

CASE SUMMARY: Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd [2021] FCAFC 40

Description: Full Federal Court considers concept of “statutory unconscionability” in Australian Consumer Law.

	
81	Trade and commerce
81K1001-K1180	Competition, fair trading and consumer protection legislation
81K1055-K1107	Consumer protection
81K1055-K1057	Unconscionable conduct
81K1056	What constitutes

statutory unconscionability — essential elements — requirement of pre-existing disadvantage — evaluation of unconscionable conduct

Was the respondent’s conduct ‘unconscionable’?

Held:

(1) Contravention of the statutory prohibition in the [AUSTRALIAN CONSUMER LAW](#) (NS), s 21, does not require advantage to be taken, or the exploitation of a pre-existing vulnerability, disability or disadvantage in the equitable sense, nor of some lessened though real disadvantage, disability or vulnerability. Neither is a necessary element of “statutory unconscionability” as a matter of statutory construction.

(2) [AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION V KOBELT \(2019\) 267 CLR 1](#) does not express, as a matter of principle, the requirement of an attribute of vulnerability, in some factor and to some degree, as a necessary element of statutory unconscionability.

(3) The task required of the court is an evaluation of the impugned conduct to assess whether it is to be characterised as a sufficient departure from the norms of acceptable commercial behaviour as to be against conscience or to offend conscience and so be characterised as unconscionable by an Australian statutory business standard of conscience. In the present case, the respondent’s conduct sufficiently departed from acceptable business standards not because it took advantage of or exploited a vulnerability, disability or disadvantage, but because it offended against honesty by reference to the considerations in s 22(1).