



# Unlawful Coercion

Coercion in the building and construction industry is unlawful under the *Building and Construction Industry Improvement Act (BCII Act)* and the *Fair Work Act 2009 (FW Act)*.

Persons or organisations who engage in unlawful coercion can be prosecuted.

## WHAT IS COERCION?

Coercion is the act of applying pressure to force a party to cause them to do, or not do, a certain thing or to make a particular decision. Coercion interferes with a person's freedom of choice.

There are specific laws in relation to coercion that apply to aspects of the building and construction industry.

## HIRING BUILDING CONTRACTORS OR EMPLOYEES

It is illegal to organise or take action, or threaten to take action, in order to coerce a person to:

- employ or not employ a person as a building employee
- engage or not engage a person as a building contractor
- allocate or not allocate particular responsibilities to a building employee or contractor or designate particular duties to a building employee or contractor.

For example it would be considered unlawful coercion for a union to threaten industrial action unless a builder employed a particular shop steward on a work site.

## AGREEMENT MAKING

Persons are entitled to make, vary, extend or terminate an agreement. It is illegal to coerce or apply undue pressure to influence a person's decision on these matters. The coercion or undue pressure may be for the purpose of influencing a person to either make a decision or not make a decision.

## MEMBERSHIP OF UNIONS AND INDUSTRIAL ASSOCIATIONS

It is illegal:

- to take adverse action against another person because the other person is or is not or was or was not an officer or member of an industrial association
- for an employer to induce an employee to become or not become, or remain or cease to be an officer or member of a union
- during discussions for a proposed building agreement for an employer to coerce or apply undue pressure to an employee to make, or withdraw, a request for union representation.

## SUPERANNUATION SCHEME

It is illegal for a person to take or refrain from taking action, or threaten to do so, with the intent of coercing a person to use a particular superannuation fund or scheme for superannuation contributions.

## WHAT PENALTIES MAY BE IMPOSED FOR UNLAWFUL COERCION?

If the Federal Court finds that unlawful coercion has occurred then it may:

- impose a penalty
- grant an injunction
- require compensation to be paid to a person damaged by the breach or make any other appropriate order.

The maximum penalties are:

- up to \$22,000 for individuals and up to \$110,000 for a body corporate per breach of the BCII Act
- up to \$6,600 for individuals and up to \$33,000 for a body corporate per breach of the FW Act.

The maximum penalty amounts do not apply to compensation.

## SOME OTHER GENERAL COERCION OFFENCES UNDER THE FW ACT

It is illegal for a union official or member to organise or take action, or threaten or encourage such, with the intent of coercing an employer to:

- become or not to become an officer or member of a union
- take action that would contravene freedom of association laws or
- prejudice an employee because they failed to comply with a direction given by the union.

It is illegal for a union official or member to take or refrain from taking action, or threaten to do so, with the intent of coercing a person to:

- join in industrial action
- discriminate against an independent contractor in relation to union membership
- pay a bargaining services fee.

## FURTHER INFORMATION

Fact sheets and other reference material is available from the ABCC:

- Hotline: 1800 003 338
- Website: [www.abcc.gov.au](http://www.abcc.gov.au)

**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.



### Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

1800 003 338  
[abcc.gov.au](http://abcc.gov.au)