



Australian Government
**Australian Building and
Construction Commissioner**

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22 July 2009

The Hon. Julia Gillard MP
Deputy Prime Minister
Minister for Education, Employment and Workplace Relations
Parliament House
Canberra ACT 2600

Dear Deputy Prime Minister

On 17 June 2009 you wrote to me and directed pursuant to section 12 of the *Building and Construction Industry Improvement Act 2005* that I provide you with a report. The report is to address how I am allocating ABCC resources to carry out my functions. Five points of detail that the report should address were set out.

I attach a copy of my report.

I would be happy to discuss the report if you wish.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Lloyd', with a long horizontal stroke extending to the right.

John Lloyd PSM
ABC Commissioner



Australian Government

**Australian Building and
Construction Commissioner**

Allocation of ABCC Resources

**Report By The ABC Commissioner
To
The Minister for Employment and Workplace Relations**
**Pursuant to Section 12 of the *Building and Construction Industry
Improvement Act 2005***

22 July 2009



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Allocation of ABCC Resources

Background

1. On 17 June 2009, you directed me to provide you a report pursuant to section 12 of the *Building and Construction Industry Improvement Act 2005* (BCII Act).
2. The direction requires me to address five points regarding the allocation of resources at the Office of the Australian Building and Construction Commissioner (ABCC).
3. Section 10 of the BCII Act sets out the functions of the ABC Commissioner. I am responsible for discharging these functions to maximum effect so as to achieve the main object of the Act.
4. I and my office are also subject to the variety of Australian Government agency accountability, disclosure and reporting requirements. The principal requirements are derived from the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999*.
5. I and my executive team devote considerable attention to ensuring good governance, clear lines of accountability and a culture that supports high standards in delivering outcomes.
6. The five points of detail contained in your direction are addressed below.

(1) *Total ABCC staffing resources and roles they perform. This should include, but not be limited to, details such as inspectors monitoring compliance with relevant laws and instruments, monitoring of the National Code of Practice for the Construction Industry (the Code) and the Australian Government Implementation Guidelines for the Code (the Guidelines), legal services, and other corporate services.*

7. The ABCC, as at 17 July 2009, employed a total of 156 staff. This figure includes me and the two Deputy Commissioners.
8. The ABCC consists of the statutory office holders and three business groups. The staffing allocation and the responsibilities of each business group are outlined below.

Business Group	Staff as at 17/07/2009	Roles & Responsibilities
Statutory Office Holders	3	ABC Commissioner and Deputy Commissioners.
Assistant Commissioners & Executive Assistants	9	Assistant Commissioners Corporate, Legal and Operations and executive assistants.
Operations	93	Industry education, investigations and monitoring National Code compliance.
Legal	23	Legal advice, interventions/submissions and managing legal proceedings and examinations.
Corporate	28	Finance, human resources, information technology, records management, security, accommodation and building management, internal and external communications, and parliamentary and ministerial reporting.
Total	156	

(2) *The actual numbers involved in the above roles and the extent of any overlap between these roles; the location of these staff and the geographic areas they monitor.*

9. The allocation of staff resources is outlined in **Attachment A** at **Tables 1, 2** and **3**.
10. The work of each Group is distinct with limited overlap between roles. It is common for agencies involved in investigation and law enforcement tasks to adopt structures with an investigation/legal split. I consider the structure we have adopted to be appropriate and to fit neatly with the legal, governance, skill and qualifications requirements of the roles we undertake.
11. Joint activity is common due to the nature of the ABCC's work. For example, legal staff are often integrated into an investigation team for a complex case. Communications staff will work with operations or legal teams when preparing educational material.
12. In determining the location of staff, especially in the Operations Group, a key consideration is their accessibility to the industry. Accessibility of staff is a fundamental element of establishing and maintaining industry confidence in the role of the ABCC. ABC Inspectors need a visible on-site presence. This is noted by Justice Wilcox in his report *Transition to Fair Work Australia for the Building and Construction Industry*, page 55, para 5.77:

"I have been impressed by statements made to me by many people, some in relatively lowly positions, about the role of the ABCC in settling wildcat strikes. Apparently, the ABCC has established a reputation for responding speedily to calls for assistance, often coming to a site within an hour of being called, and quickly resolving the problem in discussion between the parties."

