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Anissa Levy
Commissioner
Queensland Building and Construction Commission
299 Montague Road
WEST END QLD 4101
By email: Anissa.Levy@qbcc.qld.gov.au

Dear Anissa

Experience requirements – Builder licences

I am writing to seek your assistance to resolve current industry confusion as to QBCC's operational policy position regarding the acceptance of experience for the granting of builder class of licence.

The Problem

The issue of specific concern is whether the QBCC recognises experience gained prior to the licensing applicant obtaining the prescribed qualification for a builder class licence application.

The confusion has arisen because of the vastly different approaches taken by multiple operational areas of the QBCC when dealing with this matter. These operational areas include the QBCC Contact Centre, Licensing Assessment Team, Internal Review Team, and the legal team representing the QBCC at QCAT.

As you would appreciate the diversity of internal positions on this key licensing issue is leading to frustration for members seeking to apply for a builder licence and a lack of confidence in the QBCC decision-making process.

Examples of the internally inconsistent approaches taken by QBCC

Examples of conflicting QBCC information and approaches taken by different operational areas in the QBCC include the following:

- **QBCC Contact Centre:** Members report that the QBCC Contact Centre officers typically follow the content of relevant QBCC fact sheets when responding to customer inquiries about the experience needed to obtain a builder licence. The fact sheets are also commonly provided to licence applicants by Contact Centre and other QBCC staff to assist applicants to understand the experience requirements for a builder licence.

The relevant instruction on the fact sheets for builder applicants reads as follows:

“Do not provide examples for work that was performed or undertaken prior to obtaining the technical qualification for this licence class, unless it was performed as an employee for an employer with the appropriate class of licence.”

- **Licensing assessment officers:** Our experience is that the approach taken by licensing assessment officers when assessing a licence application varies. For example, some officers recognise lawful experience gained before completing a technical qualification, some recognise only experience gained as an employee for a licensed and some do not recognise any experience gained prior to the date the applicant’s technical qualification. In essence, it has become “luck of the draw” situation for licence applicants.
- **Internal Review Unit:** Members report that QBCC internal review officers rarely if ever accept experience gained by an applicant prior to obtaining the prescribed technical qualification. When doing this, officers sometimes refer to the *QBCC Licensing Procedural Manual* and note that it restricts their ability to take any other approach. They also often cite the QCAT decision in *Saunders v QBCC [2017] QCAT 318* to support their position (without reference to later inconsistent cases). For example, see the following extract from a recent internal decision.

“Qualification obtained 30 March 2023. Experience provided prior to this date cannot be considered because of Saunders v QBCC [2017] QCAT”.

....

I am satisfied that none of the experience provided by the applicant can be considered as part of this application as it was obtained as an owner builder, or, gained prior to the technical qualification being obtained on 30 March 2023.”

- **Legal Unit – QCAT Hearings:** The position taken by legal officers representing QBCC in recent QCAT reviews differs from all the above approaches. For example, in *Phillips v Queensland Building and Construction Commission [2021] QCAT 159*, the Tribunal made the following comment.

[12] There is no time limitation for the experience requirement that I can find or that has been drawn to my attention by the Commission nor in my view is Mr Phillips precluded from relying on experience undertaken prior to the existence of a scheme of regulation. The inclusion of the words “other work the Commission is satisfied is at least equivalent to experience in the scope of work in the class” supports that.

Similarly, in *Meyer v Queensland Building and Construction Commission [2023] QCAT 24* the following was observed by the Tribunal.

[5] The experience requirements are tied to the scope of work (“SOW”) for the class of licence.

[12] Most of the projects on which Mr Meyer relies to demonstrate his experience were carried out many years ago.

[13] It may be implicit in the requirement for relevant experience for that experience to be sufficiently current to demonstrate competence in the SOW for the particular licence. However, this issue was not raised by QBCC.

Master Builders position

Master Builders requests that QBCC adopt a single operational policy position on the subject issue that is consistent with both the applicable case law and the objects of the QBCC Act. We further believe this position should be published on the QBCC website, included in relevant procedural manuals, and applied uniformly across all operational areas of the QBCC.

Having reviewed the legislation and QCAT decisions, we believe all verifiable and relevant experience should be recognised by the QBCC for a builder licence application subject to the following:

- The work was supervised by an appropriately licensed builder (or relevant trade contractor) and was of the appropriate technical complexity and standard.
- The experience was not obtained as part of study towards a technical qualification (other than that expressly already provided for in the QBCC Regulation).
- The experience was not obtained under an owner builder permit.
- The applicant was not prosecuted, fined, disciplined or subject to other regulatory action by the QBCC (or another industry regulator) for unlawfully carrying out work relied on for the experience.

It is submitted that the above policy approach is consistent with the relevant case law and the key objects of the QBCC Act, including maintain proper standards in the industry.

Thank you for considering this matter and we look forward to hearing from you about this important matter for licence applicants.

Yours sincerely,

Paul Bidwell
CEO