

10 March 2023

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Ms Angela Masson  
A/CEO and Commissioner  
Queensland Building & Construction Commission  
299 Montague Road  
West End Qld 4101

VIA EMAIL: [angela.masson@qbcc.qld.gov.au](mailto:angela.masson@qbcc.qld.gov.au)

Dear Angela,

#### **USE OF QBCC AUDIT POWERS – MFR REPORTS**

As discussed at our meeting of 27 February 2023, we are concerned about the QBCC's current practice of using its supply of financial records powers under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to require licensees to have an MFR Report prepared by their accountant. The cost to the licensee of this exercise is between \$8,000 and \$10,000.

It is our view that the QBCC Act does not authorise QBCC to use these powers for this purpose. We are aware that some accountants have similar concerns.

#### **Background**

Section 50C of the QBCC Act allows the QBCC in specified circumstances to give a written notice to a licensee requiring the licensee to give the QBCC copies of, or access to "*financial records*" described in the notice. Failure of a licensee to comply with a notice may lead to the licensee being fined and is also grounds to cancel or suspend their contractor's licence.

Based on the experience of our members, QBCC uses its powers under section 50C to require licensees to have their accountant prepare an MFR Report and then provide it to the QBCC. The QBCC commonly does this in circumstances where it believes there are reasonable grounds for concern that the licensee does not satisfy relevant minimum financial requirements for their licence.

An example of a notice of this kind is attached (the identifying details have been removed).

#### **Master Builders concerns**

Master Builders does not believe that section 50C gives the QBCC the power to direct a licensee to have an accountant create an MFR Report. We believe the power given to the QBCC in section 50C(3) is limited to requiring the licensee to provide financial records that exist at the time of the notice.

In our view, it is not a general power to allow the QBCC to direct a licensee to engage an accountant to analyse the financial circumstances of the licensee and then provide a specific purpose report to assist the QBCC in its investigations.

This view is supported by the fact that the ability of the QBCC to require a licensee to prepare an MFR Report is dealt with in the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* (the Regulation). The Regulation clearly states the circumstances when an MFR Report must be provided to the QBCC and when QBCC has the power to require an MFR Report from a licensee (refer Division 4 MFR Reports and Division 5 Additional Requirements).

It is not our intention to unnecessarily hinder the QBCC in the exercise of its investigation and audit powers under the QBCC Act. However, on behalf of our members, we are keen to ensure that the regulator's powers are properly exercised within the bounds of the legislation.

Master Builders asks that the QBCC review its current operational practices. If the QBCC agrees with our view, we assume the QBCC will cease giving notices under section 50C for licensees to provide an MFR Report.

We are also keen to understand the circumstances when the QBCC will typically decide to exercise its powers under section 50C(2)(a) to require a copy of or access to a licensee's financial records.

Yours sincerely,

**Paul Bidwell**  
**CEO**

Contact:  
Office: **Brisbane**  
Telephone:  
Email:

Licence No:  
Case No:

Dear Directors

## **MINIMUM FINANCIAL REQUIREMENTS AUDIT**

I refer to the QBCC licence/s held by "(the Company)".

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

Pursuant to Section 50C(3) of the Act, the financial records specified in the notice must be the financial records QBCC reasonably requires for deciding whether the Company satisfies the minimum financial requirements. The minimum financial requirements are outlined in the [Queensland Building and Construction Commission \(Minimum Financial Requirements\) Regulation 2018](#) ("MFR Regulation 2018").

**TAKE NOTICE**, QBCC has received information that has satisfied there are reasonable grounds for concern that the Company does not satisfy the minimum financial requirements.

The QBCC has commenced an audit due to the annual reporting information disclosing the following concerns:

**TAKE NOTICE**, the Company must provide QBCC with the financial records specified in the attached schedule within 21 days.

The Company must provide QBCC with a report and verified accounts from a qualified accountant. You should make contact with the Company's accountant immediately to ensure the required information can be provided within 21 days.

Failure to comply with this notice is taken to be a breach of a condition imposed on the Company's licence under Section 36 of the Act, and may result in the Company's licence being suspended or cancelled. QBCC may also take one of the following actions against the Company:

<b>Action taken</b>	<b>Maximum Penalty</b>
Infringement notice issued under the State Penalties Enforcement Act 1999	\$1,219
Prosecution in the Magistrates Court for breach of Section 50C(4) of the Act	\$60,950
Disciplinary action in the Queensland Civil and Administrative Tribunal (QCAT)	\$121,900

QBCC may also prosecute the directors personally for failing to ensure the Company complies with its obligations under the Act. Please contact me if you have any questions.

