

## Questions Taken on Notice at ECONOMICS REFERENCES COMMITTEE Non-conforming building products on Thursday, 2 August 2018.

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### Question:

**CHAIR:** Can you provide to us on notice, if necessary, a list of what you have referred to in the past as the 2016 projects, which are the projects that are subject to the 2016 building code?

Ms Cato: Yes, Senator.

**CHAIR:** Is that an extensive list?

Ms Cato: It's a rolling stock list. It's a group of products that changes. I'd like to explain to the committee that the code has application in quite a complicated way. It attaches to contractors rather than to projects, and then the date that they've tendered for the particular project impacts on whether or not the code applies on a particular project. With respect to the requirements relating to Australian standard building materials, they apply on a much more limited number of projects, which is those that, firstly, have Commonwealth funding attached to them. At the moment, there are 164 of those that are directly procured by Commonwealth funding entities. It also has some application to Commonwealth funded building work that is procured by the states and territories, where it is indirectly funded by the Commonwealth.

**CHAIR:** So you're able to identify those projects by virtue of—

Ms Cato: Yes. We can provide you with a list of the 146 projects.

### Response:

The table below lists the projects procured by Commonwealth funding entities as at 3 August 2018.

AQIS - Future Post Entry Quarantine Arrangements Project - Quarantine Facilities - VIC	VIC
RAAF Amberley - AIR8000 PH2 Battlefield Airlifter Facilities for Airforce - QLD	QLD
RAAF Sale - Air Traffic Mgmt & Control Systems (Air 5431 PH 2/3) Project R8077 & R8085 - VIC	VIC
RAAF Townsville- Air Traffic Mgmt & Control Systems (Air 5431 PH 2/3) Project R8077&R8085 - QLD	QLD
RAAF Oakey - Air Traffic Mgmt & Control Systems (Air 5431 PH 2/3) Project R8077 & R8085 - QLD	QLD
RAAF Albatross - Air Traffic Mgmt & Control Systems (Air 5431 PH 2/3) Project R8077&R8085 - NSW	NSW
RAAF Williamtown - Air Traffic Mgmt & Control Systems (Air 5431 PH 2/3) Project R8077&R8085-QLD	NSW
RAAF Tindal - Air Traffic Management & Control Systems - Phase 2 & 3 - NT	NT
RAAF Amberely - Hangar Facility C17A Upgrade - QLD	QLD
RAAF Townsville - Replacement Chinook Facilities Townsville	QLD
Campbell Barracks - Redevelopment - Working Accommodation Facilities, Fibre Transmission - WA	WA
RAAF Amberley - Growler Airborne Attack Capability Facilities - QLD	QLD
RAAF Williamtown - Facilities for New Air Combat Capability (NACC) - NSW	NSW
RAAF Tindal - NACC Air Combat Capability Facility Air 600 Phase 2 A/B	NT
RAAF Pearce - Air 5428 Phase 1 Pilot Training System Facilities WA	WA
Land 121 Unit Sustainment Facilities Project A9008 Stage 2 - QLD	QLD
RAAF Base Edinburgh - AIR7000 PH2B Facilities - Maritime Patrol Aircraft Replacement	SA

