



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

Fourth quarter of 2017–18
Operations from 1 April – 30 June inclusive

Q4

2017–18

COMMENTS AND ENQUIRIES

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

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Letter of transmittal



Australian Government
**Australian Building and
Construction Commission**



10 August 2018

The Hon Craig Laundry MP
Minister for Small and Family Business,
the Workplace and Deregulation
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 fourth quarter of 2017-18 (1 April – 30 June 2018).

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 white background.

Stephen McBurney
Commissioner
Australian Building and Construction Commission

Letter of transmittal



Australian Government
**Australian Building and
Construction Commission**



26 September 2018

The Hon Kelly O'Dwyer MP
Minister for Jobs and Industrial Relations
Minister for Women
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 fourth quarter of 2017-18 (1 April – 30 June 2018).

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 Act.

The following report sets out the activities undertaken by the ABCC in the fourth quarter of the 2017-18 financial year, i.e. 1 April to 30 June 2018 (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 the case management system.

3. Performance of functions and exercise of powers

a) Matters investigated

In the reporting period, the ABCC had 94 open investigations.

Table A1 shows the number of investigations that were open 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	28
Wages & entitlements	21
Unlawful industrial action	17
Coercion	11
Sham contracting	8
Freedom of association	7
Misrepresentation of workplace rights	2
Total	94

Table A2: Approximate nominal internal cost in the quarter of open investigations

Ref	Main allegation	Cost
24059	Sham contracting	\$1,378
27245	Right of entry	\$7,696
27246	Right of entry	\$9,952
27818	Right of entry	\$1,365
27845	Wages & entitlements	\$15,180
27859	Right of entry	\$2,721
27860	Wages & entitlements	\$10,574
27862	Unlawful industrial action	\$3,000
27864	Coercion	\$4,189
27883	Right of entry	\$2,786
27894	Coercion	\$1,762
28828	Right of entry	\$551
28860	Unlawful industrial action	\$2,763
28971	Right of entry	\$3,599
29952	Unlawful industrial action	\$1,777
29974	Wages & entitlements	\$2,433
30089	Unlawful industrial action	\$208
30128	Wages & entitlements	\$3,225
30437	Freedom of association	\$11,147
30463	Unlawful industrial action	\$4,708
30542	Sham contracting	\$4,489

Ref	Main allegation	Cost
31393	Coercion	\$5,447
31705	Wages & entitlements	\$1,837
31749	Coercion	\$5,681
31806	Wages & entitlements	\$2,487
31833	Wages & entitlements	\$6,814
32222	Freedom of association	\$2,087
32338	Unlawful industrial action	\$2,943
32436	Wages & entitlements	\$6,083
32732	Wages & entitlements	\$998
33029	Freedom of association	\$74
33119	Coercion	\$484
33205	Right of entry	\$1,151
33428	Wages & entitlements	\$139
33434	Right of entry	\$830
33474	Coercion	\$6,265
33478	Right of entry	\$0
33558	Unlawful industrial action	\$2,098
33586	Coercion	\$3,050
33631	Freedom of association	\$1,455
33667	Unlawful industrial action	\$11,012
33783	Wages & entitlements	\$4,394
33858	Wages & entitlements	\$3,933
33972	Wages & entitlements	\$9,218
34015	Unlawful industrial action	\$4,406
34125	Unlawful industrial action	\$1,688
34144	Right of entry	\$6,287
34145	Wages & entitlements	\$2,979

Ref	Main allegation	Cost
34147	Misrepresentation of workplace rights	\$1,601
34151	Wages & entitlements	\$9,867
34160	Coercion	\$13,923
34187	Right of entry	\$62,707
34236	Coercion	\$358
34436	Wages & entitlements	\$830
34444	Unlawful industrial action	\$1,897
34455	Right of entry	\$10,560
34478	Wages & entitlements	\$4,099
34481	Sham contracting	\$3,776
34491	Right of entry	\$2,813
34575	Sham contracting	\$11,149
34673	Unlawful industrial action	\$573
34763	Freedom of association	\$2,548
34777	Right of entry	\$13,071
34848	Wages & entitlements	\$1,035
34857	Sham contracting	\$1,011
34942	Wages & entitlements	\$586
34967	Right of entry	\$2,322
35003	Right of entry	\$7,949
35007	Freedom of association	\$6,254
35018	Unlawful industrial action	\$232
35027	Unlawful industrial action	\$4,151
35034	Right of entry	\$3,598
35039	Right of entry	\$9,186
35083	Right of entry	\$4,005
35096	Right of entry	\$4,938

