



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 2017–18 Financial Year
Operations from 1 January – 31 March inclusive

Q3
2017-18

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

Distribution

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

www.abcc.gov.au/about/accountability-and-reporting

Copyright

© Commonwealth of Australia 2018

With the exception of the Commonwealth Coat of Arms, and where otherwise noted, all material presented in this document is provided under a Creative Commons Attribution 3.0 Australia (<https://creativecommons.org/licenses/by/3.0/au/>) licence.

The details of the relevant licence conditions are available on the Creative Commons website (accessible using the links provided), as is the full legal code for the CC BY 3.0 AU licence (<https://creativecommons.org/licenses/by/3.0/legalcode>).

The document must be attributed as the ABCC Quarterly Report, Third quarter of 2017–18.

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	11
e) Proceedings commenced	14
f) Number and cost of proceedings finalised	15
g) Legal expenses incurred as a result of enforcement action	15
h) Details of industry conditions	16
i) Compliance of products used in building work	16
j) Examination notices issued	16
4. Additional reporting	17
a) Directions given by the Minister	17
b) Delegations made by the Australian Building and Construction Commissioner	17

Letter of transmittal

15 May 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 third quarter of 2017-18 (1 January – 31 March 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', with a long horizontal flourish extending to the right.

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 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 Australian Building and Construction Commissioner in the third quarter of the 2017-18 financial year, i.e. 1 January to 31 March 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 81 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
Wages and entitlements	22
Coercion	17
Right of entry	15
Unlawful industrial action	14
Freedom of association	6
Sham contracting	6
Misrepresentation of workplace rights	1
Total	81

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

Ref	Main allegation	Cost
16679	Unlawful industrial action	\$2,676
24059	Sham contracting	\$1,580
27240	Sham contracting	\$1,509
27245	Right of entry	\$4,559
27246	Right of entry	\$6,106
27818	Right of entry	\$2,193
27845	Wages and entitlements	\$17,846
27847	Right of entry	\$1,522
27849	Freedom of association	\$8,576
27859	Right of entry	\$4,618
27860	Wages and entitlements	\$9,002
27862	Unlawful industrial action	\$3,628
27864	Coercion	\$6,411
27870	Sham contracting	\$753
27879	Wages and entitlements	\$643
27883	Right of entry	\$577
27884	Unlawful industrial action	\$375
27894	Coercion	\$4,994
28828	Right of entry	\$63
28859	Coercion	\$0
28860	Unlawful industrial action	\$5,883
28861	Freedom of association	\$4,912
28971	Right of entry	\$6,178

Continued overleaf

Table A2: Approximate nominal internal cost in the quarter of open investigations (*continued*)

Ref	Main allegation	Cost
28974	Unlawful industrial action	\$396
29952	Unlawful industrial action	\$7,001
29974	Wages and entitlements	\$3,309
30089	Unlawful industrial action	\$6,470
30128	Wages and entitlements	\$10,664
30238	Coercion	\$1,255
30405	Wages and entitlements	\$2,052
30437	Freedom of association	\$6,617
30463	Unlawful industrial action	\$4,974
30542	Sham contracting	\$1,922
30587	Coercion	\$495
30987	Wages and entitlements	\$693
31393	Coercion	\$6,233
31636	Wages and entitlements	\$0
31672	Coercion	\$814
31679	Sham contracting	\$1,399
31705	Wages and entitlements	\$3,470
31749	Coercion	\$12,064
31806	Wages and entitlements	\$2,550
31833	Wages and entitlements	\$726
31982	Unlawful industrial action	\$0
32188	Right of entry	\$4,927
32216	Right of entry	\$2,649
32222	Freedom of association	\$3,728
32338	Unlawful industrial action	\$10,372
32340	Coercion	\$560
32426	Wages and entitlements	\$2,483
32436	Wages and entitlements	\$3,830
32550	Coercion	\$410
32625	Right of entry	\$208

