Article Information

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Unconscionable Conduct – Optus agrees to $100m penalty

As a consequence of proceedings brought by the Australian Competition and Consumer Commission (ACCC), Optus Mobile Pty Ltd (Optus) has admitted to engaging in unconscionable conduct in connection with its sale of telecommunications goods and services to a large number of consumers and has agreed to pay a penalty of $100 million.

Further, Optus has agreed to sign an undertaking whereby Optus and the ACCC will make joint submissions to the Court in support of relief orders to be made including declarations, penalties, costs, a publication order and corrective notice. Both the penalty and undertaking are subject to court approval.[1]

We have outlined below the claim brought by the ACCC against Optus, the unconscionable conduct which Optus has admitted and the agreed penalty, which is subject to court approval.

The proceedings

On 31 October 2024, the ACCC brought proceedings against Optus in the Federal Court alleging that it engaged in unconscionable conduct in breach of section 21 of the Australian Consumer Law through the sale of telecommunication goods and services to consumers in circumstances where those goods or services were often not wanted or needed and, in some cases, pursued those consumers via debt collection agencies.

It was alleged that there were more than 400 consumers to whom Optus had sold these products and many of these consumers were considered vulnerable or experiencing disadvantage. A large number of the consumers were First Nations Australians who resided in rural or remote areas. Some of these areas did not have Optus coverage and Optus failed to do the necessary checks to inform the customer if they would have coverage.

Allegations included that Optus put undue pressure on some consumers to purchase the goods or services and that debt collectors were engaged to pursue these consumers in circumstances where Optus knew inappropriate or fraudulent sales conduct had been used. The ACCC alleged that in addition to financial harm, many vulnerable customers suffered shame, embarrassment, stress and emotional distress caused by the uncertainty of how they would pay the debt that was caused as a result of the unconscionable conduct.

What is unconscionable conduct?

The Australian Consumer Law prohibits a person in trade or commerce from engaging in conduct that is unconscionable in connection with the supply/acquisition or possible supply/acquisition of goods or services to a person.[2]

Section 22 of the Australian Consumer Law sets out relevant matters to which the court may have regard to when determining whether a person has engaged in statutory unconscionable conduct in breach of section 21 of the Australian Consumer Law. The below are some examples of these matters which have particular relevance here:

- the strengths of the bargaining positions of the supplier and the customer;
- whether the customer was able to understand documents that were provided in relation to the supply of the goods or services;
- whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer by the supplier; and
- the extent to which the supplier and the customer acted in good faith.[3]

Conduct can be seen as unconscionable when it is ‘so far outside societal norms of acceptable commercial behaviour as to warrant condemnation as conduct that is offensive to conscience.'[4]

Allsop CJ gave the following explanation on what the prohibition on unconscionable conduct involves in the case of *Paciocco v Australia and New Zealand Banking Group Ltd*[5] which was adopted in the case of *Australian Competition and Consumer Commission v Telstra Corporation Ltd* ***[6]***:

"recognition of the deep and abiding requirement of honesty in behaviour; a rejection of trickery or sharp practice; fairness when dealing with consumers; the central importance of the faithful performance of bargains and promises freely made; the protection of those whose vulnerability as to the protection of their own interests places them in a position that calls for a just legal system to respond for their protection, especially from those who would victimise, predate or take advantage; a recognition that inequality of bargaining power can (but not always) be used in a way that is contrary to fair dealing or conscience; the importance of a reasonable degree of certainty in commercial transactions; the reversibility of enrichments unjustly received; the importance of behaviour in a business and consumer context that exhibits good faith and fair dealing; and the conduct of an equitable and certain judicial system that is not a harbour for idiosyncratic or personal moral judgment and exercise of power and discretion based thereon."

Optus agrees to penalty

On 18 June 2025, the ACCC announced that Optus has admitted to engaging in unconscionable conduct and agreed to pay a $100 million penalty. The ACCC and Optus are now seeking court approval of the agreed penalty for Optus' admitted breach of the Australian Consumer Law.

