



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 2020 – 21  
Operations from 1 January – 31 March inclusive

# Q3

# 2020–21

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

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# Letter of transmittal



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



6 May 2021

Senator the Hon Michaelia Cash  
Attorney-General  
Minister for Industrial Relations  
Deputy Leader of the Government in the Senate  
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 2020-21 (1 January – 31 March 2021).

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 third quarter of the 2020-21 financial year, 1 January to 31 March 2021 (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. Figures are accurate as at the reporting date. Further legal costs received outside of the reporting period for finalised legal matters will be updated and reported in the annual BCIIIP Act Report.

# 3. Performance of functions and exercise of powers

## a) Matters investigated

In the reporting period, the ABCC had 79 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	35
Right of entry	20
Coercion	9
Freedom of association	8
Unlawful industrial action	4
Sham contracting	2
Non-compliance with Notices	1
<b>Total</b>	<b>79</b>

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

Ref	Main allegation	Cost
35007	Freedom of association	\$121
36032	Coercion	\$1,260
39131	Wages and entitlements	\$7,326
41097	Wages and entitlements	\$1,633
41436	Wages and entitlements	\$2,481
45338	Unlawful industrial action	\$1,060

Ref	Main allegation	Cost
45681	Wages and entitlements	\$630
46282	Wages and entitlements	\$401
46283	Wages and entitlements	\$401
46672	Right of entry	\$754
46797	Right of entry	\$4,753
46817	Wages and entitlements	\$576
46858	Right of entry	\$2,844
46922	Freedom of association	\$10,745
47183	Coercion	\$870
47243	Right of entry	\$274
47421	Wages and entitlements	\$0
47584	Wages and entitlements	\$5,504
47849	Wages and entitlements	\$896
47946	Right of entry	\$4,311
48050	Coercion	\$890
48194	Sham contracting	\$280
48275	Coercion	\$3,206
48691	Wages and entitlements	\$555
48835	Wages and entitlements	\$4,684
49387	Freedom of association	\$810
49459	Wages and entitlements	\$906
49624	Wages and entitlements	\$1,283
49683	Freedom of association	\$995



Ref	Main allegation	Cost
49685	Wages and entitlements	\$384
49686	Non-compliance with Notices	\$4,475
49690	Right of entry	\$5,926
49780	Wages and entitlements	\$2,610
49995	Coercion	\$7,299
50165	Right of entry	\$8,878
50223	Wages and entitlements	\$2,754
50230	Wages and entitlements	\$501
50275	Unlawful industrial action	\$7,905
50290	Right of entry	\$6,735
50357	Freedom of association	\$5,314
50441	Right of entry	\$29,664
50454	Coercion	\$10,514
50487	Freedom of association	\$12,794
50503	Right of entry	\$3,989
50512	Unlawful industrial action	\$5,900
50546	Wages and entitlements	\$563
50556	Coercion	\$621
50606	Wages and entitlements	\$332
50635	Right of entry	\$1,428
50644	Right of entry	\$1,099
50690	Wages and entitlements	\$3,019
50789	Wages and entitlements	\$1,377
50825	Wages and entitlements	\$1,452
50833	Wages and entitlements	\$2,432
50918	Sham contracting	\$420
50935	Wages and entitlements	\$4,048
50939	Wages and entitlements	\$2,997

Ref	Main allegation	Cost
50975	Coercion	\$6,764
50986	Wages and entitlements	\$1,096
50988	Wages and entitlements	\$3,978
51015	Wages and entitlements	\$1,960
51095	Unlawful industrial action	\$8,761
51119	Wages and entitlements	\$144
51201	Right of entry	\$8,731
51230	Wages and entitlements	\$132
51232	Right of entry	\$14,603
51237	Freedom of association	\$3,958
51244	Wages and entitlements	\$1,888
51254	Wages and entitlements	\$1,086
51328	Wages and entitlements	\$1,017
51384	Wages and entitlements	\$465
51499	Right of entry	\$8,780
51502	Coercion	\$8,046
51526	Freedom of association	\$4,313
51567	Right of entry	\$3,798
51649	Right of entry	\$6,148
51727	Right of entry	\$2,821
51744	Right of entry	\$4,493
51866	Right of entry	\$404

