



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 2018–19
Operations from 1 January – 31 March inclusive

Q3

2018–19

COMMENTS AND ENQUIRIES

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

Quarterly Report Contact Officer
ABCC
GPO Box 9927
Melbourne VIC 3001
Telephone: 1800 003 338
Email: enquiry@abcc.gov.au
Internet: www.abcc.gov.au

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The document must be attributed as the ABCC Quarterly Report, third quarter of 2018–19.

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Letter of transmittal



Australian Government
**Australian Building and
Construction Commission**



5 June 2019

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
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 2018-19 (1 January – 31 March 2019).

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 third quarter of the 2018-19 financial year, 1 January to 31 March 2019 (the reporting period).

2. Methodology

The ABCC uses a case management system “inCase” with a tailored activity-based costing module.

The system provides a specific facility to record nominal time costing against agency investigations and proceedings.

The internal costs allocated to investigations and prosecutions are derived from “inCase”.

3. Performance of functions and exercise of powers

a) Matters investigated

In the reporting period, the ABCC had 138 open investigations. **Table A1** shows the breakdown of these open investigations by the main allegation being investigated. **Table A2** shows the approximate internal cost of each of these investigations.

Table A1: Investigations open during the reporting period

Main allegation	Number of investigations
Right of entry	44
Unlawful industrial action	27
Wages and entitlements	25
Coercion	19
Sham contracting	11
Freedom of association	8
Strike pay	2
Non-compliance with notices	1
Misrepresentation of workplace rights	1
Total	138

Table A2: Approximate internal cost of open investigations in the reporting period

Ref	Main allegation	Cost
27845	Wages and entitlements	\$42
28971	Right of entry	\$1,899
30128	Wages and entitlements	\$250
30463	Right of entry	\$1,192

Ref	Main allegation	Cost
31393	Coercion	\$3,077
31749	Coercion	\$6,555
31833	Wages and entitlements	\$452
32338	Coercion	\$4,490
32436	Wages and entitlements	\$2,228
33474	Coercion	\$305
33558	Unlawful industrial action	\$6,615
33885	Wages and entitlements	\$98
34125	Unlawful industrial action	\$9,325
34151	Wages and entitlements	\$5,157
34575	Sham contracting	\$42
34857	Sham contracting	\$1,241
35007	Freedom of association	\$460
35027	Coercion	\$788
35039	Coercion	\$2,776
35059	Wages and entitlements	\$239
35083	Right of entry	\$488
35100	Right of entry	\$4,480
35208	Wages and entitlements	\$570
35320	Unlawful industrial action	\$0
35407	Right of entry	\$514
35410	Right of entry	\$537
35620	Sham contracting	\$2,264

Ref	Main allegation	Cost
35624	Sham contracting	\$2,113
35718	Right of entry	\$2,526
35736	Right of entry	\$516
35913	Right of entry	\$493
36032	Coercion	\$18,243
36037	Unlawful industrial action	\$5,666
36142	Sham contracting	\$809
36194	Right of entry	\$684
36254	Right of entry	\$5,498
36293	Right of entry	\$1,285
36303	Right of entry	\$931
36320	Right of entry	\$9,884
36342	Wages and entitlements	\$157
36461	Sham contracting	\$1,470
36487	Sham contracting	\$2,262
36553	Sham contracting	\$389
36695	Sham contracting	\$0
36757	Unlawful industrial action	\$92
36841	Wages and entitlements	\$2,482
36939	Wages and entitlements	\$502
37076	Wages and entitlements	\$2,464
37104	Right of entry	\$2,131
37158	Wages and entitlements	\$11,859
37237	Right of entry	\$1,874
37247	Unlawful industrial action	\$12,193
37267	Unlawful industrial action	\$10,264
37295	Freedom of association	\$4,779
37338	Wages and entitlements	\$829

