

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Australian Building and Construction Commission

Department of Employment Question No. EMSQ17-004301

Senator Xenophon provided in writing.

Question

ABCC - Security of payments obligations

1. How has the ABCC approached its compliance activity with respect to the new security of payment obligations under the Building Code?

2. Are there any active investigations relating to non-compliance with security of payment obligations?

Answer

1.

- The ABCC published the new security of payment requirements when its website was launched in December 2016 and the ABC Commissioner immediately wrote to all state/territory regulators.
- The ABCC then met with and established relationships with all state/territory regulators to learn about the security of payment legislative framework and cooperation has been afforded in the sharing of data.
- The ABC Commissioner has been in regular dialogue with Mr John Murray AM who has been appointed to conduct a review of security of payment laws in the building and construction industry. Mr. Murray has provided the agency with guidance in implementing security of payment obligations.
- The ABCC is a member of the Phoenix Taskforce that comprises over 20 Federal, state and territory government agencies. The ABCC has met with ASIC and the ATO, and attended a phoenix taskforce forum and working group meeting to discuss the new security of payment requirements under the Code and to facilitate the sharing of information.
- In early May 2017 the ABCC published a webpage about security of payments including information explaining the difference between 'disputed' and 'delayed' payments and when reporting is required. Mr Murray has provided guidance to the agency in establishing appropriate definitions for these terms.
- A reporting form has been developed to assist code covered entities meet their reporting obligations and an email inbox had been established to receive reports.
- In early May 2017 the ABCC published an industry update which included information about security of payments obligations for code covered entities.

- The ABCC is asking stakeholders to report any coercive behavior or undue influence with respect to progress payments as such conduct could breach the code.
 - ABCC investigators conduct regular compliance activities such as undertaking site inspections and audits to ensure compliance with the code. When the ABCC uncovers non-compliance with the code by a contractor, the ABCC takes appropriate action including seeking rectification by non-compliant contractors.
2. An audit undertaken by the agency uncovered a potential breach of the security of payment obligations contained in the Building Code 2013. The ABC Commissioner issued a 'show-cause' letter on 4 May 2017 in relation to this particular matter alleging that this business failed to make progress payments in a timely manner to a subcontractor.

As the new projects to which the 2016 Code applies have only recently commenced construction, the ABCC's monitoring activities have commenced with education. The ABC Commissioner and the National Manager Building Code have presented to the industry on 28 occasions about the ABCC and the requirements of the new Code, including the Security of Payment requirements. These presentations have been given to a variety of industry stakeholders including large and small contractors, unions, industry associations, government agencies and industrial relations law firms that represent industry stakeholders.