

Construction for Accountants: Part Two

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Presenting Wednesdays with Redchip Webinar



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Dominic specialises in the areas of commercial litigation, insolvency and building and construction disputes.

QBCC compliance audits / QBCC minimum financial requirements for licensees

- Notice of reasons for proposed suspensions of license;
- Notice of reasons for proposed cancellations of license;
- Consequences of suspensions and cancellations of license on the builder/client;
- Methods for recovering money in uncertain times; and
- Key upcoming changes to the QBCC licencing regime.

QBCC compliance audits

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Construction industry

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One of the most volatile industries in Queensland and Australia generally is the construction industry which accounts for approximately 20-25% of all insolvency cases on a yearly basis.

QBCC compliance audits

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There are several mechanisms the Queensland Building and Construction Commission (QBCC) has in place to minimise the risk and effects of insolvency in the building and construction industry.

One of these is by the way of a compliance audit pursuant to section 50C of the QBCC Act to ensure that a licensee meets the appropriate Minimum Financial Requirements.

Role of Accountants

For a lot of issues QBCC related, accountants are the first to be notified as notices from the QBCC are normally sent via post to the company's registered office (usually their accountant).

Accountants therefore play a key role in meeting deadlines for those requirements.

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What are the QBCC minimum financial requirements?

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Minimum financial requirements

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- The Minimum Financial Requirements are a set of legislated financial standards that each licensee must meet to be able to obtain or keep their building license. These are prescribed under the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (Qld) (**MFR Regulations**).
- Meeting the minimum financial requirements is a requirement under section 31(1)(c) and 31(2)(c) of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**) to apply for and hold a contractor's license.

Minimum financial requirements cont.



A condition on the grant of a license is subject to the conditions that (section 35(5) QBCC Act):

- i. The licensee's financial circumstances **must at all times** satisfy the minimum financial requirements for the license; and
- ii. Variations of the contractor's turnover and assets must be notified, or notified and approved, in accordance with the minimum financial requirements for the license.

Minimum financial requirements cont.

Three key conditions under the MFR are:

- i. Firstly, there must at all times be an asset liability ratio of at least 1 (17G MFR Regulations); and
- ii. Secondly, the company must maintain a Net Tangible Asset value of
 - a. at least \$0 in its own right; and
 - b. an additional amount as prescribed by the MFR Regulations Division 4 Part 4 MFR Regulations); and
- i. Thirdly, pay suppliers of goods and services on or before the due date (section 17N MFR Regulations).

Net Tangible Asset table



Criteria	Maximum Revenue	Net Tangible Assets	Information Required
SC1	Up to \$200,000	\$12,000	SC1 Declaration
SC2	Up to \$800,000	\$46,000	SC2 Declaration
	min (a) max (b)	min (c) max (d)	
Category 1	\$800,001 - \$3,000,000	\$46,001 - \$156,000	MFR Report and signed financial statements
Category 2	\$3,000,001 - \$12,000,000	\$156,001 - \$480,000	MFR Report and signed financial statements
Category 3	\$12,000,001 - \$30,000,000	\$480,001 - \$1,200,000	MFR Report and signed financial statements
Category 4	\$30,000,001 - \$60,000,000	\$1,200,001 - \$2,400,000	MFR Report and signed financial statements
Category 5	\$60,000,001 - \$120,000,000	\$2,400,001 - \$4,800,000	MFR Report and signed financial statements
Category 6	\$120,000,001 - \$240,000,000	\$4,800,001 - 14,400,000	MFR Report and signed financial statements
Category 7	>\$240M NTA	>\$14.4M	MFR Report and signed financial statements

QBCC compliance audit

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QBCC compliance audit

- The QBCC is able to audit licensees to make sure that they continue to satisfy the MFR (50A – 50C QBCC Act) (among other things).
- They may at any time issue a notice for compliance audit under section 50C of the QBCC Act if they have reason to believe a licensee does not meet the MFR – it is a condition that a licensee must **at all times** meet the MFR.