Ref	Main allegation	Cost
37395	Right of entry	\$1,099
37461	Right of entry	\$25,705
37576	Wages and entitlements	\$3,709
37623	Unlawful industrial action	\$22,386
37908	Wages and entitlements	\$383
38016	Coercion	\$4,644
38063	Unlawful industrial action	\$489
38064	Unlawful industrial action	\$1,116
38066	Freedom of association	\$222
38069	Unlawful industrial action	\$729
38075	Unlawful industrial action	\$539
38108	Coercion	\$10,549
38137	Unlawful industrial action	\$4,368
38148	Right of entry	\$1,006
38174	Freedom of association	\$7,129
38181	Right of entry	\$3,885
38261	Unlawful industrial action	\$10,390
38271	Right of entry	\$403
38359	Wages and entitlements	\$1,347
38371	Right of entry	\$489
38432	Right of entry	\$2,596
38502	Right of entry	\$1,707
38511	Unlawful industrial action	\$6,006
038564	Unlawful industrial action	\$1,312
38589	Coercion	\$890
38622	Wages and entitlements	\$1,223
38627	Unlawful industrial action	\$650
38779	Right of entry	\$3,525

Ref	Main allegation	Cost
38780	Right of entry	\$1,216
38812	Right of entry	\$3,027
38834	Wages and entitlements	\$905
38907	Unlawful industrial action	\$0
38930	Unlawful industrial action	\$674
38932	Unlawful industrial action	\$6,033
38962	Right of entry	\$4,290
38986	Right of entry	\$7,127
39074	Wages and entitlements	\$761
39100	Strike pay	\$2,044
39104	Unlawful industrial action	\$23,912
39131	Freedom of association	\$12,996
39260	Coercion	\$1,228
39264	Freedom of association	\$3,616
39293	Wages and entitlements	\$836
39329	Wages and entitlements	\$1,144
39368	Coercion	\$4,011
39371	Right of entry	\$2,299
39415	Coercion	\$4,475
39471	Coercion	\$3,469
39532	Right of entry	\$4,044
39581	Right of entry	\$4,069
39641	Unlawful industrial action	\$3,136
39667	Right of entry	\$537
39668	Right of entry	\$110
39673	Coercion	\$17,786
39675	Coercion	\$2,898
39762	Wages and entitlements	\$786

Ref	Main allegation	Cost
39772	Unlawful industrial action	\$9,346
39821	Sham contracting	\$1,792
39867	Unlawful industrial action	\$2,556
39876	Wages and entitlements	\$406
39886	Unlawful industrial action	\$775
39902	Right of entry	\$6,459
39924	Right of entry	\$2,173
39951	Coercion	\$6,750
40011	Right of entry	\$5,972
40109	Right of entry	\$655
40125	Right of entry	\$1,718
40132	Wages and entitlements	\$2,041
40143	Right of entry	\$627
40161	Freedom of association	\$1,317
40342	Misrepresentation of workplace rights	\$1,921
40365	Coercion	\$3,398
40378	Strike pay	\$623
40408	Unlawful industrial action	\$9,019
40427	Right of entry	\$2,690
40487	Freedom of association	\$2,133
40488	Right of entry	\$1,356
40496	Sham contracting	\$71
40497	Right of entry	\$3,425
40509	Coercion	\$223
40567	Right of entry	\$151
40625	Unlawful industrial action	\$1,243
40649	Non-compliance with notices	\$959

b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,287 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	570	35	49		654
General code information	266	22	31		319
Code assessment	122	3	9		134
Security of payment	99	1			100
Code advice	74	8	9		91
s.6A general advice	3				3
s.6B application	3				3
s.6A application	2				2
State code information	1				1
s.6B general advice		1			1
Workplace laws - building work	201	15	21	4	241
Right of entry	84	5	9	4	102
Wages and entitlements	57	5			62
Unlawful industrial action	23	1	6		30
Coercion	14	3	2		19
Freedom of association	14				14
Sham contracting	5		2		7
Misrepresentation of workplace rights	2	1	1		4
Strike pay	2				2
Non-compliance with notices			1		1
Other laws	48	135	2		185
Agency information and activities	59	65	9	2	135
Not relevant to the building industry	3	37	1		41
Workplace laws – non building work	12	19			31
Total	893	306	82	6	1,287

c) Building Code compliance

In the reporting period, the ABCC finalised 37 audits and 23 inspections to monitor compliance with the *Code for the Tendering and Performance of Building Work 2016* (Building Code). **Table C1** shows the outcome of all Building Code audits finalised. **Table C2** shows the outcome of all Building Code inspections finalised.

