



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 2018–19  
Operations from 1 October – 31 December inclusive

# Q2

# 2018–19

## COMMENTS AND ENQUIRIES

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

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# Letter of transmittal



**Australian Government**  
**Australian Building and  
Construction Commission**



5 February 2019

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 second quarter of 2018-19 (1 October – 31 December 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 second quarter of the 2018-19 financial year, i.e. 1 October to 31 December 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 135 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                        | 48                       |
| Unlawful industrial action            | 28                       |
| Wages & entitlements                  | 22                       |
| Coercion                              | 20                       |
| Sham contracting                      | 10                       |
| Freedom of association                | 5                        |
| Misrepresentation of workplace rights | 2                        |
| <b>Total</b>                          | <b>135</b>               |

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

| Ref   | Main allegation      | Cost    |
|-------|----------------------|---------|
| 27845 | Wages & entitlements | \$3,107 |
| 28971 | Right of entry       | \$2,065 |
| 30128 | Wages & entitlements | \$12    |
| 30463 | Right of entry       | \$3,524 |

| Ref   | Main allegation            | Cost     |
|-------|----------------------------|----------|
| 31393 | Coercion                   | \$4,034  |
| 31749 | Coercion                   | \$13,977 |
| 31833 | Wages & entitlements       | \$3,342  |
| 32338 | Coercion                   | \$4,418  |
| 32436 | Wages & entitlements       | \$2,368  |
| 33474 | Coercion                   | \$6,451  |
| 33558 | Unlawful industrial action | \$4,244  |
| 33885 | Wages & entitlements       | \$3,357  |
| 33972 | Wages & entitlements       | \$97     |
| 34125 | Unlawful industrial action | \$4,156  |
| 34151 | Wages & entitlements       | \$5,408  |
| 34455 | Right of entry             | \$5,837  |
| 34575 | Sham contracting           | \$3,835  |
| 34777 | Right of entry             | \$3,814  |
| 34857 | Sham contracting           | \$1,341  |
| 35007 | Freedom of association     | \$3,147  |
| 35027 | Coercion                   | \$2,500  |
| 35039 | Right of entry             | \$5,059  |
| 35059 | Wages & entitlements       | \$629    |
| 35083 | Right of entry             | \$3,812  |
| 35096 | Right of entry             | \$0      |
| 35100 | Right of entry             | \$3,585  |

| Ref   | Main allegation                       | Cost     |
|-------|---------------------------------------|----------|
| 35208 | Wages & entitlements                  | \$1,395  |
| 35312 | Unlawful industrial action            | \$129    |
| 35320 | Unlawful industrial action            | \$6,088  |
| 35365 | Sham contracting                      | \$2,038  |
| 35407 | Right of entry                        | \$2,353  |
| 35410 | Right of entry                        | \$900    |
| 35521 | Right of entry                        | \$4,878  |
| 35581 | Right of entry                        | \$1,234  |
| 35620 | Sham contracting                      | \$319    |
| 35624 | Sham contracting                      | \$4,120  |
| 35631 | Coercion                              | \$1,391  |
| 35718 | Right of entry                        | \$4,740  |
| 35736 | Right of entry                        | \$1,172  |
| 35913 | Right of entry                        | \$3,069  |
| 35932 | Wages & entitlements                  | \$2,164  |
| 36032 | Coercion                              | \$17,040 |
| 36037 | Unlawful industrial action            | \$15,520 |
| 36142 | Sham contracting                      | \$164    |
| 36190 | Misrepresentation of workplace rights | \$1,824  |
| 36194 | Right of entry                        | \$931    |
| 36254 | Right of entry                        | \$7,843  |
| 36267 | Right of entry                        | \$3,569  |
| 36293 | Right of entry                        | \$1,563  |
| 36303 | Right of entry                        | \$4,646  |
| 36320 | Right of entry                        | \$5,954  |
| 36342 | Wages & entitlements                  | \$1,250  |
| 36461 | Sham contracting                      | \$384    |

