



Australian Government
Australian Building and
Construction Commission



Performance of the functions and the
exercise of powers of the Australian
Building and Construction Commissioner

QUARTERLY REPORT

Second quarter of 2021-22
Operations from 1 October – 31 December inclusive

Q2

2021–22

COMMENTS AND ENQUIRIES

The Australian Building and Construction Commission welcomes comments and enquiries. Please contact:

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This document must be attributed as the ABCC Quarterly Report, second quarter of 2021-22.

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Letter of transmittal



Australian Government
**Australian Building and
Construction Commission**



2 February 2022

Senator the Hon Michaelia Cash
Attorney-General
Minister for Industrial Relations
Deputy Leader of the Government in the Senate
Parliament House
Canberra ACT 2600

Dear Minister

The *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) requires the Australian Building and Construction Commissioner to prepare a report each quarter on the performance of the Commissioner's functions and the exercise of powers and to provide that report to the Minister.

I am pleased to present to you this quarterly report, which covers the Australian Building and Construction Commission's operations in the second quarter of 2021-22 (1 October – 31 December 2021).

I note subsection 20(5) of the BCIIP Act provides that the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. McBurney', written over a light blue horizontal line.

Stephen McBurney
Commissioner
Australian Building and Construction Commission

1. Introduction

On 2 December 2016, the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) and the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* commenced. As a result, the Australian Building and Construction Commission (ABCC) commenced operations on 2 December 2016.

Section 20 of the BCIIP Act requires the Australian Building and Construction Commissioner to prepare and give to the Minister a report on the performance of the Australian Building and Construction Commissioner's functions and the exercise of the Commissioner's powers during that quarter (the Quarterly Report).

The Quarterly Report must include details of the matters set out in subsections 20(2) and 20(3) of the BCIIP Act.

The following report sets out the activities undertaken by the ABCC in the second quarter of the 2021-22 financial year, 1 October to 31 December 2021 (the reporting period).

2. Methodology

The internal costs allocated to investigations and court proceedings in this report are derived from a tailored activity-based costing module within the ABCC's case management system 'inCase'.

External legal costs are obtained from the ABCC's financial management system and have been calculated using standard accrual accounting practices. Figures are accurate as at the reporting date. Further legal costs received outside of the reporting period for finalised legal matters will be updated and reported in the annual BCIIIP Act Report.

3. Performance of functions and exercise of powers

a) Matters investigated

In the reporting period, the ABCC had 117 open investigations. **Table A1** shows the breakdown of open investigations by the main allegation being investigated. **Table A2** shows the approximate internal cost of each investigation.

Table A1: Investigations open during the reporting period

Main allegation	Number of Investigations
Wages and entitlements	58
Right of entry	26
Coercion	12
Unlawful industrial action	11
Unlawful picketing	3
Freedom of association	3
Sham contracting	1
Hinder or obstruct ABC inspector	1
Discrimination	1
Non-compliance with notices	1
Total	117

Table A2: Approximate internal cost of open investigations

Ref	Main allegation	Cost
45681	Wages and entitlements	\$149
47421	Wages and entitlements	\$0
47584	Wages and entitlements	\$57
49690	Right of entry	\$267
49780	Wages and entitlements	\$3,458
50165	Right of entry	\$1,054
50223	Wages and entitlements	\$304
50441	Right of entry	\$10,601
50690	Wages and entitlements	\$846
50935	Wages and entitlements	\$334
50975	Coercion	\$4,567
50986	Wages and entitlements	\$831
51232	Right of entry	\$5,414
51244	Wages and entitlements	\$190
51499	Right of entry	\$1,412
51502	Coercion	\$9,722
51727	Right of entry	\$3,543
51744	Right of entry	\$14,852
51845	Wages and entitlements	\$4,138
51988	Wages and entitlements	\$232
52162	Right of entry	\$2,945
52308	Unlawful picketing	\$3,067