Potential issues were identified in 10 Building Code audits, with contractors committed to rectification in each instance.

In the reporting period, 74 additional Building Code audits were commenced but not finalised.

Table C1: Outcome of audits

Outcome of audit	Total
No issues	27
Potential issues	10
Total	37

Table C2: Outcome of inspections

Outcome of inspection	Total
No issues	14
Potential issues	9
Total	23

d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 50 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	25
Sham contracting	11
Freedom of association	6
Unlawful industrial action	3
Coercion	2
Misrepresentation of workplace rights	1
Strike pay	1
Right of entry	1
Total	50

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

Ref	Main allegation	Cost
27845	Wages and entitlements	\$42
30128	Wages and entitlements	\$250
31833	Wages and entitlements	\$452
32436	Wages and entitlements	\$2,228
33474	Coercion	\$305
33885	Wages and entitlements	\$98

Ref	Main allegation	Cost
34151	Wages and entitlements	\$5,157
34575	Sham contracting	\$42
34857	Sham contracting	\$1,241
35007	Freedom of association	\$460
35059	Wages and entitlements	\$239
35208	Wages and entitlements	\$570
35620	Sham contracting	\$2,264
35624	Sham contracting	\$2,113
36142	Sham contracting	\$809
36342	Wages and entitlements	\$157
36461	Sham contracting	\$1,470
36487	Sham contracting	\$2,262
36553	Sham contracting	\$389
36695	Sham contracting	\$0
36841	Wages and entitlements	\$2,482
36939	Wages and entitlements	\$502
37076	Wages and entitlements	\$2,464
37104	Right of entry	\$2,131
37158	Wages and entitlements	\$11,859
37295	Freedom of association	\$4,779
37338	Wages and entitlements	\$829
37576	Wages and entitlements	\$3,709
37908	Wages and entitlements	\$383
38063	Unlawful industrial action	\$489
38174	Freedom of association	\$7,129
38359	Wages and entitlements	\$1,347

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

Ref	Main allegation	Cost
38511	Unlawful industrial action	\$6,006
38622	Wages and entitlements	\$1,223
38834	Wages and entitlements	\$905
39074	Wages and entitlements	\$761
39100	Strike pay	\$2,044
39131	Freedom of association	\$12,996
39264	Freedom of association	\$3,616
39293	Wages and entitlements	\$836
39329	Wages and entitlements	\$1,144
39762	Wages and entitlements	\$786
39821	Sham contracting	\$1,792
39867	Unlawful industrial action	\$2,556
39876	Wages and entitlements	\$406
40132	Wages and entitlements	\$2,041
40161	Freedom of association	\$1,317
40342	Misrepresentation of workplace rights	\$1,921
40365	Coercion	\$3,398
40496	Sham contracting	\$71

In the reporting period, employers were a complainant in 87 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	35
Unlawful industrial action	25
Coercion	16
Sham contracting	5
Freedom of association	4
Wages and entitlements	1
Strike pay	1
Total	87

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

Ref	Main allegation	Cost
30463	Right of entry	\$1,192
31393	Coercion	\$3,077
31749	Coercion	\$6,555
32338	Coercion	\$4,490
33474	Coercion	\$305
33558	Unlawful industrial action	\$6,615
34125	Unlawful industrial action	\$9,325
34857	Sham contracting	\$1,241
35027	Coercion	\$788
35039	Coercion	\$2,776
35083	Right of entry	\$488