| Ref   | Main allegation                       | Cost     |
|-------|---------------------------------------|----------|
| 36478 | Coercion                              | \$3,223  |
| 36487 | Sham contracting                      | \$537    |
| 36553 | Sham contracting                      | \$663    |
| 36695 | Sham contracting                      | \$1,139  |
| 36757 | Unlawful industrial action            | \$8,199  |
| 36779 | Right of entry                        | \$3,451  |
| 36803 | Wages & entitlements                  | \$1,589  |
| 36834 | Unlawful industrial action            | \$2,950  |
| 36841 | Wages & entitlements                  | \$2,721  |
| 36939 | Wages & entitlements                  | \$569    |
| 37042 | Right of entry                        | \$2,840  |
| 37076 | Wages & entitlements                  | \$2,608  |
| 37104 | Right of entry                        | \$4,144  |
| 37133 | Right of entry                        | \$4,493  |
| 37152 | Right of entry                        | \$673    |
| 37156 | Coercion                              | \$1,421  |
| 37158 | Wages & entitlements                  | \$18,057 |
| 37161 | Coercion                              | \$1,985  |
| 37197 | Coercion                              | \$774    |
| 37237 | Right of entry                        | \$5,194  |
| 37247 | Unlawful industrial action            | \$13,543 |
| 37267 | Unlawful industrial action            | \$8,794  |
| 37286 | Unlawful industrial action            | \$283    |
| 37295 | Freedom of association                | \$4,423  |
| 37322 | Coercion                              | \$2,544  |
| 37332 | Misrepresentation of workplace rights | \$700    |
| 37338 | Wages & entitlements                  | \$535    |

| Ref   | Main allegation            | Cost     |
|-------|----------------------------|----------|
| 37346 | Right of entry             | \$115    |
| 37395 | Right of entry             | \$6,318  |
| 37422 | Right of entry             | \$1,399  |
| 37461 | Right of entry             | \$15,050 |
| 37488 | Right of entry             | \$310    |
| 37576 | Coercion                   | \$3,102  |
| 37623 | Unlawful industrial action | \$32,216 |
| 37635 | Coercion                   | \$0      |
| 37744 | Wages & entitlements       | \$538    |
| 37758 | Coercion                   | \$971    |
| 37762 | Right of entry             | \$692    |
| 37766 | Wages & entitlements       | \$7,639  |
| 37804 | Right of entry             | \$1,764  |
| 37868 | Right of entry             | \$2,127  |
| 37908 | Wages & entitlements       | \$525    |
| 38016 | Unlawful industrial action | \$20,226 |
| 38039 | Unlawful industrial action | \$830    |
| 38063 | Unlawful industrial action | \$192    |
| 38064 | Unlawful industrial action | \$157    |
| 38066 | Freedom of association     | \$1,558  |
| 38069 | Unlawful industrial action | \$134    |
| 38075 | Unlawful industrial action | \$493    |
| 38095 | Wages & entitlements       | \$966    |
| 38108 | Coercion                   | \$12,404 |
| 38135 | Unlawful industrial action | \$2,764  |
| 38137 | Unlawful industrial action | \$9,823  |
| 38148 | Right of entry             | \$5,971  |
| 38174 | Freedom of association     | \$4,088  |

| Ref   | Main allegation            | Cost    |
|-------|----------------------------|---------|
| 38181 | Right of entry             | \$2,742 |
| 38202 | Coercion                   | \$1,007 |
| 38261 | Unlawful industrial action | \$8,848 |
| 38271 | Right of entry             | \$205   |
| 38299 | Right of entry             | \$2,090 |
| 38359 | Wages & entitlements       | \$1,377 |
| 38371 | Right of entry             | \$3,228 |
| 38432 | Right of entry             | \$1,789 |
| 38446 | Right of entry             | \$1,264 |
| 38502 | Right of entry             | \$2,386 |
| 38511 | Unlawful industrial action | \$3,972 |
| 38564 | Unlawful industrial action | \$2,675 |
| 38584 | Coercion                   | \$1,058 |
| 38589 | Coercion                   | \$3,514 |
| 38627 | Unlawful industrial action | \$3,442 |
| 38689 | Unlawful industrial action | \$3,238 |
| 38779 | Right of entry             | \$5,853 |
| 38780 | Right of entry             | \$2,228 |
| 38812 | Right of entry             | \$5,260 |
| 38917 | Unlawful industrial action | \$0     |
| 38930 | Unlawful industrial action | \$1,017 |
| 38932 | Unlawful industrial action | \$3,735 |
| 38962 | Right of entry             | \$3,732 |
| 38986 | Right of entry             | \$3,303 |
| 39104 | Unlawful industrial action | \$2,604 |
| 39260 | Coercion                   | \$338   |
| 39264 | Freedom of association     | \$207   |

