



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 2016–17
Operations from 2 to 31 December 2016 inclusive

Comments and enquiries

The Australian Building and Construction Commission welcomes comments and enquiries.

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Distribution

The report is available from the ABCC, and via the ABCC website, at: <http://www.abcc.gov.au/about/accountability-and-reporting/>

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The document must be attributed as the ABCC Quarterly Report, second quarter of 2016–17

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Letter of transmittal

8 February 2017
Senator the Hon Michaelia Cash
Minister for Employment
Parliament House
Canberra ACT 2600

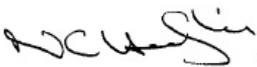
Dear Minister

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 my first quarterly report, which covers the Australian Building and Construction Commission's operations in the second quarter of 2016-17 (1 October – 31 December 2016). The agency commenced on 2 December 2016 and was in operation for 16 business days during this first reporting period.

I note subsection 20(5) of the BCIIP Act, which 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



Nigel Hadgkiss

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 Australian Building and Construction Commissioner's powers during that quarter (the Quarterly Report).

The Quarterly Report must include details of:

1. the number, and type, of matters that were investigated by the ABC Commissioner during the quarter; and the cost, during that quarter, of each such investigation;
2. assistance and advice provided during that quarter to building industry participants;
3. the extent to which the Building Code was complied with during that quarter;
4. the number, and type, of matters that were investigated by the ABC Commissioner during that quarter in relation to building employers; and the cost, during that quarter, of each such investigation;
5. the number of proceedings commenced in accordance with this Act in that quarter, both in total and by category of building industry participant; and the cost, during that quarter, of those proceedings (including legal expenses), both in total and by category of building industry participant;
6. the number, and total cost, of such proceedings finalised in that quarter;
7. the legal expenses incurred during that quarter as a result of enforcement action undertaken by the ABC Commissioner;
8. industry conditions, during that quarter, based on complaints received by the ABC Commissioner during that quarter;
9. activities that the ABC Commissioner has undertaken during that quarter to monitor the compliance of products used in building work with relevant Australian standards published by, or on behalf of, Standards Australia; and
10. details of the number, and type, of matters for which examination notices were issued under this Act.

The BCIIP Act defines quarter as a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April. The following report sets out the activities undertaken by the Australian Building and Construction Commissioner in the second quarter of 2016–17, i.e. 1 October 2016 to 31 December 2016 (the reporting period). In the reporting period the ABCC was active for 16 business days from 2 December 2016 to 31 December 2016.

2. Methodology

This report provides details of the performance of the functions and the exercise of powers of the Australian Building and Construction Commissioner. The position of the Australian Building and Construction Commissioner commenced along with the ABCC on 2 December 2016.

The ABCC is currently developing a case management system with a tailored activity-based costing module, due for release in July 2017. The Request for Tender for the development of this system was published on Austender in March 2016 by Fair Work Building and Construction (FWBC), the ABCC's predecessor agency. The ABCC's existing case management system (AIMS), carried over from FWBC, has not historically had the capability to allocate and track internal agency costs against individual matters.

When the BCIIIP Act commenced, the agency took steps to scope and implement system changes to allow AIMS to track approximate costings of investigations and proceedings. These changes were implemented on 16 December 2016 and piloted during the remaining six business days of the reporting period.

The data collected during the pilot does not represent a comprehensive allocation of time against investigation and legal activities. As a result, despite best attempts having been made, the agency is unable to report on the internal agency cost of individual matters in respect of the 16 business days in this first reporting period.

The agency is investigating ways to allocate costs to individual matters pending the release of the new Case Management System, and will provide an update on progress in the next quarterly report, covering the third quarter of 2016-17.

3. Performance of functions and exercise of powers

a) Matters investigated

In the reporting period the ABCC had 49 open investigations.

Table a) below shows the number of investigations that were open during the reporting period by the main allegation being investigated.

The cost of individual investigations cannot be reported because information on internal agency cost was unable to be recorded by the agency in this first reporting period (see 'Methodology', p.7).

Table a) Investigations open during the reporting period

Main allegation	Number of investigations
Coercion	20
Right of entry	17
Unlawful industrial action	6
Freedom of association	5
Misrepresentation of workplace rights	1
Total	49

b) Assistance and advice

In the reporting period the ABCC provided assistance and advice by responding to 337 enquiries. Table b) opposite shows these enquiries by main topic and the category of the enquirer.

