

March 2023

Quarterly report by the Commonwealth Ombudsman under s 65(6) of the *Building and Construction Industry (Improving Productivity) Act 2016* – for the period 1 October to 31 December 2022

This is the final quarterly report by the Commonwealth Ombudsman (Ombudsman), Iain Anderson, under s 65(6) of the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act).¹

Under the *Building and Construction Industry (Improving Productivity) Act 2016* (the Act), the Ombudsman was required to review the examination powers exercised by the Commissioner of the Australian Building and Construction Commission (ABCC) and any person assisting the Commissioner. Under s 65(6) of the Act, the Ombudsman must report to Parliament as soon as practicable after the end of each quarter of each financial year about examinations conducted by the ABCC and reviews conducted by the Ombudsman during that quarter.

The Australian Government committed to abolishing the ABCC. Sections of the Act relevant to the ABCC's functions were repealed by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* on 7 December 2022. Under transitional arrangements in the legislation, the Ombudsman is reporting to Parliament in 2023 on the ABCC's use of examination powers in the period between 1 July 2022 and the abolition of the ABCC.

References in this report to the Act reflect the legislation that was in force at the time of our reviews.

Australian Building and Construction Commission powers

Under the Act, the Commissioner could inquire into and investigate any act or practice by a building industry participant, which may be contrary to the Act, a designated building law, Commonwealth industrial instruments, or the Building Code². As part of an investigation, the Commissioner could apply to a nominated presidential member of the Administrative Appeals Tribunal (AAT) for an examination notice, under s 61B of the Act.

An examination notice could require its recipient to:

- a) give information to the Commissioner
- b) produce documents to the Commissioner
- c) attend before the Commissioner to answer questions relevant to an investigation.

Commonwealth Ombudsman's review role

Under s 64 of the Act, the Commissioner was required to notify the Ombudsman as soon as practicable after an examination notice is issued and provide copies of relevant documents. Under

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² The term 'Building Code' within the Act means the *Code for the Tendering and Performance of Building Work 2016*.

s 65(1) of the Act, the Commissioner was required to give the Ombudsman the following as soon as practicable after the examination is completed:

- a) a report about the examination
- b) a video recording of the examination, and
- c) a transcript of the examination.

Our Office used these records to review how the Commissioner, and any person assisting the Commissioner, exercised examination powers under the Act.

Under s 65(6) of the Act, the Ombudsman must report to Parliament as soon as practicable after the end of each quarter of each financial year about examinations conducted by the Australian Building and Construction Commission (ABCC) and reviews conducted by the Ombudsman during that quarter.

Review criteria

We assessed the examination notices issued and examinations conducted during the review period against the following criteria:

1. Was the application for the examination notice made in accordance with the requirements of the Act (s 61B) and the Regulations (s 5)?
2. Did the examination notice comply with the requirements of the Act (ss 61C and 61D), the Regulations (ss 6, 7 and 8), and relevant best practice principles?
3. Was the examination notice given to the person named on the notice, in accordance with the requirements of the Act (s 61E), and were claims of privilege properly handled?
4. Was the examination conducted in accordance with the requirements of the Act (s 61F), relevant best practice principles and standards, and the ABCC's internal guidelines?
5. Did the ABCC comply with any directions issued by the Minister (s 17)?

Progress made since previous report

No issues from previous review periods were identified as requiring further remedial action during this review.

Report on examinations and reviews conducted

1 October to 31 December 2022

The Ombudsman reviewed 8 examination notices and examinations conducted by the ABCC. Details of our reviews are at [Appendix A](#) and the results are reported below.

Criterion 1 – Was the application for the examination notice made in accordance with the requirements of the Act (s 61B) and Regulations (s 5)?

The ABCC was compliant with this criterion.

Criterion 2 – Did the examination notice comply with the requirements of the Act (ss 61C and 61D), the Regulations (ss 6, 7 and 8), and relevant best practice principles?

The ABCC was compliant with this criterion.

Criterion 3 – Was the examination notice given to the person named on the notice, in accordance with the requirements of the Act (s 61E), and were claims of privilege properly handled?

The ABCC was compliant with this criterion.

Criterion 4 – Was the examination conducted in accordance with the requirements of the Act (s 61F), relevant best practice principles and standards, and the ABCC’s internal guidelines?

The ABCC was compliant with this criterion.

Criterion 5 – Did the ABCC comply with any directions issued by the Minister (s 17)?

The Minister did not issue any directions relevant to the ABCC’s examinations during this reporting period.

Appendix A — Examinations conducted and reviewed

The Ombudsman conducted 8 reviews between 1 October 2022 and 31 December 2022 of examinations conducted by the Commissioner between 1 July to 31 December 2022.

The table below shows the dates on which the examinations were conducted and when the Ombudsman conducted its review.

ABCC Examination Reference Number	Date Examination Conducted	Ombudsman Review Conducted
ABCC22/018	8/07/2022	5/12/2022
ABCC22/019	15/07/2022	5/12/2022
ABCC22/020	7/09/2022	8/12/2022
ABCC22/021	16/09/2022	5/12/2022
ABCC22/022	9/09/2022	8/12/2022
ABCC22/023	5/10/2022	6/12/2022
ABCC22/024	5/10/2022	7/12/2022
ABCC22/025	11/10/2022	7/12/2022