## b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,628 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        |
|--|-------------------------------|----------------------|------------|------------------------|--------------|
| <b>Code</b>                                  | <b>887</b>                    | <b>45</b>            | <b>40</b>  |                        | <b>972</b>   |
| General code information                     | 328                           | 19                   | 12         |                        | 359          |
| Code assessment                              | 233                           | 10                   | 19         |                        | 262          |
| Security of payment                          | 221                           | 1                    | 2          |                        | 224          |
| Code advice                                  | 91                            | 14                   | 7          |                        | 112          |
| Notice of code breach                        | 6                             |                      |            |                        | 6            |
| s.6A general advice                          | 2                             | 1                    |            |                        | 3            |
| s.6A application                             | 2                             |                      |            |                        | 2            |
| s.6B general advice                          | 2                             |                      |            |                        | 2            |
| s.6B application                             | 2                             |                      |            |                        | 2            |
| <b>Workplace laws – building work</b>        | <b>314</b>                    | <b>7</b>             | <b>16</b>  | <b>1</b>               | <b>338</b>   |
| Unlawful industrial action                   | 93                            | 1                    | 5          |                        | 99           |
| Right of entry                               | 90                            |                      | 8          | 1                      | 99           |
| Wages & entitlements                         | 72                            | 4                    | 3          |                        | 79           |
| Coercion                                     | 25                            |                      |            |                        | 25           |
| Freedom of association                       | 20                            | 2                    |            |                        | 22           |
| Misrepresentation of workplace rights        | 7                             |                      |            |                        | 7            |
| Sham contracting                             | 5                             |                      |            |                        | 5            |
| Strike pay                                   | 2                             |                      |            |                        | 2            |
| <b>Other laws</b>                            | <b>55</b>                     | <b>90</b>            | <b>1</b>   | <b>1</b>               | <b>147</b>   |
| <b>Agency information and activities</b>     | <b>73</b>                     | <b>38</b>            | <b>12</b>  |                        | <b>123</b>   |
| <b>Not relevant to the building industry</b> | <b>7</b>                      | <b>23</b>            |            |                        | <b>30</b>    |
| <b>Workplace laws – non building work</b>    | <b>10</b>                     | <b>8</b>             |            |                        | <b>18</b>    |
| <b>Total</b>                                 | <b>1,346</b>                  | <b>211</b>           | <b>69</b>  | <b>2</b>               | <b>1,628</b> |

## c) Building Code compliance

In the reporting period, the ABCC finalised 21 Building Code audits and 30 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 11 Building Code audits, with contractors committed to rectification in each instance.

In the reporting period, 37 additional Building Code audits were commenced but not finalised.

**Table C1: Outcome of audits**

| <b>Outcome of audit</b> | <b>Total</b> |
|-------------------------|--------------|
| No issues               | 10           |
| Potential issues        | 11           |
| <b>Total</b>            | <b>21</b>    |

**Table C2: Outcome of inspections**

| <b>Outcome of inspection</b> | <b>Total</b> |
|------------------------------|--------------|
| No issues                    | 17           |
| Potential issues             | 13           |
| <b>Total</b>                 | <b>30</b>    |

## d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 49 matters.<sup>1</sup>

**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                  | 22                       |
| Sham contracting                      | 10                       |
| Unlawful industrial action            | 5                        |
| Freedom of association                | 4                        |
| Coercion                              | 4                        |
| Right of entry                        | 3                        |
| Misrepresentation of workplace rights | 1                        |
| <b>Total</b>                          | <b>49</b>                |