National Aircraft Pavement Maintenance Program Package 3 - NT	NT
J0056 EOLRP - Medium Works Contractor - Fort Direction, TAS	TAS
Eyre/Flinders, Mid North and Riverland - Resealing and Maintenance Roadworks - SA	SA
HMAS Stirling N2184P - Redevelopment - Stage 3A - WA	WA
Land 121 Unit Sustainment Facilities Project A9008 Stage 2 - VIC	VIC
Land 121 Unit Sustainment Facilities Project A9008 Stage 2 - SA	SA
Land 121 Unit Sustainment Facilities Project A9008 Stage 2 - NT	NT
RAAF East Sale - Air 5428 Phase 1 Pilot Training System Facilities VIC	VIC
Delamere Air Weapons Range - NT	NT
RAAF Amberley - C-17 Maintenance Facility / Aircraft Apron - QLD	QLD
Ansto Building 27 Solid Waste Storage Facility Extension, NSW	NSW
Holsworthy Barracks - Land 17 1B/1C Phase 2 - Package 2 - NSW	NSW
Project A9017 Land 500 - Phase 1 Military Facilities for Defence Sites, NSW & QLD	QLD
Cultana Training Area Redevelopment Phase 1	SA
HMAS Harman Refurbishments and extensions, ACT	ACT
National Aircraft Pavement Maintenance Program Package 2 - QLD	QLD
RAAF Edinburgh - Maintenance Hanger, Squadron HQ Facility & Wing Level HQ MSI Package 1	SA
RAAF Edinburgh - Maintenance & Simulation Facility Package 2	SA
Port Wakefield - Land 17 1B/1C Phase 2 - Package 3 - SA	SA
AIR7000 PH2B Facilities - Maritime Patrol Aircraft Replacement - Main Apron	SA
RAAF Base Richmond - Electrical Infrastructure works NN10640	NSW
Bulimba Barracks Partial Disposal and Unit Relocation, QLD	QLD
Department of Employment 14 Mort St Office ACT	ACT
RAAF Base Richmond - Electrical Infrastructure works NN11056	NSW
Ablutions Upgrade - Russell Offices ACT	ACT
HMAS Cerberus- Water Infrastructure and Building Works 10787 - VIC	VIC
A9033 - Shoalwater Bay Training Area Vehicle Wash Point Facility - QLD	QLD
National Aircraft Pavement Maintenance Program Package 1 - NSW	NSW
Australian Defence Force Academy (ADFA) - Civil and Pedestrian Upgrades - ACT	ACT
Holsworthy Barracks Civil Works - NSW	NSW
RAAF Base Williamstown - Runway Extension	NSW
Land 121 Unit Sustainment Facilities Project A9008 Stage 2 - NSW	NSW
Lavarack Barracks - Extension & Contruction Protected Mobility Vehicle Parking Bays - QLD	QLD
Williamstown bases - Fire Safety Remediation - VIC	VIC
RAAF Edinburgh - Defence Precinct Electronic and Physical Security Upgrade- SA	SA
Borneo Barracks - Resurfacing of Pavements - QLD	QLD
JP500 Phase 2a - Electronic Warfare Operational Support Facility - SA	SA
DIBP - Yongah Hill Immigration Detention Centre Redevelopment - Northam - WA	WA
DIBP - Melbourne Immigration Transit Accommodation (MITA) Redevelopment - VIC	VIC
DoD Centralised Processing Facilities Upgrade - RAAF Edinburgh, SA	SA
Geoscience Australia - Main Building Refresh - ACT	ACT
Brisbane Immigration Transit Accommodation Facility upgrade - QLD	QLD
Woodside Barracks - Building Works - SA	SA
Woomera Range J0069 Safety and Control System Remediation - SA	SA
National Aircraft Pavement Maintenance Program Package 4 - WA	WA
Australian Hydrographic Office Refurbishment, NSW	NSW