Ref	Main allegation	Cost
32732	Wages and entitlements	\$2,848
33029	Freedom of association	\$7,483
33119	Coercion	\$1,818
33205	Right of entry	\$3,246
33218	Coercion	\$643
33394	Wages and entitlements	\$430
33428	Wages and entitlements	\$953
33474	Coercion	\$4,087
33558	Unlawful industrial action	\$3,557
33566	Sham contracting	\$1,040
33586	Coercion	\$2,064
33621	Right of entry	\$1,650
33631	Freedom of association	\$1,733
33634	Coercion	\$634
33667	Unlawful industrial action	\$6,325
33783	Wages and entitlements	\$655
33858	Wages and entitlements	\$643
33885	Wages and entitlements	\$1,879
33972	Wages and entitlements	\$2,995
34015	Unlawful industrial action	\$1,686
34062	Wages and entitlements	\$0
34125	Unlawful industrial action	\$597
34144	Right of entry	\$4,150
34147	Misrepresentation of workplace rights	\$275
34151	Wages and entitlements	\$0
34160	Coercion	\$1,369
34187	Right of entry	\$453
34236	Coercion	\$381

b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,470 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	894	30	53	0	977
Code assessment	452	1	8	0	461
General Code information	280	12	20	0	312
Code advice	113	12	25	0	150
Security of payment - notification	22	0	0	0	22
Security of payment - enquiry	13	1	0	0	14
Notice of Code breach	7	0	0	0	7
s.6A application	5	0	0	0	5
State Code information	0	3	0	0	3
s.6A general advice	2	1	0	0	3
Workplace laws - building work	174	5	18	0	197
Right of entry	51	1	13	0	65
Wages and entitlements	54	2	2	0	58
Coercion	23	0	1	0	24
Freedom of association	14	1	1	0	16
Sham contracting	15	1	0	0	16
Unlawful industrial action	14	0	1	0	15
Non-compliance with notices	2	0	0	0	2
Misrepresentation of workplace rights	1	0	0	0	1
Other laws	43	93	1	0	137
ABCC information and activities	62	28	8	1	99
Workplace laws - non building work	29	1	0	0	30
Not relevant to the building industry	3	27	0	0	30
Total	1,205	184	80	1	1,470

c) Building Code compliance

In the reporting period, the agency finalised 27 Building Code audits and 34 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.

Five Building Code audits found potential issues, with contractors committed to rectification in each instance.

In the reporting period, 20 additional Building Code audits were commenced but not finalised.

Table C1: Outcome of audits

Outcome of audit	Total
No issues identified	22
Potential issues identified	5
Total	27

Table C2: Outcome of inspections

Outcome of inspection	Total
No issues identified	28
Potential issues identified	6
Total	34

d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 44 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 and entitlements	22
Sham contracting	6
Coercion	5
Freedom of association	5
Unlawful industrial action	4
Right of entry	1
Misrepresentation of workplace rights	1
Total	44

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

Ref	Main allegation	Cost
24059	Sham contracting	\$1,580
27240	Sham contracting	\$1,509
27818	Right of entry	\$2,193
27845	Wages and entitlements	\$17,846
27860	Wages and entitlements	\$9,002
27862	Unlawful industrial action	\$3,628
27870	Sham contracting	\$753
27879	Wages and entitlements	\$643
27894	Coercion	\$4,994
28861	Freedom of association	\$4,912
29952	Unlawful industrial action	\$7,001
29974	Wages and entitlements	\$3,309
30089	Unlawful industrial action	\$6,470
30128	Wages and entitlements	\$10,664
30405	Wages and entitlements	\$2,052
30437	Freedom of association	\$6,617
30542	Sham contracting	\$1,922
30587	Coercion	\$495
30987	Wages and entitlements	\$693
31636	Wages and entitlements	\$0
31672	Coercion	\$814
31679	Sham contracting	\$1,399
31705	Wages and entitlements	\$3,470
31806	Wages and entitlements	\$2,550
31833	Wages and entitlements	\$726
32222	Freedom of association	\$3,728
32426	Wages and entitlements	\$2,483