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

| Ref          | Main allegation        | Cost    |
|--------------|------------------------|---------|
| <b>27845</b> | Wages & entitlements   | \$3,107 |
| <b>30128</b> | Wages & entitlements   | \$12    |
| <b>31833</b> | Wages & entitlements   | \$3,342 |
| <b>32436</b> | Wages & entitlements   | \$2,368 |
| <b>33474</b> | Coercion               | \$6,451 |
| <b>33885</b> | Wages & entitlements   | \$3,357 |
| <b>33972</b> | Wages & entitlements   | \$97    |
| <b>34151</b> | Wages & entitlements   | \$5,408 |
| <b>34575</b> | Sham contracting       | \$3,835 |
| <b>34857</b> | Sham contracting       | \$1,341 |
| <b>35007</b> | Freedom of association | \$3,147 |
| <b>35059</b> | Wages & entitlements   | \$629   |
| <b>35096</b> | Right of entry         | \$0     |
| <b>35208</b> | Wages & entitlements   | \$1,395 |
| <b>35365</b> | Sham contracting       | \$2,038 |
| <b>35581</b> | Right of entry         | \$1,234 |
| <b>35620</b> | Sham contracting       | \$319   |
| <b>35624</b> | Sham contracting       | \$4,120 |
| <b>35932</b> | Wages & entitlements   | \$2,164 |
| <b>36142</b> | Sham contracting       | \$164   |
| <b>36342</b> | Wages & entitlements   | \$1,250 |
| <b>36461</b> | Sham contracting       | \$384   |
| <b>36487</b> | Sham contracting       | \$537   |
| <b>36553</b> | Sham contracting       | \$663   |

<sup>1</sup> The conduct of others may also have been considered in these matters.

| Ref   | Main allegation                       | Cost     |
|-------|---------------------------------------|----------|
| 36695 | Sham contracting                      | \$1,139  |
| 36803 | Wages & entitlements                  | \$1,589  |
| 36841 | Wages & entitlements                  | \$2,721  |
| 36939 | Wages & entitlements                  | \$569    |
| 37076 | Wages & entitlements                  | \$2,608  |
| 37104 | Right of entry                        | \$4,144  |
| 37158 | Wages & entitlements                  | \$18,057 |
| 37295 | Freedom of association                | \$4,423  |
| 37332 | Misrepresentation of workplace rights | \$700    |
| 37338 | Wages & entitlements                  | \$535    |
| 37576 | Coercion                              | \$3,102  |
| 37744 | Wages & entitlements                  | \$538    |
| 37758 | Coercion                              | \$971    |
| 37766 | Wages & entitlements                  | \$7,639  |
| 37908 | Wages & entitlements                  | \$525    |
| 38063 | Unlawful industrial action            | \$192    |
| 38069 | Unlawful industrial action            | \$134    |
| 38095 | Wages & entitlements                  | \$966    |
| 38135 | Unlawful industrial action            | \$2,764  |
| 38174 | Freedom of association                | \$4,088  |
| 38202 | Coercion                              | \$1,007  |
| 38359 | Wages & entitlements                  | \$1,377  |
| 38511 | Unlawful industrial action            | \$3,972  |
| 38689 | Unlawful industrial action            | \$3,238  |
| 39264 | Freedom of association                | \$207    |

In the reporting period, employers were a complainant in 94 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                        | 41                       |
| Unlawful industrial action            | 24                       |
| Coercion                              | 18                       |
| Sham contracting                      | 4                        |
| Wages & entitlements                  | 3                        |
| Freedom of association                | 2                        |
| Misrepresentation of workplace rights | 2                        |
| <b>Total</b>                          | <b>94</b>                |

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

| Ref   | Main allegation            | Cost     |
|-------|----------------------------|----------|
| 30463 | Right of entry             | \$3,524  |
| 31393 | Coercion                   | \$4,034  |
| 31749 | Coercion                   | \$13,977 |
| 32338 | Coercion                   | \$4,418  |
| 33474 | Coercion                   | \$6,451  |
| 33558 | Unlawful industrial action | \$4,244  |
| 33972 | Wages & entitlements       | \$97     |
| 34125 | Unlawful industrial action | \$4,156  |
| 34777 | Right of entry             | \$3,814  |
| 34857 | Sham contracting           | \$1,341  |