Ref	Main allegation	Cost
52324	Right of entry	\$4,150
52414	Wages and entitlements	\$625
52432	Freedom of association	\$5,298
52643	Wages and entitlements	\$3,154
52708	Coercion	\$260
52752	Sham contracting	\$411
52760	Wages and entitlements	\$3,604
52789	Unlawful industrial action	\$2,445
52825	Hinder or obstruct ABC inspector	\$6,082
52907	Wages and entitlements	\$1,612
52986	Right of entry	\$7,219
53088	Right of entry	\$1,666
53115	Wages and entitlements	\$1,301
53157	Wages and entitlements	\$1,922
53195	Wages and entitlements	\$709
53207	Wages and entitlements	\$312
53258	Wages and entitlements	\$1,918
53262	Wages and entitlements	\$767
53268	Discrimination	\$782
53277	Wages and entitlements	\$2,500
53297	Unlawful industrial action	\$2,392
53405	Right of entry	\$827
53614	Wages and entitlements	\$2,175
53679	Wages and entitlements	\$1,188
53697	Wages and entitlements	\$655
53747	Right of entry	\$286
53789	Wages and entitlements	\$757

Ref	Main allegation	Cost
53792	Wages and entitlements	\$1,114
53815	Wages and entitlements	\$651
53816	Wages and entitlements	\$677
53843	Wages and entitlements	\$2,689
53908	Right of entry	\$4,795
53983	Right of entry	\$4,494
54000	Wages and entitlements	\$77
54002	Wages and entitlements	\$1,693
54005	Right of entry	\$1,258
54061	Wages and entitlements	\$1,184
54076	Right of entry	\$7,031
54089	Wages and entitlements	\$1,296
54151	Wages and entitlements	\$12,846
54203	Wages and entitlements	\$1,504
54204	Wages and entitlements	\$1,983
54205	Wages and entitlements	\$851
54218	Wages and entitlements	\$3,431
54257	Wages and entitlements	\$59
54372	Wages and entitlements	\$455
54392	Wages and entitlements	\$365
54407	Right of entry	\$3,603
54451	Unlawful industrial action	\$1,314
54477	Unlawful industrial action	\$4,787
54499	Coercion	\$3,612
54506	Wages and entitlements	\$806
54574	Unlawful industrial action	\$8,233
54605	Right of entry	\$2,418
54612	Unlawful picketing	\$29,664

Ref	Main allegation	Cost
54639	Wages and entitlements	\$2,592
54642	Coercion	\$2,314
54695	Unlawful industrial action	\$2,876
54701	Coercion	\$3,328
54729	Unlawful industrial action	\$12,584
54789	Right of entry	\$3,914
54802	Wages and entitlements	\$5,373
54868	Coercion	\$778
54897	Coercion	\$1,355
54907	Wages and entitlements	\$2,602
54914	Unlawful industrial action	\$3,135
54935	Wages and entitlements	\$3,946
55085	Right of entry	\$10,138
55108	Wages and entitlements	\$673
55124	Coercion	\$1,034
55132	Right of entry	\$7,706
55167	Freedom of association	\$5,844
55183	Wages and entitlements	\$1,234
55288	Wages and entitlements	\$905
55378	Coercion	\$3,692
55390	Unlawful picketing	\$26,250
55396	Freedom of association	\$1,505
55397	Wages and entitlements	\$440
55423	Wages and entitlements	\$312
55440	Wages and entitlements	\$106
55450	Wages and entitlements	\$582
55453	Unlawful industrial action	\$7,525
55454	Wages and entitlements	\$771

Ref	Main allegation	Cost
55484	Coercion	\$2,860
55495	Right of entry	\$7,842
55542	Wages and entitlements	\$449
55558	Wages and entitlements	\$431
55583	Wages and entitlements	\$329
55628	Right of entry	\$981
55648	Unlawful industrial action	\$1,038
55728	Right of entry	\$6,208
55746	Coercion	\$3,759
55749	Right of entry	\$349
55754	Unlawful industrial action	\$523
55867	Non-compliance with notices	\$730

b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,111 enquiries.