QBCC compliance audit cont.



- The notice compels a licensee to produce financial records and other documents.
- That information requested must be provided to the QBCC within 21 days of that request.



Contact: [REDACTED]
Office: Brisbane
Telephone: [REDACTED]
Fax: [REDACTED]

Our Ref: [REDACTED]

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Dear Directors

COMPLIANCE AUDIT

I refer to the QBCC licences held by [REDACTED] Pty Ltd "(the Company)".

Pursuant to Section 50C(2) of the *Queensland Building and Construction Commission Act 1991*, QBCC may give written notice to a licensee requiring the licensee to provide copies of, or access to, specified financial records.

The Company's internal management account balance sheet as at 30 September [REDACTED] shows net assets of [REDACTED], which is below the minimum required [REDACTED] net tangible asset amount.

QBCC compliance audit cont.

- We commonly see compliance audits take place when several 'monies owed' complaints have been made by creditors to the QBCC.
- If complaints are lodged by creditors against your client under a 'monies owed complaint' to the QBCC, it is an indication that the company may not comply with the MFR requirements (in that they are not paying suppliers by due dates) and the QBCC may issue a notice for a compliance audit.

License suspension

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License suspension

- a) If the compliance audit is passed, then everything goes to being back to normal. If not, a Notice of Reasons of Proposed Suspension (NRPS) is usually issued to the licensee.
- b) The notice allows the licensee to 'show cause' as to why the license should not be terminated.
- c) Failure to comply with a compliance audit allows the QBCC to assume that the licensee does not meet the MFR and is therefore able to suspend the license (QBCC Act ss 36, 50C(5)).



Contact: [REDACTED]
Office: Brisbane
Telephone: [REDACTED]
Fax: [REDACTED]

Our Ref: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Dear Directors

NOTICE OF REASONS FOR PROPOSED SUSPENSION

This notice informs you of the reasons why QBCC proposes to suspend the licence of [REDACTED] Pty Ltd (the Company). If the Company fails to take appropriate action in response to this notice, its licence may be suspended.

Reasons for proposed suspension

TAKE NOTICE, QBCC proposes to suspend the Company's licence for the following reasons:

- By notice dated [REDACTED] QBCC commenced a compliance audit pursuant to Section 50C of the *Queensland Building and Construction Commission Act 1991*.
- The compliance audit required the Company to provide QBCC with certain records or documents within the time period stated in the compliance audit notice.
- Financial information has been received for the Company as at [REDACTED], however does not comply with the compliance audit notice due to the following concerns:
 - The MFR Report notes that a Deed of Covenant and Assurance is being assured to the

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License suspension cont.



- d) The licensee then has 21 days (section 44H QBCC Act) to show cause as to why the license should not be suspended.
- e) This normally provides a further opportunity for the licensee to provide information.
- f) If the information is not provided within 21 days, or the QBCC is still not satisfied and the license becomes suspended, the licensee must immediately suspend building works. Therefore, it is important that all the information is provided as soon as possible.

License cancellation

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License cancellation

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If documents are not provided or if the NRPS is not responded to, then a further notice is normally issued providing 21 days to give reasons why the license should not be cancelled (section 44H QBCC Act).

When the license is cancelled, the license card must be handed back to the QBCC and the licensee can no longer undertake building work.

Contact: [REDACTED]
Office: Brisbane
Telephone: [REDACTED]
Fax: [REDACTED]

Our Ref: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Dear Directors

NOTICE OF REASONS FOR PROPOSED CANCELLATION

This notice informs you of the reasons why QBCC proposes to cancel the licence of [REDACTED] Pty Ltd (the Company). If you fail to take appropriate action in response to this notice, the Company's licence may be cancelled.

Reasons for proposed cancellation

Section 48(1)(h) of the *Queensland Building and Construction Commission Act 1991* provides that QBCC may suspend or cancel a licence if the licensee contravenes a condition to which the licence is subject under Section 35 of the Act.

