



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 2020 – 21
Operations from 1 April – 30 June inclusive

Q4

2020–21

COMMENTS AND ENQUIRIES

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

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Letter of transmittal



Australian Government
**Australian Building and
Construction Commission**



23 August 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 fourth quarter of 2020-21 (1 April – 30 June 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'.

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 April to 30 June 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 86 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	40
Right of entry	18
Freedom of association	9
Coercion	9
Unlawful industrial action	6
Sham contracting	2
Hinder or obstruct ABC inspector	1
Unlawful picketing	1
Total	86

Table A2: Approximate internal cost of open investigations

Ref	Main allegation	Cost
35007	Freedom of association	\$269
39131	Wages and entitlements	\$429
41436	Wages and entitlements	\$2,175
45338	Unlawful industrial action	\$199
45681	Wages and entitlements	\$1,061
46282	Wages and entitlements	\$274
46283	Wages and entitlements	\$296
46797	Right of entry	\$2,877
47421	Wages and entitlements	\$0
47584	Wages and entitlements	\$0
47849	Wages and entitlements	\$1,311
47946	Right of entry	\$1,258
48050	Coercion	\$1,667
48275	Coercion	\$5,381
48691	Wages and entitlements	\$227
48835	Wages and entitlements	\$4,069
49387	Freedom of association	\$3,579
49459	Wages and entitlements	\$2,495
49624	Wages and entitlements	\$2,748
49685	Wages and entitlements	\$553
49690	Right of entry	\$13,244
49780	Wages and entitlements	\$2,488

Ref	Main allegation	Cost
49995	Coercion	\$3,852
50165	Right of entry	\$5,091
50223	Wages and entitlements	\$5,394
50290	Right of entry	\$3,843
50357	Freedom of association	\$4,926
50441	Right of entry	\$18,477
50454	Coercion	\$5,997
50487	Freedom of association	\$9,070
50503	Right of entry	\$3,419
50690	Wages and entitlements	\$2,581
50789	Wages and entitlements	\$284
50825	Wages and entitlements	\$654
50833	Wages and entitlements	\$2,607
50918	Sham contracting	\$945
50935	Wages and entitlements	\$5,107
50939	Wages and entitlements	\$1,212
50975	Coercion	\$8,187
50986	Wages and entitlements	\$2,441
50988	Wages and entitlements	\$1,968
51095	Unlawful industrial action	\$955
51230	Wages and entitlements	\$712
51232	Right of entry	\$17,525
51237	Freedom of association	\$10,302
51244	Wages and entitlements	\$490
51254	Wages and entitlements	\$121
51328	Wages and entitlements	\$1,304
51499	Right of entry	\$9,279
51502	Coercion	\$14,397

Ref	Main allegation	Cost
51526	Freedom of association	\$2,786
51649	Right of entry	\$14,945
51727	Right of entry	\$14,243
51744	Right of entry	\$15,074
51746	Freedom of association	\$4,704
51748	Wages and entitlements	\$768
51828	Wages and entitlements	\$1,360
51845	Wages and entitlements	\$1,962
51866	Coercion	\$12,570
51931	Wages and entitlements	\$664
51943	Wages and entitlements	\$1,733
51977	Wages and entitlements	\$732
51988	Wages and entitlements	\$658
52012	Right of entry	\$634
52036	Right of entry	\$9,675
52056	Unlawful industrial action	\$6,314
52162	Right of entry	\$15,497
52267	Unlawful industrial action	\$9,472
52279	Unlawful industrial action	\$2,448
52308	Unlawful picketing	\$11,405
52324	Right of entry	\$4,378
52329	Coercion	\$4,337
52334	Wages and entitlements	\$690
52414	Wages and entitlements	\$1,024
52420	Wages and entitlements	\$131
52432	Freedom of association	\$10,174
52563	Freedom of association	\$2,842
52601	Wages and entitlements	\$1,253

Ref	Main allegation	Cost
52643	Wages and entitlements	\$119
52708	Coercion	\$2,982
52752	Sham contracting	\$1,750
52789	Unlawful industrial action	\$2,550
52812	Wages and entitlements	\$298
52825	Hinder or obstruct ABC inspector	\$2,957
52895	Right of entry	\$7,594
52986	Right of entry	\$2,036