Table B shows a breakdown of enquiries by main topic and the enquirer category.

Table B: Details of assistance and advice provided to building industry participants in response to enquiries

Main topic	Building industry participant	Member Of the public	Government	Total
Code	435	20	36	491
Code assessment	238	6	11	255
General code information	92	8	21	121
Security of payment	73	2	0	75
Code advice	19	3	4	26
Notice of code breach	5	1	0	6
s.6B application	5	0	0	5
s.6B general advice	2	0	0	2
s.6A application	1	0	0	1
Workplace laws - building work	294	16	41	351
Wages and entitlements	156	12	26	194
Right of entry	69	1	13	83
Coercion	26	1	0	27
Unlawful industrial action	17	1	0	18
Freedom of association	16	1	0	17
Discrimination	6	0	0	6
Unlawful picketing	1	0	2	3
Sham contracting	2	0	0	2
Misrepresentation of workplace rights	1	0	0	1
Other laws	48	82	1	131
Agency information and activities	37	28	8	73
Not relevant to the building industry	5	32	1	38
Workplace laws – non building work	12	15	0	27
Total	831	193	87	1,111

c) Building Code compliance

In the reporting period, the ABCC finalised 79 audits and 36 inspections to monitor compliance with the *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016) and the *Building Code 2013*. **Table C1** shows the outcome of all building code audits finalised. **Table C2** shows the outcome of building code inspections finalised.

Potential issues were identified in 52 building code audits and 11 building code inspections.

An additional 36 building code audits were commenced but not finalised.

Table C1: Outcome of audits

Outcome of audit	Total
No issues	27
Potential issues	52
Total	79

Table C2: Outcome of inspections

Outcome of inspection	Total
No issues	25
Potential issues	11
Total	36

d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 69 matters.¹

Table D1 shows the breakdown of these investigations by the main allegation being investigated. **Table D2** shows the approximate internal cost of each of these investigations.

Table D1: Investigations where employers were a subject of the investigation

Main allegation	Number of Investigations
Wages and entitlements	58
Right of entry	3
Unlawful industrial action	2
Coercion	2
Freedom of association	1
Unlawful picketing	1
Discrimination	1
Non-compliance with notices	1
Total	69

Table D2: Approximate internal cost where employers were a subject of the investigation

Ref	Main allegation	Cost
45681	Wages and entitlements	\$149
47421	Wages and entitlements	\$0
47584	Wages and entitlements	\$57
49780	Wages and entitlements	\$3,458
50223	Wages and entitlements	\$304
50441	Right of entry	\$10,601
50690	Wages and entitlements	\$846
50935	Wages and entitlements	\$334
50986	Wages and entitlements	\$831
51244	Wages and entitlements	\$190
51744	Right of entry	\$14,852
51845	Wages and entitlements	\$4,138
51988	Wages and entitlements	\$232
52324	Right of entry	\$4,150
52414	Wages and entitlements	\$625
52643	Wages and entitlements	\$3,154
52760	Wages and entitlements	\$3,604
52907	Wages and entitlements	\$1,612
53115	Wages and entitlements	\$1,301
53157	Wages and entitlements	\$1,922
53195	Wages and entitlements	\$709
53207	Wages and entitlements	\$312
53258	Wages and entitlements	\$1,918
53262	Wages and entitlements	\$767

¹ The conduct of others may also have been considered in these matters.