13. The Operations Group is organised into three broad work areas:
 - a. ABC Inspectors – education, assistance and ensuring compliance with workplace laws.
 - Staff in each state capital.
 - Managed by three Regional Directors:
 - Southern Region covering Victoria and Tasmania;
 - Northern Region covering NSW, ACT and Queensland; and
 - Western Region covering WA, SA and NT.
 - b. National Code Officers – education, assistance and monitoring National Code compliance.
 - Staff in each state capital.
 - Work with the Department of Education, Employment and Workplace Relations, the responsible agency for policy aspects of the National Code and convener of the Code Monitoring Group.
 - Managed by the Director, National Code based in Melbourne.
 - c. Support and Administration Staff – research, reporting and administrative functions.
 - Located in Melbourne, Sydney, Brisbane and Perth.

14. The Legal Group has staff in each state capital office except Hobart. A small administrative support unit is located in Melbourne.
15. The Corporate Group is located in Melbourne. Support staff for the Operations and Legal Groups undertake some corporate roles in non-Melbourne offices.
16. Staff are encouraged to contribute to the corporate health of the ABCC. Many are engaged in training and formal mentoring roles. Four standing corporate committees operate; audit, people, information technology and OHS. Forty staff are members of these committees. Membership is reviewed annually with the goal of achieving representation from across business group and state offices.

(3) Where ABCC staff are not appointed as inspectors under the Act, an explanation of the cost-benefit of their current roles, relative to inspectors, and in the case of inspectors and Code and Guidelines staff why they are not performing dual roles.

17. Of the ABCC's 156 staff, 67 are not appointed as ABC Inspectors under the BCII Act. This includes all Corporate and Legal Group staff, six executive assistants, and seven administration staff from the Operations Group.

18. Staff are employed to enable me to discharge:

- a. each of my functions under the BCII Act; and
- b. my responsibilities as an agency head including managing the financial and personnel systems that guide and account for the performance of the ABCC.

19. Section 10 of the BCII Act extends my functions beyond investigating contraventions of the relevant laws and industrial instruments. I am required to:

- advise, assist and inform building industry participants about their rights and obligations in regard to workplace laws and the National Code;
- intervene in court cases and make submissions in proceedings before Fair Work Australia that involve building and construction industry participants;
- monitor and audit compliance with the National Code;
- institute proceedings for contraventions of relevant laws in accordance with the BCII Act; and
- conduct compulsory examinations.

20. Also, as a government agency and independent statutory authority, I have mandatory reporting, governance, staff management and parliamentary responsibilities. Staff not involved directly in inspectorate work support these activities.

21. The cost-benefit of staff not appointed as inspectors is carefully considered and reviewed by the ABCC Executive.

22. Twenty percent of ABCC staff work in the Corporate Group. This is consistent with the Australian Public Service average as noted in the *State Of The Service Report 2007-08* prepared by the Australian Public Service Commission.

23. The Legal Group have a crucial role in supporting the Operations Group. Much of the work of ABC Inspectors would be futile without an effective legal team. Legal officers and inspectors are encouraged to work closely together and are often integrated into investigation teams for complex matters.

24. The balance between the use of internal and external lawyers is constantly reviewed. To this end, the ABCC was granted the ability to conduct certain types of litigation in-house by the Attorney-General in July 2008. The ABCC is able to conduct certain less serious litigation without engaging external solicitors. This has resulted in significant savings.

