



SPASA

A U S T R A L I A

SWIMMING POOL & SPA ASSOCIATION

QLD Submission on

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

Oct 2018

INTRODUCTION

This submission is made by the Swimming Pool and Spa Association of Australia (SPASA).

SPASA represents hundreds of businesses within the swimming pool and spa industry. Members of SPASA include pool builders, service technicians, retailers, manufacturers, suppliers, subcontractors, installers, consultants and other allied trades, all of whom set themselves apart from the rest of the industry by setting standards of skill, workmanship and ethical business behaviour in the best interests of pool and spa owners.

SPASA Australia also operates a Registered Training Organisation (RTO) that provides training and assessment to the swimming pool and spa industry. Our courses are designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, employers and the wider community.

Please find attached our comments on the: **“Proposed Improvements to the Minimum Financial Requirements for Licensing in the Building and Construction Industry Discussion paper”**.

KEY AREA 1: RISK-BASED, TARGETED ANNUAL REPORTING REQUIREMENTS

Proposal 1 Reintroduce the pre-2014 requirements for annual reporting

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

SPASA **DOES NOT SUPPORT** this proposal.

The proposed frequency of annual reporting requiring various supporting evidentiary documentation would create an inconsistent compliance regulatory burden and lead to increased red tape and associated costs.

The QBCC already has substantial powers under the QBCC Act to act in relation to MFR.

These include:

- 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 the required percentage of 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
- Feedback & our own industry knowledge shows that financial viability can sometimes turn on a dime based on a small number of non-paying projects, and as such, any heavy increase in regulatory compliance obligation is unlikely to result in a tangible benefit to the community.

SPASA **SUBMITS** that current MFR Policy made under the Queensland Building and Construction Commission Act 1991 (QBCC Act) is more than sufficient and practical to ensure QBCC’s powers can be exercised in the assessment of a contractor’s financial compliance.

- 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?

SPASA **DOES NOT SUPPORT** a longer Mandatory reporting timeframe.

As per response in 1.1, QBCC's powers can be exercised in the assessment of a contractor's financial compliance. Such assessments are already able to be undertaken at any time.

Proposal 2 A tiered, risk-based approach to reporting

- 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?

SPASA **SUPPORTS** the tiered approach outlined in Proposal 2.

- **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

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

SPASA Member and industry feedback indicates that compliance with the proposed Tiered approach can work on the provision that **there is an appropriate and transparent review and appeals process.**

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

- 2.3 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?

SPASA is not aware of any data to justify the proposal to reduce the NTA reduction trigger from 30% to 10% in an informed or constructive way.

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

As answered in 2.3.

2.5 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?

As answered in 2.3.

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

All businesses are different.

SPASA considers a broader understanding of a building business is required in ascertaining its compliance with its NTA obligations.

The following financial and non-financial factors should be included in any assessment:

- net tangible assets
- time in business
- extent of any adverse history
- profitability and
- working capital
- access to external funding

SPASA does not believe that a reduction or increase of NTA should be the only trigger used in isolation when ascertaining the health of a company.

Proposal 4 More robust assessment of capability to pay debts

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

SPASA **DOES NOT SUPPORT** this proposal.

The implementation of a restrictive financial **scorecard system can significantly impact a business's ability to trade.**

This is particularly important when financial assessments are being determined through a "one-size-fits-all" computer software modelling program whose details are unknown to the contractor.

3.2 How would the proposal impact you?

Each builder may have different financial Job Costing Systems whose completeness of records and structures may vary, however, they are all required to have their record keeping transaction files reviewed annually or more frequently by an external accountant.

Major problems arise when Accountants provide sound financial advice to builders or building companies on company structures or Accounting Principles which focus on typical and classic taxation structures, which may then impact on the ability of builders to satisfy or acquire insurance or to trade.

The impost to building businesses in terms of cost and red tape to implement and manage additional financial reporting requirements based on a "balanced scorecard" rather than an assessment from a chartered accountant raises significant concerns.

The necessary seasonality, and indeed the cyclical nature of the swimming pool industry is also a major factor in why “broad brushed” overly restrictive regulatory compliance obligations would be unfair & unwarranted. Because a Swimming Pool is a discretionary item (as compared to a roof over your head), businesses necessarily run leaner (and sometimes draw on asset/cash reserves) through periods of economic contraction. Put another way, throughout periods of economic expansion, pool companies do quite well. Analysing pool companies by way of increased NTA requirements, during periods of economic contraction would unfairly prejudice businesses trading in a leaner environment and trying to pull through that period in a responsible manner.

Importantly, the rate of Swimming Pool company failures does not justify any increase in regulatory burden. i.e. there’s been absolutely no data put to our industry that an increase in regulatory burden is warranted by way of a disproportionate number of pool company failures in comparison to the broader construction industry.

