The proposed improvements to the Minimum Financial Requirements for licensing in the building and construction industry

Discussion paper

SEPTEMBER 2018

QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

Queensland Government

Minister’s message

The Queensland Government is committed to strengthening the state’s building and construction industry to ensure safe and fair workplaces for Queenslanders.

Our nation-leading Building Industry Fairness (Security of Payment) Act, passed in October 2017, is a once in a generation package of reforms that provides Queensland with Australia’s strongest security of payment regime.

One of these reforms is to restore the effectiveness of the Minimum Financial Requirements (MFR) for licensing, and return the Queensland Building and Construction Commission’s (QBCC) powers to regulate those requirements.

Insolvencies have taken a great toll on this industry and the broader community, and I am committed to ensuring that the QBCC has sufficient industry oversight to reduce the risk of insolvencies and mitigate their impacts as much as possible.

This is why the MFR for licensing are so crucial in supporting the wider security of payment initiative within the building and construction industry, and why the Act provides the ability for the MFR to be prescribed in regulation.

Prescribing the MFR by regulation returns accountability for the regime to the Queensland Parliament, with the intent of ensuring it achieves the best outcomes for Queenslanders.

This discussion paper details our proposals to strengthen MFR and you are invited to have your say on these important reforms.

I want to ensure we minimise the impacts of any new requirements on businesses, especially those who already have financially sustainable practices, while also ensuring that the QBCC can effectively protect Queenslanders from businesses that are financially at risk.

It is important we get these reforms right. That is why I am seeking your feedback on the proposals under consideration.

Make sure you have your say and contribute to strengthening Queensland’s building and construction industry.

Mick de Brenni
Minister for Housing and Public Works
Minister for Digital Technology
Minister for Sport

Contents

Executive summary

The Queensland Building Plan (QBP), published in October 2017, recognised that more needed to be done regarding MFR for licensing. A key part of the Queensland Government's security of payment reforms delivered under the QBP is its commitment to create new laws that strengthen the MFR and enable the QBCC to better regulate those requirements.

This discussion paper canvasses proposals for improving the current MFR provisions. Industry stakeholders are invited to provide their feedback on the proposals being considered, including any social, economic and cost impacts. It is intended that the improved access to critical financial information will benefit industry and the broader community by providing greater transparency and better equipping the QBCC to detect and mitigate the impact of potential insolvencies and corporate collapses.

This discussion paper seeks feedback on the proposals that can be categorised as:

1. Introducing risk-based, targeted annual reporting requirements
2. Fostering improved accountancy practices that meet the objectives of the Minimum Financial Requirements
3. Ensuring forms of assurance can provide financial security
4. Ensuring funds from related entity loans can be readily accessed
5. Clarifying definitions and requirements for the calculation of assets

Following consideration of the feedback from this discussion paper, a phased approach to legislative implementation may be necessary.

Making a submission

Your comments and suggestions will help the Queensland Government consider and refine potential improvements to the Minimum Financial Requirements.

Submissions close 5pm, Tuesday 9 October, 2018.

Have your say by:

Preparing a written response by:

Filling out our response form which can be found at the back of this document or can be downloaded from the Get Involved website.

Where possible, submissions should be sent electronically, preferably in Microsoft Word or other text based formats.

Submissions may also be sent to:

Email

mfr@hpw.qld.gov.au

Mail

Feedback on the 'Proposed improvements to Minimum Financial Requirements for licensing discussion paper'
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Building Policy and Asset Management Division
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Privacy and confidentiality

The Department of Housing and Public Works (department) is seeking input for the review of the MFR for licensing. All personal information collected will be treated in accordance with the *Information Privacy Act 2009*.

The department may contact you for further consultation regarding the review. The department will not disclose or publish, in full or part, any submissions in response to this discussion paper except as required under the *Right to Information Act 2009*.

Disclaimer

This discussion paper has been released to seek feedback on the MFR and does not represent legal advice. The State of Queensland makes no statement, representation, or warranty about the accuracy or completeness of any information contained in this discussion paper. The State of Queensland disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages and costs any person might incur as a result of the information being inaccurate or incomplete in any way for any reason.

Background

In 2016–17, Queensland's building and construction industry employed around 220,000 people and as a whole, contributed approximately $45 billion to Queensland's economy. Unfortunately, high profile insolvencies and corporate collapses continue to occur in the industry, and the impacts have been felt by many Queenslanders.

Insolvency and company collapse can have an adverse impact on subcontractors, business owners, employees, suppliers and the wider community. In addition to financial impacts, social impacts can include relationship breakdowns, loss of reputation and stress-related mental illnesses, including suicide.

Queensland's building regulator, the Queensland Building and Construction Commission (QBCC), requires financial information to be provided as part of an application for a new licence. This is to help identify applicants or licensees who may not be operating a financially sustainable business, which consequently places subcontractors, suppliers and consumers at financial risk. Access to this identifying information allows the QBCC to take appropriate licensing and other regulatory action. In 2017-18, 98 licences were cancelled and 173 licences suspended for a failure to meet financial requirements.

Since 2014 however, the QBCC's access to licensees' financial information, and hence its ability to monitor companies potentially at-risk of insolvency or collapse, has been reduced.

In November 2016, the Queensland Government released the QBP discussion paper which included a range of proposals to improve security of payment. State-wide consultation demonstrated an overwhelming case for reform.

The Queensland Government has consequently taken decisive action to address the issue of security of payment. It enacted nation-leading legislation, the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act), on 10 November 2017. Some of the reforms that have already been introduced include:

- tightening up the excluded persons provisions to deter phoenixing activity
- increasing penalties for unlicensed building work
- enhancing the enforcement powers of the QBCC
- introducing Project Bank Accounts (PBAs) for government building contracts valued between $1 million–$10 million
- introducing new offences for avoiding contractual obligations.

The BIF Act also has changes commencing in late 2018 to make the process for payment claims easier and the adjudication registry more independent. The BIF Act also allows for PBAs to be extended to private building and construction projects and government projects, excluding engineering projects, valued at more than $1 million, and lower-tier subcontractors and suppliers in the future.

The QBP, published in October 2017, recognised that more needed to be done regarding MFR. The QBP states that the Government will "create new laws that strengthen the MFR and enable the QBCC to better regulate those requirements." The BIF Act has a head of power for the MFR to be prescribed in regulation. This will be a step towards making the MFR provisions more transparent.

This discussion paper canvasses proposals for improving the current MFR provisions. Industry stakeholders are invited to provide their feedback on the proposals being considered, including any social, economic and cost impacts. It is intended that the improvements will benefit industry and the broader community by providing greater transparency and better equipping the QBCC to detect and mitigate the impact of potential insolvencies and corporate collapses.

The status quo

What are the Minimum Financial Requirements for licensing?

The MFR Policy is made under the *Queensland Building and Construction Commission Act 1991* (QBCC Act). The QBCC Act requires licensed building contractors and trade contractors to comply with financial requirements stated in the MFR Policy. The Queensland Building and Construction Board (QBC Board) is presently responsible for making the MFR Policy and the Policy must be approved by regulation. The BIF Act changed this approach and included a power for the MFR to be prescribed in regulation.

Moving away from a Queensland Building and Construction Board (QBC Board) approved policy to enshrining requirements in a regulation will provide additional clarity, rigour, reduce discretion, and add transparency in the MFR. To provide for continuity, the current MFR Policy will continue until the revised MFR is prescribed in regulation.

The current MFR Policy took effect in October 2014, replacing the former Financial Requirements for Licensing Policy (FRL Policy). To achieve the stated aim of reducing red tape and minimising reporting, the MFR Policy 2014 removed the requirement for licensees to lodge financial information as part of the annual licence renewal process. However, this meant that regular, detailed information was no longer being provided to the QBCC about a licensee's financial situation.

The current MFR applies to most QBCC contractor licence classes (other than certain exemptions—refer to Appendix 1) and can be summarised as follows:

Net Tangible Assets (NTA) (calculation of a licensee's assets minus their liabilities): Applicants and licensees must have sufficient NTA to justify their level of Maximum Revenue (refer below). An applicant or licensee must have $0 NTA in their own right and must satisfy the minimum NTA amount required for the licence category. Applicants and licensees may rely upon a Deed of Covenant and Assurance to meet this requirement. Licensees are also required to advise the QBCC within 30 days if their NTA position decreases by more than 30 percent from its last advised and QBCC-accepted NTA position (which could be when the licensee first applied for the licence).

Maximum Revenue: This is the maximum amount of revenue a licensee can earn within a year based on their current licence category. Maximum revenue amounts are based on a licensee's NTA position. Licensees must not exceed their Maximum Revenue by more than 10 percent in each financial year, unless the QBCC is notified and approves the increase.

Current Ratio (ratio of a licensee's current assets to liabilities): It is a financial requirement that applicants and licensees must meet the Current Ratio requirement when applying for, or holding a licence. The Current Ratio is calculated by dividing current assets by current liabilities and must be at least 1:1.

Accounts management: Licensees must prepare and maintain internal management accounts at a minimum of quarterly intervals. These must be submitted to the QBCC on request.

Providing copies of Australian Securities and Investments Commission (ASIC) or Australian Securities Exchange (ASX) reports to the QBCC:

If a licensee or any company within its group of companies is required to provide an auditor's report or review report to ASIC or the ASX, they must also supply a copy of that report to the QBCC within 30 days of it being signed or submitted to ASIC or ASX. These reports include statements of financial position, statements of profit and loss, cashflows, changes in equity, and director's and auditor's reports.

Timely payment of debts: Licensees must pay all undisputed debts as and when the debts fall due and within industry trading terms. Licensees must also pay all debts as ordered by a Court or Tribunal within 28 days of the order or a longer period if allowed by the Court or Tribunal.

Professional indemnity insurance: Certain applicants and licensees must hold professional indemnity insurance of $500,000 or $1 million, depending on their licence type.

What are the QBCC's powers to ensure compliance with the MFR?

The QBCC currently has substantial powers under the QBCC Act to act in relation to MFR, including the ability to:

- refuse to grant a licence if the applicant cannot demonstrate at the time of application that they satisfy the relevant financial requirements for the level of Maximum Revenue being sought
- suspend or cancel a licence if the QBCC considers the licensee no longer meets the MFR, including non-payment of debt
- require notification and approval of significant variations in a licensee's turnover and assets (i.e. sufficient to result in a change in MFR licence category)
- impose conditions on a licensee that prevents them from carrying on business until the licensee has lodged with the QBCC appropriate security against possible liabilities in relation to building work
- audit a licensee and request financial records if there are reasonable grounds for concern that the licensee does not satisfy the relevant financial requirements. While the QBCC does not always receive detailed or up-to-date information about a licensee's financial situation, other information sources such as non-payment complaints may indicate that a licensee is not complying with the MFR.

Why were these financial requirements originally introduced?

The main objectives of the financial requirements (both the previous FRL Policy and MFR Policy) have been to promote financially sustainable businesses and foster professional business practices in the Queensland building industry. This includes ensuring that businesses have sufficient liquidity to continue trading and pay their debts.

