



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

Third quarter of 2016-17

Operations from 1 January – 31 March 2017 inclusive

Q3
2016-17

Comments and enquiries

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The report is available from the ABCC and via the ABCC website at:

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Contents

Letter of transmittal	1
1. Introduction	3
2. Methodology	5
3. Performance of functions and exercise of powers	7
a) Matters investigated	7
b) Assistance and advice	9
c) Building Code compliance	10
d) Matters investigated in relation to building employers	10
e) Proceedings commenced	13
f) Number and cost of proceedings finalised	13
g) Legal expenses incurred as a result of enforcement action	14
h) Details of industry conditions	14
i) Compliance of products used in building work	14
j) Examination notices issued	14
4. Additional reporting	14
a) Directions given by the Minister	14
b) Delegations made by the Australian Building and Construction Commissioner	14

Letter of transmittal

19 May 2017
Senator the Hon Michaelia Cash
Minister for Employment
Parliament House
Canberra ACT 2600

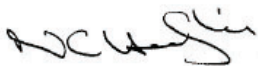
Dear Minister

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 this quarterly report, which covers the Australian Building and Construction Commission's operations in the third quarter of 2016-17 (1 January - 31 March 2017).

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 third quarter of 2016/17, i.e. 1 January to 31 March 2017 (the reporting period).

2. Methodology

The ABCC is currently developing a case management system with a tailored activity-based costing module, due for release in July 2017.* This new system will provide a specific time costing capability to the agency. The ABCC's current case management system, AIMS, was carried over from Fair Work Building and Construction and will continue in operation until it is replaced by the new case management system in July 2017.

The AIMS system was not designed to track internal agency costs or record time against individual matters. The system did not have this capability when the BCIIIP Act commenced. However, as an interim measure, the ABCC added a basic time recording capability to the AIMS system that allows for approximate reporting of internal costs against investigations.

During this reporting period the agency worked to create the interim measure and implement it, including to train staff on how to use it. That training was conducted throughout January and February 2017. As staff were trained in the use of the interim time recording system, the level of utilisation increased.

The nominal internal cost data in this Quarterly Report is based on this interim solution and provides an approximation of internal time costings.

* 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.

3. Performance of functions and exercise of powers

a) Matters investigated

The ABCC had 81 investigations that were open in the reporting period.

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

Table a(i): Investigations open during the reporting period

Main Allegation	Number of Investigations
Coercion	27
Unlawful industrial action	17
Right of entry	15
Wages and entitlements	10
Freedom of association	7
Misclassification/sham contracting	4
Misrepresentation of workplace rights	1
Total	81

Table a(ii) shows the approximate nominal internal cost in the reporting period of each of these investigations.

Table a(ii): Approximate nominal internal cost in the quarter of open investigations

Ref	Main Allegation	Cost
INV3348	Unlawful industrial action	\$20,560
INV3367	Coercion	\$11,176
INV3370	Wages and entitlements	\$8,248
INV3344	Right of entry	\$8,170
INV3327	Right of entry	\$7,528
INV3317	Right of entry	\$7,488
INV3372	Wages and entitlements	\$6,350
INV3285	Coercion	\$6,088
INV3359	Unlawful industrial action	\$5,930
INV3386	Coercion	\$4,921
INV3311	Coercion	\$4,570
INV3302	Coercion	\$4,496
INV3358	Coercion	\$4,459
INV3363	Coercion	\$4,076
INV3369	Misclassification/sham contracting	\$3,693
INV3374	Right of entry	\$3,368
INV3305	Coercion	\$3,317
INV3354	Coercion	\$2,955
INV3340	Right of entry	\$2,795
INV3371	Misclassification/sham contracting	\$2,703
INV3207	Misrepresentation of workplace rights	\$2,659

Continued overleaf

Table a(ii): Approximate nominal internal cost in the quarter of open investigations (*continued*)

