

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 31 May to 2 June 2005

Question: Bud 6

Topic: ACCC – Unconscionable Conduct

Hansard Page: Written

Senator Boswell asked:

Mr Samuel, you answered a question from me earlier relating to unconscionable conduct and mentioned that intimidation from another business may be considered a 'smoking gun' when it comes to pinning an unconscionable conduct charge on a company.

In a hypothetical situation, if a producer or processor was to make a complaint to a politician regarding behaviour they considered to be unfair from a buyer, and then after the politician takes action to address the issue, the grower or processor is 'warned' by the buyer that they do not want complaints to politicians and/or that there are possible consequences, would this, in your view, constitute a case of unconscionable conduct?

Answer:

The unconscionable conduct provisions of the Trade Practices Act (TPA) – section 51AC, does not seek to prevent the ordinary hard bargaining that comes with commercial transactions. Conduct will only be considered unconscionable when it is harsh or oppressive. Conduct which is merely 'unfair' will generally not be sufficient to establish that unconscionable conduct has occurred.

Whether or not the conduct described in the hypothetical situation could be characterised as unconscionable would ultimately be a matter for the courts to determine.