Garden Island (East) Building 130 Refurbishment - NSW	NSW
DHS Parramatta SOA Refurbishment, NSW	NSW
RAAF Edinburgh - Air 5428 Phase 1 Pilot Training System Facilities SA	SA
RAAF Gingin - Air 5428 Phase 1 Pilot Training System Facilities WA	WA
RAAF Amberley - Replacement of Padmount Substations, QLD	QLD
RAAF Amberley - Replace 3 Substations, QLD	QLD
RAAF Amberley Ring Main Unit Upgrades and Replacement, QLD	NSW
HMAS Harman Electrical Infrastructure Upgrades Building 282, ACT	ACT
Puckapunyal and Graytown Ranges Civil Works, VIC	VIC
DSTG, Fishermans Bend and RAAF Williams Point Cook - Repairs to Roofs, Gutters and Downpipes, VIC	VIC
Department of Education Level 11 Canberra office Fitout works	ACT
Puckapunyal Army Living In Accommodation Refurb, VIC	VIC
HMAS Creswell Jervis Bay - Main Wharf Structural and Services Refurbishment, ACT/NSW	ACT
Shoalhaven Jervis Bay Territory - Building Works, ACT/NSW	ACT
Gallipoli Barracks - Electrical Remediation Works, Enoggera QLD	QLD
HMAS Harman - Weapons Training Facility, ACT	ACT
HMAS Penguin - Building Modifications and Relocation, NSW	NSW
Keswick Barracks - Structural Remediation Work & New Ablutions Facilities, SA	SA
HMAS Cairns - Facilities Upgrade, QLD	QLD
Paluma Lease - Sustainability Works, QLD	QLD
Beecroft Weapons Range - 100m Open Firing Range Refurbishment, NSW	NSW
Woomera Range - Explosive Ordnance Facilities Maintenance	SA
RAAF Williamtown - Stage 2 Redevelopment - NSW	NSW
Gallipoli Barracks National Lighting Replacement, QLD	QLD
DSTG Edinburgh General Building Maintenance, SA	SA
Russell Defence Facilities Refurbishment, Canberra ACT	ACT
National Mechanical Replacement at various Defence sites, QLD	QLD
RAAF Base Amberley & AP6 Fire Works, QLD	QLD
RAAF Richmond Building and Maintenance Works, NSW	NSW
Mount Bunday Training Area – Road Maintenance, NT	NT
Defence Establishment Berrimah – New Swimming Pool Construction, NT	NT
RAAF Base Amberley, 2 Building Refurbishment, QLD	QLD
Cabarlah and Oakey Bases, - Electrical Infrastructure Works, QLD	QLD
Garden Island Dockyard Precinct - Dock, Ship Repair and Maintenance Contractor Facilities, NSW	NSW
Cultana Training Area Training Area Roads and Boundary Tracks, SA	SA
RAAF Base Williamtown - Building 472 Emergency Generator Replacement, NSW	NSW
Australian Defence Satellite Communications Station Geraldton - Solar Photo Voltaic (PV) Array, WA	WA
Cultana and RAAF Edinburgh - Demolition Works, SA	SA
RAAF Pearce Refurbishment of Sewage Ponds, WA	WA
Defence Range Facility Maintenance, Jervis Bay Range Facility, ACT	NSW
Australian Defence Forces Academy Officers Mess Canberra, ACT	ACT
RAAF Edinburgh General Building Maintenance Works, SA	SA
Campbell Barracks Swanbourne - National Demolition Program, WA	WA
Holsworthy Barracks Range Remediation Works, NSW	NSW
Lavarack Barracks - Fire Safety Remediation Works, QLD	QLD

Defence Townsville Field Training Area waste Transfer Station, QLD	QLD
Irwin Barracks - Remediation of Fire Systems and Sewer Rising Main and Hydrant System Data update for HMAS Stirling, WA	WA
RAAF Tindal - Water Infrastructure Works, NT	NT
Royal Australian Navy Base HMAS Creswell Fleet Support Services Building Refurbishment, NSW	NSW
Edinburgh Defence Precinct - DSTG Building Remediation and Partial Demolition, SA	SA
ACIC - Barton Office Fitout stage 2, ACT	ACT
Lavarack Barracks Hat Dich Accommodation Works, QLD	QLD
11730 Woomera Electrical Infrastructure Works, SA	SA
Majura Training Area - Erosion Control and Land Remediation, ACT	ACT
RAAF Base Edinburgh - Pump Pit access way and gantry works and Electrical works, SA	SA
RAAF Base Williamtown - Logistics Warehouse, NSW	NSW
RAAF Base Wagga SPS Leadership Reaction Course (LRC) Site Relocation, NSW	NSW
Lavarack Barracks Security Fence Upgrade Works, QLD	QLD
Lavarack Barracks - Armoury Remediation to Various Buildings, QLD	QLD
Campbell Barracks - Refurbishment of accommodation buildings, WA	WA
John Gorton Building - Roof refurbishment	ACT
RAAF Base Williamtown - Repair and Repaint of Storage Tanks, NSW	NSW
Campbell Barracks and Irwin Barracks - Community Centre Works, WA	WA
HMAS Albatross Building Works, NSW	NSW
Department of Employment office fitout 10 Mort St, ACT	ACT
RAAF Base Amberley Buildings & Refurbishments, QLD	QLD
RAAF Base Edinburgh Minor New Works and ICT Power Works, SA	SA
Albury Wodonga Military Area - Diesel Fume Extraction System Construction at East Bandiana, VIC	VIC
DoD Electrical and RCD Compliance Works, multiple sites - WA	WA
National Police Memorial Renewal Project, ACT	ACT
RAAF East Sale - Installation of Local Emergency Generator Systems, VIC	VIC
RAAF Pearce - Repaint Aircraft Mock-up - WA	WA
Edinburgh Defence Precinct Woomera - Water Infrastructure Upgrade, SA - Water Infrastructure Upgrade, SA	SA
DoD Range Test Track and Maintenance Works at Monegetta, VIC	VIC
Cultana Training Area Fire Trail Remediation Works, SA	SA
RAAF Base Richmond - Fire Safety Works to Hanger 523 and 54, NSW	NSW
Woomera Test Range, Test Range Road Connection, SA	SA
National Aircraft Pavement Maintenance Program Package 1 - VIC	VIC
Bandiana Civil Works - SN11077, VIC	VIC
Edinburgh Defence Precinct, Woomera - Electrical Infrastructure Works, SA	SA
10552 Woomera Range – Explosive Ordnance (EO) Processing Facility, SA	SA
Australian Hydrographic Office Refurbishment - Project 11415	NSW
International Flag Display Extension & Lighting Upgrade, ACT	ACT
Australian Signals Directorate - Buildings R5 and R6, Russell ACT	ACT
Gallipoli Barracks - Building Refurbishment QD11627, QLD	QLD
RAAF Curtin Electrical Infrastructure Upgrade, WA	WA
Edinburgh Defence Precinct Woomera - Remediation of Electrical Infrastructure, SA	SA
RAAF Base Edinburgh - Airside and Perimeter Roads Maintenance, SA	SA
Campbell Barracks Swanbourne Fence Works, WA	WA
RAAF Townsville - Demolition Works, QLD	QLD