TAKE NOTICE, QBCC proposes to cancel the Company's licence for the following reasons:

- Section 35 provides that a contractor's licence is subject to the condition that the licensee's financial circumstances must at all times satisfy the Queensland Building and Construction (Minimum Financial Requirements) Regulation 2018.
- On [REDACTED] QBCC commenced a Compliance Audit and received financial information for the Company as at 30 June 2018.
- The Company's balance sheet as at 30 June 2018 includes debtor amounts owing from [REDACTED] of \$ [REDACTED] and [REDACTED] of \$ [REDACTED].

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What happens if you fail the compliance audit or do not provide MFR details?

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Penalties under the QBCC Act



- a) Failure to comply with a compliance audit - Maximum 100 penalty units (section 50C(4) QBCC Act).

- b) Failure to give MFR report when requested – 20 penalty units (section 11G MFR Regulations) .

Construction project implications

If you fail the test / audit, this means:

- 1) The license can become suspended or cancelled – which means that the licensee cannot undertake any building or construction work;
- 2) Poses serious cash flow problems in that the licensee cannot earn an income whilst they do not have a license;
- 3) For commercial based projects it poses a risk the contract will be terminated – it is a common term of commercial contracts that the licensee must always maintain the appropriate QBCC license;



Construction project implications cont.



- 4) For residential projects, it poses the risk that:
 - a) The contract is terminated due to the licensee being in a substantial breach of the contract; and
 - b) Homeowners may claim under the QBCC Home Warranty Scheme for non-completion. This means that the QBCC will then chase the licensee and director for the costs to complete – this can be excessive if there are several jobs on the go.

How can Accountants assist?

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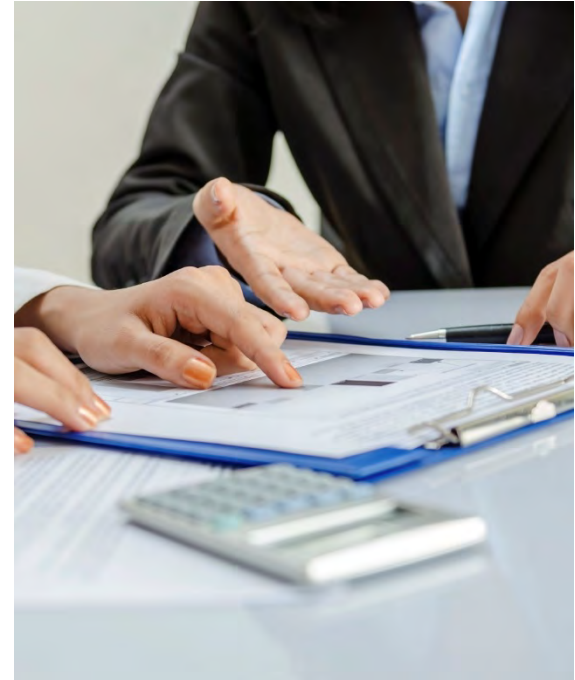
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How can Accountants assist?

If your client's books are showing unusual amounts of trade debtors compared with their income or invoices awaiting payment, this may indicate that your client:

- 1) Is not maintaining their asset liability ratio of 1:1 to keep their license;
- 2) Is not going to be able to pay suppliers on time, which may lead to complaints and a QBCC compliance audit; and



How can Accountants assist?



3) Hints that the builder may be insolvent.

Then a discussion needs to be had with your client about their position and potential implications towards their QBCC license.

What can accountants do to keep their client prepared?



- Accountants should read and understand the MFR and ensure their client is aware of the regulations and the consequences of non-compliance.
- Internal management accounts should be prepared at quarterly intervals – a common request for the QBCC.
- The NTA position and current asset ratio should be documented and considered each quarter with reference to revenue requirements and the existing NTA declaration that has been provided to the QBCC.
- Start the review process quickly if contacted by the QBCC – will allow adequate time to respond.