25. The ABCC's National Code and Guidelines role has expanded. Accordingly, resources devoted to the role have grown.
26. National Code Officers are appointed as ABC Inspectors under the BCII Act. There are several reasons why a National Code Officer does not perform a dual role as an ABC Inspector:
- a. administrative law prevents a person from using the information gathered for one purpose to be used for another. This means, to ensure procedural fairness, an ABCC staff member entering a site for the purpose of the National Code cannot perform the functions of an ABC Inspector. The ABCC staff member would be required to re-enter the site stating their purpose as an ABC Inspector;
 - b. industry participants need to have confidence to engage openly with National Code Officers. It is important that the National Code role be credible and that contractors have confidence in both seeking and accepting ABCC advice without the threat of investigation. There is an industry wide acceptance for the two separate roles;
 - c. the knowledge and skill set required for providing advice and auditing for National Code compliance is different to the skill set required of an ABC Inspector; and
 - d. the separation of functions brings clarity to the respective roles and facilitates better planning to meet competing priorities.
27. As noted in **Attachment A** at **Table 3**, an exception occurs in Tasmania. The two ABCC staff members in Tasmania perform dual roles as both ABC Inspectors and National Code Officers. Over the past two years the Tasmanian office has experienced irregular patterns of unlawful conduct. While the staff continue to provide the industry with inspectorate support, their work has become more concentrated on the National Code role.

(4) *An explanation of how the above allocation of staff relates to known levels and locations of non-compliance. This should include, but not be limited to, the way the allocation relates to allegations of non-compliance, investigations, prosecutions, audits and educational activities.*

28. The ABCC built up to its current staff numbers in a gradual and considered manner, see **Attachment A, Table 4**. The role is challenging and staff are carefully selected. Also, as the ABCC has developed a good reputation for results, some attrition to other organisations has occurred, but it has not been excessive.
29. The allocation of staff is not exclusively directed towards areas where there is ongoing visible non-compliance.
30. Each month the ABCC Executive reviews a report on national staffing workloads, resources and budget management. The report is used to inform a flexible approach to staff resources. Staff allocations are assessed against a range of current and future workload indicators.
31. In addition to monthly staffing and budget reports, the ABCC Executive considers detailed quarterly performance reports. The purpose is to enable the Executive to address trends in workload and performance.
32. It is difficult to precisely forecast the complexity of investigations and legal cases in their early stages. This means that we occasionally transfer staff for short-term assignments between offices as circumstances dictate. This also has the benefit of building the collegiality of the ABCC organisational culture.
33. In 2006 the Workplace Ombudsman and I agreed to a process to facilitate the referral of matters between our agencies. It was intrinsic to this agreement that the Workplace Ombudsman would be primarily responsible for the investigation of cases involving the non-payment of employee entitlements. This is an efficient use of the Commonwealth's resources.
34. A recurring feature of the industry's conduct over many years is that Victoria and Western Australia exhibit the most blatant and frequent incidence of unlawful conduct relative to other states. This was reflected in findings of the Cole Royal Commission and the experience of the Building Industry Taskforce. It has since been confirmed during the life of the ABCC. **Attachment A, Table 5** outlines ABCC activity on a state/territory basis.
35. The staff allocation of the ABCC mirrors this feature. Victoria has the most inspectors and lawyers. Western Australia has a higher proportion of staff compared to other states based on the size of populations. This comparative concentration of resources has applied since the commencement of the ABCC.
36. Workforce planning aims for an optimum allocation of resources over a reasonable time frame. The planning must take account of the volatility of the industry's workplace relations and emerging trends. It is impracticable to plan on the basis of snapshots of business activity.