Australian Defence Force Academy- Energy Efficiency Upgrade of Irrigation Control System, ACT	ACT
Townsville Field Training Area Heritage Management, QLD	QLD
HMAS Stirling - Dive Chemical Preparation Facility, WA	WA
Shoalwater Bay Training Area - Urban Operations Training Facility (UOTF) Maintenance, QLD	QLD
Shoalhaven Electrical Infrastructure Works at Defence sites, NSW and ACT	NSW
Holsworthy & Moorebank - General Buildings - New Awning and Battery Storage Facility, NSW	NSW
Larrakeyah Barracks - Sewerage Works	NT
RAAF Base Pearce - Structural and Civil Works, WA	WA
RAAF Base Townsville - Fire Safety Remediation Works, QLD	QLD
National Aircraft Pavement Maintenance Program Package 3 - SA	SA
DoD Residual Current Device Priority 3 Compliance Work, SA	SA
Gallipoli Barracks, Internal and External Refurbishment, Enogerra QLD	QLD
RAAF Townsville Building and Fence works, QLD	QLD

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**Question:**

**CHAIR:** Also can you provide us with a list of the code-covered entities and funding entities?

Ms Cato: Yes.

**Response:**

The table below lists the non-corporate Commonwealth entities as defined by the PGPA Act as at 3 August 2018.

