



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 2019 – 20  
Operations from 1 April – 30 June inclusive

# Q4

# 2019–20

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This document must be attributed as the ABCC Quarterly Report, fourth quarter of 2019-20.

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# Letter of transmittal



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



1 September 2020

The Hon Christian Porter MP  
Attorney-General  
Minister for Industrial Relations  
Parliament House  
Canberra ACT 2600

Dear Attorney-General

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 2019-20 (1 April – 30 June 2020).

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 fourth quarter of the 2019-20 financial year, 1 April to 30 June 2020 (the reporting period).

## 2. Methodology

The internal costs allocated to investigations and court proceedings in this report are derived from a tailored activity-based costing module within the ABCC's case management system 'inCase'.

External legal costs are obtained from the ABCC's financial management system and have been calculated using standard accrual accounting practices. This is a change in methodology from reports tabled in 2018-19 which were calculated based on the period for which the services were provided.





# 3. Performance of functions and exercise of powers

## a) Matters investigated

In the reporting period, the ABCC had 112 open investigations. **Table A1** shows the breakdown of open investigations by the main allegation being investigated. **Table A2** shows the approximate internal cost of each investigation.

**Table A1: Investigations open during the reporting period**

Main allegation	Number of investigations
Wages and entitlements	34
Right of entry	33
Freedom of association	14
Coercion	13
Unlawful industrial action	10
Sham contracting	4
Unlawful picketing	3
Misrepresentation of workplace rights	1
<b>Total</b>	<b>112</b>

**Table A2: Approximate internal cost of open investigations**

Ref	Main allegation	Cost
35007	Freedom of association	\$577
35100	Right of entry	\$5,571
35913	Right of entry	\$2,584
36032	Coercion	\$911
36342	Wages and entitlements	\$2,892
37623	Unlawful picketing	\$1,037
39131	Wages and entitlements	\$9,059
40125	Right of entry	\$1,110
40496	Sham contracting	\$1,792
41097	Wages and entitlements	\$2,595
41235	Freedom of association	\$3,833
41436	Wages and entitlements	\$9,425
41591	Right of entry	\$8,549
41656	Right of entry	\$6,573
41671	Right of entry	\$89
42010	Wages and entitlements	\$1,203
42660	Unlawful industrial action	\$3,533
42701	Right of entry	\$143
42980	Wages and entitlements	\$11,555
43250	Right of entry	\$1,746
43463	Freedom of association	\$3,476
43607	Coercion	\$13,846

Ref	Main allegation	Cost
43608	Sham contracting	\$291
43637	Sham contracting	\$807
43856	Wages and entitlements	\$1,471
44024	Unlawful picketing	\$5,146
44137	Right of entry	\$544
44460	Coercion	\$1,960
44606	Wages and entitlements	\$229
44731	Unlawful industrial action	\$3,452
44815	Sham contracting	\$775
44819	Freedom of association	\$8,044
44828	Right of entry	\$7,447
44890	Right of entry	\$1,690
45132	Wages and entitlements	\$49
45134	Wages and entitlements	\$546
45224	Wages and entitlements	\$1,591
45240	Wages and entitlements	\$692
45301	Unlawful industrial action	\$3,328
45338	Unlawful industrial action	\$5,863
45565	Right of entry	\$3,350
45656	Freedom of association	\$550
45668	Wages and entitlements	\$1,615
45681	Wages and entitlements	\$3,327
45820	Freedom of association	\$2,469
45851	Right of entry	\$8,073
45935	Freedom of association	\$1,263
45991	Wages and entitlements	\$2,560
45992	Wages and entitlements	\$1,273
45998	Wages and entitlements	\$1,278

Ref	Main allegation	Cost
46039	Freedom of association	\$734
46047	Wages and entitlements	\$2,963
46052	Unlawful industrial action	\$787
46056	Freedom of association	\$800
46068	Coercion	\$13,452
46104	Unlawful industrial action	\$2,310
46145	Wages and entitlements	\$508
46165	Right of entry	\$3,469
46205	Coercion	\$5,114
46207	Unlawful picketing	\$6,659
46278	Misrepresentation of workplace rights	\$3,225
46282	Wages and entitlements	\$2,231
46283	Wages and entitlements	\$489
46290	Right of entry	\$447
46357	Wages and entitlements	\$1,259
46452	Wages and entitlements	\$766
46509	Wages and entitlements	\$509
46510	Wages and entitlements	\$722
46533	Right of entry	\$3,201
46606	Right of entry	\$1,627
46636	Wages and entitlements	\$1,367
46656	Coercion	\$8,648
46672	Right of entry	\$5,272
46730	Unlawful industrial action	\$9,399
46778	Right of entry	\$1,591
46786	Unlawful industrial action	\$4,898
46788	Coercion	\$3,589