Ref	Main allegation	Cost
35100	Right of entry	\$7,740
35159	Wages & entitlements	\$736
35208	Wages & entitlements	\$1,572
35234	Right of entry	\$4,182
35243	Misrepresentation of workplace rights	\$4,356
35312	Unlawful industrial action	\$1,278
35320	Unlawful industrial action	\$2,591
35365	Sham contracting	\$1,228
35407	Right of entry	\$1,009
35410	Right of entry	\$2,184
35579	Right of entry	\$708
35620	Sham contracting	\$277
35624	Sham contracting	\$1,289
35627	Unlawful industrial action	\$1,359
35631	Coercion	\$616
35644	Freedom of association	\$528
35736	Right of entry	\$621
35745	Right of entry	\$20
35819	Coercion	\$790

b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,518 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	892	19	61	0	972
Code assessment	432	4	38	0	474
General code information	288	5	3	0	296
Code advice	133	9	20	0	162
Security of payments - enquiry	10	1	0	0	11
Notice of code breach	11	0	0	0	11
Security of payments - notification	7	0	0	0	7
s.6B application	5	0	0	0	5
s.6A general advice	3	0	0	0	3
Agreements	1	0	0	0	1
State code information	1	0	0	0	1
s.6A application	1	0	0	0	1
Workplace laws - building work	246	14	17	2	279
Right of entry	89	4	7	2	102
Unlawful industrial action	62	0	6	0	68
Wages & entitlements	46	6	2	0	54
Coercion	16	1	0	0	17
Freedom of association	10	2	2	0	14
Sham contracting	12	1	0	0	13
Misrepresentation of workplace rights	7	0	0	0	7
Strike pay	4	0	0	0	4
Other laws	63	60	2	1	126
Agency information and activities	44	22	15	1	82
Not relevant to the building industry	14	19	0	0	33
Workplace laws - non building work	18	8	0	0	26
Total	1,277	142	95	4	1,518

c) Building Code compliance

In the reporting period, the ABCC finalised 29 Building Code audits and 53 Building Code inspections. **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 23 Building Code audits, with contractors committed to rectification in each instance.

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

Table C1: Outcome of audits

Outcome of audit	Total
No issues	6
Potential issues	23
Total	29

Table C2: Outcome of inspections

Outcome of inspection	Total
No issues	43
Potential issues	10
Total	53

d) Matters investigated

In the reporting period, the conduct of employers was the subject of investigation in 47 matters.¹

Table D1 shows the breakdown of those 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 & entitlements	20
Sham contracting	8
Freedom of association	6
Unlawful industrial action	4
Coercion	4
Right of entry	4
Misrepresentation of workplace rights	1
Total	47

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

Ref	Main allegation	Cost
24059	Sham contracting	\$1,378
27818	Right of entry	\$1,365
27845	Wages & entitlements	\$15,180
27860	Wages & entitlements	\$10,574
27894	Coercion	\$1,762
29974	Wages & entitlements	\$2,433
30089	Unlawful industrial action	\$208
30128	Wages & entitlements	\$3,225
30437	Freedom of association	\$11,147
30542	Sham contracting	\$4,489
31705	Wages & entitlements	\$1,837
31749	Coercion	\$5,681
31806	Wages & entitlements	\$2,487
31833	Wages & entitlements	\$6,814
32222	Freedom of association	\$2,087
32436	Wages & entitlements	\$6,083
32732	Wages & entitlements	\$998
33029	Freedom of association	\$74
33119	Coercion	\$484
33428	Wages & entitlements	\$139
33474	Coercion	\$6,265
33631	Freedom of association	\$1,455
33667	Unlawful industrial action	\$11,012
33783	Wages & entitlements	\$4,394

