



## Demerit Points System for Licensing

### Policy Background

- A demerit point system is similar to a driver's licence system, where a license holder has a demerit over a set period of time. There are certain offences where a licensee will incur demerit points. If the licensee accumulates demerit points to the threshold within the period of time, the licensee may lose the right to hold the license.
- A significant issue with a demerit point system is its potential to impact directly on the licensee's livelihood.

### Policy Issues

- The reasons for the development of the demerit point system relate more to easing the administrative effort of regulating bodies than matters of significant non-compliance.
- Demerit points are imposed administratively (subject to appeal) for specified (often low grade) offences. When the licensee's demerit points reach a certain threshold the consequences are automatically triggered - in the case of the present system in Queensland - without further right of appeal.
- A person may have a licence cancelled or suspended based on the mathematical formula without the regulatory body having to show that the licensee is, in fact, not fit and proper to hold a licence.
- Due to the automatic consequence of reaching the threshold, and its corresponding impact on a person's livelihood, any demerit points system will need to have appropriate checks and balances to ensure that there a sufficient degree of natural justice and equity for the affected licence holders.
- There are numerous problems with demerit point systems including:
  - All licence holders are normally provided with the same number of points, regardless of work activity and work volumes. A larger volume builder could reach the demerit point threshold more readily than a lower volume builder. For example, demerit points incurred for the same, albeit minor, matter repeated on several projects could multiply against the licensee.
  - The offences for which demerit points will accrue appear to be chosen as objectively simple to prove. This reduces the scope for review of the actions of

the regulating body and, unless appropriate safeguards are in place, makes it easy for a person's livelihood to be adversely affected through a succession of minor offences.

- A builder's clients can use the threat of a complaint relating to an activity that incurs demerit points against license holders in an effort to achieve commercial advantage.
- The threat to a license holder's livelihood is not a balanced and proportional response when compared with the offences for which points accrue.

### **HIA's Policy Position on Demerit Points System for Licensing**

1. HIA strongly opposes demerit points systems as the systems:
  - a. are inherently flawed;
  - b. will operate arbitrarily and unfairly;
  - c. will provide a disproportionate response to the nature of the offences incurred;
  - d. may have a significant detrimental effect on a licensee's employees and subcontractors; and
  - e. will present and give rise to an uninsurable risk for private insurers.
2. On the basis of Recommendation 1, HIA strongly opposes any system that:
  - a. removes judicial discretion to review the decision to suspend or cancel a license through limiting any assessment to purely objective criteria (has the number of points been reached?);
  - b. seeks to reverse the onus of proof from the regulating body to the contractor; and,
  - c. has an arbitrary limit on the number of allocated demerit points regardless of activity.