Have there been previous changes to the MFR?

The MFR Policy has been amended over time to provide additional protections to minimise the impact of building and construction industry contractors collapsing or becoming insolvent. A summary of the key changes made since the introduction of the FRL Policy in 1999 is included in Appendix 2.

Why do the Minimum Financial Requirements need to be improved further?

Impact of ongoing insolvencies

A 2015 report by the Commonwealth Senate Standing Committee on Economics about insolvency in the Australian construction industry (Senate Report) found that security of payment in the building and construction industry is a problem at a national level. The Senate Report noted that the building and construction industry nationally is *"burdened every year by nearly $3bn in unpaid debts, including subcontractor payments, employee entitlements and tax debts averaging around $630m a year for the past three years."* Further, the building and construction industry's rate of insolvencies is out of proportion to its share of national output. ASIC data shows that in 2016–17, the construction industry had 1509 external administrations, the most of any industry in the country. Queensland accounted for 20.07 percent of the total insolvencies in the industry during this period.

In 2017-18, 67 companies and 124 individuals were excluded from holding a QBCC licence due to their involvement in a financial failure. Further, 33 individuals were permanently excluded from holding a licence due to their involvement in a second financial failure.

Despite the QBCC's regulatory actions, in recent years there have been multiple high-profile collapses in the building and construction industry in Queensland.

In 2016, Deloitte found that because the building and construction industry uses a system of cascading payments, subcontractors usually bear the risk of head contractor insolvency. [1]

"There is also an incentive for contractors higher up the chain to delay payments to those lower down to supplement their own cash flow and working capital. This deferred payment system and inflated cash flow is particularly prevalent where the higher contractor is nearing insolvency, and may hide that a company may otherwise be near or actually insolvent." Deloitte, 2016

What has been the Queensland Government's commitment to change?

Following extensive consultation, the QBP was published in late 2017. It announced that the Government would "create new laws that strengthen the MFR and enable the QBCC to better regulate those requirements."

The BIF Act came into force on 10 November 2017 and includes a complete suite of reforms to improve security of payment for subcontractors. It also includes a head of power for the MFR to be prescribed in regulation.

[1] Deloitte, Analysis of security of payment reform for the building and construction industry (2016)
http://www.hpw.qld.gov.au/SiteCollectionDocuments/SecurityOfPaymentDeloitteReportOriginal.pdf

What are other jurisdictions doing?

Queensland has some of the most stringent financial requirements for licensing of all the states and territories. Appendix 3 provides an overview of the approach taken in other jurisdictions.

Reforms to the Corporations Act 2001

The Australian Government recently passed new laws with the stated aim of allowing directors of financially distressed businesses a new 'safe harbour' to turn around their business, free of the worry of being personally pursued for insolvent trading. In order for the 'safe harbour' defence to apply retrospectively, the business must have done the following prior to liquidation:

- developed or taken a course of action that, at the time, was reasonably likely to lead to a better outcome for the company than immediate administration or liquidation (the course of action that was developed must have been implemented within a reasonable period)
- ensured that the company complied with its obligation to pay its employees (including their superannuation)
- ensured that the company met its tax reporting obligations.

The Commonwealth 'safe harbour' reforms also change the effect of 'ipso facto' clauses in contracts. These clauses allow a party to terminate under certain circumstances, including where one party enters into a form of external administration. The recent reforms make such clauses unenforceable while a company is under administration, with the objective of allowing the company to trade out of financial difficulty. The period of the 'stay' on these clauses generally depends on the duration of the administration. However, the Corporations Act does provide for circumstances in which the stay may remain in place indefinitely, including where the other party to the contract seeks to terminate on the basis of the company's financial position prior to the end of the stay.

The department and QBCC understand that some stakeholders are considering the implications of both of these Commonwealth initiatives and are informally suggesting that they have relevance to the MFR, or the Queensland building and construction licensing framework more broadly. Stakeholders are invited to provide comment on these provisions as part of the consultation on this paper.

What are the proposed changes?

In order to further strengthen the current MFR, reforms are proposed in the following key areas:

1. **Introducing risk-based, targeted annual reporting requirements**
2. **Fostering improved accountancy practices that meet the objectives of the Minimum Financial Requirements**
3. **Ensuring forms of assurance can provide financial security**
4. **Ensuring funds from related entity loans can be readily accessed**
5. **Clarifying definitions and requirements for the calculation of assets**

Key Area 1:
Risk-based, targeted annual reporting requirements

Context

Currently, the MFR does not require a financial report or declaration annually, or upon licence renewal, other than copies of reports provided to ASIC or ASX (only for companies that are required to report to ASIC or ASX). Rather, the MFR only requires that a licensee self-report to the QBCC if they do not meet the MFR at the time of the licence renewal.

What are the issues?

Because the current requirements rely on self-reporting, the QBCC does not receive sufficient financial information from its licensees on a regular basis. The ASIC and ASX reports serve a different purpose to the MFR and while complementing information that the QBCC should otherwise receive, they alone do not provide sufficient information for the QBCC to fulfil its regulatory functions. This potentially allows licensees experiencing financial difficulties an opportunity to hide their solvency issues from the QBCC due to concerns that their licence may be suspended or cancelled. As a result, the QBCC may not become aware that a licensee is experiencing financial difficulty until it is too late. Further, the information that must currently be self-reported does not give a complete picture of an applicant or licensee's financial position. If the QBCC had greater access to more detailed financial information, particularly for those licensees whose potential collapse would result in significant impact within the industry, it would be better equipped to take action in order to mitigate further impacts on subcontractors, suppliers and consumers.

What is being proposed?

To reflect the different levels of risk depending on the scale of a licensee's business, a more targeted and risk-based approach to reporting is proposed. This proposal would mean that increased reporting requirements and greater QBCC visibility are targeted towards businesses with the highest turnover (categories 4–7)[2] based on the likely impact associated with any potential collapse. This proposal would include reintroducing pre-2014 requirements such as annual reporting, as well as revising the reporting trigger for changes in NTA to align more closely with the pre-2014 requirements (10 percent) (intended for categories 4–7 only).

It is also proposed to improve upon the pre-2014 requirements by requiring additional metrics (such as a debt to equity ratio for categories 4–7) that will provide the QBCC with a clearer understanding of an applicant or licensee's current financial position.

A more targeted framework is intended to allow for efficient use of industry and QBCC resources, as well as supporting the QBCC's current approach as a risk-based regulator. Reporting on other metrics such as the debt to equity ratio is designed to fit within present accounting principles and standards.

Table 1: A summary of the proposed reporting framework

	Self-certification categories–SC1 and SC2	Categories 1–3	Categories 4–7
Frequency of reporting	**Annual** (self-certifying only) (pre-2014 requirement)	**Annual** (pre-2014 requirement)	**Annual** (pre-2014 requirement)
Type of reporting required	Net Tangible Assets (NTA) and **Current Ratio**	NTA and Current Ratio	NTA, Current Ratio and **balanced scorecard of solvency tests (e.g. debt to equity ratio, etc)**
Verification of information	Self-certifying only	Report from accountant and signed financial statements	Report from accountant and signed financial statements

Note: **bold** indicates a change in requirements

[2] Appendix 4 provides a summary of the current licence classes

Of the approximately 70,000 QBCC licensees that are subject to the MFR, as at 4 July 2018, 844 of these licensees fell within categories 4–7. This means that only a small proportion of licensees would be impacted by some of the proposed increased reporting requirements. However, other proposals set out in the discussion paper apply to all licensees and would help foster professional business practices and financially viable businesses (refer to Appendix 5 for the number of QBCC licensees per MFR category).

Proposal 1
Reintroduce the pre-2014 requirements for annual reporting

This proposal involves the reintroduction of annual reporting of financial requirements by licensees to the QBCC.

To ensure the information is accurate and reliable, this would include the provision of financial records certified by an accountant for licensees in categories 1–7. The financial records would be a formal record of the licensee's business enabling the QBCC to make an informed assessment of the licensee's capability to pay their debts (see Proposal 4 for additional metrics that are proposed to be provided).

More regular reporting will allow the QBCC to monitor changes in a licensee's financial position over time and potentially identify those licensees who are engaging in high risk, financially unsustainable business practices and take action to address this.

Table 2: Expected benefits and potential impacts of Proposal 1—Reintroduce the pre-2014 requirements for annual reporting

Expected benefits	Potential impacts
• QBCC could more effectively track a licensee's financial position and may be able to identify financial sustainability concerns earlier. • Would better equip the QBCC to act to limit impacts of insolvencies. This could help to stop the 'domino effect' of insolvency on the contractual chain. • More rigour around reporting should encourage an increase in financially sustainable licensees operating in Queensland.	• Some licensees would be required to potentially provide four annual financial reports with supporting documentation with different due dates e.g. ASIC, ASX, Australian Taxation Office (ATO) and QBCC. • QBCC would require further resources to undertake the review of annual reports.

Questions

1.1 Do you agree with this proposal? If not, why not?

1.2 If you do not agree with annual reporting, would you support a longer mandatory reporting timeframe such as every 18 months or two years? If so, please indicate the timeframe that should apply. How would this support the need for the QBCC to have up-to-date information on a licensee's performance?

Proposal 2
A tiered, risk-based approach to reporting

Under the FRL Policy, there were four different types of reports that were provided to the QBCC, depending on the category of licensee. Under the MFR Policy, there is only one type of report and, as mentioned previously, there is no requirement to provide this report to the QBCC at licence renewal.

To better ensure that the extent of information provided to the QBCC reflects the likely scale and complexity of an entity's financial records, it is proposed that licensees would have different reporting requirements based on their licence category. This is because it may not be necessary for a smaller entity to provide the same level of detail to the QBCC as a larger entity.

As a result, more stringent requirements are proposed for categories 4–7. These have been based on what would generally be good accounting practice for businesses of this scale. For self-certifying categories SC1 and SC2, it is proposed to retain basic reporting requirements to reflect the low overall risk due to the minimal impact of their collapse within the sector.

Overall, it is proposed to establish a risk-based, three-tiered approach to reporting, as follows:

- Licensees in SC1 and SC2 would continue to self-certify but this would be annually. The self-certified report would include the licensee's NTA, as well as their Current Ratio.
- Licensees in categories 1–3 would need to annually report information about their NTA and Current Ratio, verified by a report from an accountant and signed financial statements.
- Licensees in categories 4–7 would need to report annually about their NTA and Current Ratio, and also provide additional financial information (e.g. debt to equity ratio). Again, this information would need to be verified by a report from an accountant and signed financial statements.

Table 3: Expected benefits and potential impacts of Proposal 2—A tiered, risk-based approach to reporting

Expected benefits	Potential impacts
• Reporting would be based on the category of licensee. The smaller the licensee, the less reporting that is necessary. • Reporting requirements would be proportional to the risk to the sector.	• This approach would result in minimising the compliance burden wherever possible. • Higher category licensees would be imposed with an additional regulatory requirement compared with lower category licensees. • QBCC would need to process multiple types of reporting.