Table b) Assistance and advice provided to building industry participants in response to enquiries

Main Topic	Building Industry Participant	Member of the public	Government	Total
Code	169	27	12	208
General Code information	79	19	12	110
Code assessment	87	8		95
Notice of Code breach	3			3
Workplace laws – building work	40	1		41
Unlawful industrial action	18			18
Right of entry	10			10
Coercion	8			8
Wages and entitlements	2	1		3
Freedom of association	1			1
Independent contractor / sham contracting	1			1
Other laws	15	18	1	34
ABCC information and activities	19	9	1	29
Not relevant to the building industry	2	9	5	16
Workplace laws – non building work	6	3		9
Total	251	67	19	337

c) Building Code compliance

In the reporting period the agency finalised three Building Code audits and one Building Code inspection. Table c) i shows the outcome of all Building Code audits finalised in the reporting period. Table c) ii shows the outcome of all Building Code inspections finalised in the reporting period.

Two Building Code audits found potential issues, which in both cases have been addressed.

One additional Building Code audit was commenced in the reporting period but was not finalised in the same reporting period.

Table c) i. Outcome of audits

Outcome of audit	Total
No issues identified	1
Potential issues identified	2
Total	3

Table c) ii. Outcome of inspections

Outcome of inspection	Total
No issues identified	1

d) Building employers investigated

In the reporting period the conduct of employers was the subject of investigation in 15 matters. Table d) i below shows the breakdown of those investigations by the main allegation being investigated.

Table d) i. Investigations open during the reporting period where employers were the subject of the investigation

Main allegation	Number of investigations
Coercion	7
Freedom of association	4
Unlawful industrial action	2
Misrepresentation of workplace rights	1
Right of entry	1
Grand Total	15

In the reporting period employers were the complainant in 40 open investigations. Table d) ii below shows the breakdown of those investigations by the main allegation being investigated.

Table d) ii. Investigations open during the reporting period where employers were the complainant in the investigation

Main allegation	Number of investigations
Right of entry	17
Coercion	14
Unlawful industrial action	6
Freedom of association	3
Total	40

The cost of individual investigations cannot be reported because information on internal agency cost was unable to be recorded by the agency in this first reporting period (see 'Methodology', p. 7).

e) Proceedings commenced

In the reporting period the agency did not commence any proceedings.

f) Number and cost of proceedings finalised

In the reporting period the agency finalised three proceedings:

- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2016] FCCA 3265; the agency incurred \$74,107.99 in external legal fees.
- *Construction, Forestry, Mining and Energy Union v Australian Building and Construction Commissioner* [2016] FCAFC 184; the agency incurred \$233,212.03 in external legal fees (this includes hearing the matter at first instance and appeal).
- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2016] FCAFC 169; the agency incurred \$127,976.96 in external legal fees (this includes hearing the matter at first instance, a Full Bench appeal and a Full Court appeal).

The total cost of proceedings cannot be reported because information on internal agency cost was unable to be recorded by the agency in this first reporting period (see 'Methodology', p. 7).

g) Legal expenses incurred as a result of enforcement action

In the reporting period the agency incurred \$491,038.44 in external legal expenses as a result of enforcement action undertaken in 41 matters by the ABCC.

This figure has been calculated by reference to invoices received by the ABCC by 31 January 2017. There are invoices for work undertaken in the reporting period that are yet to be received by the ABCC and some invoices received are still being examined and have not yet been approved for payment. Some invoice amounts may subsequently change and this will alter the reported figure above.

h) Details of industry conditions

In the reporting period the agency received 15 complaints. Table h, below shows the breakdown of complaints received by the main topic discussed.

Table h) complaints received in the reporting period by main topic

Main topic of complaint	Total
Coercion	6
Unlawful industrial action	6
Right of entry	3
Total	15

i) Compliance of products used in building work

Pursuant to section 25A(1)(b) of the Code for the Tendering and Performance of Building Work 2016 (Building Code 2016), a funding entity must ensure that before a contract is entered into in respect of Commonwealth funded building work,

the preferred tenderer provides information on whether the building materials to be used to undertake the building work comply with relevant Australian standards published by, or on behalf of, Standards Australia.

Further, under section 26(8) of the Building Code 2016, a funding entity must only enter into a contract in respect of building work with a code covered entity that only uses products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

The ABCC monitors compliance by funding entities with the Building Code 2016. During the reporting period, the ABCC published model tender and contract clauses for use by funding entities in implementing these requirements. The clauses require the provision of information pursuant to section 25A(1)(b) and include declarations of compliance with section 26(8) of the Building Code 2016.

Under section 38(ca) of the BCIP Act, the Federal Safety Commissioner has the function of auditing compliance with National Construction Code performance requirements in relation to building materials.

During the reporting period, the Australian Building and Construction Commissioner wrote to the Federal Safety Commissioner requesting a meeting about these new requirements. A meeting is scheduled to discuss how the responsibilities of each Office can be discharged to their fullest extent, in the most efficient manner possible.