Ref	Main allegation	Cost
35100	Right of entry	\$4,480
35320	Unlawful industrial action	\$0
35407	Right of entry	\$514
35410	Right of entry	\$537
35718	Right of entry	\$2,526
35736	Right of entry	\$516
35913	Right of entry	\$493
36037	Unlawful industrial action	\$5,666
36194	Right of entry	\$684
36254	Right of entry	\$5,498
36293	Right of entry	\$1,285
36320	Right of entry	\$9,884
36461	Sham contracting	\$1,470
36487	Sham contracting	\$2,262
36553	Sham contracting	\$389
36757	Unlawful industrial action	\$92
37158	Wages and entitlements	\$11,859
37237	Right of entry	\$1,874
37247	Unlawful industrial action	\$12,193
37295	Freedom of association	\$4,779
37395	Right of entry	\$1,099
37461	Right of entry	\$25,705
38016	Coercion	\$4,644
38063	Unlawful industrial action	\$489
38064	Unlawful industrial action	\$1,116
38066	Freedom of association	\$222
38069	Unlawful industrial action	\$729
38075	Unlawful industrial action	\$539

Ref	Main allegation	Cost
38108	Coercion	\$10,549
38137	Unlawful industrial action	\$4,368
38148	Right of entry	\$1,006
38181	Right of entry	\$3,885
38261	Unlawful industrial action	\$10,390
38271	Right of entry	\$403
38371	Right of entry	\$489
38502	Right of entry	\$1,707
38511	Unlawful industrial action	\$6,006
38564	Unlawful industrial action	\$1,312
38589	Coercion	\$890
38627	Unlawful industrial action	\$650
38779	Right of entry	\$3,525
38780	Right of entry	\$1,216
38812	Right of entry	\$3,027
38907	Unlawful industrial action	\$0
38930	Unlawful industrial action	\$674
38932	Unlawful industrial action	\$6,033
38962	Right of entry	\$4,290
38986	Right of entry	\$7,127
39104	Unlawful industrial action	\$23,912
39260	Coercion	\$1,228
39415	Coercion	\$4,475
39471	Coercion	\$3,469
39532	Right of entry	\$4,044
39581	Right of entry	\$4,069
39641	Unlawful industrial action	\$3,136
39673	Coercion	\$17,786

Ref	Main allegation	Cost
39675	Coercion	\$2,898
39772	Unlawful industrial action	\$9,346
39821	Sham contracting	\$1,792
39867	Unlawful industrial action	\$2,556
39886	Unlawful industrial action	\$775
39902	Right of entry	\$6,459
39951	Coercion	\$6,750
40011	Right of entry	\$5,972
40109	Right of entry	\$655
40125	Right of entry	\$1,718
40161	Freedom of association	\$1,317
40365	Coercion	\$3,398
40378	Strike pay	\$623
40408	Unlawful industrial action	\$9,019
40427	Right of entry	\$2,690
40487	Freedom of association	\$2,133
40488	Right of entry	\$1,356
40497	Right of entry	\$3,425
40567	Right of entry	\$151
40625	Unlawful industrial action	\$1,243

e) Proceedings commenced

In the reporting period, the ABCC commenced ten proceedings with the following respondents. **Table E1** provides the approximate internal legal costs for each and the category of the respondents.

Table E1: Proceedings commenced by category of building industry participant and internal legal costs

Case number	Case name	Employee	Employer	Building association	Building association representative	Internal legal costs
VID123/2019	<i>Australian Building and Construction Commissioner v Australian Manufacturing Workers' Union & Ors (Newcold)</i>			1	2	\$3,077
NSD478/2019	<i>Australian Building and Construction Commissioner v Communications Electrical Plumbing Union & Ors (NRT)</i>			1	4	\$1,899
VID300/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (Melbourne University Veterinary School)</i>			1	3	\$5,666
NSD474/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (Mezzo Stage 2)</i>			1	2	\$6,615
BRG34/2019	<i>Australian Building and Construction Commissioner v Hynes & Ors (Logan Enhancement Project)</i>			1	2	\$1,874
QUD138/2019	<i>Australian Building and Construction Commissioner v Jade Ingham & Ors (Qube)</i>			1	2	\$6,555
NTD1/2019	<i>Australian Building and Construction Commissioner v Menon & Ors (Palmerston Police Station)</i>			1	6	\$2,776

Case number	Case name	Employee	Employer	Building association	Building association representative	Internal legal costs
QUD222/2019	<i>Australian Building and Construction Commissioner v O'Halloran, Communications Electrical Plumbing Union and Ors (Southpoint A and Ivy & Eve)</i>	25		1	2	\$4,490
VID229/2019	<i>Australian Building and Construction Commissioner v Pattinson & Anor (Monash Peninsula)</i>		1	1		\$4,779
VID108/2019	<i>Australian Building and Construction Commissioner v SWAT Building Systems Pty Ltd</i>		2			\$2,228

In the reporting period, the ABCC filed an appeal in one proceeding in the Federal Court. **Table E2** shows the internal legal costs for this proceeding.