Questions

2.1 Do you agree with this three-tiered approach to reporting? If you agree, what benefit could it bring to the industry? If you do not agree, what would you change to ensure that the QBCC is able to identify licensees at risk?

2.2 If you are a current licensee, would you be able to comply with the proposal?

Proposal 3
Reduce the NTA reporting trigger for licence categories 4–7

Under the former FRL Policy, all licensees were subject to the condition that their NTA must not decrease by more than 10 percent for more than one month. If this occurred, the licensee was required to report the decrease to the QBCC.

Now, under the current MFR Policy, all licensees must report to the QBCC if their NTA decreases by more than 30 percent from their last advised and QBCC-accepted NTA position.

A 30 percent decrease in NTA can translate to a significant amount of assets, particularly for larger entities. For example, a 30 percent decrease in NTA for a licensee in category 7 could mean a difference of at least $4 million. There have been some suggestions that the 30 percent NTA trigger is too large and does not provide adequate warning to the QBCC that a company may be nearing insolvency or collapse.

It is proposed to reduce the NTA reduction trigger for category 4–7 licensees (for example, to 10 percent) from the last advised position. Categories 1–3 as well as SC1 and SC2 would retain the current 30 percent NTA reduction trigger. Under the proposal, licensees would need to provide a new MFR report (categories 1–7) or declaration (SC1 and SC2) to the QBCC within 30 days of when they would reasonably become aware of the decrease.

This approach would draw on the best features of both the MFR and FRL, but improves them by using a risk-based approach to target increased requirements to where they can provide the most benefit.

Table 4: Expected benefits and potential impacts of Proposal 3—Reduce the NTA reporting trigger for licence categories 4-7

Expected benefits	Potential impacts
• This proposal would complement proposal 1 which seeks to require mandatory annual reporting. This is because the QBCC would be in a position to know if a company has not reported this reduction, due to the information being provided at renewal each year. • Would provide the QBCC with an earlier indication of financial position. • Has the potential to provide earlier warning and better protection for subcontractors and consumers. • This change would encourage licensees to plan appropriately and have sufficient backing to cover the peaks and troughs of business.	• This approach has the potential to impose more reporting on category 4–7 licensees if their NTA regularly shifts by more than 10 percent per year. • Licensees may potentially incur additional costs associated with ensuring that they have sufficient resources to monitor their financial position on a regular basis. • Licensees in categories 4–7 may experience additional accountancy costs associated with preparing reports to the QBCC if their NTA drops by more than 10 percent.

Questions

3.1 Do you agree with this proposal? If you agree, what benefit could it bring to the industry? If you do not agree, how could the proposal be changed to still ensure that the QBCC is receiving the information that it needs to monitor financial viabilities for licensees?

3.2 Are the proposed NTA reduction percentages appropriate triggers for reporting by licensees in categories 4–7?

3.3 If not, what is an appropriate percentage in NTA reduction that should trigger a self-reporting obligation to the QBCC for licensees in categories 4–7? For example, could the NTA reduction triggers be further staggered e.g. 20 percent for categories 4–5 and 10 percent for categories 6–7?

3.4 What do you think is a typical fluctuation in NTA as part of standard operating practice for a licensee in categories 4–7?

[4] Note a licensee's NTA position is also proposed to be provided to the QBCC annually under Proposal 1

Proposal 4
More robust assessment of capability to pay debts

The current MFR Policy requires licensed contractors to continuously satisfy a Current Ratio and NTA level in accordance with Australian Accounting Standards.

While these tests are useful and provide important information for assessing the ongoing financial viability of a contractor's business, they do not provide a complete 'financial picture'.

For example, a contractor can comply with these tests but still have serious solvency issues, including:

- continued substantive trading losses
- ongoing reliance on debtors and work in progress without significant reserves of cash
- substantive repayment arrangements with creditors, including the ATO, without ready access to available cash if it defaults on the repayments
- heavy reliance on related entity asset loans, which may not be capable of being called upon (despite being recorded as current assets) due to taxation implications for the related entity or even physical location (e.g. an overseas entity).

To enable the QBCC to effectively assess a licensee's financial position, it is proposed to include additional metrics that typically indicate signs of financial distress. From these, the QBCC would have the ability to identify situations where a licensee may appear to have enough assets to fund their liabilities but may not be able to liquidate those assets in time to pay their debts.

This will be derived from a 'balanced scorecard' approach that covers the licensee's:

- assets, liabilities, and equity at a given point in time
- income, expenses, and profits over a period of time
- changes in equity during the stated period
- assets available for realisation
- cash flow activities, particularly its operating, investing and financing activities
- business continuity.

To satisfy the scorecard, licensees in categories 4–7 may need to provide additional metrics such as:

- minimum debt to equity ratio
- profitability ratio
- cash flow ratios.

Together, these metrics provide a more fulsome overview of an applicant or licensee's financial sustainability. One of the benefits of requiring licensees to satisfy the additional tests is that it will encourage licensees to introduce cash flow risk management strategies into their financial arrangements.

These may include:

- implementing sufficient asset to credit arrangements (such as a business overdraft or a drawdown loan)
- developing and implementing budgeting and forecasting plans, thereby ensuring that the licensee is aware of the day-to-day financial aspects of their business, including when and how outgoing costs and expenses will be covered
- having an amount of cash on hand or liquid assets available to cover liabilities when they fall due.

Table 5: Expected benefits and potential impacts of Proposal 4—More robust assessment of capability to pay debts

Expected benefits	Potential impacts
• Would encourage licensees to introduce cash flow risk management strategies into their financial arrangements (if they have not done so already). • Would give the QBCC more accurate information about the 'real-time' financial position of its licensees.	• Would potentially require licensees to undertake more comprehensive assessment of their day-to-day business. • Would potentially require the QBCC to review and assess additional reporting information.

Debt to equity ratio

In broad terms, a debt to equity ratio means the ratio of liabilities divided by equity. It demonstrates the percentage of company financing that comes from creditors or investors (total debts owed by the contractor proportionate to total equity). A high debt to equity ratio is generally indicative of high levels of financial risk. It can indicate when a company is taking on debt as a means of increasing its value by using borrowed funds to finance projects. In these situations, if the cost of debt becomes too significant for a company to handle it can lead to insolvency or corporate collapse.

The appropriate debt to equity ratio varies from industry to industry. For the building industry, accounting experts suggest the recommended debt to equity ratio is between 0.30 and 2. A debt to equity ratio of 0.5 means that there are half as many liabilities as there is equity, while a debt to equity ratio of 1 means that creditors have an equal stake in the business assets.

Profitability and cash flow ratios

A profitability ratio measures a business's ability to generate earnings compared to its expenses and other relevant costs during a specific period. A cash flow ratio compares the cash flow of a business to other elements of its financial statement (e.g. debt). This helps to inform a company's ability to meet its obligations as and when they fall due.

Questions

4.1 Do you agree with this proposal? If you agree, what would be the benefits? If you do not agree, what would you change?

4.2 How would the proposal impact you?

4.3 What do you think is an appropriate minimum debt to equity, profitability and cash flow ratio?

4.4 Can you suggest any additional metrics that should apply?

Proposal 5

Require SC1 and SC2 to declare their Current Ratio (this may be self-reported by the licensee)

Under the current MFR Policy, there are Self-Certification categories (SC1 and SC2) for certain applicants and licensees. SC1 applies to applicants and licensees who are not seeking or holding a builder class of licence and whose Maximum Revenue does not exceed $200,000. SC2 applies to applicants and licensees who are seeking or holding any class of licence (and is therefore the minimum licence category for those seeking or holding a builder class of licence), provided their Maximum Revenue does not exceed $600,000.

These categories are required to self-certify that they hold a minimum amount of NTA to justify their Maximum Revenue amount. However, these categories do not currently need to meet a minimum Current Ratio, as other categories are required to do. A licensee's Current Ratio identifies whether the licensee has sufficient current assets to pay its current liabilities in the forthcoming 12-month period. This is an important business practice that promotes financial sustainability, and should be relevant to all businesses, regardless of size.

It is therefore proposed that applicants or licensees in the SC1 and SC2 categories also be required to meet the Current Ratio test. This would provide the QBCC with a more comprehensive understanding of the financial position of these applicants or licensees. It will also encourage licensees to better monitor their business. This ratio is one that SC1 and SC2 can readily calculate without the assistance of an accountant.

For consistency across categories it is recommended that the minimum Current Ratio for SC1 and SC2 applicants and licensees be 1:1.

Table 6: Expected benefits and potential impacts of Proposal 5—Require SC1 and SC2 to declare their Current Ratio (this may be self-reported by the licensee)

Expected benefits	Potential impacts
• This additional requirement would encourage further consideration of a licensee's ability to pay its debts. • Could encourage licensees to adopt cash flow management strategies. • It is expected, if accepted by government, this proposal would introduce minimal additional burden on the QBCC.	• This would impose a new level of reporting on present SC categories. • If accepted by government, licensees may need to update practices if they are not presently calculating a Current Ratio as part of their existing business practices.

Questions

5.1 Do you agree with this proposal for categories SC1 and SC2?

5.2 How would the proposal impact you?

5.3 If you are a SC1 or SC2 licensee currently, do you already calculate a Current Ratio for your business?

5.4 Do you think licensees with zero revenue for the year (e.g. those who have a licence but are not undertaking active work) should still be required to self-certify?

Key Area 2:
Fostering improved accountancy practices that meet the objectives of the Minimum Financial Requirements

Context

New applicants, as well as existing licensees seeking to increase their Maximum Revenue amount, must provide financial reports to the QBCC demonstrating that they meet the financial requirements for their intended licence category. MFR reports are generally prepared by an Accepted Independent Accountant, who must meet certain criteria as set out in the MFR Policy. For example, an accountant providing an MFR report cannot be the applicant or licensee's spouse or business partner or be otherwise involved in the company (for example, as a secretary, director, employee or investor). An accountant is also excluded from providing an MFR report if they have:

- been convicted of, or pled guilty to, providing false or misleading information in regards to whether an applicant or licensee meets the financial requirements
- previously received written notification from the QBCC that they have provided incorrect information relating to whether an applicant or licensee meets the financial requirements
- previously received written notification from the QBCC that they have incorrectly applied the requirements of the MFR Policy.

Significant penalties apply to accountants under the QBCC Act for giving false or misleading documentation about whether a licensee satisfies the MFR.

What are the issues?

As outlined above, Accepted Independent Accountants play a key role in the MFR as the veracity of the information provided to the QBCC is crucial for monitoring and assessing compliance with the financial requirements. Issues therefore arise when an accountant prepares an MFR report containing inaccurate or incomplete information.

Despite accountants having professional obligations and standards, there can be a perception of bias due to the professional relationship between an accountant and the applicant or licensee who has engaged them. This is because the applicant or the licensee is the 'employer' and the accountant assesses their financial position and compliance. An accountant may fail to provide independent advice because they are either advocating for their client (whether consciously or subconsciously) or they are reluctant to disturb the relationship by raising issues.