## b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 978 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>470</b>	<b>20</b>	<b>31</b>	<b>1</b>	<b>522</b>
Code assessment	252	4	8	0	264
General code information	130	9	19	1	159
Security of payment	55	1	0	0	56
Code advice	25	1	3	0	29
s.6A application	2	2	0	0	4
s.6B application	2	2	0	0	4
Notice of code breach	3	1	0	0	4
Department of employment	0	0	1	0	1
s.6A general advice	1	0	0	0	1
<b>Workplace laws - building work</b>	<b>160</b>	<b>18</b>	<b>13</b>	<b>0</b>	<b>191</b>
Wages and entitlements	75	8	3	0	86
Right of entry	54	4	7	0	65
Freedom of association	9	3	1	0	13
Coercion	9	3	0	0	12
Unlawful industrial action	8	0	1	0	9
Misrepresentation of workplace rights	3	0	1	0	4
Sham contracting	2	0	0	0	2
<b>Other laws</b>	<b>33</b>	<b>91</b>	<b>1</b>	<b>0</b>	<b>125</b>
<b>Agency information and activities</b>	<b>28</b>	<b>19</b>	<b>9</b>	<b>0</b>	<b>56</b>
<b>Not relevant to the building industry</b>	<b>4</b>	<b>44</b>	<b>1</b>	<b>0</b>	<b>49</b>
<b>Workplace laws – non building work</b>	<b>22</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>35</b>
<b>Total</b>	<b>717</b>	<b>205</b>	<b>55</b>	<b>1</b>	<b>978</b>

## c) Building Code compliance

In the reporting period, the ABCC finalised 73 audits and 28 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 all building code audits finalised. **Table C2** shows the outcome of building code inspections finalised.

Potential issues were identified in 39 building code audits and eight building code inspections.

An additional 35 building code audits were commenced but not finalised.

**Table C1: Outcome of audits**

Outcome of audit	Total
No issues	34
Potential issues	39
<b>Total</b>	<b>73</b>

**Table C2: Outcome of inspections**

Outcome of inspection	Total
No issues	20
Potential issues	8
<b>Total</b>	<b>28</b>

## d) Matters investigated in relation to building employers

In the reporting period, the conduct of employers was the subject of investigation in 52 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	35
Freedom of association	7
Right of entry	4
Coercion	2
Sham contracting	2
Non-compliance with notices	1
Unlawful industrial action	1
<b>Total</b>	<b>52</b>

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

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

Ref	Main allegation	Cost
35007	Freedom of association	\$121
39131	Wages and entitlements	\$7,326
41097	Wages and entitlements	\$1,633
41436	Wages and entitlements	\$2,481
45681	Wages and entitlements	\$630
46282	Wages and entitlements	\$401
46283	Wages and entitlements	\$401
46817	Wages and entitlements	\$576
46922	Freedom of association	\$10,745
47421	Wages and entitlements	\$0
47584	Wages and entitlements	\$5,504
47849	Wages and entitlements	\$896
47946	Right of entry	\$4,311
48194	Sham contracting	\$280
48691	Wages and entitlements	\$555
48835	Wages and entitlements	\$4,684
49459	Wages and entitlements	\$906
49624	Wages and entitlements	\$1,283
49683	Freedom of association	\$995
49685	Wages and entitlements	\$384
49686	Non-compliance with notices	\$4,475
49780	Wages and entitlements	\$2,610
50223	Wages and entitlements	\$2,754
50230	Wages and entitlements	\$501
50290	Right of entry	\$6,735
50357	Freedom of association	\$5,314

Ref	Main allegation	Cost
50441	Right of entry	\$29,664
50454	Coercion	\$10,514
50487	Freedom of association	\$12,794
50546	Wages and entitlements	\$563
50556	Coercion	\$621
50606	Wages and entitlements	\$332
50690	Wages and entitlements	\$3,019
50789	Wages and entitlements	\$1,377
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50833	Wages and entitlements	\$2,432
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50939	Wages and entitlements	\$2,997
50986	Wages and entitlements	\$1,096
50988	Wages and entitlements	\$3,978
51015	Wages and entitlements	\$1,960
51095	Unlawful industrial action	\$8,761
51119	Wages and entitlements	\$144
51230	Wages and entitlements	\$132
51237	Freedom of association	\$3,958
51244	Wages and entitlements	\$1,888
51254	Wages and entitlements	\$1,086
51328	Wages and entitlements	\$1,017
51384	Wages and entitlements	\$465
51526	Freedom of association	\$4,313
51649	Right of entry	\$6,148

Employers were a complainant in 34 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	7
Freedom of association	5
Unlawful industrial action	4
Wages and entitlements	1
<b>Total</b>	<b>34</b>

