commission—*

A licensee may have notified the commission of the licensee's net tangible assets in the licensee's application for a licence or when complying with a requirement under an approved audit program or other requirement to give financial information under the Act.

- (b) the commission has given the licensee a written notice that the commission accepts the net tangible assets notified under paragraph (a) (the *accepted NTA*); and
- (c) the licensee's net tangible assets decrease by more than—

- (i) for a category SC1, SC2, 1, 2 or 3 licensee under the continued MFR policy—30% below the licensee’s most recent accepted NTA; or
  - (ii) for any other licensee—20% below the licensee’s most recent accepted NTA.
- (2) The licensee must, within 30 days after the licensee becomes aware, or ought reasonably to have become aware, of the decrease, give the commission—
  - (a) for a category SC1 or SC2 licensee under the continued MFR policy—a declaration about the decrease in the approved form; or
  - (b) otherwise—a report, in the approved form, about the financial position of the licensee.

Maximum penalty—20 penalty units.

## **Division 3                      Working out net tangible assets**

### **14            Meaning of *net tangible assets* of a licensee**

The *net tangible assets* of a licensee is the amount worked out by subtracting all of the following amounts from the total amount of assets of the licensee under section 15—

- (a) the total amount of the licensee’s liabilities under section 16;
- (b) the total amount of the licensee’s intangible assets worked out under Australian Accounting Standard AASB 138;
- (c) the total amount of the licensee’s disallowed assets under section 17.

### **15            Working out licensee’s assets**

- (1) A licensee’s assets include the following—
  - (a) cash;

- (b) the following amounts held in a project bank account for a building contract—
  - (i) if the licensee is the head contractor for the building contract—the amount held in the project bank account in which the licensee has a beneficial interest under the *Building Industry Fairness (Security of Payment) Act 2017*, section 9(3), other than amounts held in the retention trust account or disputed funds trust account;
  - (ii) if the licensee is a subcontractor for the building contract—the amount held on trust for the licensee as a beneficiary under the *Building Industry Fairness (Security of Payment) Act 2017*, section 9(3) and (4);
- (c) an amount payable to the licensee for building work, construction work or building work services carried out by the licensee under a building contract for which the licensee has not yet been paid, other than an amount mentioned in paragraph (b);
- (d) an amount owing to the licensee by a debtor, if the amount is recoverable by the licensee on the day the assets are worked out;
- (e) the value of inventory;
- (f) an investment made by the licensee, if the terms of the investment allow it to be converted to cash on the day the assets are worked out;
- (g) an investment valued using the equity method under Australian Accounting Standard AASB 128 for a general purpose financial report under the Australian Accounting Standards;
- (h) the value of a motor vehicle;
- (i) plant and equipment valued at carrying amount under Australian Accounting Standard AASB 116;
- (j) the value of real property;

- (k) a loan given by the licensee to a related entity, if the related entity has sufficient funds to repay the loan on the day the assets are worked out;
  - (l) the value of shares in companies listed on a stock exchange;
  - (m) the value of tools of trade.
- (2) Also, the net tangible assets of a licensee include any net tangible assets of a covenantor under a deed of covenant given in favour of the licensee.
- (3) For subsection (2), the net tangible assets of the covenantor must be worked out under this division as if a reference in this division to a licensee were a reference to the covenantor.
- (4) In this section—

**building contract** includes a building contract or construction contract under the *Building Industry Fairness (Security of Payment) Act 2017*, section 8 or 64.

**construction work** see the *Building Industry Fairness (Security of Payment) Act 2017*, section 65.

**disputed funds trust account** see the *Building Industry Fairness (Security of Payment) Act 2017*, section 23(1)(c).

**head contractor**, for a building contract, see the *Building Industry Fairness (Security of Payment) Act 2017*, section 8.

**project bank account**, for a building contract, see the *Building Industry Fairness (Security of Payment) Act 2017*, section 9(1).

**retention trust account** see the *Building Industry Fairness (Security of Payment) Act 2017*, section 23(1)(b).

**subcontractor**, for a building contract, see the *Building Industry Fairness (Security of Payment) Act 2017*, section 6(3)(b).

**value**, of an asset, means the value of the asset worked out under the Australian Accounting Standards.

## **16 Working out a licensee's liabilities**

A licensee's liabilities include—

- (a) an amount owing by the licensee to a related entity; and
- (b) the amount of a deficiency in trust assets of a trust for which the licensee is a trustee; and
- (c) the full amount of a loan for which the licensee is in default if the lender has not waived its rights in relation to the default.