In a worst-case scenario, this could result in a person or company holding a licence when they do not meet the financial requirements, placing their business, subcontractors, suppliers and clients at risk. Improperly prepared MFR reports can also pose problems for recordkeeping and result in a waste of time and resources. For example, the QBCC advises that when questioned on aspects of an MFR report, accountants will often simply alter the original financial statements and provide the QBCC with second, and sometimes third, sets of financial statements for the same reporting date. If the information provided is constantly changing, this can affect the QBCC's ability to keep a clear and accurate record of a licensee's financial history (i.e. a clear 'paper trail'). It can also extend the time the QBCC would otherwise take in assessing the information and deciding on the application or audit. Further, it demonstrates a lack of due diligence from the accountant in preparing the initial reports. The QBCC reports that approximately 43 percent of the MFR reports received for an increase in Maximum Revenue or a new licence application (category 3–7 licensees) had to be amended.

What is being proposed?

Proposal 6
Establish a panel of pre-qualified Accepted Independent Accountants to be used on a case-by-case basis

It is proposed to establish a panel of pre-qualified Accepted Independent Accountants to assist in preparing or reviewing MFR reports and financial accounts. Under this proposal, the QBCC would be able to facilitate or direct a person to obtain advice from the panel in certain circumstances. The person may choose their own panel member. It is only intended for this to be used if the QBCC has concerns about a report that has been provided—not for all MFR reports.

For example, the QBCC could direct independent verification of some or all of a MFR report, or require a new report to be prepared, if it suspects that the information provided is inaccurate or incomplete. This would provide the QBCC and industry with greater certainty that an applicant or licensee's financial position has been subject to an accurate and impartial assessment. Applicants and licensees would otherwise be able to continue to engage their own accountant (subject to their meeting the existing requirements for Accepted Independent Accountants).

The QBCC would maintain the panel, including assessing accountant eligibility. While it is not proposed to limit the number or appointment term of panel members, the QBCC would have the power to disqualify panel members where appropriate. Pre-qualified accountants would need to satisfy set criteria that demonstrate their ability to provide MFR reporting services, for example, providing evidence of the currency of their qualifications.

It is proposed that the cost of engaging the panel member would generally be met by the applicant or licensee. It is expected that the costs would vary depending on the panel member and the size and complexity of the licensee's business. One accountancy firm has advised that its financial analysis services to determine ongoing financial capacity may range from $7500 to $50,000. Although the 'user pays' approach presents a financial impost, applicants and licensees could avoid this cost by ensuring they engage a competent and impartial accountant to prepare their MFR report. The proposal may encourage greater diligence and transparency from both licensees and accountants.

Table 7: Expected benefits and potential impacts of Proposal 6—Establish a panel of pre-qualified Accepted Independent Accountants to be used on a case-by-case basis

Expected benefits	Potential impacts
• This would allow the QBCC greater oversight over the quality of accountants assisting in the provision of certain reports. • This would allow the QBCC to be independently informed, which would increase its ability to take action to protect the building and construction industry. • This proposal would not impose on existing licensees and accountants operating in accordance with the MFR Policy and Australian Accounting Standards.	• This option, if accepted by government, could reduce the number of accountants available to prepare reports for applicants and licensees. • Requiring use of a panel accountant potentially may not eliminate questionable professional relationships if collaborating parties still have the freedom to choose. • This proposal could increase demand for a potentially reduced number of pre-qualified accountants, and prices may also increase accordingly. • Applicants/licensees would be required to pay for independent verification or a new MFR report. • Potentially, accountants may not form a position or act independently if they fear that the licensee may be unable to pay for their services.

Questions

6.1 Do you agree with this proposal? If not, what would you change?

6.2 Would this proposal damage your professional relationship/s?

6.3 How should panel members be appointed?

6.4 How should fees be managed (e.g. should there be agreed hourly rates)?

Proposal 7

Clarify the process by which accountants are excluded from preparing MFR reports

As outlined, an accountant may not qualify as an Accepted Independent Accountant for the purposes of MFR in certain circumstances. However, the MFR Policy does not provide guidance about what the implications of these provisions are. It is considered that greater clarity is needed about the circumstances in which, and process by which, an accountant is excluded from continuing to provide MFR reports.

For example, it is proposed to formalise the process by which the QBCC provides an accountant with written notification that they have provided incorrect information or have failed to appropriately apply the financial requirements. Commissioner guidelines or similar would provide further details about the scenarios in which the QBCC would use its powers to exclude an accountant from providing MFR reports. This may include where:

- the accountant is prosecuted for an offence under the QBCC Act
- the accountant is excluded under part 3A of the QBCC Act due to their involvement in a financial failure
- a licensee's licence is cancelled or suspended on the basis of incorrect information supplied to the QBCC, and the information was provided, prepared or otherwise verified as correct by an accountant as complying with the MFR.

The exclusion would be a permanent exclusion.

To limit the likelihood of licensees engaging and paying an accountant to provide an MFR report when the accountant is not permitted to do so, consideration is also being given to whether licensees would be notified by the QBCC if the accountant they have used has been excluded. Additionally, a list of excluded accountants may be made available to all licensees to enable them to make an informed choice about the accountant they choose to engage and pay for services. Alternatively, the list could only include accountants who have been successfully prosecuted for an offence. This would reduce the possibility of accountants taking legal action against the QBCC for defamation claims. However, such an approach may not provide sufficient clarity to licensees about which accountants have been excluded from providing MFR reports.

Table 8: Expected benefits and potential impacts of Proposal 7—Clarify the process by which the QBCC can exclude accountants from preparing MFR reports

Expected benefits	Potential impacts
• This proposal would still allow the majority of licensees to maintain their professional relationships with their accountants, but would also provide the QBCC with independent financial information of an acceptable standard. • This approach would balance the needs of the licensee with the needs of the wider building and construction industry. • Having access to information about accountants who have been excluded by the QBCC would enable licensees to engage an accountant who is able to prepare MFR reports.	• This could impact on the ability of certain accountants to operate in the building and construction industry. • It may negatively impact long-standing professional relationships between a licensee and their accountant. • Depending on the level of disclosure to licensees, the QBCC could be subject to claims of defamation by accountants who have been excluded.

Questions

7.1 Do you agree with this proposal? If not, what would you change?

7.2 Would this proposal damage your professional relationship/s?

7.3 Do you think the proposed process for exclusion of accountants is fair and equitable?

7.4 Do you think licensees should be able to view a list of excluded accountants?

7.5 Alternatively, do you think only accountants who have been prosecuted for an offence should be on the list that is able to be viewed by licensees?

Proposal 8
Material changes in MFR reports require updated financial information

To encourage greater diligence when preparing MFR reports, it is proposed to improve the criteria under which information provided to the QBCC can be amended. If a material change is required to be made to an already submitted MFR report, the original report would need to be withdrawn and a revised version submitted based on the current date and with any changes clearly noted. Updated financial statements that are current as at the date of submission of the revised report would also need to be provided to support the changes to the MFR report. This would mean that the QBCC has sufficient information to assess a licensee's current financial position (not at the time the original financial statements were prepared).

Ensuring that MFR reports are properly prepared in the first instance would save both the QBCC and industry time and resources. It also reduces the potential for intentionally misleading or fraudulent reporting. The proposal would also help ensure that the QBCC has the necessary information over a period of time and in a consistent form to make decisions about a licensee's financial position. This proposal is also expected to complement Proposal 7, which would provide the QBCC with a greater ability to take action where an accountant has not been meeting minimum professional standards.

Table 9: Expected benefits and potential impacts of Proposal 8—Material changes in MFR reports require updated financial information

Expected benefits	Potential impacts
• These actions could increase confidence in the ability of the MFR to provide the QBCC with an accurate financial picture of its licensees and applicants the first time. • This proposal would remove a potential loophole that allows inaccuracies and potentially fraud in reporting. • This proposal would increase accountability.	• It may be difficult to ascertain the scope of a 'legitimate error', which may lead to consequences if a licensee fails to meet the MFR.

Questions

8.1 Do you agree with this proposal? If not, what would you change?

8.2 Are there other reasons, or exceptions, regarding the changing of an MFR report or financial statements? If so, what are they?

Key Area 3:
Ensuring forms of assurance are providing financial security

Context

The MFR currently provides that where an applicant or licensee in categories 1–7 does not have sufficient NTA in their own right for their MFR category, they may rely upon a Deed of Covenant and Assurance to meet the NTA requirements. Under a Deed of Covenant and Assurance, the covenantor (that is, the person or company providing the deed) agrees that in the event the licensee becomes bankrupt or enters liquidation, the covenantor will pay the liquidator or other relevant creditors the amount set out in the Deed of Covenant and Assurance (the 'defined amount').

The MFR Policy sets out who may provide this form of assurance depending on the applicant or licensee's structure. The covenantor will generally be the director of the licensee company, an associated company, other companies in a group or a partner in the partnership. To provide a Deed of Covenant and Assurance, they must have sufficient net unencumbered assets to meet the value of the defined amount. Net unencumbered assets are calculated similarly to NTA but cannot include certain assets such as related entity loans, investments from the applicant or licensee and amounts held in trust. To demonstrate that a deed can be relied upon, the applicant or licensee's MFR report must include a statement detailing the covenantor's financial position.

What are the issues?

The Deed of Covenant and Assurance provisions only operate effectively if the covenantor has, and continuously maintains, net unencumbered assets in their own right to cover the licensee's debts. Recent building collapses involving companies reliant on these deeds have shown, however that this is not always the case.

There are a number of possible reasons why a covenantor may be unable to pay in a liquidation scenario. For example, if the covenantor is the director of the licensee company it is likely that their financial position has declined in parallel with that of the company.

Alternatively, the covenantor may have never met the requirements for providing the Deed of Covenant and Assurance (in which case the deed essentially represents an 'empty promise'). Due to inadequate reporting requirements however, it may not be apparent to the QBCC that a covenantor does not have sufficient net unencumbered assets. The covenantor's statement of financial position that is lodged with a MFR report requires only a limited breakdown of the assets and liabilities held by the covenantor. Further, no information about the accounting treatment used or supporting documentation to verify the assets held must be provided.

Although a liquidator can take steps to recover costs if the defined amount under the deed is not paid, this can be a lengthy and complex process involving the liquidator potentially lodging a caveat over any real property owned by the covenantor and applying to Court for an order that the property be sold. Due to the liquidator's costs of taking action, unsecured creditors may still fail to recoup their losses.

What is being proposed?

Proposal 9

More information about covenantor's financial position

Revise the covenantor's statement of financial position to include further information identifying assets and liabilities and how these have been treated. This proposal will better enable the QBCC to assess the covenantor's solvency and whether the Deed of Covenant and Assurance provided for the applicant or licensee can in fact be relied upon. To provide further assurance and encourage accountability, the covenantor would be required to certify that they have reviewed that the information provided in their statement of financial position is true and correct. The regulation would also clarify that both an applicant or licensee and their accountant have a positive obligation to prove to the QBCC that a Deed of Covenant and Assurance can be relied upon.