Ref	Main allegation	Cost
46797	Right of entry	\$6,785
46799	Right of entry	\$9,074
46817	Wages and entitlements	\$2,290
46820	Freedom of association	\$2,694
46835	Right of entry	\$2,391
46858	Right of entry	\$3,781
46861	Right of entry	\$14,239
46879	Wages and entitlements	\$2,317
46891	Right of entry	\$2,871
46922	Freedom of association	\$9,767
46935	Right of entry	\$3,649
47059	Wages and entitlements	\$1,988
47183	Coercion	\$12,457
47185	Unlawful industrial action	\$4,585
47230	Freedom of association	\$3,346
47243	Right of entry	\$6,648
47252	Right of entry	\$8,541
47312	Right of entry	\$7,139
47421	Wages and entitlements	\$475
47449	Wages and entitlements	\$703
47526	Coercion	\$1,874
47549	Coercion	\$2,518
47550	Right of entry	\$2,604
47579	Right of entry	\$2,517
47584	Wages and entitlements	\$1,276
47621	Coercion	\$1,019
47624	Freedom of association	\$1,454
47767	Right of entry	\$738

Ref	Main allegation	Cost
47794	Coercion	\$1,351
47810	Unlawful industrial action	\$2,500
47827	Coercion	\$192
47849	Wages and entitlements	\$534
47891	Wages and entitlements	\$170
47950	Freedom of association	\$1,615
48065	Right of entry	\$797

## b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,356 enquiries.

**Table B** shows a breakdown of enquiries by main topic and the enquirer category.

**Table B: Details of assistance and advice provided to building industry participants in response to enquiries**

Main topic	Building industry participant	Member of the public	Government	Law enforcement	Total
<b>Code</b>	<b>569</b>	<b>26</b>	<b>40</b>	<b>1</b>	<b>636</b>
Code assessment	225	5	2	0	232
General code information	137	9	20	0	166
Code advice	121	8	18	1	148
Security of payments	78	3	0	0	81
Notice of code breach	3	0	0	0	3
s.6A general advice / application	2	1	0	0	3
s.6B general advice / application	3	0	0	0	3
<b>Workplace laws - building work</b>	<b>221</b>	<b>25</b>	<b>12</b>	<b>1</b>	<b>259</b>
Wages and entitlements	84	6	2	0	92
Right of entry	79	5	6	0	90
Freedom of association	20	9	0	0	29
Coercion	19	4	1	1	25
Unlawful industrial action	14	0	2	0	16
Sham contracting	4	0	0	0	4
Misrepresentation of workplace rights	0	1	1	0	2
Strike pay	1	0	0	0	1
<b>Other laws</b>	<b>54</b>	<b>221</b>	<b>2</b>	<b>0</b>	<b>277</b>
<b>Agency information and activities</b>	<b>46</b>	<b>30</b>	<b>12</b>	<b>1</b>	<b>89</b>
<b>Not relevant to the building industry</b>	<b>9</b>	<b>55</b>	<b>0</b>	<b>0</b>	<b>64</b>
<b>Workplace laws – non building work</b>	<b>13</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>31</b>
<b>Total</b>	<b>912</b>	<b>375</b>	<b>66</b>	<b>3</b>	<b>1,356</b>

## c) Building Code compliance

In the reporting period, the ABCC finalised 44 audits and 18 inspections to monitor compliance with the *Code for the Tendering and Performance of Building Work 2016* (Building Code 2016) and the *Building Code 2013*. **Table C1** shows the outcome of 1 building code audits finalised. **Table C2** shows the outcome of building code inspections finalised.

Potential issues were identified in 30 building code audits.

An additional 60 building code audits were commenced but not finalised.

**Table C1: Outcome of audits**

Outcome of audit	Total
No issues	14
Potential issues	30
<b>Total</b>	<b>44</b>

**Table C2: Outcome of inspections**

Outcome of inspection	Total
No issues	4
Potential issues	14
<b>Total</b>	<b>18</b>

## d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 54 matters.<sup>1</sup>

**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	34
Freedom of association	7
Sham contracting	4
Right of entry	3
Coercion	2
Unlawful industrial action	2
Misrepresentation of workplace rights	1
Unlawful picketing	1
<b>Total</b>	<b>54</b>