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

Ref	Main allegation	Cost
33858	Wages & entitlements	\$3,933
33972	Wages & entitlements	\$9,218
34015	Unlawful industrial action	\$4,406
34144	Right of entry	\$6,287
34145	Wages & entitlements	\$2,979
34147	Misrepresentation of workplace rights	\$1,601
34151	Wages & entitlements	\$9,867
34436	Wages & entitlements	\$830
34481	Sham contracting	\$3,776
34575	Sham contracting	\$11,149
34673	Unlawful industrial action	\$573
34763	Freedom of association	\$2,548
34848	Wages & entitlements	\$1,035
34857	Sham contracting	\$1,011
34942	Wages & entitlements	\$586
35007	Freedom of association	\$6,254
35096	Right of entry	\$4,938
35159	Wages & entitlements	\$736
35208	Wages & entitlements	\$1,572
35234	Right of entry	\$4,182
35365	Sham contracting	\$1,228
35620	Sham contracting	\$277
35624	Sham contracting	\$1,289

In the reporting period, employers were a complainant in 62 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	22
Unlawful industrial action	17
Coercion	11
Wages & entitlements	4
Freedom of association	4
Misrepresentation of workplace rights	2
Sham contracting	2
Total	62

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

Ref	Main allegation	Cost
27245	Right of entry	\$7,696
27246	Right of entry	\$9,952
27859	Right of entry	\$2,721
27862	Unlawful industrial action	\$3,000
27864	Coercion	\$4,189
27883	Right of entry	\$2,786
27894	Coercion	\$1,762
28828	Right of entry	\$551
28860	Unlawful industrial action	\$2,763
29952	Unlawful industrial action	\$1,777

Ref	Main allegation	Cost
30089	Unlawful industrial action	\$208
30437	Freedom of association	\$11,147
30463	Unlawful industrial action	\$4,708
30542	Sham contracting	\$4,489
31393	Coercion	\$5,447
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32338	Unlawful industrial action	\$2,943
33029	Freedom of association	\$74
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33205	Right of entry	\$1,151
33434	Right of entry	\$830
33474	Coercion	\$6,265
33478	Right of entry	\$0
33558	Unlawful industrial action	\$2,098
33586	Coercion	\$3,050
33631	Freedom of association	\$1,455
33667	Unlawful industrial action	\$11,012
33972	Wages & entitlements	\$9,218
34015	Unlawful industrial action	\$4,406
34125	Unlawful industrial action	\$1,688
34144	Right of entry	\$6,287
34145	Wages & entitlements	\$2,979
34147	Misrepresentation of workplace rights	\$1,601
34160	Coercion	\$13,923
34236	Coercion	\$358
34444	Unlawful industrial action	\$1,897
34491	Right of entry	\$2,813

Ref	Main allegation	Cost
34673	Unlawful industrial action	\$573
34763	Freedom of association	\$2,548
34777	Right of entry	\$13,071
34848	Wages & entitlements	\$1,035
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35579	Right of entry	\$708
35627	Unlawful industrial action	\$1,359
35631	Coercion	\$616
35736	Right of entry	\$621
35745	Right of entry	\$20
35819	Coercion	\$790

e) Proceedings commenced

In the reporting period, the ABCC commenced four proceedings with the following respondents and intervened in one proceeding:

Table E: Proceedings commenced or intervened by category of building industry participant

Case – name and court file number	Employer	Building association	Building association representative
<i>QUD238/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors</i>		1	7
<i>TAD21/2018 – Australian Building and Construction Commissioner v Richard Xavier Hassett & Ors</i>		1	2
<i>VID496/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors</i>		1	2
<i>VID515/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors</i>		1	3
<i>BRG327/2016 – Andrew Ramsay & Anor v Susan Menso & Anor</i>	2		

Costs during the reporting period of proceedings commenced:

- *QUD238/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors*. Nominal internal costs of \$62,707 were recorded against this matter during the quarter.
- *TAD21/2018 – Australian Building and Construction Commissioner v Richard Xavier Hassett & Ors*. Nominal internal costs of \$9,952 were recorded against this matter during the quarter.
- *VID496/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors*. Nominal internal costs of \$2,721 were recorded against this matter during the quarter.
- *VID515/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors*. Nominal internal costs of \$3,000 were recorded against this matter during the quarter.

In the reporting period, the ABCC intervened in one proceeding in the Federal Court:

- *BRG327/2016 – Andrew Ramsay & Anor v Susan Menso & Anor*; the agency incurred \$4,855 in nominal internal legal costs.