Administrative Appeals Tribunal Asbestos Safety and Eradication Agency Attorney-General's Department Australian Aged Care Quality Agency Australian Building and Construction Commission Australian Bureau of Statistics Australian Centre for International Agricultural Research (ACIAR) Australian Commission for Law Enforcement Integrity (ACLEI) Australian Communications and Media Authority (ACMA) Australian Competition and Consumer Commission (ACCC) Australian Crime Commission (Australian Criminal Intelligence Commission) Australian Electoral Commission Australian Federal Police Australian Financial Security Authority Australian Fisheries Management Authority Australian Institute of Criminology Australian Institute of Family Studies (AIFS) Australian Law Reform Commission Australian National Audit Office Australian National Preventive Health Agency (ANPHA) Australian Office of Financial Management (AOFM) Australian Prudential Regulation Authority (APRA) Australian Public Service Commission (APS Commission) Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) Australian Research Council Australian Secret Intelligence Service Australian Securities and Investments Commission (ASIC) Australian Security Intelligence Organisation Australian Signals Directorate Australian Skills Quality Authority (National Vocational Education and Training Regulator) Australian Sports Anti-Doping Authority (ASADA) Australian Taxation Office Australian Trade and Investment Commission (Austrade) Australian Transaction Reports and Analysis Centre (AUSTRAC) Australian Transport Safety Bureau (ATSB) Bureau of Meteorology Cancer Australia Clean Energy Regulator Climate Change Authority Commonwealth Grants Commission Department of Agriculture and Water Resources
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Department of Communications and the Arts  
Department of Defence  
Department of Education and Training  
Department of Finance  
Department of Foreign Affairs and Trade  
Department of Health  
Department of Home Affairs  
Department of Human Services  
Department of Industry, Innovation and Science  
Department of Infrastructure, Regional Development and Cities  
Department of Jobs and Small Business  
Department of Parliamentary Services  
Department of Social Services  
Department of the Environment and Energy  
Department of the House of Representatives  
Department of the Prime Minister and Cabinet  
Department of the Senate  
Department of the Treasury  
Department of Veterans' Affairs  
Digital Transformation Agency  
Fair Work Commission  
Fair Work Ombudsman and Registered Organisations Commission Entity  
Federal Court of Australia  
Future Fund Management Agency  
Geoscience Australia  
Great Barrier Reef Marine Park Authority  
Independent Parliamentary Expenses Authority  
Infrastructure and Project Financing Agency (IPFA)  
Inspector-General of Taxation  
IP Australia  
National Archives of Australia  
National Blood Authority  
National Capital Authority  
National Competition Council  
National Health and Medical Research Council (NHMRC)  
National Health Funding Body (NHFB)  
National Mental Health Commission  
NDIS Quality and Safeguards Commission  
Office of National Assessments  
Office of Parliamentary Counsel  
Office of the Auditing and Assurance Standards Board (AUASB)  
Office of the Australian Accounting Standards Board (AASB)  
Office of the Australian Information Commissioner  
Office of the Commonwealth Ombudsman  
Office of the Director of Public Prosecutions (CDPP)  
Office of the Inspector-General of Intelligence and Security  
Office of the Official Secretary to the Governor-General  
Organ and Tissue Authority  
Parliamentary Budget Office  
Productivity Commission  
Professional Services Review Scheme  
Royal Australian Mint  
Safe Work Australia  
Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)  
Tertiary Education Quality and Standards Agency  
Workplace Gender Equality Agency

## ECONOMICS REFERENCES COMMITTEE Non-conforming building products.

### Written questions for the ABCC.

#### Questions

1. In reference to the following question from Senator Cameron on Wednesday 28<sup>th</sup> February 2018 at Senate Estimates (page 180) and response:

“Senator Cameron: Would noncompliance with the terms of the contract be considered a breach of the code by the ABCC?”

Ms Cato: The code itself—the law that we are monitoring—doesn't set it up as a breach of the code. If the contractor is not complying with the terms of their contract with the funding entity, that is a matter for the funding entity to deal with. If we found out that they weren't, we would refer that to the funding entity so that they could then take appropriate steps.”

- a) How many referrals have you made to funding entities of this nature and what would you consider being appropriate steps for them to take?

**Response:** The ABCC has made one referral to a funding entity. The steps taken in response to the referral are a matter for the funding entity. A funding entity may consider the requirements of paragraphs 10.10 and 10.37 of the Commonwealth Procurement Rules (CPR), which since 1 March 2017, contain requirements relating to goods and services meeting applicable Australian standards.

- b) How many referrals have you made to the Federal Safety Commissioner about this issue or any other issue, such as a health and safety issues?

**Response:** The ABCC has made no referrals.

- c) Given the requirements in the Commonwealth Procurement rules, specifically 10.10 and 10.38 as set out by Ms Cato in evidence at the recent hearing, how many referrals has the ABCC made to the Department of Finance about non-compliance with Australian Standards?

**Response:** The ABCC has made no referrals.

- d) Is this a course of action that the ABCC is intending to use at some point? If so, what criteria need to be met for this to occur?

**Response:** In the event that the ABCC identifies that a funding entity has not complied with the requirements of the *Code for the Tendering and Performance of Building Work 2016* (the Code), the ABC Commissioner will consider the circumstances and if appropriate refer the matter to the Department of Finance.

