

9 February 2023

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Ms Angela Masson
Chief Building Regulator
Queensland Building & Construction Commission
299 Montague Road
West End QLD 4101
VIA EMAIL: Angela.Masson@qbcc.qld.gov.au

RE: LICENSING POLICY MATTERS

Dear Angela,

I am writing to seek clarity regarding what appear to be operational policy changes to QBCC licensing processes.

These changes were recently brought to our attention following an application from one of our members (who holds a site supervisor's licence) for a builder low rise contractor's licence. The member is in the unfortunate position of being unable to obtain a referee report from their former licensed employer for the purposes of establishing that they meet the experience requirements for a contractor's licence.

The member has received correspondence from the QBCC that sets out a range of operational policy positions, some of which may have significant implications for industry and appear to be changes. A copy of the correspondence between our member and the QBCC is attached for your reference. The licence application has not yet been determined.

The 'operational policy positions' of the QBCC which are of concern to us are set out below:

1 The scope of work for a builder low rise licence allows the preparation of plans and specifications for class 1 or 10A buildings without limitation.

For the last 20 years, industry has been operating on the premise that the holder of builder low rise contractor's licence was restricted in their ability to prepare plans and specifications to those situations where the building work was for their personal use or for building work performed by the licensee personally. The reason being that this limitation is specifically stated in the licence scope for the licence class (see Schedule 2, Part 4, section 2(4) of the QBCC Act).

Master Builders has, until recently, understood that the above view of the legislation was promoted and shared by QBCC. Work outside the above limitation was believed to be within the remit of QBCC licensed building designers and registered architects.

However, the attached QBCC correspondence appears to be stating that the scope of work for a builder low rise licence class includes the preparation of plans and specifications for the performance of all building work on class 1 and to 10 buildings for a builder low class licence (i.e., without the limitations stated above).

We acknowledge there is an argument for this revised position based on a combined reading of the definition of “building work” in schedule 2 of the QBCC Act and section (2)(1) of the scope of work for a Part 10 licence in the QBCC Regulation.

It would be greatly appreciated if you would clarify the QBCC’s current policy position in this regard. As you would appreciate, we do not wish to provide or publish information to our members that may be incorrect.

2 For a builder class contractor’s licence, site supervisors must demonstrate that they have “supervised” the preparation of plans and specifications.

In the attached correspondence, QBCC has taken the operational policy position that licensed site supervisors must demonstrate that they have “supervised” the preparation of plans and specifications as part of the experience requirements to upgrading their licence to a contractor’s licence.

While licensed site supervisors perform a broad range of supervision work associated with plans and specifications, it is very rare for site supervisors to supervise their employer or a building designer in the actual preparation of the plans and specifications.

Until recently our members have been allowed by QBCC to demonstrate they meet the plans and specifications experience requirement for the licence by demonstrating their extensive use and administration of plans and specifications in their site supervision work.

In view of this, we are asking for the operational policy position to be reviewed to take into account standard industry and business practice. The current operational requirements, should they continue, will effectively result in the vast majority (if not all) licensed site supervisors being unable to meet the experience requirements for a builder class contractor’s licence.

3 An employee who carries out residential construction work for a licensed employer who has not taken out the appropriate home warranty insurance is considered by QBCC to have performed “unlawful building work”.

It has been the long established public policy position of the QBCC that applicants for a builder class licence cannot rely on experience that breaches [section 42 \(Unlawful carrying out of building work\)](#) of the QBCC Act. As you would be aware, this offence provision targets persons who carry out building work without holding the appropriate class of QBCC licence.

However, it is apparent from the attached correspondence that QBCC has recently expanded its view of what constitutes “unlawful building work”. The correspondence states that site supervisors who perform residential construction work for an employer who has not paid

the appropriate insurance premium are considered by the QBCC to have performed unlawful building work.

We are asking for this new policy position to be reconsidered and withdrawn for the following reasons:

- An employee site supervisor is not authorised or allowed under the QBCC Act to pay an insurance premium on behalf of their employer (the responsibility exclusively lies with the employer).
- Failure to pay an insurance premium does not constitute a breach of section 42 of the QBCC Act or any other offence in the QBCC Act by the employee site supervisor (it is a breach of section 68A by the employer of which the employee site supervisor has no control or responsibility).
- Having regard to the above, it is unfair and arguably an improper exercise of discretionary power to deny recognition of the site supervisor's experience in these circumstances.

4 Request for QBCC to reinstate its previous licensing process to allow site supervisors an alternate path to a contractor's licence where their previous employer will not act as a referee.

There are occasions where a QBCC licensed contractor is unwilling or unable to provide a referee report for their employee (or former employee) site supervisor. The typical situations where this occurs are as follows:

- The employer has died or can no longer be located.
- The employer declines to be a referee for business reasons (e.g. the site supervisor if given a contractor's licence will be a competitor in a niche market).
- There has been a relationship breakdown between the parties.

During 2019, Master Builders worked with QBCC to put in place a process whereby a licensed site supervisor caught in this unfortunate situation could verify their experience providing a statutory declaration about their work experience and attending an interview with an experienced QBCC building inspector to verify their technical knowledge and experience. This process is allowed for under section 16(3) of the QBCC Regulation.

It is understood that this process has been discontinued by the QBCC. This seems to be supported by the QBCC response in the attached email to our member.

Could you please confirm whether the process still exists? In the event that it has been discontinued, we are asking for it to be reinstated to assist licensed site supervisors who are in the above situation. Alternately, we would be happy to work with QBCC to implement an alternate suitable process to assist licence applicants.

And finally, in the event that the above policy positions are altered, would it be possible for the QBCC to re-examine the licence application that led to these issues coming to light?

Thank you for taking the time to consider this submission and I look forward to your response.

Yours faithfully

Paul Bidwell
CEO