Table E2: ABCC appeals in the Federal Court and internal legal costs

Case number	Case name	Internal legal costs
QUD173/2019	<i>Australian Building and Construction Commissioner v J Hutchinson Pty Ltd T/A Hutchinson Builders and Ors</i>	\$459

In the reporting period, the ABCC intervened in two proceeding in the Fair Work Commission. **Table E4** provides the details of the proceedings and internal legal costs.

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

Case number	Type of proceedings	Name	Internal legal costs
RE2018/1438	Right of entry notification	Jason O'Mara	\$366
RE2019/101	Application to permit entry	Jason O'Mara	\$24

f) Number and cost of proceedings finalised

In the reporting period, the ABCC finalised its involvement in two court proceedings. **Table F1** shows the internal and external legal costs for each proceeding.

Table F1: Proceedings finalised and legal costs

Case number	Case name	External legal costs	Internal legal costs
BRG894/2014	<i>Director, Fair Work Building Industry Inspectorate v J Hutchinson Pty Ltd T/A Hutchinson Builders & Ors [2019] FCCA 401</i>	\$273,925.51	\$4,541.00
BRG305/2018	<i>Australian Building and Construction Commission v D'Arcy & Anor [2019] FCCA 563</i>	\$76,381.11	\$34,145.00

In the reporting period, the following appeal decision was delivered that relates to previously finalised matters. **Table F2** shows the internal and external legal costs for this appeal decision.

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

Case number	Case name	External legal costs	Internal legal costs
VID1030/2018	<i>Australian Building and Construction Commission v Construction, Forestry, Maritime, Mining and Energy Union (the costs of the Cup of Tea Case) [2019] FCAFC 36</i>	\$70,045.27	\$28,779.00

g) Legal expenses incurred as a result of enforcement action

In the reporting period, the ABCC incurred \$824,064.01 in external legal expenses as a result of enforcement action undertaken in 58 matters by the ABCC.

This figure has been calculated based on invoices received by the ABCC by 30 April 2019 that relate to the work performed in the reporting period. There may be invoices for work undertaken in the reporting period that are yet to be received by the ABCC.

Invoices received after 30 April 2019 have not been included in the reported figure above.

h) Details of industry conditions

In the reporting period, the ABCC received 57 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
Right of entry	22
Coercion	8
Wages and entitlements	7
Sham contracting	5
Unlawful industrial action	5
Freedom of association	4
Misrepresentation of workplace rights	3
Security of payment	2
Non-compliance with notices	1
Total	57

i) Compliance of products used in building work

Section 26(8) of the Building Code requires funding entities to only enter into contracts for building work, which require the use of products that comply with the relevant Australian standards.

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 Australian Standard clauses have been included in contracts.

No instance of non compliance with section 26(8) was identified by the ABCC during the reporting period.

j) Examination notices issued

Ten examination notices were issued in this reporting period.

Table J: Examinations notices issued

Main allegation	Number issued
Coercion	2
Unlawful industrial action	5
Wages and entitlements	3
Total	10

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

New South Wales
Level 8, 111 Elizabeth Street
Sydney NSW 2000

Northern Territory
Jacana House
Level 7, 39-41 Woods Street
Darwin NT 0800

Queensland
Level 25, 400 George Street
Brisbane QLD 4000

South Australia
Level 3, 60 Light Square
Adelaide SA 5000

Tasmania
Level 4, 39-41 Davey Street
Hobart TAS 7000

Victoria
Level 4, 509 St Kilda Road
Melbourne VIC 3004

Western Australia
Level 2, 863 Hay Street
Perth WA 6000