The criteria is set out in the funding entity compliance process published on the ABCC's website: <https://www.abcc.gov.au/building-code/building-code-resources/funding-entity-resources> .



- e) The ABCC's quarterly report of the Second Quarter of 2016-17, which was its first quarterly report states:

"Under section 38(ca) of the BCIP Act, the Federal Safety Commissioner has the function of auditing compliance with National Construction Code performance requirements in relation to building materials. During the reporting period, the Australian Building and Construction Commissioner wrote to the Federal Safety Commissioner requesting a meeting about these new requirements. A meeting is scheduled to discuss how the responsibilities of each Office can be discharged to their fullest extent, in the most efficient manner possible."

Can the ABCC please provide this correspondence and the result of the meeting?  
In addition, can the ABCC also outline how responsibilities under the Act and Code between the ABCC and the FSC have been divided and managed?

**Response:** On 22 December 2016, the former ABC Commissioner wrote to the former Federal Safety Commissioner (FSC), Mr Alan Edwards. A copy of this letter is at **Attachment A**.

On 10 February 2017 Mr Edwards and his staff met with representatives of the ABCC, including the former National Manager Building Code, Ms Cathy Cato. It was agreed that there was no overlap between the legislative requirements within the ABC Commissioner's jurisdiction and the Federal Safety Commissioner's jurisdiction.

Responsibilities under the Act and the Code are implemented by the Commissioner responsible for the legislative function. The ABC Commissioner's legislative function relating to building materials is to ensure that funding entities procuring building work impose Code requirements that relate to the use of Australian standard building products.

The Federal Safety Commissioner's legislative function relating to building materials is to audit compliance with National Construction Code (NCC) performance requirements. The NCC does not require the use of Australian standard products. Rather, the NCC addresses the fitness for purpose of materials in the context of the structural integrity of the finished building.

- f) Section 20 of the BCIP Act deals with the information in Quarterly and Annual reports which must be made by the agency. At clause (2)(i) it states that information to be included is (i) details of activities that the ABC Commissioner has undertaken during that quarter or year to monitor the compliance of products used in building work with relevant Australian standards published by, or on behalf of, Standards Australia;
- This suggests that it is the ABCC's role to monitor compliance of products used in building work?
  - Do you consider that it is part of the ABCC's role to monitor the compliance of products used in building work with the relevant Australian Standards?

- If so, how do you do it?
- If so, why have you not included this activity in Quarterly and Annual Reports?

**Response:** The ABCC's role in monitoring the compliance of products used in building work with the relevant Australian Standards is limited by the requirements in the legislation.

The Code imposes requirements on funding entities and the ABCC monitors the compliance of funding entities with these requirements. The ABCC also audits supply chain contracts to assess whether the model clauses used by funding entities to comply with these requirements are effective. Issues identified would be referred to the funding entities as a potential breach of contract. The ABCC's monitoring role is included in its BCIP Quarterly and Annual Reports.



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

22 December 2016

[REDACTED]  
Federal Safety Commissioner  
Office of the Federal Safety Commissioner  
Department of Employment  
10 Mort Street, Canberra ACT 2601

Dear [REDACTED]

**New Compliance Requirements for Commonwealth-funded Building Work**

I write in relation to the recently enacted *Building and Construction Industry (Improving Productivity) Act 2016* (the Act) and *Code for the Tendering and Performance of Building Work 2016* (the Code), and specifically the new functions required of both our Offices for which there is overlap.

The Building Code 2016 for which I am responsible, requires funding entities to only contract for building work with code covered entities who only use products in building work that comply with the relevant Australian Standards. Beyond this, I have a general responsibility under the Act to investigate suspected contraventions, by building industry participants, of the Act, designated building laws and the Code.

I note the requirement conferred on you for auditing compliance with National Construction Code performance requirements in relation to building materials.

I believe this is an area where we can work together to ensure the responsibilities of our Offices are discharged to their fullest extent, in the most efficient manner possible.

To that end, I request a meeting in the New Year to discuss these matters.

The appropriate person to contact within the ABCC is Acting National Manager Building Code, [REDACTED]  
[REDACTED] can be contacted on [REDACTED]

Yours sincerely

[REDACTED]  
**Nigel Hadgkiss**  
Commissioner  
Australian Building and Construction Commission