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

Net Tangible Assets: Not less than 3%
Profitability: Gross Profit not less than 5%

3.4 Can you suggest any additional metrics that should apply?

Assessment of other factors could include:

- Trading Structure
- Continuous years trading in this structure - experience
- Signs of adverse history
- Instances of systemic defective workmanship
- Directors’/Principals history
- Past insolvencies

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

4.1 Do you agree with this proposal for categories SC1 and SC2? 4.2 How would the proposal impact you?

The rationale provided in the Discussion Paper to require SC1 and SC2 applications to meet the Current Ratio test is based on providing the “QBCC with more comprehensive understanding of the financial position of these applicants or licensees”.

It would be helpful to understand the actual or perceived problem.

In this regard, **SPASA is not aware of any data to justify the proposal** require SC1 and SC2 applications to meet the Current Ratio test.

4.2 How would this proposal impact you?

Significant additional reporting requirements

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

Discussions with SPASA members reveal the application of different Ratios being used specific to their individual businesses and based on professional accounting advice.

4.4 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.

KEY AREA 2: FOSTERING IMPROVED ACCOUNTANCY PRACTICES THAT MEET THE OBJECTIVES OF THE MINIMUM FINANCIAL REQUIREMENTS

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

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

SPASA **DOES NOT SUPPORT** this proposal.

Building businesses should continue to have a “**freedom of choice**” when it comes to selecting their Accepted Independent Accountant.

To presume that a panel is a way to solve an issue is to presuppose that the broad base of CPA’s or accountants are not acting professionally; and would be fundamentally draconian in nature.

The notion that the QBCC could direct an applicant or licensee to use another Accepted Independent Accountant who was now Pre-Qualified would lead to **unnecessary additional costs and red tape**.

The perception of bias as stated in the Discussion Paper is not a sustainable argument.

Errors can occur, irrespective of whether an Accountant is an Accepted Independent Accountant or a Pre-Qualified Accepted Independent Accountant.

5.2 Would this proposal damage your professional relationship/s?

SPASA Members advise that this proposal, if implemented, would **significantly affect their professional relationships**:

- Accountant to Accountant communication/advice
- Reduction of accountants available to prepare reports
- Costs increasing due to pre-qualification process and costs
- Additional accounting costs to have MFR Reports verified
- Red Tape

5.3 How should panel members be appointed?

A panel of pre-qualified Accepted Independent Accountants **should not be appointed**.

SPASA is not aware of any justifiable reason or data that would support this proposal.

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

As per above responses.

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

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

SPASA **DOES NOT SUPPORT** the exclusion of Qualified Accountants from being able to prepare MFR Reports.

The exclusion of qualified accountants from preparing MFR Reports would be concerning, especially where there has been no history of any professional breach or recorded offence.

6.2 Would this proposal damage your professional relationship/s?

Yes. This proposal has the **potential to affect every building contractor** that has a long-standing relationship with their accountant that may be excluded from preparing MFR's under this proposal.

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

SPASA **DOES NOT** consider this proposal as fair and equitable.

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

As per above commentary.

6.5 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. SPASA considers this a more valuable and focused approach.

Proposal 8 Material changes in MFR reports require updated financial information

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

SPASA **SUPPORTS** this proposal.

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

There are many reasons that are due to the various types and sizes of business.

If this proposal is adopted, the QBCC need to introduce a mechanism that allows contracting businesses to discuss additions to an existing submitted MFR Report as opposed to the preparation of a new MFR Report.

KEY AREA 3: ENSURING FORMS OF ASSURANCE ARE PROVIDING FINANCIAL SECURITY

Proposal 9 More information about covenantor's financial position

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

In the absence of any data to rely upon, SPASA **SUPPORTS** the status quo.

8.2 Would the proposal impact you in any other way?

- Additional administrative burden
- Additional Accountant and other professionals costs
- QBCC cost impost to applicant/licensee
- Red Tape

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

SPASA **SUPPORTS** increased education and awareness around the operation and implications of Deeds of Covenant and Assurance. Other than that, the status quo is sufficient.

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

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

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

Legitimately procured and used Related Entity Loans are an acceptable source of funding.

SPASA **DOES NOT SUPPORT** this proposal as it shuts off the potential for contracting businesses to access, rely and utilise alternative funding.

Absolutely no industry (construction or otherwise) operates in this type of restrictive manner, and businesses (construction or otherwise) should be able to access reserve funding from whatever source they desire. To do otherwise would be utterly prejudicial to the construction industry at large.

Proposal 11 Require that related entity loans must be secured

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

SPASA **DOES NOT SUPPORT** this proposal.

See 9.1 above.

Proposal 12 Clarify how related entity loans are assessed

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

SPASA **DOES NOT SUPPORT** this proposal.