| Ref   | Main allegation                       | Cost     |
|-------|---------------------------------------|----------|
| 35027 | Coercion                              | \$2,500  |
| 35039 | Right of entry                        | \$5,059  |
| 35083 | Right of entry                        | \$3,812  |
| 35100 | Right of entry                        | \$3,585  |
| 35312 | Unlawful industrial action            | \$129    |
| 35320 | Unlawful industrial action            | \$6,088  |
| 35407 | Right of entry                        | \$2,353  |
| 35410 | Right of entry                        | \$900    |
| 35521 | Right of entry                        | \$4,878  |
| 35581 | Right of entry                        | \$1,234  |
| 35631 | Coercion                              | \$1,391  |
| 35718 | Right of entry                        | \$4,740  |
| 35736 | Right of entry                        | \$1,172  |
| 35913 | Right of entry                        | \$3,069  |
| 36037 | Unlawful industrial action            | \$15,520 |
| 36190 | Misrepresentation of workplace rights | \$1,824  |
| 36194 | Right of entry                        | \$931    |
| 36254 | Right of entry                        | \$7,843  |
| 36267 | Right of entry                        | \$3,569  |
| 36293 | Right of entry                        | \$1,563  |
| 36320 | Right of entry                        | \$5,954  |
| 36461 | Sham contracting                      | \$384    |
| 36478 | Coercion                              | \$3,223  |
| 36487 | Sham contracting                      | \$537    |
| 36553 | Sham contracting                      | \$663    |
| 36757 | Unlawful industrial action            | \$8,199  |
| 36779 | Right of entry                        | \$3,451  |

| Ref   | Main allegation                       | Cost     |
|-------|---------------------------------------|----------|
| 36803 | Wages & entitlements                  | \$1,589  |
| 37042 | Right of entry                        | \$2,840  |
| 37133 | Right of entry                        | \$4,493  |
| 37152 | Right of entry                        | \$673    |
| 37156 | Coercion                              | \$1,421  |
| 37158 | Wages & entitlements                  | \$18,057 |
| 37161 | Coercion                              | \$1,985  |
| 37197 | Coercion                              | \$774    |
| 37237 | Right of entry                        | \$5,194  |
| 37247 | Unlawful industrial action            | \$13,543 |
| 37286 | Unlawful industrial action            | \$283    |
| 37295 | Freedom of association                | \$4,423  |
| 37322 | Coercion                              | \$2,544  |
| 37332 | Misrepresentation of workplace rights | \$700    |
| 37346 | Right of entry                        | \$115    |
| 37395 | Right of entry                        | \$6,318  |
| 37422 | Right of entry                        | \$1,399  |
| 37461 | Right of entry                        | \$15,050 |
| 37488 | Right of entry                        | \$310    |
| 37635 | Coercion                              | \$0      |
| 37758 | Coercion                              | \$971    |
| 37762 | Right of entry                        | \$692    |
| 37804 | Right of entry                        | \$1,764  |
| 37868 | Right of entry                        | \$2,127  |
| 38016 | Unlawful industrial action            | \$20,226 |
| 38039 | Unlawful industrial action            | \$830    |
| 38063 | Unlawful industrial action            | \$192    |



| Ref   | Main allegation            | Cost     |
|-------|----------------------------|----------|
| 38064 | Unlawful industrial action | \$157    |
| 38066 | Freedom of association     | \$1,558  |
| 38069 | Unlawful industrial action | \$134    |
| 38075 | Unlawful industrial action | \$493    |
| 38108 | Coercion                   | \$12,404 |
| 38135 | Unlawful industrial action | \$2,764  |
| 38137 | Unlawful industrial action | \$9,823  |
| 38148 | Right of entry             | \$5,971  |
| 38181 | Right of entry             | \$2,742  |
| 38202 | Coercion                   | \$1,007  |
| 38261 | Unlawful industrial action | \$8,848  |
| 38271 | Right of entry             | \$205    |
| 38299 | Right of entry             | \$2,090  |
| 38371 | Right of entry             | \$3,228  |
| 38502 | Right of entry             | \$2,386  |
| 38511 | Unlawful industrial action | \$3,972  |
| 38564 | Unlawful industrial action | \$2,675  |
| 38584 | Coercion                   | \$1,058  |
| 38589 | Coercion                   | \$3,514  |
| 38627 | Unlawful industrial action | \$3,442  |
| 38779 | Right of entry             | \$5,853  |
| 38780 | Right of entry             | \$2,228  |
| 38812 | Right of entry             | \$5,260  |
| 38917 | Unlawful industrial action | \$0      |
| 38930 | Unlawful industrial action | \$1,017  |
| 38932 | Unlawful industrial action | \$3,735  |
| 38962 | Right of entry             | \$3,732  |

| Ref   | Main allegation            | Cost    |
|-------|----------------------------|---------|
| 38986 | Right of entry             | \$3,303 |
| 39104 | Unlawful industrial action | \$2,604 |
| 39260 | Coercion                   | \$338   |