Ref	Main Allegation	Cost	Ref	Main Allegation	Cost
INV3380	Freedom of association	\$2,368	INV3364	Coercion	\$968
INV3378	Coercion	\$2,298	INV3379	Misclassification/sham contracting	\$907
INV3385	Wages and entitlements	\$2,144	INV3382	Wages and entitlements	\$887
INV3388	Coercion	\$2,124	INV3316	Coercion	\$797
INV3298	Right of entry	\$2,072	INV3299	Right of entry	\$770
INV3383	Unlawful industrial action	\$2,011	INV3412	Coercion	\$761
INV3391	Coercion	\$1,954	INV3210	Coercion	\$732
INV3234	Coercion	\$1,942	INV3414	Coercion	\$707
INV3251	Freedom of association	\$1,808	INV3229	Right of entry	\$670
INV3396	Wages and entitlements	\$1,791	INV3366	Coercion	\$641
INV3376	Wages and entitlements	\$1,685	INV3304	Right of entry	\$621
INV3375	Misclassification/sham contracting	\$1,672	INV3416	Unlawful industrial action	\$523
INV3387	Right of entry	\$1,649	INV3393	Unlawful industrial action	\$510
INV3239	Right of entry	\$1,611	INV3249	Coercion	\$488
INV3263	Right of entry	\$1,563	INV3413	Unlawful industrial action	\$453
INV3392	Unlawful industrial action	\$1,534	INV3389	Freedom of association	\$429
INV3368	Unlawful industrial action	\$1,527	INV3352	Coercion	\$387
INV3296	Coercion	\$1,485	INV3409	Wages and entitlements	\$323
INV3377	Coercion	\$1,479	INV3402	Freedom of association	\$292
INV3360	Right of entry	\$1,470	INV3361	Coercion	\$263
INV3398	Unlawful industrial action	\$1,371	INV3403	Unlawful industrial action	\$239
INV3373	Wages and entitlements	\$1,324	INV3399	Wages and entitlements	\$238
INV3318	Unlawful industrial action	\$1,283	INV3194	Unlawful industrial action	\$217
INV3355	Right of entry	\$1,209	INV3225	Coercion	\$80
INV3223	Coercion	\$1,166	INV3407	Unlawful industrial action	\$67
INV3333	Unlawful industrial action	\$1,153	INV3390	Freedom of association	\$59
INV3323	Freedom of association	\$1,143	INV3397	Unlawful industrial action	\$58
INV3395	Coercion	\$1,108	INV3401	Unlawful industrial action	\$39
INV3411	Right of entry	\$1,030	INV3325	Freedom of association	-
INV3408	Wages and entitlements	\$990	INV3394	Unlawful industrial action	-

Continued

b) Assistance and advice

In the reporting period the ABCC provided assistance and advice by responding to 1,658 enquiries. Table b 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	Law enforcement agency	Total
Code	951	79	52	0	1,082
Code assessment	470	13	5	0	488
General Code information	277	45	25	0	347
Code advice	193	20	21	0	234
Notice of Code breach	10	0	1	0	11
State Code information	1	1	0	0	2
Workplace laws – building work	225	29	6	2	262
Wages and entitlements	50	14	4	0	68
Right of entry	61	2	1	2	66
Unlawful industrial action	57	8	0	0	65
Coercion	31	1	0	0	32
Freedom of association	13	2	0	0	15
Misclassification/sham contracting	10	2	0	0	12
Strike pay	3	0	1	0	4
Non-designated building law	52	81	0	0	133
ABCC information and activities	55	20	10	1	86
Not relevant to the building industry	11	50	10	2	73
Workplace laws - non building work	12	10	0	0	22
Total	1,306	269	78	5	1,658

c) Building Code compliance

In the reporting period the agency finalised five Building Code audits and 46 Building Code inspections. **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.

Four Building Code audits found potential issues, which in all 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	4
Total	5

Table c(ii): Outcome of inspections

Outcome of inspection	Total
No issues identified	36
Potential issues identified	10
Total	46

d) Matters investigated in relation to building employers

In the reporting period the conduct of employers was the subject of investigation in 32 matters.*

Table d(i) shows the breakdown of those investigations by the main allegation being investigated.

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

Main Allegation	Number of investigations
Wages and entitlements	9
Coercion	7
Freedom of association	6
Unlawful industrial action	4
Misclassification/sham contracting	4
Right of entry	1
Misrepresentation of workplace rights	1
Total	32

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

Table d(ii) shows the approximate internal cost in the reporting period of each of these investigations.