Alternatively, or perhaps as a complementary measure to this proposal, there could be increased education and awareness around the operation and implications of Deeds of Covenant and Assurance. While the MFR Policy requires covenantors to seek legal advice before signing a Deed of Covenant and Assurance, legal experts suggest many fail to do so, or do not understand the underlying risks of signing.

Table 10: Expected benefits and potential impacts of Proposal 9—More information about covenantor's financial position

Expected benefits	Potential impacts
• This proposal would close a loophole that currently exists. It would no longer be possible for a company that considers it may not meet the MFR, to say they are backed by a solvent entity without sufficient proof. • This would increase confidence in the MFR and give the QBCC a more accurate financial picture of a licensee, and those that contribute to the licensee's financial position.	• This may impose additional obligations on accountants, who may pass on the costs to applicants/licensees. • This would increase the administrative burden on the QBCC by having to review detailed covenantor statements.

Questions

9.1 Do you agree with this proposal? If not, what would you change?

9.2 Would the proposal impact you in any other way?

9.3 Do you support any further steps in relation to Deeds of Covenant and Assurance?

Key Area 4:
Ensuring funds from related entity loans are accessible

Context

In the building and construction industry, contractors frequently participate in joint ventures or have a direct or indirect affiliation with other entities. The prevalence of such arrangements in the industry can be attributed to factors such as legal liability, taxation, competition, ownership and operating arrangements and regulatory requirements.

Under the MFR Policy, a related entity for a licensee may include an individual licensee's spouse or relative, an associated entity (as defined under the *Corporations Act 2001*) of a company licensee, or a director or shareholder of either the company licensee or an associated entity. Financial transactions between licensees and their related entities are not uncommon. A related entity may decide to make a loan to a licensee or invest in the licensee's business, for example, with the 'parent' development company providing funding to a subsidiary building company to expand the residential home-building part of their business. It is also common for the profits and assets of a licensed entity to be transferred to related entities (i.e. as a loan from the licensee to the related entity), while the licensed entity continues to incur the debts (e.g. from subcontractors and suppliers). This is often a means of asset protection, as holding significant assets in the entity that carries on the business means that the retained earnings and assets will be continually exposed to that business risk.

For the purposes of the current MFR, a loan from, or investment by, a licensee to a Related Entity may be considered as part of a licensee's assets when calculating their NTA and Current Ratio, but only if an accountant has verified the loan is collectible, i.e. loan repayments able to be accessed or collected by the licensee.

What are the issues?

Loans to related entities present a degree of risk to a licensee's financial capacity, as a proportion of the licensee's assets are dependent upon the related entity's ability to repay the loan. Despite the existing requirement for related entity loans to be verified as collectible, in practice, when a licensee enters insolvency these types of loans are often not repaid. In some cases, the licensee may not have sufficient funds available in the liquidation for the liquidator to take recovery action in relation to the loan.

In essence, this means that the information that the QBCC is currently relying upon to assess a licensee's financial position may not be an accurate representation of the assets that the licensee has at their disposal. Further, because of the varied and complex ways in which group structures can be organised and financed and business affairs conducted, the QBCC's ability to assess the veracity or otherwise of a related entity loan, using only the information currently required under the MFR, may be impeded.

What is being proposed?

Proposal 10
Related entity loans cannot be included to meet MFR requirements

This proposal would mean that all loans to a licensee or applicant from a related entity would be excluded from the licensee's NTA and Current Ratio calculations. This may reduce the financial interdependency between the licensee and its related entities and eliminate the risk that loans to related entities are not collectible. It would also simplify the calculations and potentially provide the QBCC with a clearer and more accurate picture of the licensee's financial position and ability to pay their debts.

Table 11: Expected benefits and potential impacts of Proposal 10—Related entity loans cannot be included to meet MFR requirements

Expected benefits	Potential impacts
• This would increase the integrity of the MFR, by requiring funds to stay with a licensee, rather than a related entity. • Therefore there would be increased solvency and an ability to pay creditors. • The proposal would close a potential loophole in business practices.	• Not being able to rely on related entity loans may have impacts on licensees when determining their NTA and current ratio levels. • It may require applicants and licensees to determine alternative funding arrangements to satisfy asset requirements.

Questions

10.1 Do you agree with this proposal? If not, what would you change?

Proposal 11
Require that related entity loans must be secured

As an alternative to excluding related entity loans entirely, if a licensee wishes to rely on a related entity loan as part of their NTA and Current Ratio calculations, they could instead be required to obtain security over the loan, for example, via a mortgage. This would provide the licensee some recourse to the related entity's assets if the related entity fails to meet their obligations to pay the loan.

Table 12: Expected benefits and potential impacts of Proposal 11—Require that related entity loans must be secured

Expected benefits	Potential impacts
• If accepted by government, this proposal would result in increased security and an ability to pay creditors. • If accepted, it would close a potential loophole in business practices.	• A licensee may already have multiple mortgages. While this proposal may increase the security, there may be competing interests via other mortgages. • There may be trusts, which rank higher as creditors.

Questions

11.1 Do you agree with this proposal? If not, what would you change?

Proposal 12

Clarify how related entity loans are assessed

As outlined, a licensee may only include loans from a related entity as part of their NTA and Current Ratio calculations if the loans are assessed as being collectible (i.e. able to be repaid). Collectability of a related entity loan is informed by the related entity's financial position. The MFR Policy requires the accountant to view the balance sheet of a related entity to check that the related entity loan is reflected, and that the related entity has a positive net asset position. Any loans to a related entity that has a negative net asset position must be excluded from the licensee's calculations. Also, where the related entity in question is owed loans by other related entities, the accountant must determine those loans are collectible or deduct the amounts from the related entity's net assets.

No further requirements apply in relation to determining a related entity's financial position. However, given the ability of related entities that are indebted to a licensee to influence the licensee's financial position, it is proposed to strengthen and clarify the criteria about how related entity loans are assessed.

While it is not proposed that related entities must comply with the full MFR requirements (such as reporting), it is considered that they should be subject to the same financial assessment as licensees. For example, when determining a related entity's NTA, the related entity would only be able to include allowed assets as currently defined under the MFR Policy and would need to exclude disallowed and excluded assets. Related entities would also be required to demonstrate that they have sufficient liquidity to repay their loans as well as their other debts. It is also proposed to clarify that debts incurred by related entities, including trade debts, would be treated as related entity loans, not debtor amounts. This will ensure that all debts are assessed as collectible.

Table 13: Expected benefits and potential impacts of Proposal 12—Clarify how related entity loans are assessed

Expected benefits	Potential impacts
• This proposal would add more rigour and integrity to the MFR.	• This may impose additional obligations on accountants and therefore applicants/licensees. • The proposal, if accepted by government, would increase administrative burden on the QBCC by having to review additional related entity information.

Questions

12.1 Do you agree with this proposal? If not, what would you change?

Key Area 5:
Clarifying definitions and requirements for the calculation of assets

Context

The standard accounting tests used under the current MFR Policy require an applicant or licensee to measure their assets and liabilities. Certain criteria apply to how assets should be treated, for example, the NTA excludes intangible assets (such as intellectual property) and disallowed assets (such as superannuation benefits). This is to ensure that assets relied upon to demonstrate solvency are in fact sufficiently liquid and can be realised in time to pay the licensee's debts as they fall due.

What are the issues?

The current criteria for how assets are treated under the MFR policy may not be stringent enough. For example, the NTA and Current Ratio tests allow trade debtors that are up to six months overdue to be included as a current asset before they are written off (50 per cent write off after 180 days and 100 per cent write off after 365 days). Where a licensee is operating across jurisdictions, these amounts are also counted as trade debts. Given that the current MFR policy allows financial information in an MFR report to be up to four months old, this can result in the full value of debts that have remained unpaid for 10 months being recorded as an asset. Relying on assets that are unlikely to be realised affects the QBCC's ability to make an informed assessment about an applicant or licensee's financial position. Similar risks would apply when assets are not correctly valued or cannot be easily liquidated.

What is being proposed?

Proposal 13
Exclude trade debtor amounts over a certain age, unless their collectability can be verified

To address the above scenario, it is proposed to strengthen the requirements for trade debtor amounts so that any trade debtors that have not yet been paid after a certain period, for example, 120 days (based on the invoice date) must be written off in full. An applicant or licensee would only be able to rely on an older debt if they are able to prove that it is collectible. This may include evidence of an agreed payment arrangement between the parties, or that payment has been made since the reporting period date.

Trade debtor amounts often comprise a large portion of an applicant's or licensee's asset base. For this reason, the proposal may alter their NTA and Current Ratio calculations and could potentially result in an applicant or licensee being unable to meet the requirements due to insufficient assets. However, the current level of reliance on trade debtors highlights the importance of ensuring that these are reported accurately and transparently.

It is noted that this proposal could impose different requirements to the Australian Accounting Standards regarding the treatment of trade debts over time.

Table 14: Expected benefits and potential impacts of Proposal 13—Exclude trade debtor amounts over a certain age, unless their collectability can be verified

Expected benefits	Potential impacts
• This proposal seeks to ensure liquidity in licensees. • This would ensure licensees sufficiently plan to ensure they can meet their debts as they fall due.	• Licensees who have not been paid, through no fault of their own, would be impacted adversely. • It may be perceived as unfair that subcontractors need to prove the collectability of the debt. • This may mean licensees who have not been paid large amounts, do not meet the MFR. • Inconsistent with the Australian Accounting Standards, which may require licensees to prepare a separate set of financial information for MFR purposes.

Questions

13.1 Do you agree with this proposal? If not, what would you change?

13.2 What sort of timeframe (number of days) is appropriate before a debt is excluded?

13.3 Do you think it is appropriate that the proposal departs from the Australian Accounting Standards? What sort of additional impost would this mean for a licensee?

Proposal 14
Only registered vehicles can be considered as assets

Under the current MFR policy, motor vehicles are a defined asset and can be included in NTA calculations. Some vehicles, however, particularly off-road or unregistered vehicles such as dirt bikes, quad bikes and golf carts, have shown to have a limited market for resale i.e. they are not very liquid. The QBCC has also reported that it can be difficult to substantiate the value, for example where the vehicle is an older model that may not be in a state of good repair.

It is therefore proposed that motor vehicles must be lawfully registered to qualify as a defined asset. This will help provide a more accurate representation of the assets that an applicant or licensee has at their disposal. However, it is noted that this proposal could impose different requirements to the Australian Accounting Standards. This proposal does not apply to plant and machinery.

Table 15: Expected benefits and potential impacts of Proposal 14—Only registered vehicles can be considered as assets

Expected benefits	Potential impacts
• This proposal would potentially remove a loophole from the MFR and means that a licensee's solvency can be more adequately assessed and communicated. • If accepted, it would not be possible for licensees to inflate the value of a vehicle, which can also artificially influence the MFR. • This would provide more rigour and integrity to the MFR and allows the QBCC a more fulsome understanding of its licensees.	• If accepted by government this proposal may negatively impact licensees who currently count these assets. • This proposal may not align asset allocation practices with that of other regulators. • The proposal may be inconsistent with the Australian Accounting Standards, which may require licensees to prepare a separate set of financial information for MFR purposes.