## e) Proceedings commenced

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

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

| Case number  | Case name  | Building association | Building association representative | Nominal internal legal costs |
|--------------|--|----------------------|-------------------------------------|------------------------------|
| BRG1307/2018 | <i>Australian Building and Construction Commissioner v Roland Cummins &amp; Anor (Cairns Performing Arts Centre Case)</i>  | 1                    | 1                                   | \$3,814.23                   |
| QUD785/2018  | <i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors (Toowoomba Second Range Crossing)</i> | 1                    | 8                                   | \$5,837.00                   |

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

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

| Case number  | Case name  | Nominal internal legal costs |
|--------------|--|------------------------------|
| NSD2247/2018 | <i>Construction, Forestry, Mining and Energy Union &amp; Ors v Australian Building and Construction Commissioner</i> | \$286.56                     |

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

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

| Case number | Type of proceedings         | Name         | Nominal internal legal costs |
|-------------|-----------------------------|--------------|------------------------------|
| RE2018/1075 | Application to permit entry | Peter D'Arcy | \$1,711.81                   |

## f) Number and cost of proceedings finalised

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

**Table F1: Proceedings finalised and legal costs**

| Case number | Case name   | External legal costs | Nominal internal legal costs |
|-------------|---|----------------------|------------------------------|
| NSD361/2016 | <i>Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (The BKH Contractors Case) (No 2) [2018] FCA 1563</i>                            | \$826,793.86         | \$23,075.96                  |
| VID195/2016 | <i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (No 2) (Springvale Level Crossing Removal Project) [2018] FCA 1968</i> | \$231,811.15         | \$18,742.12                  |
| SAD316/2017 | <i>Australian Building and Construction Commissioner v Gava [2018] FCA 1480</i>   | \$97,728.02          | \$26,153.74                  |

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

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

| Case number | Case name  | External legal costs | Nominal internal legal costs |
|-------------|--|----------------------|------------------------------|
| WAD26/2014  | <i>Australian Building and Construction Commissioner v Scott Adams &amp; Ors [2018] FCA 1520</i>   | \$364,347.45         | \$0.00                       |
| NSD460/2018 | <i>Pomare Auimatagi &amp; Anor v Australian Building and Construction Commissioner [2018] FCAFC 191</i>  | \$77,171.01          | \$19,511.67                  |
| B44/2018    | <i>Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner &amp; Anor [2018] HCASL 380</i> | \$31,946.80          | \$15,412.71                  |

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

**Table F3: Fair Work Commission proceedings in which the ABCC finalised its involvement and legal costs**

| <b>Case number</b> | <b>Type of proceedings</b>              | <b>Name</b>     | <b>External legal costs</b> | <b>Nominal internal legal costs</b> |
|--------------------|---|-----------------|-----------------------------|-------------------------------------|
| RE2018/1075        | Application for entry permit            | Peter D'Arcy    | \$0.00                      | \$1,712.81                          |
| RO2018/4579        | Application to revoke or suspend permit | Richard Hassett | \$0.00                      | \$4,663.57                          |

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## g) Legal expenses incurred as a result of enforcement action

In the reporting period, the ABCC incurred \$582,267.71 in external legal expenses as a result of enforcement action undertaken in 46 matters by the ABCC.

This figure has been calculated by reference to invoices received by the ABCC by 31 January 2019 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 January 2019 have not been included in the reported figure above.

## h) Details of industry conditions

In the reporting period, the ABCC received 85 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                        | 24        |
| Wages & entitlements                  | 18        |
| Unlawful industrial action            | 16        |
| Coercion                              | 13        |
| Freedom of association                | 7         |
| Misrepresentation of workplace rights | 3         |
| Security of payment                   | 3         |
| Strike pay                            | 1         |
| <b>Total</b>                          | <b>85</b> |

## 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.<sup>2</sup>

## j) Examination notices issued

Three examination notices were issued in this reporting period.

**Table J: Examinations notices issued**

| Main allegation            | Number issued |
|----------------------------|---------------|
| Coercion                   | 2             |
| Unlawful industrial action | 1             |
| <b>Total</b>               | <b>3</b>      |

<sup>2</sup> In Q1 2018/2019 one instance of non-compliance with section 26(8) was reported. This has since been reassessed as compliant.

## 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.



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