37. The workforce planning task involves making judgements so as to achieve an adequate presence commensurate with the requirement to efficiently discharge all of the ABCC functions. The task involves a balancing of various factors and pressures and can involve fine judgements.
38. For example, if a permanent presence was not established in Tasmania we would expect more unlawful conduct than currently occurs. ABC Inspectors and National Code Officers would need to be flown in and the savings achieved would likely be minimal. Another example involves Western Australia where we are mindful that investigations tend to be relatively more complex as some industry participants have developed sophisticated strategies to avoid the detection of unlawful conduct. Also, the ABCC inherited a National Code team concentrated in Sydney, reflecting factors such as staff expertise and the location of major projects. Over time we have increased National Code staff numbers in all states and for administrative efficiency transferred management tasks to Melbourne.
39. Prudent budget management has enabled me to record a surplus in each year of the ABCC's operation. Staff numbers have increased each year in response to the identified needs of the agency.

(5) An explanation for any discrepancy between the allocation of resources and the issues mentioned above and any actions proposed to remedy any such discrepancy.

40. I see no apparent discrepancy in the disposition of staff and resources that requires attention.

Conclusion

41. We have deliberately cultivated a performance culture at the ABCC. We are extremely vigilant in attending to the efficient, effective and ethical disposition of the ABCC resources.
42. I consider there is compelling evidence that the ABCC has discharged its functions efficiently and clearly advanced the main object of the BCII Act. The industry is more lawful and its productivity has improved markedly. We have achieved this while returning surpluses of over \$5 million in each of the last two financial years.
43. We will continue to carefully manage and review the use of our resources. This will ensure that the excellent outcomes achieved by our highly professional and dedicated staff, of which I am proud, are maintained.

John Lloyd
ABC Commissioner
22 July 2009

Attachment A

Table 1: Staff by Group and Function

Group & Function	Staff
Statutory Office Holders	3
Assistant Commissioners	3
Executive Assistants	6
Corporate Group	
Communications	9
Finance and Business Services	9
Human Resources	7
IT and Security	3
Legal Group	
Lawyers	18
Interventions/Submissions	2
Admin Support Team	3
Operations Group	
Code	27
Investigations	56
Investigations/National Code	3
Admin Support Team	7
Total Staff	156

Table 2: Staff by Home Office Location

Office	Staff
Sydney	31
Melbourne	83
Brisbane	14
Perth	19
Adelaide	7
Hobart	2
Totals	156

Table 3: Staff Directly Involved in Inspectorate, National Code Monitoring and Legal Activities

Group	NSW	Vic	Qld	WA	SA	NT	Tas	ACT
Inspectors	15	19	6	11	5	-	-	-
National Code Officers	9	7	5	5	2	-	-	-
Joint Inspectors / Code	-	-	-	-	-	-	2	-
Legal	4	12	2	2	-	-	-	-

Table 4: All Staff Numbers By Group Since Inception of the ABCC

Group	June 2007	June 2008	17 July 2009
Statutory Office Holders	3	3	3
Assistant Commissioners, & Exec Assistants	8	8	9
Operations	74	88	93
Legal	21	20	23
Corporate	28	28	28
Totals	134	147	156

Table 5: ABCC Activity Report

Investigations Activity	Vic	WA	NSW	Qld	SA	Tas	NT	ACT
Current Investigations as at 17 July 2009	30	9	13	4	0	0	0	0
Site Visits 1 Oct 05 – 17 July 2009	1245	659	899	1344	295	349	249	88
Section 52 Examinations 1 Oct 05 – 30 June 2009	94	40	3	20	3	6	0	0
Completed Court Proceedings 1 Oct 05 – 30 June 2009	15	3	5	4	1	1	0	1
Current Court Proceedings As at 30 June 2009	19	1	2	2	2	0	0	1
Interventions /Submissions 1 Oct 05 – 30 June 2009	62	26	12	8	2	0	0	1
National Code Activity								
Site Visits 2006 – 30 June 2009	588	228	375	421	131	119	33	80
Inspections 2006 – 30 June 2009	49	20	16	16	6	16	5	10
Audits 2006 – 30 June 2009	23	7	9	21	5	2	2	6
Educational Activity								
Presentations 1 Oct 05 – 30 June 2009	339	131	246	171	64	18	40	38