Questions

14.1 Do you agree with this proposal? If not, what would you change?

Proposal 15
Proof of revaluation of assets

The current MFR policy allows fixed assets such as real estate property, plant and equipment to be included as defined assets and used for calculating NTA. These must generally be recorded at their 'written down value' (the current cost after allowing for depreciation). However, an applicant or licensee may revalue an asset to account for appreciation, and record this in their financial statements as an asset revaluation reserve.

In practice, however, the QBCC is often unable to substantiate revalued assets as MFR reports are not accompanied by sufficient evidence about the valuation process. Under this proposal, an applicant or licensee would only be able to include an asset revaluation reserve as part of their NTA calculation if it is supported by evidence from a registered valuer.

Table 16: Expected benefits and potential impacts of Proposal 15—Require any revaluation of fixed assets to be accompanied by supporting documentation of new value

Expected benefits	Potential impacts
• This proposal would remove a potential loophole from the MFR and means that a licensee's solvency can be more adequately assessed and communicated. • The proposal would remove the possibility of inflating the value of an asset without proof, which can also artificially influence the MFR. • This would provide more rigour and integrity to the MFR and allows the QBCC a more fulsome understanding of its licensees.	• The cost of revaluation would be borne by the applicant/licensee. • The valuation process may delay the reporting process.

Questions

15.1 Do you agree with this proposal? If not, what would you change?

Proposal 16

Require properties listed for sale for longer than 12 months to be re-classified as a non-current asset

Similar to some other assets, not all real estate property may be sufficiently liquid. Currently, real estate property that has been listed for sale on the market can be categorised as a current asset and included in the Current Ratio calculation. However, there is no mechanism for real estate property to be re-categorised as non-current where the property has been on the market for a prolonged period and there is a clear inability for it to be sold.

Under this proposal, an applicant or licensee would not be able to classify real property which has been listed for sale for more than 12 months (whether continuously or not) over a defined period as a current asset. However, it is noted that this proposal could impose different requirements to the Australian Accounting Standards.

Table 17: Expected benefits and potential impacts of Proposal 16— Require properties listed for sale for longer than 12 months to be re-classified as a non-current asset

Expected benefits	Potential impacts
• This proposal would remove a potential loophole from the MFR and means that a licensee's solvency can be more adequately assessed and communicated. • It would not be possible to overstate the value of a property, when in fact it has not been able to be sold for a period of time. • This would provides more rigour and integrity to the MFR and allows the QBCC a more fulsome understanding of its licensees.	• Licensees in more sparsely populated areas, with less demand, may be disproportionately affected. • If a property was listed for sale by a prior owner, that period of time may detrimentally impact the length of time the current licensee would be able to list it for sale. • This proposal may be inconsistent with the Australian Accounting Standards, which may require licensees to prepare a separate set of financial information for MFR purposes.

Questions

16.1 Do you agree with this proposal? If not, what would you change?

16.2 Is a 12 month sale period appropriate? Where this period is cumulative, what should be the cap on this defined period?

16.3 Do you think it is appropriate that the proposal departs from the Australian Accounting Standards? What sort of additional impost would this mean for a licensee?

Proposal 17
Project Bank Accounts and the MFR Policy

The BIF Act introduced the use of PBAs for certain building and construction projects valued over $1 million (via a phased approach). A PBA is a set of three bank accounts that operate as a trust to safeguard progress payments and protect retention monies. The head contractor is the PBA 'trustee' and a beneficiary. Each first-tier subcontractor will also be a beneficiary. Phase 1 of PBAs commenced on 1 March 2018 and applies to certain government projects valued between $1 million–$10 million. PBAs are expected to be rolled out to the private sector in 2019.

The introduction of PBAs has raised questions about how the funds in the PBA should be treated. This is because the current MFR Policy excludes assets which are held in trust for another person or corporation. It is therefore proposed to clarify the NTA and Maximum Revenue calculations.

For NTA, regarding progress payment amounts that are held in the general trust account of a PBA, the licensee will be able to include as an asset any funds held in the general trust account that it legally owns and in which it has a beneficial interest under section 9(3) of the BIF Act. For example, the principal may make a payment of $100,000 into the general account of the PBA for the benefit of both the head contractor and two subcontractors. Of this, $20,000 is payable to the first subcontractor and $15,000 is payable to the second subcontractor (under their respective contracts with the head contractor). The remaining monies ($65,000) will be payable to the head contractor. In this scenario, the head contractor's NTA calculations may include an asset of $65,000, while the subcontractors' may include $20,000 and $15,000 respectively. These figures are known, due to the payment schedules which would have been received. However, given that money passes through the general account of a PBA very quickly, the issue of ownership (for the purposes of the financial requirements, at least) may rarely arise.

In relation to money held in the retention account and the disputed funds account of a PBA, these may ultimately belong to the head contractor or a subcontractor as both parties have a beneficial interest in the money in those accounts. The retention money might all go to the subcontractor, however, it might also be needed by the head contractor to fix defects by a subcontractor. However, it is considered more likely that the funds held in the retention account and in the disputed funds account will belong beneficially to the subcontractor. For this reason, only the subcontractor may claim as assets (for the purpose of NTA calculation) the funds attributable to them held in the retention account and in the disputed funds account.

For the calculation of Maximum Revenue, the current MFR Policy provides that the Maximum Revenue includes money from all sources a licensee may earn in each financial year. For a head contractor who is the trustee for a PBA, it is proposed to clarify that the Maximum Revenue is to be calculated by including all monies held in the trust, including monies held for the benefit of subcontractors and other persons. This is because the head contractor is the trustee and technically owns the account, even though it isn't entitled to all the money in the account, as outlined above.

Table 18: Expected benefits and potential impacts of Proposal 17—Project Bank Accounts and the MFR Policy

Expected benefits	Potential impacts
• This proposal would provide clarity on how to treat payments which are subject to PBA requirements. • It would provide consistency and reduce confusion.	• Head contractors would not be able to claim beneficial interests in funds held in retention or disputed funds accounts as assets for NTA calculation.

Questions

17.1 Do you agree with this proposal? If not, what would you change?

Other suggestions

Context

Non-payment of debts can have significant ramifications down the contractual chain. Currently, the MFR provides that licensees must pay their undisputed debts within normal industry timeframes. A licensee must also pay debts as ordered by a Court or Tribunal within 28 days (unless otherwise specified by the Court or Tribunal).

What are the issues?

Currently there is no requirement to notify the QBCC if a licensee becomes aware that non-payment is occurring.

This may be non-payment to themselves, or it may be non-payment to another party. Failure of licensees to report this type of information voluntarily may be due to concerns about damaging a professional relationship. However, this type of information can assist the QBCC to investigate cases of non-payment that could constitute a licensee failing to meet their requirements under the MFR.

What is being proposed?

Proposal 18
Create a positive obligation for licensees to notify QBCC of non-payment

The QBCC Act could be amended to create a positive obligation on licensees to notify the QBCC when they reasonably become aware of a case of non-payment. An offence would apply for failing to meet this obligation. The new provision could be similar to the current section 54A of the QBCC Act, which creates a positive obligation for licensees to notify the QBCC of certain safety incidents occurring on a building site. Similar to the section 54A requirements, notice could be written or verbal and would need to include sufficient details to identify the licensee and the alleged non-payment. This proposal is expected to provide the QBCC with valuable information to effectively enforce the MFR.

Table 19: Expected benefits and potential impacts of Proposal 18—Create a positive obligation for licensees to notify QBCC of non-payment

Expected benefits	Potential impacts
• Would allow the QBCC to better investigate potential cases of non-payment. • Would remove the stigma around this type of reporting, as it will be a legislative obligation for all licensees.	• If accepted by government, the proposal may result in the possibility of vexatious or ill-informed 'notifications' to the QBCC. • Could result in greater administrative burden for QBCC.

Questions

18.1 Do you agree with this proposal? If not, what would you change?

Response form

Key Area 1 Risk-based, targeted annual reporting requirements

What is being proposed?

Proposal 1—Reintroduce the pre-2014 requirements for annual reporting

QUESTIONS

1.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, why not?

1.2 If you do not agree with annual reporting, would you support a longer mandatory reporting timeframe such as every 18 months or two years?

☐ Yes ☐ No

If so, please indicate timeframe that should apply.

How would this support the need for the QBCC to have up to date information on a licensee's performance?

Proposal 2—A tiered, risk-based approach to reporting

QUESTIONS

2.1 Do you agree with this three-tiered approach to reporting?

☐ Yes ☐ No

If you agree, what benefit could it bring to the industry?

If you do not agree, what would you change to ensure that the QBCC is able to identify licensees at risk?

2.2 If you are a current licensee, would you be able to comply with the proposal?

☐ Yes ☐ No

Proposal 3—Reduce the NTA reporting trigger for licence categories 4 – 7

QUESTIONS

3.1 Do you agree with this proposal?

☐ Yes ☐ No

If you agree, what benefit could it bring to industry?

If not, how could the proposal be changed to still ensure that the QBCC is receiving the information that it needs to monitor financial viabilities for licensees?

3.2 Are the proposed NTA reduction percentages appropriate triggers for reporting by licensees in categories 4–7?

☐ Yes ☐ No

3.3 If not, what is an appropriate percentage in NTA reduction that should trigger a self-reporting obligation to the QBCC for licensees in categories 4–7? For example, could the NTA reduction triggers be further staggered e.g. 20 percent for categories 4–5 and 10 percent for categories 6–7?

3.4 What do you think is a typical fluctuation in NTA as part of standard operating practice for a licensee in categories 4–7?

Proposal 4—More robust assessment of capability to pay debts

QUESTIONS

4.1 Do you agree with this proposal?

☐ Yes ☐ No

If you agree, what would be the benefits?

If you don't agree with the proposal, what would you change?

4.2 How would the proposal impact you?

4.3 What do you think is an appropriate minimum debt to equity, profitability and cash flow ratio?

4.4 **Can you suggest any additional metrics that should apply?**

Proposal 5—Require SC1 and SC2 to declare their Current Ratio (this may be self-reported by the licensee)

QUESTIONS

5.1 **Do you agree with this proposal for categories SC1 and SC2?**

☐ Yes ☐ No

5.2 **How would the proposal impact you?**

5.3 **If you are an SC1 or SC2 licensee currently, do you already calculate a Current Ratio for your business?**

☐ Yes ☐ No

5.4 **Do you think licensees with zero revenue for the year (e.g. those who have a licence but are not undertaking active work) should still be required to self-certify?**

☐ Yes ☐ No

KEY AREA 2 Fostering improved accountancy practices that meet the objectives of the Minimum Financial Requirements

What is being proposed?

