



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

First quarter of 2020 – 21
Operations from 1 July – 30 September inclusive

Q1

2020–21

COMMENTS AND ENQUIRIES

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This document must be attributed as the ABCC Quarterly Report, first quarter of 2020-21.

Contents

Letter of transmittal	4
1. Introduction	6
2. Methodology	7
3. Performance of functions and exercise of powers	8
a) Matters investigated	8
b) Assistance and advice	11
c) Building Code compliance	13
d) Matters investigated in relation to building employers	14
e) Proceedings commenced	17
f) Number and cost of proceedings finalised	18
g) Legal expenses incurred as a result of enforcement action	20
h) Details of industry conditions	20
i) Compliance of products used in building work	20
j) Examination notices issued	20
4. Additional reporting	21
a) Directions given by the Minister	21
b) Delegations made by the Australian Building and Construction Commissioner	21

Letter of transmittal



Australian Government
**Australian Building and
Construction Commission**



10 November 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 first quarter of 2020-21 (1 July – 30 September 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'.

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 first quarter of the 2020-21 financial year, 1 July to 30 September 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.

3. Performance of functions and exercise of powers

a) Matters investigated

In the reporting period, the ABCC had 104 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	39
Right of entry	23
Coercion	17
Freedom of association	10
Unlawful industrial action	8
Sham contracting	4
Unlawful picketing	2
Non-compliance with notices	1
Total	104

Table A2: Approximate internal cost of open investigations

Ref	Main allegation	Cost
35007	Freedom of association	\$680
36032	Coercion	\$430
36342	Wages and entitlements	\$107
39131	Wages and entitlements	\$4,593
40496	Sham contracting	\$2,627
41097	Wages and entitlements	\$2,110
41235	Freedom of association	\$1,801
41436	Wages and entitlements	\$4,172
42660	Unlawful industrial action	\$8,121
42980	Wages and entitlements	\$23,763
43250	Right of entry	\$4,379
43463	Freedom of association	\$6,674
43607	Coercion	\$22,052
43637	Sham contracting	\$563
44024	Unlawful picketing	\$6,850
44731	Unlawful industrial action	\$12,051
44819	Freedom of association	\$117
44828	Right of entry	\$3,994
44890	Right of entry	\$3,645
45132	Wages and entitlements	\$824
45224	Wages and entitlements	\$1,525
45240	Wages and entitlements	\$739

Ref	Main allegation	Cost
45301	Unlawful industrial action	\$7,136
45338	Unlawful industrial action	\$7,387
45565	Right of entry	\$3,348
45668	Wages and entitlements	\$1,198
45681	Wages and entitlements	\$1,653
45851	Right of entry	\$5,431
45991	Wages and entitlements	\$978
45992	Wages and entitlements	\$1,168
45998	Wages and entitlements	\$771
46047	Wages and entitlements	\$63
46068	Coercion	\$5,912
46145	Wages and entitlements	\$484
46207	Unlawful picketing	\$1,542
46282	Wages and entitlements	\$655
46283	Wages and entitlements	\$756
46357	Wages and entitlements	\$55
46452	Wages and entitlements	\$1,094
46509	Wages and entitlements	\$1,386
46510	Wages and entitlements	\$1,383
46636	Wages and entitlements	\$590
46656	Coercion	\$9,716
46672	Right of entry	\$1,183
46786	Unlawful industrial action	\$1,328
46797	Right of entry	\$8,701
46799	Right of entry	\$2,536
46817	Wages and entitlements	\$2,810
46835	Right of entry	\$769
46858	Right of entry	\$6,641

Ref	Main allegation	Cost
46879	Wages and entitlements	\$834
46891	Right of entry	\$372
46922	Freedom of association	\$4,301
46935	Right of entry	\$1,042
47059	Wages and entitlements	\$729
47183	Coercion	\$5,829
47230	Freedom of association	\$1,037
47243	Right of entry	\$10,690
47252	Right of entry	\$8,532
47312	Right of entry	\$280
47421	Wages and entitlements	\$2,194
47449	Wages and entitlements	\$470
47526	Coercion	\$2,954
47549	Coercion	\$11,666
47550	Right of entry	\$4,752
47579	Right of entry	\$9,401
47584	Wages and entitlements	\$3,052
47621	Coercion	\$4,623
47624	Freedom of association	\$1,796
47767	Right of entry	\$360
47794	Coercion	\$1,894
47810	Unlawful industrial action	\$5,590
47827	Coercion	\$7,968
47849	Wages and entitlements	\$4,530
47891	Wages and entitlements	\$307
47946	Right of entry	\$5,637
47950	Freedom of association	\$6,894
47994	Unlawful industrial action	\$6,338

