

ABCC Commissioner's Opening Statement

Thank you, Chair.

I welcome the opportunity to update the Committee on the work of the ABCC in undertaking the agency's significant new roles and responsibilities.

Building Code

When I appeared before this Committee in February, I advised that the ABCC was in the process of streamlining our enterprise agreement assessments under the Building Code. I am pleased to report that we have done exactly that.

You may recall that during that last hearing, I outlined plans to publish guidance material consisting of more than 500 agreement clauses which had been assessed for compliance with the 2016 Code.

This guidance material was published in March, and has since been expanded to include more than 1,200 clauses. This published material includes examples of real clauses and provides accompanying advice on whether the clause is either compliant or non-compliant.

This resource provides readily accessible clarity for the sector on the application of the Code and allows industry to undertake their own preliminary reviews of agreements prior to submitting them to the ABCC for assessment. This has substantially streamlined the assessment process.

Additionally, the ABCC is now providing expedited advice on individual clauses.

This advice is particularly helpful for unions and industry associations seeking advice on behalf of hundreds of members. The average turn-around time for this type of advice is ten days.

As of 29 May 2017, the ABCC had received 1,192 enterprise agreements for assessment against the Building Code 2016.

The agency is now assessing over 300 agreements per month – a number which should enable us to meet industry demands for assessments, particularly for those involved in tender processes.

The systems the ABCC has introduced have enabled us to carry out this assessment work in-house without needing to outsource any part of the process to external parties, such as law firms.

The ABCC has worked hard to put the appropriate structures and processes in place.

For example, we have introduced systems which place priority on the assessment of agreements which relate to a tender that is soon to be awarded.

This will ensure that the award of a tender is not delayed by an outstanding agreement assessment on our part.

Engagement with contractors

My agency continues to engage with contractors to educate and assist them to comply with the Building Code. When we uncover non-compliance with the Code by a contractor, the ABCC will take appropriate action.

We have already seen one sanction being imposed by the Minister on a builder earlier this year.

In recent weeks, I have also had cause to issue 'show-cause' letters to three other companies across the country.

Each deals with suspected breaches of the Code, including one relating to a Security of Payment matter.

Two of the entities are Tier One contactors.

It may also be noted that the agency has five employers currently before the courts for breaches of workplace laws.

If these employers are found to have contravened the law, then this may also have code sanction consequences for them.

Engagement with State and Territory OHS authorities

As the Committee would be aware, the Building Code requires strict compliance with occupational health and safety obligations by contactors.

A failure to comply with State and Territory safety laws is taken to be a failure to comply with the Building Code and may result in an exclusion sanction for undertaking Commonwealth funded work.

To ensure the ABCC is able to effectively seek exclusion sanctions in such circumstances, I have personally written to the heads of all State, Territory and Commonwealth occupational health and safety regulators to establish information sharing arrangements with them.

This will enable my agency to take steps towards a sanction under the Building Code where we are notified a code covered entity has contravened a safety law.

Security of Payment

The Committee will also recall that the 2016 Code sets out new requirements for strict compliance with State and Territory Security of Payment laws.

This includes a requirement for code covered entities to:

1. report disputed and delayed progress payments to the ABCC; and
2. comply with any adjudication decision.

As a consequence, the ABCC is working to ensure the Code delivers increased compliance with State and Territory security of payment laws by code covered entities.

The ABCC has provided guidance to industry about disputed and delayed payments, and has established new systems to enable contractors to report disputed or delayed payments.

We are also asking stakeholders to report to us any coercive behaviour or undue influence with respect to progress payments as such conduct could breach the Code.

The ABCC has been, and will continue to work with State and Territory agencies with responsibility for security of payments.

I have also been in regular dialogue with Mr John Murray AM, who, as you may recall, has been appointed to conduct a review of Security of Payment laws in the building and construction industry.

I wish to place on record my thanks to Mr Murray for his advice to my agency, which has been invaluable.

Wages and Entitlements

With regard to wages and entitlements, the ABCC has established a dedicated team to provide advice and assistance across our organisation.

They work with our investigators, whose focus on wages and entitlements issues is both reactive and proactive.

The agency provides assistance and advice, and where necessary, will take enforcement action, on any wages and entitlements issues in the commercial building and construction sector.

We will also undertake targeted proactive audits of key industry sectors.

For instance, I can advise that the first series of proactive audits has commenced with a focus on the concreting and formwork sector.

Those processes are continuing.

Finally, I would like to again publicly thank the staff of the ABCC, and acknowledge their continued dedication and efforts in establishing the new agency and its operations.

Let me also conclude by confirming that both my staff and I remain absolutely committed to ensuring the rule of law is paramount in the building and construction industry.

Breaches of workplace laws will continue to be effectively enforced in this important sector, whether they are by employers, employees, or unions, and whether they are in relation to wages and entitlements, unlawful industrial action, coercion, discrimination, or right of entry.

Thank you, Chair.