Ref	Main allegation	Cost
53268	Discrimination	\$782
53277	Wages and entitlements	\$2,500
53614	Wages and entitlements	\$2,175
53679	Wages and entitlements	\$1,188
53697	Wages and entitlements	\$655
53789	Wages and entitlements	\$757
53792	Wages and entitlements	\$1,114
53815	Wages and entitlements	\$651
53816	Wages and entitlements	\$677
53843	Wages and entitlements	\$2,689
54000	Wages and entitlements	\$77
54002	Wages and entitlements	\$1,693
54061	Wages and entitlements	\$1,184
54089	Wages and entitlements	\$1,296
54151	Wages and entitlements	\$12,846
54203	Wages and entitlements	\$1,504
54204	Wages and entitlements	\$1,983
54205	Wages and entitlements	\$851
54218	Wages and entitlements	\$3,431
54257	Wages and entitlements	\$59
54372	Wages and entitlements	\$455
54392	Wages and entitlements	\$365
54506	Wages and entitlements	\$806
54612	Unlawful picketing	\$29,664
54639	Wages and entitlements	\$2,592
54802	Wages and entitlements	\$5,373
54907	Wages and entitlements	\$2,602
54914	Unlawful industrial action	\$3,135

Ref	Main allegation	Cost
54935	Wages and entitlements	\$3,946
55108	Wages and entitlements	\$673
55183	Wages and entitlements	\$1,234
55288	Wages and entitlements	\$905
55396	Freedom of association	\$1,505
55397	Wages and entitlements	\$440
55423	Wages and entitlements	\$312
55440	Wages and entitlements	\$106
55450	Wages and entitlements	\$582
55453	Unlawful industrial action	\$7,525
55454	Wages and entitlements	\$771
55484	Coercion	\$2,860
55542	Wages and entitlements	\$449
55558	Wages and entitlements	\$431
55583	Wages and entitlements	\$329
55746	Coercion	\$3,759
55867	Non-compliance with notices	\$730

Employers were a complainant in 51 open investigations. **Table D3** shows the breakdown of those investigations by the main allegation being investigated. **Table D4** shows the approximate internal cost of each of these investigations.

Table D3: Investigations where employers were a complainant in the investigation

Main allegation	Number of Investigations
Right of entry	25
Unlawful industrial action	10
Coercion	9
Wages and entitlements	3
Unlawful picketing	2
Freedom of association	2
Total	51

Table D4: Approximate internal cost where employers were a complainant in the investigation

Ref	Main allegation	Cost
49690	Right of entry	\$267
50441	Right of entry	\$10,601
50975	Coercion	\$4,567
51232	Right of entry	\$5,414
51499	Right of entry	\$1,412
51502	Coercion	\$9,722
51727	Right of entry	\$3,543
51744	Right of entry	\$14,852
52162	Right of entry	\$2,945
52308	Unlawful picketing	\$3,067
52324	Right of entry	\$4,150
52432	Freedom of association	\$5,298
52708	Coercion	\$260
52789	Unlawful industrial action	\$2,445
52907	Wages and entitlements	\$1,612
52986	Right of entry	\$7,219
53088	Right of entry	\$1,666
53207	Wages and entitlements	\$312
53297	Unlawful industrial action	\$2,392
53405	Right of entry	\$827
53697	Wages and entitlements	\$655
53747	Right of entry	\$286
53908	Right of entry	\$4,795
53983	Right of entry	\$4,494
54005	Right of entry	\$1,258
54076	Right of entry	\$7,031

Ref	Main allegation	Cost
54407	Right of entry	\$3,603
54451	Unlawful industrial action	\$1,314
54477	Unlawful industrial action	\$4,787
54574	Unlawful industrial action	\$8,233
54605	Right of entry	\$2,418
54612	Unlawful picketing	\$29,664
54642	Coercion	\$2,314
54695	Unlawful industrial action	\$2,876
54701	Coercion	\$3,328
54729	Unlawful industrial action	\$12,584
54789	Right of entry	\$3,914
55085	Right of entry	\$10,138
55124	Coercion	\$1,034
55132	Right of entry	\$7,706
55167	Freedom of association	\$5,844
55378	Coercion	\$3,692
55453	Unlawful industrial action	\$7,525
55484	Coercion	\$2,860
55495	Right of entry	\$7,842
55628	Right of entry	\$981
55648	Unlawful industrial action	\$1,038
55728	Right of entry	\$6,208
55746	Coercion	\$3,759
55749	Right of entry	\$349
55754	Unlawful industrial action	\$523

e) Proceedings commenced

In the reporting period, the ABC Commissioner commenced 7 court proceedings. **Table E1** lists these court proceedings, category of respondent and approximate internal legal cost.