b) Assistance and advice

In the reporting period, the ABCC provided assistance and advice by responding to 1,069 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	518	30	30	0	578
Code assessment	266	5	8	0	279
General code information	129	18	19	0	166
Security of payment	87	3	0	0	90
Code advice	26	3	3	0	32
Notice of code breach	7	0	0	0	7
s.6A general advice	2	1	0	0	3
s.6B application	1	0	0	0	1
Workplace laws - building work	199	12	19	0	230
Wages and entitlements	88	7	1	0	96
Right of entry	61	0	14	0	75
Unlawful industrial action	20	0	1	0	21
Freedom of association	14	2	2	0	18
Coercion	12	2	0	0	14
Unlawful picketing	3	0	0	0	3
Sham contracting	1	1	0	0	2
Hinder or obstruct ABC inspector	0	0	1	0	1
Other laws	26	77	0	0	103
Agency information and activities	34	22	7	1	64
Not relevant to the building industry	7	57	1	0	65
Workplace laws – non building work	22	7	0	0	29
Total	806	205	57	1	1,069

c) Building Code compliance

In the reporting period, the ABCC finalised 64 audits and 22 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 31 building code audits and 9 building code inspections.

An additional 59 building code audits were commenced but not finalised.

Table C1: Outcome of audits

Outcome of audit	Total
No issues	33
Potential issues	31
Total	64

Table C2: Outcome of inspections

Outcome of inspection	Total
No issues	13
Potential issues	9
Total	22

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	40
Freedom of association	6
Right of entry	6
Unlawful industrial action	2
Coercion	1
Sham contracting	1
Total	56

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

Ref	Main allegation	Cost
35007	Freedom of association	\$269
39131	Wages and entitlements	\$429
41436	Wages and entitlements	\$2,175
45681	Wages and entitlements	\$1,061
46282	Wages and entitlements	\$274
46283	Wages and entitlements	\$296
47421	Wages and entitlements	\$0
47584	Wages and entitlements	\$0
47849	Wages and entitlements	\$1,311
47946	Right of entry	\$1,258
48691	Wages and entitlements	\$227
48835	Wages and entitlements	\$4,069
49459	Wages and entitlements	\$2,495
49624	Wages and entitlements	\$2,748
49685	Wages and entitlements	\$553
49780	Wages and entitlements	\$2,488
50223	Wages and entitlements	\$5,394
50290	Right of entry	\$3,843
50357	Freedom of association	\$4,926
50441	Right of entry	\$18,477
50454	Coercion	\$5,997
50487	Freedom of association	\$9,070
50690	Wages and entitlements	\$2,581
50789	Wages and entitlements	\$284

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

Ref	Main allegation	Cost
50825	Wages and entitlements	\$654
50833	Wages and entitlements	\$2,607
50918	Sham contracting	\$945
50935	Wages and entitlements	\$5,107
50939	Wages and entitlements	\$1,212
50986	Wages and entitlements	\$2,441
50988	Wages and entitlements	\$1,968
51095	Unlawful industrial action	\$955
51230	Wages and entitlements	\$712
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51828	Wages and entitlements	\$1,360
51845	Wages and entitlements	\$1,962
51931	Wages and entitlements	\$664
51943	Wages and entitlements	\$1,733
51977	Wages and entitlements	\$732
51988	Wages and entitlements	\$658
52056	Unlawful industrial action	\$6,314
52324	Right of entry	\$4,378
52334	Wages and entitlements	\$690
52414	Wages and entitlements	\$1,024

Ref	Main allegation	Cost
52420	Wages and entitlements	\$131
52601	Wages and entitlements	\$1,253
52643	Wages and entitlements	\$119
52812	Wages and entitlements	\$298

Employers were a complainant in 39 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	16
Coercion	8
Freedom of association	7
Unlawful industrial action	6
Wages and entitlements	1
Unlawful picketing	1
Total	39

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

Ref	Main allegation	Cost
45338	Unlawful industrial action	\$199
46797	Right of entry	\$2,877
48050	Coercion	\$1,667
48275	Coercion	\$5,381
49387	Freedom of association	\$3,579
49690	Right of entry	\$13,244
49995	Coercion	\$3,852
50290	Right of entry	\$3,843
50441	Right of entry	\$18,477
50454	Coercion	\$5,997
50487	Freedom of association	\$9,070
50503	Right of entry	\$3,419
50975	Coercion	\$8,187
51095	Unlawful industrial action	\$955
51232	Right of entry	\$17,525
51237	Freedom of association	\$10,302
51499	Right of entry	\$9,279
51502	Coercion	\$14,397
51526	Freedom of association	\$2,786
51649	Right of entry	\$14,945
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51748	Wages and entitlements	\$768
51866	Coercion	\$12,570
52012	Right of entry	\$634