Recovering money in uncertain times

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Recovering money in uncertain times

- 'Monies owed complaint' – a complaint that can be made by a creditor of a licensee.
- Adjudication application under the *Building Industry Fairness (Security of Payment) Act 2017*.
- Subcontractors charges.
- Commencing proceedings in court.
- Statutory demand.



Changes to the QBCC licensing regime

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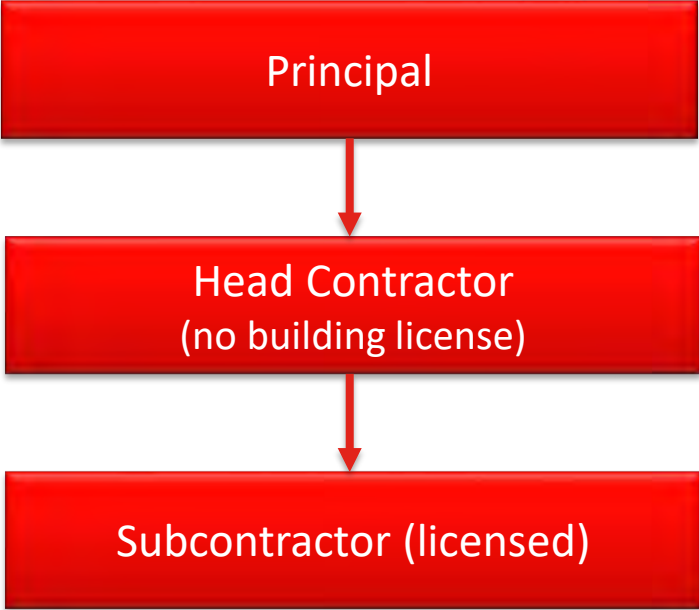


Key changes – QBCC Act

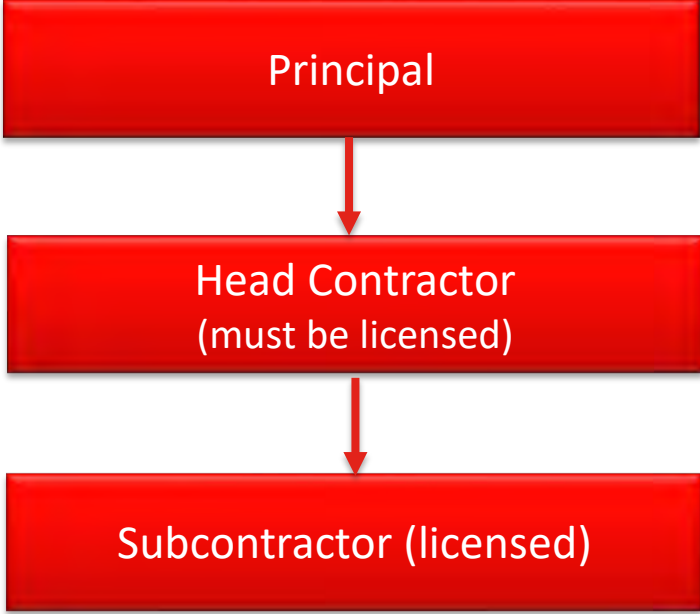
- There is currently an exemption under section 8 of Schedule 1A of the QBCC Act that allows head contractors on non-residential based projects to have building work carried out by a licensed subcontractor without the need to hold a QBCC license themselves (Head Contractor exemption).
- This is due to be repealed (expected towards the end of this year). This means that all head contractors on any project will now require a QBCC license to undertake construction work.
- The exemption is normally used on large civil projects where civil contractors do not need a QBCC license for the whole project and they will engage licensed subcontractors where needed.



Current



Changes



Recent insolvency law changes

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Recent insolvency law changes



- Due to COVID-19 the Federal Government has introduced various mechanisms and protections for directors to protect them from insolvent trading from 25 March 2020 to 31 December 2020.
- If clients are in distress and are potentially insolvent, these mechanisms and protections may impact the way that they deal with creditors moving forward.



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Your questions are important

Please send them through using the

Q&A section

07 3223 6100

Thank you for tuning in

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