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

Ref	Main allegation	Cost
35007	Freedom of association	\$577
36342	Wages and entitlements	\$2,892
39131	Wages and entitlements	\$9,059
40496	Sham contracting	\$1,792
41097	Wages and entitlements	\$2,595
41235	Freedom of association	\$3,833
41436	Wages and entitlements	\$9,425
42010	Wages and entitlements	\$1,203
42980	Wages and entitlements	\$11,555
43463	Freedom of association	\$3,476
43607	Coercion	\$13,846
43608	Sham contracting	\$291
43637	Sham contracting	\$807
43856	Wages and entitlements	\$1,471
44024	Unlawful picketing	\$5,146
44606	Wages and entitlements	\$229
44815	Sham contracting	\$775
45132	Wages and entitlements	\$49
45134	Wages and entitlements	\$546
45224	Wages and entitlements	\$1,591
45240	Wages and entitlements	\$692
45656	Freedom of association	\$550
45668	Wages and entitlements	\$1,615
45681	Wages and entitlements	\$3,327

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

Ref	Main allegation	Cost
45820	Freedom of association	\$2,469
45991	Wages and entitlements	\$2,560
45992	Wages and entitlements	\$1,273
45998	Wages and entitlements	\$1,278
46039	Freedom of association	\$734
46047	Wages and entitlements	\$2,963
46104	Unlawful industrial action	\$2,310
46145	Wages and entitlements	\$508
46278	Misrepresentation of workplace rights	\$3,225
46282	Wages and entitlements	\$2,231
46283	Wages and entitlements	\$489
46357	Wages and entitlements	\$1,259
46452	Wages and entitlements	\$766
46509	Wages and entitlements	\$509
46510	Wages and entitlements	\$722
46636	Wages and entitlements	\$1,367
46730	Unlawful industrial action	\$9,399
46817	Wages and entitlements	\$2,290
46835	Right of entry	\$2,391
46879	Wages and entitlements	\$2,317
46922	Freedom of association	\$9,767
46935	Right of entry	\$3,649
47059	Wages and entitlements	\$1,988
47421	Wages and entitlements	\$475
47449	Wages and entitlements	\$703
47526	Coercion	\$1,874
47584	Wages and entitlements	\$1,276

Ref	Main allegation	Cost
47849	Wages and entitlements	\$534
47891	Wages and entitlements	\$170
48065	Right of entry	\$797

Employers were a complainant in 60 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	26
Unlawful industrial action	9
Coercion	9
Freedom of association	8
Wages and entitlements	4
Unlawful picketing	2
Misrepresentation of workplace rights	1
Sham contracting	1
<b>Total</b>	<b>60</b>



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

Ref	Main allegation	Cost
35100	Right of entry	\$5,571
35913	Right of entry	\$2,584
40125	Right of entry	\$1,110
41235	Freedom of association	\$3,833
41591	Right of entry	\$8,549
41671	Right of entry	\$89
42660	Unlawful industrial action	\$3,533
42701	Right of entry	\$143
43250	Right of entry	\$1,746
43463	Freedom of association	\$3,476
43607	Coercion	\$13,846
43637	Sham contracting	\$807
44024	Unlawful picketing	\$5,146
44137	Right of entry	\$544
44460	Coercion	\$1,960
44606	Wages and entitlements	\$229
44819	Freedom of association	\$8,044
44828	Right of entry	\$7,447
44890	Right of entry	\$1,690
45240	Wages and entitlements	\$692
45301	Unlawful industrial action	\$3,328
45338	Unlawful industrial action	\$5,863
45565	Right of entry	\$3,350
45656	Freedom of association	\$550
45851	Right of entry	\$8,073
45935	Freedom of association	\$1,263

Ref	Main allegation	Cost
46052	Unlawful industrial action	\$787
46056	Freedom of association	\$800
46068	Coercion	\$13,452
46104	Unlawful industrial action	\$2,310
46165	Right of entry	\$3,469
46207	Unlawful picketing	\$6,659
46278	Misrepresentation of workplace rights	\$3,225
46290	Right of entry	\$447
46357	Wages and entitlements	\$1,259
46533	Right of entry	\$3,201
46656	Coercion	\$8,648
46730	Unlawful industrial action	\$9,399
46786	Unlawful industrial action	\$4,898
46788	Coercion	\$3,589
46797	Right of entry	\$6,785
46835	Right of entry	\$2,391
46858	Right of entry	\$3,781
46861	Right of entry	\$14,239
46891	Right of entry	\$2,871
46922	Freedom of association	\$9,767
47183	Coercion	\$12,457
47185	Unlawful industrial action	\$4,585
47243	Right of entry	\$6,648
47252	Right of entry	\$8,541
47312	Right of entry	\$7,139
47449	Wages and entitlements	\$703
47550	Right of entry	\$2,604

<b>Ref</b>	<b>Main allegation</b>	<b>Cost</b>
47579	Right of entry	\$2,517
47621	Coercion	\$1,019
47767	Right of entry	\$738
47794	Coercion	\$1,351

<b>Ref</b>	<b>Main allegation</b>	<b>Cost</b>
47810	Unlawful industrial action	\$2,500
47827	Coercion	\$192
47950	Freedom of association	\$1,615

## e) Proceedings commenced

In the reporting period, the ABCC commenced six court proceedings. **Table E1** lists these court proceedings, category of respondent and approximate internal legal cost.