Table d(ii): Approximate internal cost in the quarter of investigations where employers were the subject of the investigation

Ref	Main Allegation	Cost
INV3370	Wages and entitlements	\$8,248
INV3372	Wages and entitlements	\$6,350
INV3359	Unlawful industrial action	\$5,930
INV3369	Sham contracting	\$3,693
INV3374	Right of entry	\$3,368
INV3371	Sham contracting	\$2,703
INV3207	Agreements	\$2,659
INV3380	Freedom of association	\$2,368
INV3385	Wages and entitlements	\$2,144
INV3388	Coercion	\$2,124
INV3251	Freedom of association	\$1,808
INV3376	Wages and entitlements	\$1,685
INV3375	Sham contracting	\$1,672
INV3373	Wages and entitlements	\$1,324
INV3323	Freedom of association	\$1,143
INV3408	Wages and entitlements	\$990
INV3379	Sham contracting	\$907
INV3382	Wages and entitlements	\$887
INV3412	Coercion	\$761
INV3210	Coercion	\$732
INV3414	Coercion	\$707
INV3393	Unlawful industrial action	\$510
INV3389	Freedom of association	\$429
INV3352	Coercion	\$387
INV3409	Wages and entitlements	\$323

Continued

Ref	Main Allegation	Cost
INV3402	Freedom of association	\$292
INV3361	Coercion	\$263
INV3399	Wages and entitlements	\$238
INV3225	Coercion	\$80
INV3407	Unlawful industrial action	\$67
INV3325	Freedom of association	\$0
INV3394	Unlawful industrial action	\$0

Employers were a complainant in 61 investigations that were open in the reporting period.

Table d(iii) shows the breakdown of those investigations by the main allegation being investigated.

Table d(iii): Investigations open during the reporting period where employers were a complainant in the investigation

Main Allegation	Number of investigations
Coercion	21
Unlawful industrial action	15
Right of entry	13
Freedom of association	5
Wages and entitlements	4
Misclassification/ sham contracting	3
Total	61

Table d(iv) shows the approximate internal cost in the reporting period of each of these investigations.

Table d(iv): Approximate internal cost in the quarter of investigations where employers were a complainant in the investigation

Ref	Main Allegation	Cost
INV3348	Unlawful industrial action	\$20,560
INV3367	Coercion	\$11,176
INV3344	Right of entry	\$8,170
INV3327	Right of entry	\$7,528
INV3317	Right of entry	\$7,488
INV3285	Coercion	\$6,088
INV3359	Unlawful industrial action	\$5,930
INV3386	Coercion	\$4,921
INV3311	Coercion	\$4,570
INV3302	Coercion	\$4,496
INV3358	Coercion	\$4,459
INV3363	Coercion	\$4,076
INV3369	Misclassification/sham contracting	\$3,693
INV3354	Coercion	\$2,955
INV3340	Right of entry	\$2,795
INV3380	Freedom of association	\$2,368
INV3378	Coercion	\$2,298
INV3385	Wages and entitlements	\$2,144
INV3388	Coercion	\$2,124
INV3298	Right of entry	\$2,072
INV3391	Coercion	\$1,954
INV3234	Coercion	\$1,942
INV3251	Freedom of association	\$1,808
INV3376	Wages and entitlements	\$1,685
INV3375	Misclassification/sham contracting	\$1,672

Continued

Ref	Main Allegation	Cost
INV3239	Right of entry	\$1,611
INV3263	Right of entry	\$1,563
INV3392	Unlawful industrial action	\$1,534
INV3368	Unlawful industrial action	\$1,527
INV3377	Coercion	\$1,479
INV3360	Right of entry	\$1,470
INV3398	Unlawful industrial action	\$1,371
INV3318	Unlawful industrial action	\$1,283
INV3355	Right of entry	\$1,209
INV3333	Unlawful industrial action	\$1,153
INV3411	Right of entry	\$1,030
INV3364	Coercion	\$968
INV3379	Misclassification/sham contracting	\$907
INV3382	Wages and entitlements	\$887
INV3299	Right of entry	\$770
INV3412	Coercion	\$761
INV3210	Coercion	\$732
INV3414	Coercion	\$707
INV3229	Right of entry	\$670
INV3304	Right of entry	\$621
INV3416	Unlawful industrial action	\$523
INV3393	Unlawful industrial action	\$510
INV3249	Coercion	\$488
INV3413	Unlawful industrial action	\$453
INV3389	Freedom of association	\$429
INV3352	Coercion	\$387
INV3409	Wages and entitlements	\$323
INV3402	Freedom of association	\$292
INV3361	Coercion	\$263
INV3403	Unlawful industrial action	\$239