The **complexities, cost and the administrative burden would increase** for contractors and the QBCC.

KEY AREA 5: CLARIFYING DEFINITIONS AND REQUIREMENTS FOR THE CALCULATION OF ASSETS

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

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

SPASA **DOES NOT SUPPORT** this proposal.

Unpaid trade **debtors can remain outstanding for valid reasons** such as:

- Renegotiated Contracts
- Sequencing of work
- Variation delays and payments
- Positive dispute resolution processes
- Planning related matters
- Other items outside the contractor's control

Verifying the collectability of a debt would often cost an equal amount to the debt. This proposal is unworkable.

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

SPASA **SUBMITS** that no debts should be excluded.

12.3 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?

No.

Supporting a model that sidesteps Australian Accounting Standards is fraught with danger and adds significant cost and red tape for everyone involved.

Proposal 14 Only registered vehicles can be considered as assets

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

SPASA **DOES NOT SUPPORT** this proposal.

Whilst this proposal does not apply to plant and machinery, it will have a **significant impact on the segregation of accounts**, reporting requirements and associated costs if certain asset classes are excluded.

Moreover, the **exclusion of asset classes properly depreciated in the balance sheet raises concerns** regarding the ability for a contractor to **legal rely** on their inclusion as part of in Australian Accounting Standards and tax laws.

Proposal 15 Proof of revaluation of assets

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

SPASA **DOES NOT SUPPORT** this proposal as it stands.

Costs of valuation would dissolve the benefit trying to be achieved by the QBCC (i.e. encouraging licensees' financial viability)

Additionally, contractors may have properties or other asset classes in other regions outside Queensland.

By way of example, NSW has removed the need to have Registered Valuers. Ending registration for valuers in NSW was a recommendation from the Independent Pricing and Regulatory Tribunal report - Reforming licensing in NSW. The change supports initiatives to remove unnecessary business regulation, helping to lift productivity and drive down costs for businesses and consumers.

Whilst Registered Valuers may be a QBCC preferred option, **there are alternatives that should be considered** such as:

- *Full (Short Form) Valuations*
- *Desktop Valuations* such as RP Data's EVR product can value a property without an internal or external valuation using detailed real data.
- *Kerbside Valuations*. A Kerbside requires a qualified valuer to externally sight the subject property from the street and provide a value range.

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

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

SPASA **DOES NOT AGREE** with this proposal.

Market driven external factors can disproportionately impact real-estate in value and length of time listed for sale in metropolitan and rural areas. Moreover, **the re-categorisation of a current assets to non-current assets is not in line with accepted Australian Accounting Standards.**

Completely excluding an asset in this manner irrationally ignores the maintained ability to fire-sale the asset, which is better than excluding the asset from the calculations all together.

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

As per above.

15.3 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?

SPASA **DOES NOT SUPPORT** a departure from Australian Accounting Standards. To do so would **decrease** the viability of the construction industry, and prejudice it as compared to other industries.

Proposal 17 Project Bank Accounts and the MFR Policy

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

SPASA **DOES NOT SUPPORT** this proposal.

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

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

SPASA **DOES NOT SUPPORT** this proposal.

The frequency, vexatious and ill-informed/timing to notify would create a financially merry-go-round that would create a cost impost and unnecessary red tape.

More needs to be done to protect honest and hardworking industry contractors!

Prompt payment is an important issue for pool builders and other contractors, as delays in payment and non-payment can have a dramatic impact on the financial viability of a business and their associated industries. Pool Builders like other contractors are placed in significant risk positions daily, when they rely on the final payment from the homeowner to cover expenses and make a profit.

SPASA and other respected associations do not support (and actively prosecute) bad behaviour or practices by builders and contractors that negatively impact homeowners, but we do support and advocate for decent hard-working builders and contractors being paid for good work they undertake and complete.

Many of our members work directly for homeowners that undertake pool and spa construction work, renovations, repairs and servicing. Feedback from these members highlights that non-payment from homeowners is a major issue which has significant flow on effects to their subcontractors, suppliers and to their business. This is where we believe focus should be placed, as in our genuine experience - this is the root problem lies.

Whilst Home Warranty Insurance is part of a comprehensive consumer protection regime for homeowners, a prominent major cause of builder financial stress and insolvency is non-payment by homeowners for works carried out by the pool builder.

In stark contrast to a homeowner's consumer rights, the means to recover progress claims from homeowners by contractors is expensive, time consuming and riddled with red-tape.

SPASA **SUBMITS** that the Security of Payments Act or some other similar mechanism needs to be also geared to include residential building works contracted directly with the homeowner to protect the builder..... ***This would ensure that the balance of power between the homeowner and the contractors is in fact - Balanced.***

For further information:

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