

What is 'Unconscionable Conduct'?

'Unconscionable conduct' under the Trade Practices Act refers to harsh or unfair behaviour by a stronger party over a weaker party through imposition of unreasonable terms or non disclosure of conditions. In general, unconscionable conduct results in financial benefit for the stronger party to the detriment of the other.

Does the Act apply to you?

1. The conduct must have occurred after 1 July 1998.
2. The transaction must involve goods or services priced under \$ 1 million.
3. The circumstances of the alleged conduct must be reasonably foreseeable.

If the answer is yes to one or more of the following then the risk of 'unconscionable conduct' is increased.

1. Does the size or strength of the company put it in a substantially stronger bargaining position than your small business?
2. Is your small business, as a result of the company's conduct, required to comply with conditions that are not reasonably necessary to protect the legitimate commercial interests of the company?
3. Was undue influence, pressure, or unfair tactics used against your small business or representative? If so, was such conduct engaged in by a company or person acting on behalf of the stronger party?
4. Was the amount paid and/or the terms for the goods and services higher, or were the circumstances under which they could be acquired, more onerous than generally apply elsewhere?

If the answer is 'no' to one or more of the following questions the risk of unconscionable conduct is increased.

1. Were you able to understand the documents used?
2. If you were not able to understand the documents, were you advised by the larger company to seek independent advice?
3. Has the larger party demonstrated compliance with an industry code?
4. Has the larger party disclosed all terms that could affect your commercial viability?
5. Were you given the opportunity to negotiate the terms and conditions of the contract?