

Overview of investigative and supervisory powers in Queensland building legislation

Special Joint Taskforce

Queensland Building and Construction Commission Act 1991

The *Queensland Building and Construction Commission Act 1991* (QBCC Act) contains various investigative and supervisory powers that enable the Queensland Building and Construction Commission (QBCC) to regulate the building and construction industry. Key provisions and offences are outlined below.

Minimum Financial Requirements (MFR)

Under the QBCC Act, the QBCC may establish an approved audit program for monitoring satisfaction of the MFR. Under an audit program, the QBCC may require a licensee to provide financial records and other documents. The QBCC may also ask for this documentation if it has reasonable grounds for concern that the licensee does not satisfy the MFR.

It is also an offence to provide the QBCC false or misleading documents about the MFR. A maximum penalty of 100 penalty units (PU) or 2 years imprisonment applies.

Relevant sections

- Part 3, Division 9A—Monitoring continued satisfaction of minimum financial requirements and particular laws
- Section 53B—False or misleading documents about minimum financial requirements

Entitlement to a licence (excluded and disqualified individuals and convicted company officers)

Under the QBCC Act, a person who becomes bankrupt or is involved in a construction company that is wound up (including an interstate company) becomes an 'excluded person' and is restricted from holding a QBCC contractor or nominee supervisor licence for three years. A person who is involved in multiple events faces permanent exclusion.

A person who accumulates 30 demerit points (which apply to various offences under the QBCC Act) within a three year period becomes a 'disqualified person' and is similarly restricted from holding a QBCC contractor or nominee supervisor licence for three years.

A person who is convicted of an offence under the Corporations Act section 596(1)(b) or (c) (which relates to fraud) is known as a 'convicted company officer' and is not entitled to a contractor or nominee supervisor licence at all.

In addition to being restricted from holding a licence, excluded and disqualified individuals and convicted company officers cannot be a director, secretary, nominee or influential person for a licensed company.

The QBCC Act establishes procedures for the cancellation of licences in the above circumstances.



Relevant provisions:

- Part 3A—Excluded individuals
- Part 3B—Permanently excluded individuals
- Part 3C—Convicted company officers
- Part 3E—Disqualified individuals

Investigator powers

Part 9 of the QBCC Act allows the QBCC to appoint investigators and sets out the powers available to these investigators for investigating, monitoring and enforcing compliance with the QBCC Act, the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act), the *Building Act 1975* and the *Plumbing and Drainage Act 2002*.

These powers include:

- powers of entry by consent or under a warrant
- after entry, powers to inspect, examine, extract, copy, and seize materials which may be evidence in determine whether a person complies with the applicable legislation
- obtaining information such as the name and address of a person who is suspected of committing an offence
- requiring production of documentation
- requiring a person to attend an interview to answer questions
- specific additional powers relating to building products, such as taking samples and requiring a person to take remedial action.

Part 9 includes various offences where a person does not comply with a requirement made of them by an investigator and for obstructing an investigator.

Enforcement powers

The QBCC Act includes a suite of enforcement powers used to ensure that licensees and industry comply with legislative requirements and address noncompliance when it occurs.

For example, the QBCC may impose conditions on a licence if it believes the licensee may have insufficient financial resources to satisfy their debts, or if there are other grounds for imposing a condition. It is also condition for all contractors that they meet the MFR at all times.

The QBCC Act outlines the circumstances in which the QBCC may suspend or cancel a person's licence, including where the licence was obtained by fraud, the licensee is convicted of an indictable offence or the licensee contravenes a licence condition.

Penalties are prescribed for almost 100 offences under the QBCC Act and the QBCC may issue infringement notices for some of these. Penalty infringement notice offences are prescribed under the *State Penalties Enforcement Regulation 2014* and are used to target low-level offending or less complex offences.

The QBCC may also take disciplinary action against licensees, former licensees and non-licensees. Types of disciplinary action include directing a licensee to pay compensation to another person, imposing monetary penalties and issuing a reprimand. Among the grounds for disciplinary action is where a licensee has committed an offence involving fraud or dishonesty relating to the business carried on under the licence.

Relevant provisions

- Section 35—Imposition of conditions etc. on grant of licence
- Section 36—Subsequent imposition of conditions etc.
- Part 3, Division 9—Cancellation, suspension or surrender of licence

- Part 6A—Disciplinary proceedings

Other relevant provisions

Other powers that allow the QBCC to regulate the building and construction industry include offences for providing false and misleading information or documents, failing to comply with contractual obligations, and executive officer liability. The QBCC Act also establishes a process for the prosecution of offences.

Relevant provisions

- Section 42E—Avoidance of contractual obligations causing significant financial loss
- Section 108B—False or misleading statement
- Section 108C—False or misleading document
- Section 111—Prosecutions for offences
- Section 111B—Liability of executive officer—particular offences committed by company
- Section 111C—Liability of directors for amounts

Building Industry Fairness (Security of Payment) Act 2017

An investigator appointed under the QBCC Act may exercise powers under Part 9 of that Act to investigate compliance with the BIF Act. The QBCC may also approve an audit program under section 50A of the QBCC Act relating to chapter 2 of the BIF Act (Project Bank Accounts).

Additionally, the BIF Act includes certain notification requirements that may alert the QBCC to potential noncompliance. For example, under section 52 of the BIF Act, a principal must inform the QBCC of any discrepancies in a payment instruction made by a head contractor.

The implementation of the first phase of Project Bank Accounts (government building work in the \$1 million to \$10 million range) is the subject of separate evaluation.