According to the ACCC's media release, Optus admits to sales staff acting unconscionably including by:

- putting undue pressure on consumers to purchase a large number of products, including expensive phones and accessories, that they did not want or need, could not use or could not afford;
- failing to explain relevant terms and conditions to vulnerable consumers in a manner they could understand, resulting in them not understanding their ongoing payment obligations;
- not having regard to whether consumers had Optus coverage where they lived;
- selling products and services which Optus knew, or ought reasonably to have known, the consumers could not afford; and
- misleading these consumers to believe that goods were free or included as part of a bundle at no additional cost.***[7]***

This case raised concerns that Optus staff who operate on commission-based sales arrangements may have felt incentivised to engage in inappropriate sales conduct.

The ACCC's investigation entailed hearing the impact Optus' conduct had on the consumers, including the significant emotional distress and fear the conduct caused. Optus had conducted internal investigations into the conduct and despite this, proceeded with engaging debt collectors to chase up these vulnerable consumers. Optus admitted to deficiencies in its systems that allowed the conduct to continue and a failure to take the necessary steps to prevent it.

Telstra $50 million penalty

In a similar case brought by the ACCC, in May 2021 Telstra admitted engaging in unconscionable conduct and was ordered by the Federal Court to pay $50 million in penalties.[8] The conduct included selling mobile contracts to indigenous consumers who were in many cases vulnerable due to English being their second or third language. The behaviour was described by the then ACCC Chair Mr Rod Sims, as "truly beyond conscience" and notably there was a failure by the board to cease the practices when they were made aware.[9]

Key Takeaways

Optus' acceptance of such a high penalty demonstrates the seriousness of businesses behaving unconscionably and the ACCC Deputy Chair, Catriona Lowe commented on how such conduct is "unacceptable". To demonstrate how high the agreed penalty is, the maximum penalty for a corporation breaching the relevant provisions of Australian Consumer Law that can be ordered by the court is the greater of:

- $50,000,000;
- if the Court can determine the value of the 'reasonably attributable' benefit obtained, 3 times that value; or
- if the Court cannot determine the value of the 'reasonably attributable' benefit, 30% of the corporation's adjusted turnover during the breach turnover period for the contravention.[10]

The penalty accepted by Optus amounts to approximately double what Telstra paid for similar unconscionable conduct in 2021. The ACCC has again shown its determination to protect consumers from unconscionable conduct.

Commission-based remuneration is a practice the ACCC recommends avoiding in the ACCC's best practice recommendations. The ACCC has recently announced a review into unsolicited selling which will further examine the issues including the role of incentives such as commission based remuneration.[11] Optus' engagement of sales employees on a commission-based remuneration structure materially increased the risk of undesirable or worse still unconscionable conduct.

Businesses should take the time to review the ACCC's best practice recommendations and ensure that business practices are meeting the needs of customers which includes avoiding 'conflicted remuneration policies such as commission-based selling'.[12] Businesses should also consider their interaction with vulnerable customers on the potential training that could be undertaken to enhance compliance.

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[1] ACCC, 'Optus agrees to $100m penalty, subject to court approval, for unconscionable conduct' (Media Release, 18 June 2025) <https://www.accc.gov.au/media-release/optus-agrees-to-100m-penalty-subject-to-court-approval-for-unconscionable-conduct>.

[2] *Competition and Consumer Act 2010* (Cth) sch 2, s 21(1).

[3] Ibid sch 2, s 22.

[4] *Australian Securities and Investments Commission v Kobelt* (2019) 267 CLR 1 at [92].

[5] [2015] 236 FCR 199 at [296].

[6] [2021] FCA 502.

[7] ACCC, 'Optus agrees to $100m penalty, subject to court approval, for unconscionable conduct' (Media Release, 18 June 2025) <https://www.accc.gov.au/media-release/optus-agrees-to-100m-penalty-subject-to-court-approval-for-unconscionable-conduct>.

[8] ACCC, 'Telstra to pay $50m penalty for unconscionable sales to Indigenous consumers, 13 May 2021) <https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers >.

[9] Ibid.

[10] *Competition and Consumer Act 2010* (Cth) sch 2, s 224(3A).

[11] ACCC, 'ACCC to examine unsolicited selling and lead generation practices' (Media Release, 17 June 2025) <https://www.accc.gov.au/media-release/accc-to-examine-unsolicited-selling-and-lead-generation-practices>.

[12] ACCC, *Consumer Vulnerability a business guide to the Australian Consumer Law* (Business Guide, November 2021) 3.