Ref	Main allegation	Cost
48002	Coercion	\$1,711
48033	Wages and entitlements	\$1,178
48041	Right of entry	\$1,132
48050	Coercion	\$4,078
48065	Right of entry	\$14,136
48159	Freedom of association	\$10,997
48194	Sham contracting	\$591
48224	Coercion	\$6,064
48275	Coercion	\$11,232
48334	Wages and entitlements	\$1,161
48465	Wages and entitlements	\$3,937
48475	Unlawful industrial action	\$6,712
48520	Wages and entitlements	\$1,447
48672	Wages and entitlements	\$669
48691	Wages and entitlements	\$2,926
48814	Coercion	\$2,054
48835	Wages and entitlements	\$3,714
49021	Right of entry	\$3,803
49067	Sham contracting	\$855
49191	Coercion	\$1,353
49204	Coercion	\$4,884
49271	Right of entry	\$1,917
49318	Wages and entitlements	\$793
49387	Freedom of association	\$1,571
49624	Wages and entitlements	\$754
49686	Non-compliance with notices	\$2,062

b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,526 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
Code	631	42	28	0	701
Code assessment	255	8	4	0	267
General code information	169	13	9	0	191
Code advice	97	14	14	0	125
Security of payment	90	5	0	0	95
Notice of code breach	8	0	0	0	8
S.6B application	5	0	0	0	5
S.6B general advice	3	1	0	0	4
S.6A application	1	0	0	0	1
S.6A general advice	1	1	0	0	2
State code information	1	0	1	0	2
Department of Employment	1	0	0	0	1
Workplace laws - building work	265	22	15	0	302
Wages and entitlements	128	10	2	0	140
Right of entry	64	2	9	0	75
Coercion	26	3	2	0	31
Unlawful industrial action	23	1	0	0	24
Freedom of association	12	3	0	0	15
Sham contracting	7	3	1	0	11
Misrepresentation of workplace rights	3	0	0	0	3
Unlawful picketing	2	0	0	0	2
Non-compliance with notices	0	0	1	0	1
Other laws	59	257	3	0	319

Main topic	Building industry participant	Member Of the public	Government	Law enforcement	Total
Agency information and activities	45	30	8	1	84
Not relevant to the building industry	8	64	0	0	72
Workplace laws – non building work	27	21	0	0	48
Total	1,035	436	54	1	1,526

c) Building Code compliance

In the reporting period, the ABCC finalised 38 audits and 12 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 16 building code audits.

An additional 50 building code audits were commenced but not finalised.

Table C1: Outcome of audits

Outcome of audit	Total
No issues	22
Potential issues	16
Total	38

Table C2: Outcome of inspections

Outcome of inspection	Total
No issues	4
Potential issues	8
Total	12

d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 56 matters.¹

Table D1 shows the breakdown of these investigations by the main allegation being investigated. **Table D2** shows the approximate internal cost of each of these investigations.

Table D1: Investigations where employers were a subject of the investigation

Main allegation	Number of Investigations
Wages and entitlements	39
Freedom of association	5
Sham contracting	4
Right of entry	4
Coercion	2
Non-compliance with notices	1
Unlawful picketing	1
Total	56

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

Ref	Main allegation	Cost
35007	Freedom of association	\$680
36342	Wages and entitlements	\$107
39131	Wages and entitlements	\$4,593
40496	Sham contracting	\$2,627
41097	Wages and entitlements	\$2,110
41235	Freedom of association	\$1,801
41436	Wages and entitlements	\$4,172
42980	Wages and entitlements	\$23,763
43463	Freedom of association	\$6,674
43607	Coercion	\$22,052
43637	Sham contracting	\$563
44024	Unlawful picketing	\$6,850
45132	Wages and entitlements	\$824
45224	Wages and entitlements	\$1,525
45240	Wages and entitlements	\$739
45668	Wages and entitlements	\$1,198
45681	Wages and entitlements	\$1,653
45991	Wages and entitlements	\$978
45992	Wages and entitlements	\$1,168
45998	Wages and entitlements	\$771
46047	Wages and entitlements	\$63
46145	Wages and entitlements	\$484
46282	Wages and entitlements	\$655
46283	Wages and entitlements	\$756