Ref	Main allegation	Cost
52036	Right of entry	\$9,675
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52162	Right of entry	\$15,497
52267	Unlawful industrial action	\$9,472
52279	Unlawful industrial action	\$2,448
52308	Unlawful picketing	\$11,405
52324	Right of entry	\$4,378
52432	Freedom of association	\$10,174
52563	Freedom of association	\$2,842
52708	Coercion	\$2,982
52789	Unlawful industrial action	\$2,550
52895	Right of entry	\$7,594
52986	Right of entry	\$2,036

e) Proceedings commenced

In the reporting period, the ABC Commissioner commenced 3 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
BRG161/2021	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (Queensland Performing Arts Complex (QPAC))</i>		1	3	\$3,843
MLG1029/2021	<i>Australian Building and Construction Commissioner v Gray (Jake Gray's Carpentry)</i>	1			\$2,578
SYG825/2021	<i>Australian Building and Construction Commissioner v Rielly & Ors (Armidale Secondary School)</i>		1	2	\$2,877

The ABCC did not file any appeals.

Two appeals were filed against the ABC Commissioner. **Table E2** shows the internal legal cost for these proceedings.

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

Case number	Case name	Jurisdiction	Internal legal cost
NSD579/2021	<i>Construction, Forestry, Maritime, Mining and Energy Union & Ors v Australian Building and Construction Commissioner (Botany Cranes Penalty Appeal)</i>	Full Court of the Federal Court	\$658
NSD463/2021	<i>Hanlon v Australian Building and Construction Commissioner (The Astar Plaster Case Appeal)</i>	Full Court of the Federal Court	\$555

The ABC Commissioner intervened in one court proceeding. **Table E3** shows the internal legal cost for this proceeding.

Table E3: ABCC interventions and internal legal cost

Case number	Case name	Jurisdiction	Internal legal cost
B78/2020	<i>Heiko Constructions T/A Heiko Constructions Pty Ltd v Tyson</i>	High Court	\$89

The ABC Commissioner intervened in one proceeding in the Fair Work Commission. **Table E4** shows the internal legal cost for this proceeding.

Table E4: ABCC interventions in Fair Work Commission proceedings and internal legal cost

Case number	Type of proceeding	Name	Internal legal cost
RE2021/485	Application for entry permit	Walter Molina	\$6,570

f) Number and cost of proceedings finalised

In the reporting period, the ABC Commissioner finalised his involvement in 4 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
NSD574/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (The Botany Cranes Case) [2021] FCA 525</i>	\$301,051	\$46,790
NSD1792/2019	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors (The WGC Cranes Case) [2021] FCA 622</i>	\$379,462	\$43,981
SYG2231/2015	<i>Australian Building and Construction Commissioner v Hanlon & Ors [2021] FCCA 787 (The Austar Plaster Case)</i>	\$137,947	\$6,965
VID494/2020	<i>Australian Building and Construction Commissioner v Parker & Ors [2021] FCA 704 (Melbourne Metro Rail Tunnel)</i>	\$77,739	\$64,017

There were 2 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
M121/2020	<i>Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union & Ors [2021] HCATrans 115 (The Bay Street High Court Appeal)</i>	\$128,020	\$4,253
B79/2020	<i>Construction, Forestry, Maritime, Mining and Energy Union & Ors v Australian Building and Construction Commissioner & Anor [2021] HCASL 60 (The Bruce Highway Caloundra to Sunshine Upgrade High Court Appeal)</i>	\$14,118	\$546

In the reporting period, the ABC Commissioner finalised his involvement in 4 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
RE2018/1438	Application to revoke or suspend entry permit	Jason O'Mara	\$6,480	\$3,723
RE2020/207	Application for entry permit	Michael Greenfield	\$0	\$4,040
RE2021/175	Application for entry permit	Brendan Holl	\$1,917	\$922
RE2021/89	Application for entry permit	Grant Harradine	\$32	\$1,497

The ABC Commissioner finalised his intervention in one court proceeding. **Table F4** shows the internal and external legal cost for this proceeding.

Table F4: Interventions finalised

Case number	Case name	External legal cost	Internal legal cost
B78/2020	Heiko Constructions t/as Heiko Constructions Pty Ltd v Tyson ²	\$65,197	\$3,974

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.

² The application for special leave was discontinued before the High Court could make a ruling on whether the ABC Commissioner would be granted leave to intervene in the proceeding.

g) Legal expenses incurred as a result of enforcement action

In the reporting period, the ABCC incurred \$1,239,054 in external legal expenses as a result of enforcement action undertaken in 62 matters.

This figure has been calculated using standard accrual accounting practices.

h) Details of industry conditions

In the reporting period, the ABCC received 49 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
Security of payment	15
Wages and entitlements	8
Coercion	7
Right of entry	6
Unlawful industrial action	5
Freedom of association	4
Unlawful picketing	2
Hinder or obstruct ABC inspector	1
Sham contracting	1
Total	49

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

Seven 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	2
Total	7

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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