Proposal 6—Establish a panel of pre-qualified Accepted Independent Accountants to be used on a case-by-case basis

QUESTIONS

6.1 **Do you agree with this proposal?**

☐ Yes ☐ No

If not, what would you change?

6.2 **Would this proposal damage your professional relationship/s?**

☐ Yes ☐ No

6.3 **How should panel members be appointed?**

6.4 **How should fees be managed (e.g. should there be agreed hourly rates)?**

Proposal 7—Clarify the process by which accountants are excluded from preparing MFR reports

QUESTIONS

7.1 **Do you agree with this proposal?**

☐ Yes ☐ No

If not, what would you change?

7.2 **Would this proposal damage your professional relationship/s?**

☐ Yes ☐ No

7.3 **Do you think the proposed process for exclusion of accountants is fair and equitable?**

☐ Yes ☐ No

7.4 **Do you think licensees should be able to view a list of excluded accountants?**

☐ Yes ☐ No

7.5 **Alternatively, do you think only accountants who have been prosecuted for an offence should be on the list that is able to be viewed by licensees?**

☐ Yes ☐ No

Proposal 8—Material changes in MFR reports require updated financial information

QUESTIONS

8.1 **Do you agree with this proposal?**

☐ Yes ☐ No

If not, what would you change?

8.2 **Are there other reasons, or exceptions, regarding the changing of an MFR report or financial statements?**

☐ Yes ☐ No

If so, what are they?

KEY AREA 3 Ensuring forms of assurance are providing financial security

What is being proposed?

Proposal 9—More information about covenantor's financial position

QUESTIONS

9.1 **Do you agree with this proposal?**

☐ Yes ☐ No

If not, what would you change?

9.2 **Would this proposal impact you in any other way?**

☐ Yes ☐ No

9.3 **Do you support any further steps in relation to Deeds of Covenants and Assurance?**

☐ Yes ☐ No

KEY AREA 4 Ensuring funds from related entity loans are accessible

What is being proposed?

Proposal 10—Related entity loans cannot be included to meet MFR requirements

QUESTIONS

10.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

Proposal 11—Require that related entity loans must be secured

QUESTIONS

11.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

Proposal 12— Clarify how related entity loans are assessed

QUESTIONS

12.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

KEY AREA 5 Clarifying definitions and requirements for the calculation of assets

What is being proposed?

Proposal 13 – Exclude trade debtor amounts over a certain age, unless their collectability can be verified

QUESTIONS

13.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

13.2 What sort of timeframe (number of days) is appropriate before a debt is excluded?

13.3 Do you think it is appropriate that the proposal departs from the Australian Accounting Standards?

☐ Yes ☐ No

What sort of additional impost would this mean for a licensee?

Proposal 14—Only registered vehicles can be considered as assets

QUESTIONS

14.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

Proposal 15—Proof of revaluation of assets

QUESTIONS

15.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

Proposal 16—Require properties listed for sale for longer than 12 months to be re-classified as a non-current asset

QUESTIONS

16.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

16.2 Is a 12 month sale period appropriate?

☐ Yes ☐ No

Where this period is cumulative, what should be the cap on this defined period?

16.3 Do you think it is appropriate that the proposal departs from the Australian Accounting Standards?

☐ Yes ☐ No

What sort of additional impost would this mean for a licensee?

Proposal 17—Project Bank Accounts and the MFR Policy

QUESTIONS

17.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

Other suggestions

Proposal 18—Create a positive obligation for licensees to notify QBCC of non-payment

QUESTIONS

18.1 Do you agree with this proposal?

☐ Yes ☐ No

If not, what would you change?

Overall financial impacts

19.1 Please consider the proposals in this document and indicate the financial impacts on you (if any).

Glossary of Terms

Accepted Independent Accountant – a person who is permitted under Part 6 of the MFR Policy to provide MFR reports for an applicant or licensee

ASIC – Australian Securities and Investments Commission

ASX – Australian Securities Exchange

ATO – Australian Taxation Office

BIF Act – *Building Industry Fairness (Security of Payment) Act 2017*

Categories 1–7 – see Appendix 4, page 50

Current Ratio – is calculated by dividing current assets by current liabilities and must be at least 1:1

FRL Policy – the former Financial Requirements for Licensing Policy

MFR – Minimum Financial Requirements

NTA – Net Tangible Assets

NTA Reduction Trigger – Under the current MFR, all licensees must report to the QBCC if their NTA decreases by more than 30% from their last advised and QBCC-accepted NTA position

PBA – Project Bank Account

QBCC Act – *Queensland Building and Construction Commission Act 1991*

QBC Board – Queensland Building and Construction Board

QBCC – Queensland Building and Construction Commission

QBP – Queensland Building Plan

Senate Report – A 2015 report by the Commonwealth Senate Standing Committee on Economics about insolvency in the Australian construction industry

SC1, SC2 – Self-Certification categories, see Appendix 4

Appendix 1: Current application of MFR to licence classes

The current MFR Policy applies in full to all classes of contractor licence, other than the exceptions outlined below.

General exceptions to the MFR Policy

- Building design—low rise
- Building design—medium rise
- Building design—open
- Hydraulic services design
- Hydraulic services design excluding design of on-site domestic waste water management
- Site classifier
- Site classifier excluding on-site domestic waste management.

However, the exemption for the above licence classes from the financial reporting requirements of the MFR Policy only applies if:

a) the applicant or licensee has complied with the requirements under the MFR Policy to hold professional indemnity insurance, without relying upon the circumstances when insurance is not required; and

b) the applicant or licensee is not applying for, and does not hold a licence in another class, which requires the applicant to comply with the MFR Policy in full.

Other exceptions to the MFR Policy

In addition, the following are not required to comply with the current MFR in full:

- A special purpose vehicle—This is an entity established for the sole purpose of carrying out building work under a public private partnership agreement.
- Builder—Project Management Services Licence if:

  a) the applicant or licensee holds professional indemnity insurance for the services specified in the scope of work for the licence; and

  b) the policy terms and conditions for the professional indemnity insurance:

     (i) provide for a minimum limit of indemnity for any one claim and the sum of all claims during any one period of insurance of not less than $1,000,000; and

     (ii) are otherwise equivalent to those requirements under the MFR; and

  c) the applicant or licensee is not applying for, and does not hold, a licence in another class which requires the applicant or licensee to comply with the MFR Policy in full.

Appendix 2: History of the MFR

Table 20: Summary of the history of the MFR

Commencement date	Licensee tests	Major amendments
1 October 1999 Financial Requirements for Licensing Policy	• NTA (Capital Test) • Liquidity Ratio (0.8:1) • Self-Certification 1 (SC11) set at $75K • Self-Certification 2 (SC21) set at $250K	• FRL Policy commences.
1 October 2000	• NTA (Capital Test) • Liquidity Ratio (0.8:1) • SC1 $75K • SC2 $250K	• Changes to categories (9 down to 8 and grouped differently).
5 January 2004	• NTA (Capital Test) • Liquidity Ratio (0.8:1)	• Professional Indemnity Insurance.
1 July 2006	• NTA (Capital Test) • Liquidity Ratio (0.8:1) • Current Ratio (1:1) • SC1 $100K • SC2 $300K	• Introduction of Current Ratio (either ratio can be met between 1/7/06 and 30/6/07 and phase out of Liquidity ratio from 1/7/07). • Phase out of Negative NTA from 1/7/07. • Turnover limits for self-certification categories 1 and 2 increased.
1 July 2010	• NTA (Capital Test) • Current Ratio (1:1) • SC1 $100K • SC2 $300K	• Introduction of special purpose vehicle, i.e. an entity established for the sole purpose of carrying out building work under a public private partnership agreement. • Introduction of exemption from FRL for Builder – Project Management Services licence, when they hold PI insurance licence.
1 October 2012	• NTA (Capital Test) • Current Ratio (1:1) • SC1 $100K • SC2 $300K • Payment of judgement debts	• Payment of debts section introduced—limited to judgement debts.

Commencement date	Licensee tests	Major amendments
1 October 2014 – Minimum Financial Requirements Policy	• NTA (Capital Test) • Current Ratio (1:1) • SC1 200K • SC2 600K • Payment of debts	• Policy renamed to Minimum Financial Requirements (MFR). • Limits for self-certification categories increased and former category 1 removed. • 'Allowable Annual Turnover' renamed to 'Maximum Revenue'. Maximum Revenue limit now applies to each financial year for all licence categories. Previously, the limit applied to the licence year (i.e. 12 months between renewals) for self-certification categories. • Removal of annual reporting requirements. • Payment of debts section extended to include all debts of a licensee. • All licensees must prepare and maintain internal management accounts quarterly. Licensees must provide internal management accounts to QBCC if requested after the end of a quarter. Previously, different internal management requirements existed for different categories of licensee. • Reduced number of report types when applying for a licence or seeking an increase to Maximum Revenue. • Requirement to meet Current Ratio extended to included SC1 and SC2 licensees. • Change to requirement to notify of decreases in NTA. Licensees are subject to a condition that their NTA must not decrease by more than 30 percent from the end of its last financial year without reporting the decrease to the QBCC. Licensees were previously subject to a condition that their NTA must not decrease by more than 10 percent for more than 1 month unless they report to the QBCC.
9 October 2015	• NTA (Capital Test) • Current Ratio (1:1) • SC1 200K • SC2 600K • Payment of debts	• Introduction of requirement to provide financial statements lodged with ASX or ASIC to QBCC. • Licensees required to report decrease of more than 30 percent to the QBCC from its last reported NTA position rather than from end of previous financial year. • Additional provisions added to clarify the financial reporting format required in circumstances where the QBCC is concerned that a licensee may not satisfy MFR requirements and needs additional information from the licensee. • More stringent requirements placed on independent accountants. • Powers under the QBCC Act, in relation to production of documents and licence condition requirements, added to MFR Policy.

Appendix 3: Cross-jurisdictional analysis of financial requirements for builder licences

An explanation of the financial requirement categories in Table 21 is below.

- Maximum Revenue—requirement that a licensee must not exceed a certain amount of revenue in each year.
- Net Tangible Assets— requirement to have a certain amount of Net Tangible Assets.
- Current Ratio—requirement to have a certain ratio between assets and liabilities.
- Payment of Debts—requirement that a licensee must at all times pay undisputed debts and debts ordered by a Court or Tribunal when due.
- Financial Monitoring—requirement that a licensee prepare and maintain internal accounts showing the ongoing financial position and performance of the business.
- Insurance—requirement that a licensee have insurance in order to hold a licence.
- Other—other financial requirements that do not fall within the scope of the categories above.

