

Unconscionable conduct

Unconscionable conduct is generally understood to mean conduct which is so harsh that it goes against good conscience. **YES**. Under the Australian Consumer Law, businesses must not engage in unconscionable conduct, when dealing with other businesses or their customers. **HCF are guilty of unconscionable conduct. Explanation and evidence below.**

Understanding what unconscionable conduct means

Unconscionable conduct does not have a precise legal definition as it is a concept that has been developed on a case-by-case basis by courts over time. Conduct may be unconscionable if it is particularly harsh **YES** or oppressive **YES**. To be considered unconscionable, conduct it must be more than simply unfair—it must be against conscience as judged against the norms of society. **YES**

Business behaviour may be deemed unconscionable if it is particularly harsh or oppressive, and is beyond hard commercial bargaining. **YES**

For example, Australian courts have found transactions or dealings to be 'unconscionable' when they are deliberate **YES**, involve serious misconduct **YES** or involve conduct which is clearly unfair and unreasonable. **YES**

Determining whether conduct is unconscionable

There are a number of factors a court will consider when assessing whether conduct in relation to the selling or supplying of goods and services **YES** to a customer, or to the supplying **YES** or acquiring of goods or services to or from a business **YES**, is unconscionable.

These include:

- the relative bargaining strength of the parties. **Dominant.**
- whether any conditions were imposed on the weaker party that were not reasonably necessary **YES** to protect the legitimate interests of the stronger party **YES**
- whether the weaker party could understand the documentation used **NO**
documentation prior to 16/9/2016 even though multiple requests were made.
- the use of undue influence **YES**, pressure **YES** or unfair tactics **YES** by the stronger party. **No chance to 'make right' after onsite audit-16/9/2016. Escalation to HCCC and Physio council with no discussion or warning of intention.**
- the requirements of applicable industry codes **YES. HCF had multiple meetings with a private practice to assist them. I believe and have evidence industry requirements were not fulfilled. HCF (and the APA) advised teh industry that 'classes' were not claimable. HCF allowed one practice to claim classes- no other practice to claim 'classes' in Australia.**
- the willingness of the stronger party to negotiate. **HCF showed no willingness to negotiate. HCF's ancillary manger has never accepted to meet and assist a resolution. HCF have not fulfilled its word to the Small Business Commissioners Office to have a meeting with my business.**
- the extent to which the parties acted in good faith. **I believe that HCF have acted grossly in bad faith at many levels. I believe this to be motivated by management receiving percentage bonuses with the money they save,**

This is not an exhaustive list and it should be noted that the court may also consider any other factor it thinks relevant.

Penalties and remedies

If the court determines that unconscionable conduct has occurred, a variety of remedies may be ordered including:

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

Relevant sections of the Competition and Consumer Act

[s.20 — Prohibition against unconscionable conduct \(link is external\)](#)

[s.21 — Unconscionable conduct in connection with goods or services \(link is external\)](#)

[s.22 — Matters the court may have regard to for the purposes of section 21 \(link is external\)](#)

Report potential unconscionable conduct

[Contact the ACCC](#)

More information

[Business snapshot – Unconscionable conduct](#)

[Make a consumer complaint](#)

[Make a complaint as a business](#)