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

Continued overleaf

Ref	Main allegation	Cost
32436	Wages and entitlements	\$3,830
32732	Wages and entitlements	\$2,848
33029	Freedom of association	\$7,483
33119	Coercion	\$1,818
33394	Wages and entitlements	\$430
33428	Wages and entitlements	\$953
33474	Coercion	\$4,087
33566	Sham contracting	\$1,040
33631	Freedom of association	\$1,733
33667	Unlawful industrial action	\$6,325
33783	Wages and entitlements	\$655
33858	Wages and entitlements	\$643
33885	Wages and entitlements	\$1,879
33972	Wages and entitlements	\$2,995
34062	Wages and entitlements	\$0
34147	Misrepresentation of workplace rights	\$275
34151	Wages and entitlements	\$0

In the reporting period, employers were a complainant in 48 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
Coercion	16
Unlawful industrial action	13
Right of entry	11
Freedom of association	3
Wages and entitlements	2
Sham contracting	2
Misrepresentation of workplace rights	1
Total	48

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

Ref	Main allegation	Cost
16679	Unlawful industrial action	\$2,676
27240	Sham contracting	\$1,509
27245	Right of entry	\$4,559
27246	Right of entry	\$6,106
27847	Right of entry	\$1,522
27859	Right of entry	\$4,618
27862	Unlawful industrial action	\$3,628
27864	Coercion	\$6,411
27883	Right of entry	\$577
27884	Unlawful industrial action	\$375
27894	Coercion	\$4,994
28828	Right of entry	\$63
28859	Coercion	\$0
28860	Unlawful industrial action	\$5,883
28974	Unlawful industrial action	\$396
29952	Unlawful industrial action	\$7,001
30089	Unlawful industrial action	\$6,470
30238	Coercion	\$1,255
30437	Freedom of association	\$6,617
30463	Unlawful industrial action	\$4,974
30542	Sham contracting	\$1,922
30587	Coercion	\$495
31393	Coercion	\$6,233
31672	Coercion	\$814
31749	Coercion	\$12,064
32188	Right of entry	\$4,927
32216	Right of entry	\$2,649

Ref	Main allegation	Cost
32338	Unlawful industrial action	\$10,372
32340	Coercion	\$560
32426	Wages and entitlements	\$2,483
32550	Coercion	\$410
32625	Right of entry	\$208
33029	Freedom of association	\$7,483
33119	Coercion	\$1,818
33205	Right of entry	\$3,246
33218	Coercion	\$643
33558	Unlawful industrial action	\$3,557
33586	Coercion	\$2,064
33631	Freedom of association	\$1,733
33634	Coercion	\$634
33667	Unlawful industrial action	\$6,325
33972	Wages and entitlements	\$2,995
34015	Unlawful industrial action	\$1,686
34125	Unlawful industrial action	\$597
34144	Right of entry	\$4,150
34147	Misrepresentation of workplace rights	\$275
34160	Coercion	\$1,369
34236	Coercion	\$381

e) Proceedings commenced

In the reporting period, the agency commenced two proceedings with the following respondents:

Table E: Proceedings commenced by category of building industry participant

Case – name and court file number	Employee	Employer	Building association	Building association representative
<i>BRG305/2018 – Australian Building and Construction Commissioner v Peter Joseph D'Arcy & Anor.</i>			1	1
<i>VID347/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Ors.</i>	2	1	1	

Costs during the reporting period of proceedings commenced:

- *BRG305/2018 – Australian Building and Construction Commissioner v Peter Joseph D'Arcy & Anor.* Nominal internal costs of \$8,576 were recorded against this matter during the quarter.
- *VID347/2018 – Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Ors.* Nominal internal costs of \$4,912 were recorded against this matter during the quarter.

In the reporting period, the agency intervened in four proceedings in the Fair Work Commission:

- RE2018/180 - Application for entry permit – Justin Steele; the agency incurred \$324 in nominal internal legal costs.
- RE2018/116 - Application for entry permit – Walter Vincenzo Molina; the agency incurred \$1,775 in nominal internal legal costs.

