



Freedom of Association in the Building and Construction Industry

Freedom of association protections give employees and contractors the right to choose whether or not to join a union or industrial association.

Freedom of association is protected by the *Fair Work Act 2009* (FW Act), which applies to all employers and employees.

The *Building and Construction Industry Improvement Act 2005* (BCII Act) has special provisions to reinforce freedom of association principles in the building and construction industry.

Freedom of association gives employers, employees and independent contractors:

- freedom to choose whether or not to join a union or employer association
- protection from discrimination or victimisation due to membership or non-membership of a union or employer association
- entitlements to compensation when freedom of association rights are infringed.

Penalties and deterrents can be imposed for infringements of a person's freedom of association rights.

CONDUCT THAT BREACHES THE RIGHT OF FREEDOM OF ASSOCIATION

The BCII Act and FW Act prohibit several types of conduct that infringe freedom of association rights. Additionally, it is often illegal to simply threaten to engage in prohibited conduct. Likewise, it is illegal to encourage or incite another person to engage in prohibited conduct.

BCII ACT - PROHIBITED CONDUCT AND PENALTIES

Prohibited conduct under the BCII Act includes:

- coercing a person to, or not to, employ, engage, designate, or allocate responsibilities to a building employee or contractor. For example, a union official threatens to shut down a site unless a subcontractor hires a certain unionised contractor
- coercing or undue pressuring of a person into making, varying, terminating, or lengthening a workplace agreement
- coercing a person into nominating a superannuation fund applying to building employees
- discriminating against a person because they are covered/not covered by a particular industrial instrument. For example, a head contractor cuts back the work to be done by a subcontractor because they are using independent contractors.

For contraventions of BCII Act provisions the Federal Court can make appropriate orders, including:

- penalties of up to \$22,000 for an individual, and up to \$110,000 for a body corporate
- awards of compensation for damage suffered by an injured party
- the conduct be discontinued or prevented from taking place.

FW ACT - PROTECTIONS AND PENALTIES

Under the FW Act it is unlawful for a person to take or threaten adverse action because a person is or is not:

- a member of a union
- engaging in industrial activity - this includes participating in industrial action; joining or leaving a union and paying strike pay
- exercising a workplace right - this includes activities such as seeking correct entitlements under an award or agreement, or an industrial law; commencing or participating in court proceedings; making an inquiry in relation to employment; or complaining to a workplace body.

Adverse action covers activities such as dismissal, terminating a contract, refusing to employ or engage a person, discrimination, and organising or taking industrial action.

For breaches of the FW Act, the Federal Court or the Federal Magistrates Court can make appropriate orders, including:

- penalties of up to \$6,600 for an individual, and up to \$33,000 for a body corporate
- awards of compensation for damages suffered by an employee or independent contractor
- injunctions to stop or prevent the conduct
- reinstatement of a person.

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.