The ABCC has not identified any project that had commenced during the reporting period to which these requirements apply.

j) Examination notices issued

In the reporting period no examination notices were issued.

4. Additional reporting

a) Directions given by the Minister

During the reporting period no directions were issued under ss 17 or 18 of the BCIP Act.

b) Delegations made by the Australian Building and Construction Commissioner

During the reporting period the Australian Building and Construction Commissioner made the following delegations under section 19 of the BCIP Act:

No.	Function and/or Power	Delegate(s)
Functions of the ABC Commissioner		
1.	<p>Promote the main object of the BCIP Act in accordance with subsection 16(1)(aa) of the BCIP Act.</p> <p>Monitor compliance and promote appropriate standards of conduct by building industry participants, including by:</p> <ul style="list-style-type: none"> Monitoring and promoting compliance with the BCIP Act, designated building laws and the Building Code by building industry participants; and Referring matters to other relevant agencies and bodies, in accordance with subsection 16(1)(a) of the BCIP Act. <p>Investigate suspected contraventions, by building industry participants, of the BCIP Act, designated building laws or the Building Code in accordance with subsection 16(1)(b) of the BCIP Act.</p> <p>Ensure building employers and building contractors comply with their obligations under the BCIP Act, designated building laws and the Building Code in accordance with subsection 16(1)(ba) of the BCIP Act.</p> <p>Provide assistance and advice to building industry participants regarding their rights and obligations under the BCIP Act, designated building laws and the Building Code in accordance with subsection 16(1)(d) of the BCIP Act.</p> <p>Disseminate information about the BCIP Act, designated building laws and the Building Code, and about other matters affecting building industry participants, including disseminating information by facilitating ongoing discussions with building industry participants in accordance with subsection 16(1)(f) of the BCIP Act.</p>	<ul style="list-style-type: none"> An SES employee or acting SES employee who is an employee of the Commission Australian Building and Construction Inspectors

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No.	Function and/or Power	Delegate(s)
Consultants		
2.	Engage persons having suitable qualifications and experience as consultants to the ABC Commissioner in accordance with subsection 32 of the BCIP Act.	<ul style="list-style-type: none"> Chief Operating Officer
Building Code		
3.	Give written notice to a person who is required to comply with the Building Code in respect of particular building work in accordance with subsection 35(1) of the BCIP Act.	<ul style="list-style-type: none"> Australian Building and Construction Inspectors
Examination Notices		
4.	Give an examination notice to the person in relation to whom it is issued in accordance with subsection 61E(1) of the BCIP Act.	<ul style="list-style-type: none"> Australian Building and Construction Inspectors
5.	<p>Give notice to a person, in relation to whom an examination notice has been issued, of a time later than the time specified in the examination notice for compliance if the time specified in the examination notice is not at least 14 days after the examination notice was given to the person in accordance with subsection 61E(3) of the BCIP Act.</p> <p>Give notice to a person, in relation to whom an examination notice has been issued, of a time later than the time specified in the examination notice for compliance in accordance with subsection 61E(4) of the BCIP Act.</p>	<ul style="list-style-type: none"> An SES employee or acting SES employee who is an employee of the Commission
6.	Notify the Commonwealth Ombudsman that an examination notice has been issued and provide a copy of the examination notice, the affidavit that accompanied the application for the examination notice and any other information in relation to the examination notice that was given to the nominated AAT presidential member who issued the notice in accordance with section 64 of the BCIP Act.	<ul style="list-style-type: none"> General Counsel Deputy General Counsel
7.	Give the Commonwealth Ombudsman a report, video recording and transcript of an examination of a person in accordance with subsection 65(1) of the BCIP Act.	<ul style="list-style-type: none"> General Counsel Deputy General Counsel
Persons assisting authorised officers		
8.	Determine whether a person may accompany an authorised officer onto premises to assist the authorised officer in accordance with subsection 75(1) of the BCIP Act.	<ul style="list-style-type: none"> An SES employee or acting SES employee who is an employee of the Commission Australian Building and Construction Inspectors who are designated as Team Leaders or Acting Team Leaders

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No.	Function and/or Power	Delegate(s)
Persons assisting authorised officers (continued)		
9.	Disclose or authorise the disclosure of information in accordance with subsections 105(2), (3) and (4) of the BCIP Act.	<ul style="list-style-type: none"> • An SES employee or acting SES employee who is an employee of the Commission • Australian Building and Construction Inspectors employed as Executive Level Band 1 or 2 employees
Submissions		
10.	May intervene or make submissions in a matter before the Fair Work Commission in accordance with subsection 110(1) of the BCIP Act.	<ul style="list-style-type: none"> • General Counsel • Deputy General Counsel



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Australian Building and Construction Commission

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