In the reporting period, the ABCC filed an appeal in one proceeding in the Federal Court:

- *QUD324/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors*; the agency incurred \$4,080 in nominal internal legal costs.

In the reporting period, the ABCC intervened in one proceeding in the Fair Work Commission:

- *RE2018/475 – Application for entry permit – Anthony Sloane*; the agency incurred \$618 in nominal internal legal costs.

f) Number and cost of proceedings finalised

In the reporting period, the ABCC finalised its involvement in four court proceedings:

- *Australian Building and Construction Commissioner v Upton (The Gorgon Project Case) (No 2)* [2018] FCA 897 – WAD334/2016; the agency incurred \$240,865 in external legal costs. Nominal internal costs of \$12,954 were recorded against this matter since 2 December 2016.
- *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (Cardigan St Case)* [2018] FCA 957 – VID260/2016; the agency incurred \$107,213 in external legal costs. Nominal internal costs of \$6,517 were recorded against this matter since 2 December 2016.
- *Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Nine Brisbane Sites Case) (No 3)* [2018] FCA 564 – QUD755/2016; the agency incurred \$433,330 in external legal costs. Nominal internal costs of \$12,688 were recorded against this matter since 2 December 2016.
- *Andrew Ramsay & Anor v Susan Menso & Anor* [2017] FCCA 1416 – BRG327/2016; the agency incurred \$6,819 in external legal costs. Nominal internal costs of \$4,941 were recorded against this matter since 2 December 2016.

In the reporting period, the following two appeal decisions were delivered that relate to previously finalised matters:

- *Australian Building and Construction Commissioner v Hall* [2018] FCAFC 83 – ACD25/2017; the agency incurred \$122,266 in external legal costs. Nominal internal costs of \$7,812 were recorded against this matter since 2 December 2016.
- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The Laverton North and Cheltenham Premises Case)* [2018] FCAFC 88 – VID872/2017; the agency incurred \$138,801 in external legal costs. Nominal internal costs of \$5,876 were recorded against this matter since 2 December 2016.

In the reporting period, the ABCC finalised its involvement in five proceedings in the Fair Work Commission:

- RE2017/1380 – Application for entry permit – Michael Robinson; the agency incurred \$7,318 in external legal costs. Nominal internal costs of \$2,509 were recorded against this matter since 2 December 2016.
- RE2018/116 – Application for entry permit – Walter Vincenzo Molina; the agency did not incur any external legal costs. Nominal internal costs of \$5,397 were recorded against this matter since 2 December 2016.
- RE2018/160 – Application for entry permit – Kurt Daniel Pauls; the agency incurred \$774 in external legal costs. Nominal internal costs of \$1,111 were recorded against this matter since 2 December 2016.
- RE2018/180 – Application for entry permit – Justin William Steele; the agency incurred \$4,879 in external legal costs. Nominal internal costs of \$1,015 were recorded against this matter since 2 December 2016.
- RE2018/318 – Application for entry permit – Michael Ravbar; the agency did not incur any external legal costs. Nominal internal costs of \$1,263 were recorded against this matter since 2 December 2016.

g) Legal expenses incurred as a result of enforcement action

In the reporting period, the ABCC incurred \$882,605.63 in external legal expenses as a result of enforcement action undertaken in 48 matters by the ABCC.

This figure has been calculated by reference to invoices received by the ABCC by 31 July 2018 that relate to 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 31 July 2018 have not been included in the reported figure above.

h) Details of industry conditions

In the reporting period, the ABCC received 70 complaints. **Table H** shows the breakdown of complaints received by the main topic discussed.

Table H: Complaints received by main topic

Main topic of complaint	Total
Right of entry	26
Wages & entitlements	11
Unlawful industrial action	8
Sham contracting	7
Freedom of association	6
Coercion	6
Misrepresentation of workplace rights	3
Security of payments - notification	1
General code information	1
Security of payments - enquiry	1
Total	70

i) Compliance of products used in building work

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.

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. During the reporting period, no non-compliance was identified by the ABCC with section 26(8) of the Building Code 2016.

j) Examination notices issued

No examination notices were issued in this 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 1 April – 30 June 2018, the Australian Building and Construction Commissioner did not make any delegations under section 19 of the BCIIIP Act.



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