## **17 Working out a licensee's disallowed assets**

(1) The following are disallowed assets of a licensee—

- (a) a recreational vehicle;
- (b) an unregistered vehicle mentioned in the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*, section 6(2);
- (c) a racehorse;
- (d) a collectors item;

*Examples—*

paintings, stamps, coins

- (e) contingent assets under Australian Accounting Standard AASB 137;
- (f) furniture used solely or predominantly for a personal purpose;
- (g) investments in, or shares of, companies other than companies listed on a stock exchange;
- (h) investments valued using the equity method under Australian Accounting Standard AASB 128 for a special purpose financial statement under the Australian Accounting Standards;
- (i) non-monetary credits, including, for example, goods or services owed to the licensee in exchange for other goods or services;

- (j) assets held on trust by the licensee for a beneficiary other than the licensee;
  - (k) units in trusts that are not listed on a stock exchange;
  - (l) superannuation benefits that can not be accessed by the licensee on the day the disallowed assets are worked out;
  - (m) life or income protection insurance policy benefits.
- (2) In this section—

***recreational vehicle*** means the following—

- (a) a motorbike under *Transport Operations (Road Use Management) Act 1995*, schedule 4, that is designed to be used off-road;
- (b) a quad bike under the Queensland Road Rules, schedule 5;
- (c) a motorised golf buggy under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*, schedule 8;
- (d) a ship under the *Transport Operations (Marine Safety) Act 1994*, section 10;
- (e) a personal watercraft under the *Transport Operations (Marine Safety) Act 1994*, schedule 1;
- (f) an aircraft under the *Air Navigation Act 1937*, section 4;
- (g) a racing vehicle under the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010*, schedule 8.

## **Part 5 Transitional provisions**

### **18 Minimum financial requirements—continued MFR policy is prescribed**

The continued MFR policy is prescribed for section 116(2)(ab) of the Act until the day the continued MFR policy expires under schedule 1, section 76 of the Act.

### **19 Relationship of this regulation with continued MFR policy**

Subject to section 12, if this regulation is inconsistent with the continued MFR policy, this regulation prevails to the extent of the inconsistency.

### **20 Application of s 8 to existing licensees**

- (1) This section applies to a person who, on the commencement, is a licensee to whom this regulation applies.
- (2) Section 8 applies to the person as if—
  - (a) the following day were the annual reporting day for the person—
    - (i) if the person is a category 4, 5, 6 or 7 licensee under the continued MFR policy—31 March 2019;
    - (ii) if the person is a category SC1, SC2, 1, 2 or 3 licensee under the continued MFR policy—31 December 2019; and
  - (b) the year stated in the notice given to the person under subsection (4) were the most recent reporting year in relation to the day mentioned in paragraph (a).
- (3) However, the person does not commit an offence against section 8 if the person can not comply with that section because—
  - (a) the person does not have the financial information required to be given under that section in relation to a period occurring before the commencement; and



- (b) the financial information was not, before the commencement, required to be kept by the person under the Act or another Act or law.
- (4) Within 20 business days after the commencement, the commission must give the person a written notice stating details of the person's obligation to comply with section 8 as it applies under this section, including the year for which the person must give financial information.
- (5) The licensee may not apply under section 10(2) to change the day mentioned in subsection (2)(a).
- (6) This section does not limit the application of section 8 in relation to an annual reporting day for the person that is after the day mentioned in subsection (2)(a).

## **21 Commission must notify existing licensees of annual reporting day**

- (1) The commission must give each person who holds a licence on the commencement a written notice stating the annual reporting day for the licensee.
- (2) The notice must—
  - (a) be given at least 40 business days before the annual reporting day stated in the notice; and
  - (b) state that the licensee may apply, under section 10(2), to change the licensee's annual reporting day.

## **22 Application of pt 4 to existing licensees**

- (1) This section applies to a person who was a licensee immediately before the commencement.
- (2) Part 4 does not apply to the licensee until the first annual reporting day to occur after the commencement as stated in the notice given to the person under section 21.
- (3) The continued MFR policy, part 2 continues to apply to the person until the day mentioned in subsection (2).

## Schedule 1 Dictionary

### section 4

***annual reporting day***, for a licensee, means—

- (a) the day notified by the commission to the licensee under section 10(1) or 21(1); or
- (b) if the day is changed under section 10(2)—the changed day.

***continued MFR policy*** means the policy called ‘Minimum Financial Requirements’ made by the board on 28 August 2015 and continued in force under schedule 1, section 76 of the Act.

***net tangible assets***, of a licensee, see section 14.

***related entity*** see the *Building Industry Fairness (Security of Payment) Act 2017*, section 19.

***reporting year***, for a licensee, means—

- (a) if the licensee is required to lodge annual financial reports with ASIC under the Corporations Act, part 2M.3—a financial year under that Act; or
- (b) if paragraph (a) does not apply—
  - (i) a calendar year starting on a day agreed between the licensee and the commission; or
  - (ii) otherwise—a financial year.