

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

Explanatory notes for Subordinate Legislation 2018 No. 218

made under the

Architects Act 2002

Queensland Building and Construction Commission Act 1991

State Penalties Enforcement Act 1999

General Outline

Short title

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

Authorising law

Sections 33 and 116 and Schedule 2 (definition of 'minimum financial requirements') of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

Section 165(2) of the *State Penalties Enforcement Act 1999*.

Section 143 of the *Architects Act 2002* (Architects Act).

Policy objectives and the reasons for them

Minimum Financial Requirements for licensing

As part of its suite of security of payment reforms outlined in the Queensland Building Plan, the Government committed to "create new laws that strengthen the Minimum Financial Requirements (MFR) for licensing and enable the Queensland Building and Construction Commission (QBCC) to better regulate those requirements." The *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) was enacted on 10 November 2017 and includes a legislative head of power for the MFR to be prescribed in regulation.

Prior to prescribing the MFR in regulation, a discussion paper titled 'The proposed improvements to the Minimum Financial Requirements for licensing in the building and construction industry' was released on 12 September 2018 for 4 weeks' public consultation.

The intent of the reforms is to introduce a strengthened reporting framework, clarify what can and cannot be included when calculating a licensee's assets and revenue, and result in improved data to allow the QBCC to more effectively monitor the financial sustainability of licensees.

The changes are to be implemented in phases, with Phase 1 commencing from 1 January 2019. A regulation is needed to outline certain matters to support implementation of Phase 1 of the MFR reforms.

Voting procedures for the Board of Architects of Queensland (the Board)

The Board is responsible for, among other things, registering qualified and competent persons as architects in Queensland. The Board consists of seven members, one of whom must be an architect elected under the Act.

The *Architects Regulation 2003* (Architects Regulation) prescribes the voting procedures for electing an architect to the Board. These procedures currently restrict the Board to a postal voting process, using paper ballots and being administered by the registrar of the Board. This is inflexible, resource intensive and, with the availability of electronic voting, inefficient.

It is intended to modernise the current voting process and make it more user-friendly and convenient for architects, primarily by introducing electronic voting. It is also intended to provide the Board with greater flexibility in administering the elections and promote efficiencies by allowing them to use more modern methods of conducting an election.

However, it is also intended that any architect who prefers to vote using the current postal voting system is afforded the opportunity to do so.

Achievement of policy objectives

Minimum Financial Requirements for licensing

The *Queensland Building and Construction Commission (Minimum Financial Requirements) 2018* (Amendment Regulation) will implement Phase 1 of the MFR reforms through the making of the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (the MFR Regulation). The MFR Regulation reinstates the requirement for licensees to provide financial information to the QBCC each year (as was the case prior to 2014). It also includes a requirement for licensees in categories 4-7 to report to the QBCC any decreases in Net Tangible Assets (NTA) that are greater than 20%. The NTA is the calculation of a licensee's assets minus their liabilities. It is used to justify their level of maximum revenue under the MFR. This improved supply of information will better equip the QBCC to detect those licensees who may be experiencing financial distress.

The MFR Regulation clarifies the types of recreational vehicles, assets or equipment that cannot be included as a licensee's assets when calculating a change in asset position. The regulation also confirms how money held within a Project Bank

Account (PBA) is to be considered when calculating a change in a licensee's assets. The regulation makes it clear that this money is to be treated in the same way as trust money under the general law. That is, if a licensee holds, or has a beneficial interest in money held in a PBA, this money will be counted towards the licensee's assets.

The MFR Regulation also prescribes some new offences and penalties, including for failure to lodge annual financial information and failure to notify the QBCC of a decrease in NTA. Further, the regulation includes amendments to the *State Penalties Enforcement Regulation 2004* to include new penalty infringement notice offences.

Finally, the MFR Regulation makes consequential amendments to the *Queensland Building and Construction Commission Regulation 2018* to replace references to the Queensland Building and Construction Board policy which previously set out the MFR for licensing.

Voting procedures for the Board

The MFR Regulation amends the Architects Regulation to modernise the current procedures for electing a registered architect to the Board. The changes provide for a system of electronic voting which is in addition to the current voting procedures involving paper ballots.

Allowing electronic voting will provide the architectural profession greater flexibility in casting their vote and will facilitate process efficiencies and cost savings for the Board (e.g. printing and postage costs and staff time). Electronic voting may also facilitate increased participation in the voting process due to the ease of voting electronically as opposed to via hard copy.

If a person does not have access to a computer, email or the internet to allow participation in electronic voting, or has a preference for postal voting, the current process of postal voting will remain available to them, upon request.

Under the amended voting model, the Board will also have the ability to approve an entity as a voting services provider, to provide an electronic and postal voting system for an election. This will provide greater flexibility than the current model, where responsibility for the election is solely vested in the registrar.

Finally, the MFR Regulation requires an electronic voting system to meet certain security and privacy requirements, to preserve the integrity of the voting process. For example, the system cannot allow a person to find out how a particular architect cast his or her vote. The voting services provider (or registrar) must also perform certain functions in the presence of at least two witnesses and must also make a tally of votes available for inspection for three months after the election.

Consistency with policy objectives of authorising law

The MFR Regulation is consistent with the objectives of the Acts.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by making the Regulation.

Benefits and costs of implementation

Minimum Financial Requirements for licensing

The MFR Regulation will introduce a new MFR framework for licensees in the Queensland building and construction industry. While the MFR Regulation will impose additional financial monitoring responsibilities on the QBCC, it will also have the benefit of providing the QBCC with additional financial information so that it can better detect those licensees who may be operating in an unsustainable manner. It will also introduce additional enforcement measures for the QBCC to respond to inappropriate financial conduct.

Voting procedures for the Board

Any costs of implementing the modernised voting system (e.g. set-up costs) will be met from existing Board resources, however, the Board advises that these costs are likely to be completely offset by a reduction in administrative costs and resource burden.

The amendments will also improve flexibility and create process efficiencies for the Board, while improving the accessibility and convenience of voting for architects.

Consistency with fundamental legislative principles

The MFR Regulation is consistent with fundamental legislative principles.

Consultation

Minimum Financial Requirements for licensing

A discussion paper titled 'The proposed improvements to the Minimum Financial Requirements for licensing in the building and construction industry' was released for four weeks' consultation from 12 September 2018.

The Ministerial Construction Council (which included representatives from the National Association of Women in Construction, the Master Plumbers' Association of Queensland, Master Electricians Australia, the National Fire Industry Association, Master Builders Queensland, and the Housing Industry Association) was consulted on the proposals included in the regulation.

The Queensland Productivity Commission was consulted and determined that further regulatory impact analysis was not required due to previous consultation undertaken on this matter.

Voting procedures for the Board

Substantial consultation has occurred with the Board. The Board has indicated that the introduction of electronic voting will provide greater flexibility, process efficiencies and cost savings.

The Queensland Productivity Commission was consulted and determined that further regulatory impact analysis was not required as it is considered that these amendments have no significant adverse impacts.