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

Ref	Main allegation	Cost
46357	Wages and entitlements	\$55
46452	Wages and entitlements	\$1,094
46509	Wages and entitlements	\$1,386
46510	Wages and entitlements	\$1,383
46636	Wages and entitlements	\$590
46817	Wages and entitlements	\$2,810
46835	Right of entry	\$769
46879	Wages and entitlements	\$834
46922	Freedom of association	\$4,301
46935	Right of entry	\$1,042
47059	Wages and entitlements	\$729
47421	Wages and entitlements	\$2,194
47449	Wages and entitlements	\$470
47526	Coercion	\$2,954
47584	Wages and entitlements	\$3,052
47849	Wages and entitlements	\$4,530
47891	Wages and entitlements	\$307
47946	Right of entry	\$5,637
48033	Wages and entitlements	\$1,178
48065	Right of entry	\$14,136
48159	Freedom of association	\$10,997
48194	Sham contracting	\$591
48334	Wages and entitlements	\$1,161
48465	Wages and entitlements	\$3,937
48520	Wages and entitlements	\$1,447
48672	Wages and entitlements	\$669
48691	Wages and entitlements	\$2,926
48835	Wages and entitlements	\$3,714

Ref	Main allegation	Cost
49067	Sham contracting	\$855
49318	Wages and entitlements	\$793
49624	Wages and entitlements	\$754
49686	Non-compliance with notices	\$2,062

Employers were a complainant in 50 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	17
Coercion	13
Unlawful industrial action	7
Freedom of association	7
Wages and entitlements	3
Unlawful picketing	2
Sham contracting	1
Total	50

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

Ref	Main allegation	Cost
41235	Freedom of association	\$1,801
42660	Unlawful industrial action	\$8,121
43250	Right of entry	\$4,379
43463	Freedom of association	\$6,674
43607	Coercion	\$22,052
43637	Sham contracting	\$563
44024	Unlawful picketing	\$6,850
44819	Freedom of association	\$117
44828	Right of entry	\$3,994
44890	Right of entry	\$3,645
45240	Wages and entitlements	\$739
45301	Unlawful industrial action	\$7,136
45338	Unlawful industrial action	\$7,387
45565	Right of entry	\$3,348
45851	Right of entry	\$5,431
46068	Coercion	\$5,912
46207	Unlawful picketing	\$1,542
46357	Wages and entitlements	\$55
46656	Coercion	\$9,716
46786	Unlawful industrial action	\$1,328
46797	Right of entry	\$8,701
46835	Right of entry	\$769
46858	Right of entry	\$6,641
46891	Right of entry	\$372
46922	Freedom of association	\$4,301
47183	Coercion	\$5,829

Ref	Main allegation	Cost
47243	Right of entry	\$10,690
47252	Right of entry	\$8,532
47312	Right of entry	\$280
47449	Wages and entitlements	\$470
47550	Right of entry	\$4,752
47579	Right of entry	\$9,401
47621	Coercion	\$4,623
47767	Right of entry	\$360
47794	Coercion	\$1,894
47810	Unlawful industrial action	\$5,590
47827	Coercion	\$7,968
47950	Freedom of association	\$6,894
47994	Unlawful industrial action	\$6,338
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48159	Freedom of association	\$10,997
48275	Coercion	\$11,232
48475	Unlawful industrial action	\$6,712
48814	Coercion	\$2,054
49021	Right of entry	\$3,803
49191	Coercion	\$1,353
49204	Coercion	\$4,884
49387	Freedom of association	\$1,571