Continued

Table d(iv): Approximate internal cost in the quarter of investigations where employers were a complainant in the investigation (continued)

Ref	Main Allegation	Cost
INV3194	Unlawful industrial action	\$217
INV3225	Coercion	\$80
INV3407	Unlawful industrial action	\$67
INV3390	Freedom of association	\$59
INV3401	Unlawful industrial action	\$39
INV3394	Unlawful industrial action	-

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 eight proceedings, of which two are subject to appeal:

- *Australian Building & Construction Commissioner v Construction, Forestry, Mining and Energy Union & Ors* [2017] FCA 10; the agency incurred \$220,671.04 in external legal costs. Nominal internal costs of \$1,325 were recorded against this matter since 2 December 2016.
- *Australian Building & Construction Commissioner v Dean Hall & Ors (Miller, Smith, O'Mara, Kivalu, Hamilton, Lomax, Vitte, CFMEU ACT Divisional Branch)* [2017] FCA 274; the agency incurred \$633,498.21 in external legal costs. Nominal internal costs of \$250 were recorded against this matter since 2 December 2016. This matter is subject to appeal.
- *Australian Building & Construction Commissioner v Campbell McCullough & Ors* [2017] FCA 295; the agency incurred \$303,881.52 in external legal costs. Nominal internal costs of \$980 were recorded against this matter since 2 December 2016.

- *Australian Building & Construction Commissioner v Construction, Forestry, Mining and Energy Union & Karamitos* [2017] FCA 11; the agency incurred \$209,218.81 in external legal costs. Nominal internal costs of \$1,266 were recorded against this matter since 2 December 2016.

- *Australian Building & Construction Commissioner v Construction, Forestry, Mining and Energy Union & Tadic* [2017] FCA 197; the agency incurred \$270,563.26 in external legal costs. Nominal internal costs of \$1,321 were recorded in this matter since 2 December 2016. This matter is subject to appeal.

- *Australian Building & Construction Commissioner v Mamudi & 18 Ors* [2017] FCA 134; the agency incurred \$62,624.69 in external legal costs. Nominal internal costs of \$164 were recorded against this matter since 2 December 2016.

- *Australian Building & Construction Commissioner v Construction, Forestry, Mining and Energy Union, Myles, Hall, Theodorou and MacDonald* [2017] FCA 62; the agency incurred \$181,426.28 in external legal costs. Nominal internal costs of \$775 were recorded against this matter since 2 December 2016.

- *Australian Building & Construction Commissioner v Michael Myles & Anor* QUD782/2016; the agency incurred \$46,403.12 in external legal costs. Nominal internal costs of \$2,825 were recorded against this matter since 2 December 2016.

In the reporting period, the agency also finalised its involvement in one proceeding in the Fair Work Commission:

- *Construction, Forestry, Mining and Energy Union-Construction and General Division, SA Divisional Branch* [2017] FWC 1227; the agency incurred \$12,078.57 in nominal internal legal costs that were recorded after 2 December 2016. This matter is subject to appeal.

g) Legal expenses incurred as a result of enforcement action

In the reporting period the agency incurred \$1,227,579.66 in external legal expenses as a result of enforcement action undertaken in 60 matters by the ABCC.

This figure has been calculated by reference to invoices received by the ABCC by 30 April 2017. There may be invoices for work undertaken in the reporting period that are yet to be received by the ABCC. Some invoices received are still being examined and have not yet been approved for payment. Accordingly, 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 62 complaints. **Table h** 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	13
Unlawful Industrial Action	12
Wages & Entitlements	11
Freedom of Association	10
Right of Entry	9
Misclassification/sham contracting	6
Strike Pay	1
Total	62

i) Compliance of products used in building work

Further to the background provided in the Quarterly Report for the second quarter of 2016-17 (the previous reporting period), the ABCC is closely monitoring funding entities to ensure that the Australian standard requirement is included in their contracts for building work. Funding entities are using the model tender and contract clauses, which were published by the ABCC in the previous reporting period, to help them implement these requirements.

During the reporting period the ABCC established an audit process for the Building Code 2016 which includes the auditing of supply chain contracts to ensure that the Australian standard contract requirements are passed down the supply chain. This will come into effect as projects that are subject to the 2016 Code reach construction phase and audits against the 2016 Code commence.

j) Examination notices issued

During 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 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.



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