Yours faithfully

**Financial Assessment Officer**

## Your rights

You may wish to get advice from the QBCC or a lawyer about:

- ✓ The effect of this decision, and
- ✓ Your right to have this decision reviewed if you are not satisfied with it

You have the right to have this decision **externally reviewed** in the Queensland Civil and Administrative Tribunal (QCAT). If you do so, you may also apply to QCAT to stay the operation of this decision. An external review application must be lodged with QCAT within 28 days of this decision. QCAT can be contacted on 1300 753 228 or at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

Before making an application to review a QBCC decision in QCAT, please read QCAT Practice Direction 2022/09 available at [www.qcat.qld.gov.au/resources/practice-directions#2022](http://www.qcat.qld.gov.au/resources/practice-directions#2022), which provides an explanation of QCAT's pre-hearing processes including how to make an application.

Alternatively, you have the right to have this decision **internally reviewed** by a QBCC officer independent of the original decision. An internal review application must be lodged with the QBCC within 28 days of this decision.

Should you be dissatisfied with the internal review decision, that decision may also be externally reviewed by QCAT. For further information visit QBCC's website [www.qbcc.qld.gov.au](http://www.qbcc.qld.gov.au) or telephone 139 333.

## SCHEDULE

### FINANCIAL RECORDS REQUIRED

1. A Minimum Financial Requirements (MFR) Report that complies with the Minimum Financial Requirements, which is no older than 4 months at the time the qualified accountant signs the report, or preferably for the financial year to 31 December 2022;

1.a [MFR Report for Categories 1 – 3](#);

2. A copy of signed financial statements (as defined in the MFR Regulation 2018) which includes comparatives for the last financial year and any other financial statements used by the qualified accountant to prepare the MFR Report referred to in paragraph 1, including all commentary and analysis relating to these reports;

2.a If the Company is a trustee for a trust or a partner in a partnership, then in addition to the signed financial statements of the Company, signed financial statements must also be provided for each trust and/or partnership.

2.b Please note the QBCC's definition of signed financial statements includes a cash flow statement and aged debtors and creditors report.

3. A listing of debtor retentions and a listing of creditor retentions as at the same period end date as the MFR Report referred to in paragraph 1, verified by the qualified accountant;

4. If the MFR Report referred to in paragraph 1 includes related entity asset loans in the calculations, then a balance sheet of each debtor entity must also be provided as at the same period end date as the MFR Report, as well as any other balance sheets relied upon in determining the debtor entity has a QBCC Current Ratio of at least 1:1 and a Net Tangible Asset position of at least \$0;

5. If the MFR Report referred to in paragraph 1 relies upon a Deed of Covenant and Assurance from an approved Covenantor then a [Covenantors Statement of Financial Position](#) must be provided for each Covenantor.

5.a Please note it is mandatory for the Covenantors Statement of Financial Position to be accompanied by a copy of each document relied upon by the Licensee in assessing the Covenantors assets and Liabilities.

5.b If the Licensee has not previously relied upon a Deed of Covenant and Assurance from the Covenantor, then the original executed [Deed of Covenant and Assurance](#) must also be provided.

#### **Note: Warning to accountants preparing information to be provided to QBCC**

QBCC relies upon the information provided under financial compliance audits to determine whether the licensee meets the Minimum Financial Requirements and is entitled to maintain a QBCC licence. The information provided will be scrutinised carefully, often by specialist experienced forensic accountants.

You should ensure you comply with your professional obligations and the Minimum Financial Requirements. You must make appropriate enquiries of the licensee, carry out tests and checks, and seek evidence that is appropriate in the circumstances, to justify the information provided to QBCC.

Pursuant to section 53B of the Queensland Building and Construction Commission Act 1991 it is an offence for an accountant or any other person to provide QBCC with information that is false or misleading in circumstances where the person providing the financial information has not taken reasonable steps to ensure the information was not false and misleading. The maximum penalty is a \$11,385 fine or 2 years imprisonment.