Table 21: Financial requirement categories

Jurisdiction	Financial requirement category	Summary of financial requirement
QLD	Maximum Revenue	A licensee must not exceed their Maximum Revenue by more than 10 percent in each financial year.
	Net Tangible Assets	Applicants and licensees must have sufficient NTA in their own right sufficient for the higher of the level of Maximum Revenue or the actual Revenue being generated (see Table A of the QBCC's MFR Policy). The Net Tangible Assets of an Applicant or Licensee must be at least $0. Applicants and Licensees may rely upon a Deed of Covenant and Assurance in order to meet this financial requirement.
	Current Ratio	Applicants and Licensees must meet the Current Ratio requirement (current assets/current liabilities must be at least 1:1) at the time of application and at all times whilst the licence is held.
	Payment of Debts	A Licensee must at all times pay all undisputed debts as and when the debts fall due and within industry trading terms. It is also a financial requirement that a Licensee or Applicant must pay all debts as ordered by a Court or Tribunal within 28 days of the order or a longer period if allowed by the Court or Tribunal.
	Financial Monitoring	A Licensee must prepare and maintain internal management accounts at quarterly intervals in each financial year at a minimum.
	Insurance	Applicants for and Licensees who hold a class of licence specified in Table 4 of the QBCC's MFR Policy must hold professional indemnity insurance. The policy conditions for the required professional indemnity insurance must have a minimum limit of indemnity for any one claim and the sum of all claims during any one period of insurance of not less than the limits specified in the table.
	Other	Nil
NSW	Maximum Revenue	Nil
	Net Tangible Assets	Nil
	Current Ratio	Nil
	Payment of Debts	Nil
	Financial Monitoring	Nil

<table>
<tr><th>Jurisdiction</th><th>Financial requirement category</th><th>Summary of financial requirement</th></tr>
<tr><td rowspan="2">NSW</td><td>Insurance</td><td>All applicants for building work licence classes must provide evidence of a current certificate of eligibility to obtain cover under the Home Building Compensation (HBC) Scheme.
If an applicant or licensee does not provide a certificate of eligibility, their licence will be endorsed with the condition that they be limited to work that does not require cover under the HBC Scheme. That is, work in which the reasonable cost of labour and materials, inclusive of GST, does not exceed $20,000.
As a builder or contractor, a certificate of eligibility determines the maximum value and number of construction projects a contractor can have open at any given time. It also certifies the maximum contract price for each type of construction work they are eligible to do under their approved eligibility.</td></tr>
<tr><td>Other</td><td>Nil</td></tr>
<tr><td rowspan="7">VIC</td><td>Maximum Revenue</td><td>Nil</td></tr>
<tr><td>Net Tangible Assets</td><td>Nil</td></tr>
<tr><td>Current Ratio</td><td>Nil</td></tr>
<tr><td>Payment of Debts</td><td>Nil</td></tr>
<tr><td>Financial Monitoring</td><td>Nil</td></tr>
<tr><td>Insurance</td><td>• A registered building practitioner must have the appropriate insurance for their registration category/class. The Victorian Building Authority (VBA) requires evidence of insurance or eligibility to purchase insurance (in some cases) before it can grant a registration or a renew of registration.
• If the VBA learns that a licensee is no longer covered by the required insurance, it must suspend their registration.
• There are 3 types of insurance for registered building practitioners:
– Domestic building insurance
– Professional indemnity insurance
– Public liability insurance (for Builder – Demolisher, Erector or Supervisor (Temporary Structures).</td></tr>
<tr><td>Other</td><td>From 1 July 2018, as part of a company builder registration application, the applicant must provide details of financial probity. In summary, the applicant must provide details of:
• any judgment debt for an amount recoverable by an insurer under a policy of insurance for domestic building work that has not been satisfied within the period required
• any judgment debt for an amount owed to the VBA as a debt due under this Act that has not been satisfied within the period required
• any judgment debt for an amount payable in relation to a domestic building dispute that has not been satisfied within the period required
• any amount payable under any dispute resolution order or Victorian Civil and Administrative Tribunal order requiring the payment of an amount in relation to a domestic building dispute that has not been paid within the period required
• any unpaid adjudicated amount due to be paid under the Building and Construction Industry Security of Payment Act 2002 if—
– the period for making an adjudication review application under that Act in relation to that amount has expired; and
– the practitioner has not made an adjudication review application in relation to that amount within that period.</td></tr>
</table>

Jurisdiction	Financial requirement category	Summary of financial requirement
SA	Maximum Revenue	Nil
	Net Tangible Assets	When applying for a building work contractor's licence in South Australia, an applicant needs to have sufficient financial resources for the purpose of properly carrying on the business authorised by the licence. An applicant who intends to do 'specific building work' (e.g. bricklayers, carpenters) needs to have at least $10,000 in net assets to apply for a contractor's licence. If they do not have $10,000 in net assets, they can apply for a restricted licence as a subcontractor. If a builder intends to work in 'major residential construction', they must provide on application either: • a certificate showing they can get building indemnity insurance; or • a letter from a chartered accountant, certified practicing accountant or IPA public accountant confirming they are solvent and have at least $100,000 in tangible net assets. Industrial commercial and civil builders must declare on the application form that they have the financial resources needed to carry on this type of business.
	Current Ratio	Nil
	Payment of Debts	Nil
	Financial Monitoring	Nil
	Insurance	As stated in the 'Net Tangible Assets' section above, if a builder intends to work in 'major residential construction' they must provide on application either: • a certificate showing they can get building indemnity insurance; or • a letter from a chartered accountant, certified practicing accountant or IPA public accountant confirming they are solvent and have at least $100,000 in tangible net assets. However, this is not a strict prerequisite for obtaining a licence.
	Other	Nil
WA	Maximum Revenue	Nil
	Net Tangible Assets	When applying for registration, or renewal of registration, as a building contractor (individual, partnership or company), the applicant must satisfy the Building Services Board that they have capacity to meet debts as and when they fall due. When assessing this, the Board may have regard to the following: (a) the net assets of the applicant; (b) liquid funds available to the applicant; (c) loan or overdraft facilities available to the applicant; (d) the applicant's equity in property or non-current assets that a loan facility may be raised against; (e) the proposed scale of operation of the applicant; (f) any other consideration relevant to the applicant's financial capacity.
	Current Ratio	Nil
	Payment of Debts	As per legislation, a building contractor must have the capacity to meet debts as and when they fall due. It is also a requirement under legislation for a building contractor to notify the Building Services Board if they are unable to meet their financial obligations as and when they fall due.

Jurisdiction	Financial requirement category	Summary of financial requirement
WA	Financial Monitoring	Upon renewal of registration every three years, a building contractor must demonstrate to the Board that they have capacity to meet debts as and when they fall due. The Board can have regard to the information listed above in the 'Net Tangible Assets' section. In practice, the renewal application form provides that a building contractor can demonstrate their capacity to pay debts as and when they fall due by providing either: • A certificate of eligibility for Home Indemnity Insurance in the name of the contractor; or • A letter from an independent qualified accountant to the effect that, in the accountant's opinion at the time of signing, the applicant can pay their debts as and when they fall due.
	Insurance	Nil Note: Home indemnity insurance is required to be taken out for residential building work, however, this does not appear to be a prerequisite for obtaining or holding a licence.
	Other	Nil
NT	Maximum Revenue	Nil
	Net Tangible Assets	In an application for registration as a building contractor (individual or company), an applicant must provide an original net assets certificate as certified by a registered accountant stating they have 'Net Tangible Assets' of $50,000 or more as required by the Northern Territory's Building Regulations. They must maintain at least that minimum amount during the entire period of registration. The financial information used must be less than 12 months old from the date of the certificate. The Building Practitioners Board can at any time require a Building Contractor to produce evidence to assess compliance with the requirement to hold the minimum NTA of $50,000 in accordance with legislation.
	Current Ratio	Nil
	Payment of Debts	Nil
	Financial Monitoring	A Building Contractor must produce evidence of compliance with the requirement to hold a minimum NTA of $50,000 every two years upon renewal of a licence.
	Insurance	Nil
	Other	Nil
TAS	Maximum Revenue	Nil
	Net Tangible Assets	Nil Note: Builders were previously required to demonstrate that they had at least $50,000 in NTA before being granted accreditation as a building practitioner. This requirement was removed in 2017 as part of an ongoing assessment of builders under Tasmania's Scheme for the Accreditation of Building Practitioners. The assessment deemed that the consumer protection offered by requiring builders to have at least $50,000 in assets was of no real benefit to consumers.
	Current Ratio	Nil
	Payment of Debts	Nil
	Financial Monitoring	Nil

Jurisdiction	Financial requirement category	Summary of financial requirement
TAS	Insurance	On application and renewal of a licence, a copy of a certificate of currency of insurance is required. The following insurance requirements must be met: • Builder, fire protection services and demolisher ($5 million public liability) • Construction manager needs professional indemnity insurance: – $500,000 for low rise – $750,000 for medium rise – $1 million for open. • Contract works insurance is needed for a builder when working on a project and may be taken out on an annual or a project-by-project basis. • Contract works insurance is needed by a builder when working on a project and may be taken out on an annual or a project-by-project basis.
	Other	Nil
ACT	Maximum Revenue	Nil
	Net Tangible Assets	Nil
	Current Ratio	Nil
	Payment of Debts	Nil
	Financial Monitoring	Nil
	Insurance	Although it is not a strict prerequisite for holding a builder licence, a builder must have a residential building insurance policy or a fidelity certificate before starting any building work, unless the work is exempt from requiring protection.
	Other	When applying for a licence (individual, partnership or company), the applicant must advise whether they have access to financial resources adequate to complete works performed under the licence. For a company applying for a licence, a company extract issued by the ASIC must be provided with the application. If a licensee becomes bankrupt or insolvent they must notify the Construction Occupations Registrar as this may affect their builder's licence.

Appendix 4: Summary of existing licence classes under the current Minimum Financial Requirements Policy

Table 22: Licence classes under the current Minimum Financial Requirements Policy

Criteria	Maximum Revenue*		Net Tangible Assets	
SC1	$200,000		$12,000	
SC2	$600,000		$36,000	
	Minimum (a)	**Maximum (b)**	**Minimum (c)**	**Maximum (d)**
Category 1	$600,001	$3,000,000	$36,001	$156,000
Category 2	$3,000,001	$12,000,000	$156,001	$480,000
Category 3	$12,000,001	$30,000,000	$480,001	$1,200,000
Category 4	$30,000,001	$60,000,000	$1,200,001	$2,400,000
Category 5	$60,000,001	$120,000,000	$2,400,001	$4,800,000
Category 6	$120,000,001	$240,000,000	$4,800,001	$14,400,000
Category 7	›$240,000,001	NTA x 16.67	N/A	›$14,400,000

*The formula for deriving level of Maximum Revenue between minimum and maximum NTA values for categories 1 to 6 is:
Maximum Revenue = {[(Licensee's NTA–c) / (d–c)] x (b–a)} + a.

The calculation is **not** applied to SC1 and SC2 in determining Maximum Revenue.

Appendix 5:
Number of licensees per category, as at 4 July 2018

Table 23: Licensees per category, as at 4 July 2018

Category	Number of licensees
SC1	25,674
SC2	33,895
1	5155
2	4585
3	672
4	300
5	197
6	162
7	185

Note the above licensee numbers do not reflect the total number of QBCC licensees due to some licensees being excluded from the MFR.

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QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

Queensland Government