e) Proceedings commenced

In the reporting period, the ABCC commenced nine 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	Employee	Employer		Trade union	Trade union representative	Internal legal cost
			Organisation	Person			
VID494/2020	<i>Australian Building and Construction Commissioner v Parker & Ors (Melbourne Metro Rail Tunnel)</i>	12			1		\$8,121
QUD235/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (Inner City South State Secondary College)</i>				1	2	\$6,712
WAD197/2020	<i>Australian Building and Construction Commissioner v Parker & Anor (Next DC)</i>				1	1	\$3,645
SYG2015/2020	<i>Australian Building and Construction Commissioner v Rielly & Ors (Woolgoolga to Ballina Pacific Highway upgrade project (W2B))</i>				1	2	\$4,379
VID601/2020	<i>Australian Building and Construction Commissioner v Consolidated Power Projects Australia Pty Ltd & Ors (Springvale Terminal Station Project)</i>		1	4			\$6,674
CAG41/2020	<i>Australian Building and Construction Commissioner v N-Cap Pty Ltd (N-Cap)</i>		1				\$3,070
SYG2121/2020	<i>Australian Building and Construction Commissioner v Open Tiling Services Pty Ltd & Anor (Open Tiling)</i>		1	1			\$24,108

Case number	Case name	Employee	Employer		Trade union	Trade union representative	Internal legal cost
			Organisation	Person			
VID625/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (West Gate Tunnel Case)</i>				1	2	\$3,994
SAD136/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (250 East Terrace Apartments)</i>		1	2	1	4	\$6,850

The ABCC filed an appeal in one proceeding. **Table E2** shows the internal legal cost for this proceeding.

Table E2: ABCC appeal filed and internal legal cost

Case number	Case name	Jurisdiction	Internal legal cost
ACD43/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (Constitution Place Appeal)</i>	Full Court of the Federal Court	\$2,064

No appeals were filed against the ABCC.

The ABCC did not intervene in any court proceedings.

The ABCC intervened in three proceedings in the Fair Work Commission. **Table E3** shows the internal legal cost for each proceeding.

Table E3: ABCC interventions in Fair Work Commission proceedings and internal legal cost

Case number	Type of proceeding	Name	Internal legal cost
RE2020/592	Application for entry permit	Beau Seiffert	\$2,466
RE2020/675	Application for entry permit	Anthony Stott	\$408
RE2020/833	Application for entry permit	Paul Tzimas	\$268

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
ACD29/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (The Constitution Place Case) [2020] FCA 1070</i>	\$151,221	\$33,644
QUD614/2019	<i>Australian Building and Construction Commissioner v Fissenden & Anor [2020] FCA 945 (Sunshine Plaza Shopping Centre)</i>	\$76,623	\$17,490
CAG78/2014	<i>Commissioner of the Australian Building and Construction Commission v Hall & Ors (No. 3) (The 3 Site Canberra Case – Penalties (No.3)) [2020] FCCA 2352</i>	\$1,262,701	\$16,420
WAD41/2020	<i>Australian Building and Construction Commissioner v Tyrone Construction Services Pty Ltd & Anor [2020] FCA 1185 (Skypark)</i>	\$98,439	\$19,707

There were no appeal decisions delivered in the reporting period that relate to previously finalised matters.

In the reporting period, the ABCC finalised its involvement in two proceedings in the Fair Work Commission. **Table F2** shows the total external and internal legal costs for each proceeding.

Table F2: 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
RE2020/592	Application for entry permit	Beau Seiffert	\$0	\$2,466
RE2020/675	Application for entry permit	Anthony Stott	\$0	\$408

g) Legal expenses incurred as a result of enforcement action

In the reporting period, the ABCC incurred \$599,587 in external legal expenses as a result of enforcement action undertaken in 54 matters.²

This figure has been calculated using standard accrual accounting practices.

h) Details of industry conditions

In the reporting period, the ABCC received 65 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
Wages and entitlements	20
Security of payment	17
Coercion	9
Right of entry	7
Freedom of association	4
Unlawful industrial action	3
Sham contracting	2
Non-compliance with notices	1
Misrepresentation of workplace rights	1
Notice of code breach	1
Total	65

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

Six 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	5
Right of entry	1
Total	6

² An additional \$1,568 in external legal expenditure for one matter was incurred but not reported in the fourth quarter of 2019-20, bringing the total external legal expenditure for that period to \$1,690,058 for 61 matters.

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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Queensland
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Adelaide SA 5000

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