Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation (No. 2) 2019

Explanatory notes for Subordinate Legislation 2019 No. 100

made under the

Queensland Building and Construction Commission Act 1991

General Outline

Short title

Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation (No. 2) 2019

Authorising law

Section 116 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

Policy objectives and the reasons for them

As part of its suite of security of payment reforms under the Queensland Building Plan, the Queensland Government released a new framework for strengthening the Minimum Financial Requirements (MFR) for licensing in building and construction industry.

The new MFR framework has been introduced in two phases. Phase 1 commenced on 1 January 2019 through the introduction of the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (MFR Regulation). It included key reforms such as reinstating mandatory annual reporting by licensees to the Queensland Building and Construction Commission (QBCC).

Phase 2 commenced on 2 April 2019 and further strengthened the MFR, including a repeal of the previous MFR Policy and a transfer of the requirements into the MFR Regulation.

The MFR Regulation outlines what can and cannot be included as a licensee's assets for the purposes of meeting the financial requirements for licensing. In line with the former MFR Policy, intangible assets and disallowed assets are generally not able to be included as part of a licensee's assets.

It has been identified that further clarification is required about the asset reporting requirements under the MFR Regulation, as outlined below.

Reference to specific accounting standards for intangible assets

As part of Phase 1 of the MFR reforms, a reference to accounting standard "AASB 138 – Intangible Assets" was included in the MFR Regulation to describe the intangible assets that must be excluded when working out a licensee's Net Tangible Assets (NTA). However, this accounting standard does not cover the full range of intangible assets that need to be excluded. There are several other accounting standards that cover individual types of intangible assets.

As a result, a minor amendment to the MFR Regulation is needed to make it clear that all intangible assets must be excluded when calculating a licensee's NTA.

Calculating a deficiency in trusts

Since 1 January 2019, the MFR Regulation has specified that a deficiency in trust assets for which the licensee is a trustee must be included as part of the licensee's liabilities. However, it does not define 'assets' in this context. As a result, there may be the potential for a licensee to include disallowed and intangible assets for the trust, which may artificially inflate their overall asset position.

It has always been the QBCC's practice to exclude disallowed and intangible assets for this purpose. This is consistent with how a licensee's general assets are calculated. A minor amendment to the MFR Regulation is needed to remove any doubt about this matter and better reflect the current policy position.

Calculating assets when working out current ratio

The MFR Regulation currently refers to assets (for the purposes of calculating a licensee's current ratio of assets to liabilities) as those that are worked out under Part 4. Part 4 of the MFR Regulation relates to calculating a licensee's NTA.

Referring to methodology that has been specified for a different purpose under the MFR Regulation may have the potential to cause confusion for licensees and accountants. It is important that the requirements are as clear cut as possible so that it is easier for accountants and licensees to comply.

As a result, a minor amendment is required to the MFR Regulation to clarify the methodology for calculating assets for the purposes of working out a licensee's current ratio.

Achievement of policy objectives

The *Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation (No. 2) 2019* (Amendment Regulation) makes the following minor amendments to the MFR Regulation:

Reference to specific accounting standards for intangible assets

The Amendment Regulation clarifies the full range of intangible assets, including items such as deferred tax, goodwill and borrowing costs, that must be excluded when calculating a licensee's NTA.

This is consistent with the former MFR Policy and will prevent a licensee's asset position from being artificially increased when reporting to the QBCC.

Calculating a deficiency in trusts
The Amendment Regulation clarifies that intangible assets and disallowed assets must be excluded when calculating a deficiency in trusts. This is a more accurate reflection of the current policy position.

Calculating assets when working out current ratio
The Amendment Regulation makes it clearer that the methodology for calculating assets for the purposes of working out a licensee's current ratio is to be the same as that used to calculate NTA.

The amendments provide greater clarity and certainty to industry and enable the QBCC to better regulate the MFR requirements.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the Act.

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 Amendment Regulation.

Benefits and costs of implementation

The implementation of the Amendment Regulation will provide greater clarity and certainty to industry.

It will also enable the QBCC to better regulate and detect those licensees who may be operating in an unsustainable manner.

There are not expected to be any costs associated with the Amendment Regulation.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

At a meeting on 8 May 2019, members of the Ministerial Construction Council, which includes representatives of key stakeholders within the building and construction industry, were consulted and were supportive of the proposed amendments which will make it clear that the full range of intangible assets, including items such as deferred tax, goodwill and borrowing costs, must be excluded when calculating a licensee's net tangible assets and that the methodology for calculating assets for the purposes of working out a licensee's current ratio is to be the same as that used to calculate net tangible assets.

The Queensland Productivity Commission was consulted and determined that further regulatory assessment was not required as the proposed amendments relate to clarifying amendments and are unlikely to result in significant adverse impacts.