**Table E1: Proceedings commenced by category of respondent and approximate internal legal cost**

Case number	Case name	Trade union	Trade union representative	Internal legal cost
BRG344/2020	<i>Australian Building and Construction Commissioner v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia &amp; Anor (The Hedge Project)</i>	1	1	\$2,584
SAD60/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors (Adelaide Airport Terminal)</i>	1	9	\$8,549
BRG365/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors (Boggo Road Site)</i>	1	3	\$14,239
TAD15/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors (Elizabeth Street)</i>	1	2	\$6,573
QUD194/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors (Logan Enhancement Project)</i>	1	6	\$5,571
SYG1018/2020	<i>Australian Building and Construction Commissioner v Simon Gutierrez &amp; Ors (WestConnex (New M5))</i>	1	2	\$1,110

The ABCC did not file any appeals.

One appeal was filed against the ABCC. **Table E2** shows the internal legal cost for this proceeding.

**Table E2: Appeal filed against the ABCC and internal legal cost**

Case number	Case name	Jurisdiction	Internal legal cost
VID431/2020	<i>Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors v Australian Building and Construction Commissioner (College Crescent Case)</i>	Full Court of the Federal Court	\$335

The ABCC did not intervene in any court proceedings.

The ABCC did not intervene in any proceedings in the Fair Work Commission.

## f) Number and cost of proceedings finalised

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

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

Case number	Case name	External legal cost	Internal legal cost
NSD474/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors</i> [2020] FCA 549 (Mezzo Stage 2)	\$195,201	\$31,507
VID881/2017	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors (College Crescent Case)</i> [2020] FCA 757	\$183,063	\$27,176
TAD17/2019	<i>Australian Building and Construction Commissioner v Richard Hassett &amp; Anor</i> [2020] FCA 498 (Castle Hill Wind Farm)	\$20,317	\$20,112
MLG3942/2019	<i>Australian Building and Construction Commissioner v SWAT Building Systems Pty Ltd (In Liq) &amp; Anor</i> [2020] FCCA 1360	\$136,958	\$34,321

The following two court appeal decisions were delivered in the reporting period that relate to previously finalised matters. **Table F2** shows the total external and internal legal costs for these appellate proceedings.

**Table F2: Legal costs for finalised appellate proceedings**

Case number	Case name	External legal cost	Internal legal cost
WAD383/2019	<i>Australian Building and Construction Commissioner v Walter Molina &amp; Anor</i> [2020] FCAFC 97 (Perth Stadium)	\$73,371	\$6,700
NSD2247/2018	<i>Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors v Australian Building and Construction Commissioner (The BKH Contractors Appeal)</i> [2020] FCAFC 9	\$24,103	\$2,343

In the reporting period, the ABCC finalised its involvement in two proceedings in the Fair Work Commission. **Table F3** shows the total external and internal legal costs for each proceeding.

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

Case number	Type of proceeding	Name	External legal cost	Internal legal cost
RE2018/1439	Application to revoke or suspend entry permit	Kenneth Miller	\$0	\$149
C2020/461	Appeal of decision to revoke or suspend entry permit	Blake Hynes	\$6,625	\$0

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

In the reporting period, the ABCC incurred \$1,688,490 in external legal expenses as a result of enforcement action undertaken in 60 matters.

This figure has been calculated using standard accrual accounting practices. This is a change in methodology from reports tabled in 2018-19.

## h) Details of industry conditions

In the reporting period, the ABCC received 77 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	24
Security of payment	18
Coercion	12
Freedom of association	8
Unlawful industrial action	7
Wages and entitlements	6
Sham contracting	2
<b>Total</b>	<b>77</b>

## i) Compliance of products used in building work

Section 26(8) of the Building Code 2016 requires funding entities to only enter into contracts for building work that require the use of products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.

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 clauses have been included in contracts.

No instances of non-compliance with section 26(8) by funding entities were identified by the ABCC during the reporting period.

## j) Examination notices issued

Eight examination notices were issued in the reporting period. Table J shows the main allegation for each examination notice.

**Table J: Examination notice issued**

Main allegation	Total
Coercion	1
Right of entry	2
Unlawful industrial action	5
<b>Total</b>	<b>8</b>

## 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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