Table E1: Proceedings commenced by category of respondent and approximate internal legal cost

Case number	Case name	Trade union	Trade union representative	Internal legal cost
QUD329/2021	<i>Australian Building and Construction Commissioner v Blakeley & Ors ('Coles Distribution Centre')</i>	1	2	\$1,054
MLG3368/2021	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor ('North East Link')</i>	1	1	\$5,414
WAD259/2021	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors ('GN Construction')</i>	1	2	\$3,067
VID669/2021	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors ('Mordialloc Freeway')</i>	1	3	\$10,601
QUD433/2021	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors ('Titan Cranes')</i>	1	4	\$4,567
CAG45/2021	<i>Australian Building and Construction Commissioner v Darnton-Turner & Ors ('Founders Lane')</i>	1	2	\$3,543
QUD445/2021	<i>Australian Building and Construction Commissioner v Reilly & Ors ('Pacific Motorway')</i>	1	2	\$2,945

The ABC Commissioner filed an appeal in one proceeding. **Table E2** shows the internal legal cost for this proceeding.

Table E2: ABCC appeal filed and internal legal cost

Case number	Case name	Jurisdiction	Internal legal cost
VID746/2021	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors ('West Gate Tunnel case')</i>	Full Court of the Federal Court	\$829

One appeal was filed against the ABC Commissioner. **Table E3** shows the internal legal cost for this proceeding.

Table E3: Appeal filed against the ABCC and internal legal cost

Case number	Case name	Jurisdiction	Internal legal cost
VID589/2021	<i>Construction, Forestry, Maritime, Mining and Energy Union & Anor v Australian Building and Construction Commissioner ('Monash Freeway Upgrade')</i>	Full Court of the Federal Court	\$6,282

The ABC Commissioner did not intervene in any court proceeding.

The ABC Commissioner intervened in 4 proceedings in the Fair Work Commission. **Table E4** shows the internal legal cost for each proceeding.

Table E4: ABCC interventions in Fair Work Commission proceedings and internal legal cost

Case number	Type of proceeding	Name	Internal legal cost
RE2021/1162	Application for entry permit	Roland Cummins	\$1,335
RE2021/1298	Application to revoke or suspend entry permit	Paul Tzimas	\$464
RE2021/1334	Application to revoke or suspend entry permit	Brendan Holl	\$457
RE2021/1335	Application to revoke or suspend entry permit	Justin Hobson	\$100

The ABC Commissioner intervened in one Fair Work Commission appeal proceeding. **Table E5** shows the internal legal cost for this proceeding.

Table E5: ABCC interventions in Fair Work Commission appeal proceedings and internal legal cost

Case number	Type of proceeding	Name	Internal legal cost
C2021/7781	Appeal of decision on entry permit revocation	Desmond Savage	\$292

f) Number and cost of proceedings finalised

In the reporting period, the ABC Commissioner finalised his involvement in 4 court proceedings. **Table F1** shows the total external and internal legal costs for each proceeding.

