

# Factsheet No. 19

## Unconscionable conduct



This factsheet looks at the law covering unconscionable conduct.

- What is unconscionable conduct?
- How do I tell if conduct is unconscionable?
- What are some examples of unconscionable conduct?
- How do I avoid being a victim of unconscionable conduct?
- What remedies are available?
- Further information

Under the Australian Consumer Law, it is illegal for businesses to engage in unconscionable conduct when dealing with other businesses or their customers.

### What is unconscionable conduct?

Unconscionable conduct does not have a precise legal definition but generally speaking, it refers to conduct which is particularly harsh, unfair or oppressive and against conscience as judged against the norms of society.

The laws concerning unconscionable conduct extend to consideration of a stronger party exploiting the special disadvantage of another in business dealings in a manner regarded as unconscionable.

What constitutes a special disadvantage can take a variety of forms and may include:

*poverty or need of any kind, sickness, age, sex, infirmity of body or mind, drunkenness, illiteracy or lack of education, lack of assistance or explanation where assistance or explanation is necessary. The common characteristic of such adverse circumstances seems to be that they have the effect of placing one party at a serious disadvantage vis-à-vis the other.*

### How do I tell if conduct is unconscionable?

Relevant considerations when determining whether conduct is unconscionable include:

- the relative bargaining strength of the parties
- the willingness of the stronger party to negotiate
- whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party
- whether the weaker party could understand the documentation used
- the use of undue influence, pressure or unfair tactics by the stronger party
- the extent to which the parties acted in good faith

### What are some examples of unconscionable conduct?

The NSW Office of Fair Trading provides the following examples:

- not properly explaining conditions of a contract to a person known not speak English or with a learning disability
- not allowing sufficient time to read an agreement, ask questions or get advice
- using a friend or relative of a customer to influence the customer's decision
- inducing a person to sign a blank or one-sided contract
- taking advantage of a low-income consumer by making false statements about the real cost of a loan
- failing to disclose key contractual terms
- using high pressure tactics, such as refusing to take 'no' for an answer

### **How do I avoid being a victim of unconscionable conduct?**

The Australian Competition and Consumer Commission (**ACCC**) provides the following tips to avoid becoming a victim of unconscionable conduct:

- ensure all commercial agreements are in writing
- make sure you fully understand all the terms of the transaction
- do not sign any agreements without reading them carefully
- ask for plain language explanations and obtain independent professional legal or financial advice if unsure
- if you think you are being treated differently, ask why
- do not allow yourself to be talked into a deal that is wrong for you by high pressure sales tactics. Be wary of tight decision deadlines
- look for the best deal and try to negotiate the outcome you want
- be prepared to walk away from a deal that does not 'feel' right. It could be an unreasonable or oppressive deal

### **What remedies are available?**

If it is determined that unconscionable conduct has occurred, remedies include:

- compensation for loss or damage
- financial penalties
- having the contract declared void in whole or in part
- having the contract or arrangement varied
- a refund or performance of specified services

### **Further information**

For further information you may visit the websites of the [Office of Fair Trading](#) or the [ACCC](#).

If you need advice on to how proceed with a complaint regarding unconscionable conduct contact your nearest community legal centre

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*This factsheet is no substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre*