- RE2018/160 – Application for entry permit – Kurt Daniel Pauls; the agency incurred \$1,111 in nominal internal legal costs.
- RE2018/318 – Application for entry permit – Michael Ravbar; the agency incurred \$257 in nominal internal legal costs.

f) Number and cost of proceedings finalised

In the reporting period, the agency finalised three Court proceedings:

- *Australian Building and Construction Commissioner v Auimatagi & Anor*; SYG1823/2015; the agency incurred a total of \$167,842.42 in external legal costs. Nominal internal costs of \$6,999 were recorded against this matter since 2 December 2016.
- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Anor (No 2)* [2018] FCA 163; VID406/2016; the agency incurred a total of \$158,829.47 in external legal costs. Nominal internal costs of \$11,486 were recorded against this matter since 2 December 2016.
- *Australian Building and Construction Commissioner v Jade Ingham & Ors*; QUD491/2015; the agency incurred a total of \$1,076,153.48 in external legal costs. Nominal internal costs of \$38,736 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 Construction, Forestry, Mining and Energy Union & Anor*; VID306/2017; the agency incurred a total of \$387,508.67 in external legal costs. Nominal internal costs of \$9,643 were recorded against this matter since 2 December 2016. The case has been remitted back to the Federal Court for a penalty hearing and has not yet been finalised.
- *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Ors* [2018] HCA3; M65/2017; the agency incurred a total of \$122,610.51 in external legal costs. Nominal

internal costs of \$17,443 were recorded against this matter since 2 December 2016. The case has been remitted back to the Full Federal Court for a penalty hearing and has not yet been finalised.

In the reporting period, the agency finalised its involvement in two proceedings in the Fair Work Commission:

- *Application by the Construction, Forestry, Mining & Energy Union, Construction and General Division, NSW, for an entry permit for Brian Leonard Parker* – RE2017/1109; the agency incurred a total of \$6,204.54 in external legal costs. Nominal internal costs of \$3,045 were recorded against this matter since 2 December 2016.
- *Application by the Construction, Forestry, Mining & Energy Union, Construction and General Division, VIC-TAS, for an entry permit for Toby Thornton* – RE2017/1280; the agency did not incur any external legal costs. Nominal internal costs of \$1,946 were recorded against this matter since 2 December 2016.

g) Legal expenses incurred as a result of enforcement action

In the reporting period, the agency incurred \$620,797.02 in external legal expenses as a result of enforcement action undertaken in 39 matters by the ABCC.

This figure has been calculated by reference to invoices received by the ABCC by 30 April 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 30 April 2018 have not been included in the reported figure above.

h) Details of industry conditions

In the reporting period the agency received 39 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
Coercion	9
Wages and entitlements	9
Right of entry	7
Unlawful industrial action	5
Freedom of association	3
Sham contracting	3
Security of payment - enquiry	2
Misrepresentation of workplace rights	1
Total	39

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 continues to monitor 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

Six examination notices were issued in two investigations.

- Four notices were issued in a coercion investigation.
- Two notices were issued in a freedom of association investigation.

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 BCIP Act.

b) Delegations made by the Australian Building and Construction Commissioner

On 19 March 2018, the Australian Building and Construction Commissioner made the following delegation: I, Stephen John McBurney, Australian Building and Construction Commissioner appointed under section 21 of the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIP Act), delegate my powers and functions under subsections 61E(3) and (4) and section 61F of the BCIP Act to Catherine Alexandra Cato, Deputy ABC Commissioner. This delegation is made pursuant to section 19 of the BCIP Act.



Australian Government

Australian Building and Construction Commission

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 3, 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 12, 188 Collins Street
Hobart TAS 7000

Victoria
Level 4, 509 St Kilda Road
Melbourne VIC 3004

Western Australia
Level 2, 863 Hay Street
Perth WA 6000