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

Ref	Main allegation	Cost
45338	Unlawful industrial action	\$1,060
46797	Right of entry	\$4,753
46858	Right of entry	\$2,844
46922	Freedom of association	\$10,745
47183	Coercion	\$870
47243	Right of entry	\$274
48050	Coercion	\$890
48275	Coercion	\$3,206
49387	Freedom of association	\$810
49690	Right of entry	\$5,926
49995	Coercion	\$7,299
50275	Unlawful industrial action	\$7,905
50290	Right of entry	\$6,735

Ref	Main allegation	Cost
50441	Right of entry	\$29,664
50454	Coercion	\$10,514
50487	Freedom of association	\$12,794
50503	Right of entry	\$3,989
50512	Unlawful industrial action	\$5,900
50606	Wages and entitlements	\$332
50635	Right of entry	\$1,428
50644	Right of entry	\$1,099
50975	Coercion	\$6,764
51095	Unlawful industrial action	\$8,761
51201	Right of entry	\$8,731
51232	Right of entry	\$14,603
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51526	Freedom of association	\$4,313
51567	Right of entry	\$3,798
51649	Right of entry	\$6,148
51727	Right of entry	\$2,821
51744	Right of entry	\$4,493
51866	Right of entry	\$404

## e) Proceedings commenced

In the reporting period, the ABCC commenced two 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	Employer - Organisation	Trade union	Trade union representative	Internal legal cost
BRG99/2021	<i>Australian Building and Construction Commissioner v ADADN Pty Ltd</i>	1			\$4,475
VID23/2021	<i>Australian Building and Construction Commissioner v Roach &amp; Anor ('Two Melbourne Quarter Project')</i>		1	1	\$10,745

The ABCC did not file any appeals.

No appeals were filed against the ABCC.

The ABCC did not intervene in any court proceedings.

The ABCC intervened in four proceedings in the Fair Work Commission. **Table E2** shows the internal legal cost for each proceeding.

**Table E2: ABCC interventions in Fair Work Commission proceedings and internal legal cost**

Case number	Type of proceeding	Name	Internal legal cost
RE2020/1197	Application for entry permit	Arron Platt	\$1,391
RE2021/175 & RE2021/176	Application for entry permit	Brendan Holl	\$58
RE2021/312 & RE2021/313	Application for entry permit	Michael Ravbar	\$931
RE2021/89	Application for entry permit	Grant Harradine	\$563

## 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
BRG864/2019	<i>Australian Building and Construction Commissioner v Bray &amp; Ors ('FV1 Stage 2')</i> [2021] FCCA 88	\$85,958	\$44,538
QUD228/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union &amp; Ors ('Townsville Stadium')</i> [2021] FCA 105	\$463,682	\$24,867
QUD388/2016	<i>Australian Building and Construction Commissioner v Ingham &amp; Ors ('Watpac 180')</i> [2021] FCA 263	\$655,557	\$22,874
CAG41/2020	<i>Australian Building and Construction Commissioner v N-Cap Pty Ltd</i>	\$31,755	\$7,584

There were two court appeal decisions delivered in the reporting period that relate to previously finalised matters. **Table F2** shows the total external and internal legal costs for this appeal decision.

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

Case number	Case name	External legal cost	Internal legal cost
TAD35/2020	<i>Construction, Forestry, Maritime, Mining and Energy Union &amp; Anor v Australian Building and Construction Commissioner ('The Elizabeth Street Hobart Penalty Appeal')</i>	\$958	\$4,285
NTD19/2020	<i>Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner &amp; Ors ('Palmerston Police Station Penalty Appeal')</i> [2021] FCAFC 7	\$31,806	\$109

In the reporting period, the ABCC finalised its involvement in four 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
RE2020/1197	Application for entry rights	Arron Platt	\$3,700	\$1,391
RE2020/989 & RE2020/990	Application for entry permit	Rita Mallia	\$0	\$432
RE2020/1011	Revocation of entry permit	Arturo Menon	\$0	\$2,683
RE2020/1012	Revocation of entry permit	Paul Taylor	\$0	\$2,229

Further legal costs incurred on finalised matters received after the reporting date are not included in these tallies. These costs will be updated and reported for finalised matters in the annual BCIIIP Act Report.



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

In the reporting period, the ABCC incurred \$471,476 in external legal expenses as a result of enforcement action undertaken in 46 matters.

This figure has been calculated using standard accrual accounting practices.

## h) Details of industry conditions

In the reporting period, the ABCC received 45 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	14
Wages and entitlements	14
Security of payment	7
Freedom of association	6
Coercion	3
Misrepresentation of workplace rights	1
<b>Total</b>	<b>45</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

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
Freedom of association	1
Right of entry	5
<b>Total</b>	<b>6</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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