Table F1: Proceedings finalised and total legal costs

Case number	Case name	Citation	External legal cost	Internal legal cost
SAD152/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Anor ('Morphettville Park Sports Club')</i>	[2021] FCA 1640	\$73,818	\$35,215
WAD185/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors ('Doubletree Hilton')</i>	[2021] FCA 1468	\$101,193	\$15,293
VID625/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors ('West Gate Tunnel Case')</i>	[2021] FCA 1414	\$71,255	\$46,708
NSD2137/2019	<i>Australian Building and Construction Commissioner v Holl & Ors ('Wheeler Cranes')</i>	[2021] FCA 1480	\$342,907	\$44,143

There was one court appeal decision delivered in the reporting period that relates to a previously finalised matter. **Table F2** shows the total external and internal legal costs for each proceeding.

Table F2: Appeal decisions related to previously finalised matters and total legal costs

Case number	Case name	Citation	External legal cost	Internal legal cost
NSD463/2021	<i>Hanlon v Australian Building and Construction Commissioner ('Austar Plaster Appeal')</i>	[2021] FCAFC 221	\$41,151	\$1,865

In the reporting period, the ABC Commissioner finalised his involvement in 4 proceedings in the Fair Work Commission. **Table F3** shows the total external and internal legal costs for each proceeding.

Table F3: Fair Work Commission proceedings in which the ABCC finalised its involvement and total legal costs

Case number	Type of proceeding	Name	External legal cost	Internal legal cost
RE2021/1004	Application for entry permit	Craig Kelly	\$0	\$2,535
RE2021/1032	Application for entry permit	Peter D'Arcy	\$0	\$1,964
RE2021/932	Application to revoke or suspend entry permit	Desmond Savage	\$3,180	\$2,663
C2021/6200	Appeal of decision on application for entry permit	Walter Molina	\$8,045	\$1,775

The ABC Commissioner finalised his intervention in one court proceeding. **Table F4** shows the internal and external legal cost for this proceeding.

Table F4: Interventions finalised

Case number	Case name	External legal cost	Internal legal cost
BRG823/2018	<i>Tyson v Heiko Constructions t/as Heiko Constructions Pty Ltd</i>	\$7,118	\$3,273

Further legal costs incurred on finalised matters received after the reporting date are not included in these tallies. These costs will be updated and reported for finalised matters in the annual BCIIIP Act Report.

g) Legal expenses incurred as a result of enforcement action

In the reporting period, the ABCC incurred \$1,348,372 in external legal expenses as a result of enforcement action undertaken in 63 matters.

This figure has been calculated using standard accrual accounting practices.

h) Details of industry conditions

In the reporting period, the ABCC received 108 complaints. **Table H** shows the breakdown of complaints received by the main topic.

Table H: Complaints received by main topic

Main topic of complaint	Total
Wages and entitlements	59
Coercion	12
Security of payment	11
Right of entry	10
Freedom of association	8
Unlawful industrial action	7
General Code Information	1
Total	108

i) Compliance of products used in building work

Section 26(8) of the Building Code 2016 requires funding entities to only enter into contracts for building work that require the use of products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

The ABCC monitors compliance of supply chain contracts to ensure that the requirement to use building materials that comply with relevant Australian standards is passed down the supply chain.

The ABCC has published model clauses, including the Australian standard requirement, for use by funding entities in their contracts for building work. The ABCC has continued to receive notification forms from funding entities providing evidence that relevant clauses have been included in contracts.

No instances of non-compliance with section 26(8) by funding entities were identified by the ABCC during the reporting period.

j) Examination notices issued

No examination notices were issued in the reporting period.

4. Additional reporting

a) Directions given by the Minister

During the reporting period, no directions were issued by the Minister to the Australian Building and Construction Commissioner under sections 17 or 18 of the BCIIIP Act.

b) Delegations made by the Australian Building and Construction Commissioner

During the reporting period, the Australian Building and Construction Commissioner did not make any delegations under section 19 of the BCIIIP Act.

Australian Capital Territory
Level 8, 12 Moore Street
Canberra ACT 2600

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Level 8, 111 Elizabeth Street
Sydney NSW 2000

Northern Territory
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Queensland
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Brisbane QLD 4000

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Adelaide SA 5000

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