



Australian  
Competition &  
Consumer  
Commission

# The Sharing Economy: A guide for private traders

## Complying with Australia's consumer law

2016

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# 1. Who this guide is for

If you are driving for Uber, renting accommodation via Airbnb or using similar websites or apps to find work or customers, you are part of the sharing economy and this guidance is for you.

If you are a trader this guidance will help you understand:

- when Australia's consumer laws apply
- the relationships involved in the supply of services in the sharing economy
- the obligations you have to consumers
- the obligations that platform operators have to you.

## 1.1. Summary of rights and obligations

The *Competition and Consumer Act 2010* and Australian Consumer Law create a number of obligations that businesses must comply with. Many of these obligations are discussed in detail in this document. This document sets out a brief overview of the most important obligations that you and platform operators must comply with.

1. Avoid misleading or deceptive statements about the goods or services you offer, including creating a misleading impression.
2. You cannot use small print to excuse an overall misleading message.
3. Any reviews you write must be accurate and reflect your actual experience and honest opinion.
4. The law creates a number of automatic guarantee rights when you sell goods or services. You must honour these guarantees. There are different obligations depending on whether a failure to comply with a guarantee is major or minor.
5. Generally, it is illegal to refuse to provide refunds if the good or service is faulty.
6. You can refuse to provide a refund if the consumer has changed their mind.
7. You must sell safe goods and services.
  - (a) There are certain products that are banned and cannot be sold.
  - (b) If you recall a product, you must notify the ACCC.
  - (c) If you become aware that a product that you supplied has caused a death or serious injury, you must notify the ACCC.
8. Platform operators must not mislead or deceive you.
9. The automatic guarantee rights apply to you when purchasing services from a platform operator.
10. There are certain circumstances where it is illegal for a platform operator to refuse to supply you.

## 1.2. What is the sharing economy?

The sharing economy is a system which enables people to share access to their goods or services, usually for a fee. There is no single definition for the sharing economy. For the purposes of this guidance, the sharing economy involves individuals or businesses making goods or services available for use by others on a short-term basis. Platform operators provide administrative functions, such as facilitating payment and managing the platform through the use of peer reviews.

Businesses that act as classified markets (such as Ebay or Gumtree), connecting buyers and sellers of goods or that supply goods for the shared use of consumers (such as companies that charge people membership to access company owned cars) do not form part of the sharing economy. This guidance is not intended for people selling goods or services through these platforms. However, the principles set out in this guide are often relevant and are worth following as best practice.

### 1.3. Defining the key parties

There are typically three main parties involved in any sharing economy transaction:

- **Trader** – a person or business that offers and provides goods or services for use by consumers via a platform on a frequent or regular (including semi-regular) basis. For example, you might be a driver of a ride sharing service, or offer your home for holiday accommodation. If so, you are the trader. Platforms may refer to traders by a number of different terms, such as user, driver or host.
- Traders are people who are engaging in ‘trade or commerce.’ People who sell goods or services on a one-off basis are unlikely to be engaging in trade or commerce. However, best practice is to assume you are engaging in trade and or commerce and follow this guidance.
- **Consumer** – a person who purchases goods or services from a trader.
- **Platform Operator** – the business that operates the technology platform that manages the connection between you and the consumer. For example, Uber is a platform operator connecting drivers with consumers and Airbnb is a platform operator connecting accommodation seekers with traders who rent out their homes.

#### Example

Jayne owns a holiday house at the beach. While she mainly uses it for herself, for short breaks away, she has decided to also use the property to earn some additional income. She signs up to Airbnb which connects her with potential consumers, to let her house out a few times a year during holiday periods.

Jayne is the trader. Airbnb is the platform operator.

If you are a consumer or platform operator involved in the sharing economy, the ACCC has prepared alternative guidance. These are available on the [ACCC website](#).

### 1.4. About the Competition and Consumer Act 2010

The *Competition and Consumer Act 2010* is designed to enhance the welfare of Australians through the promotion of competition, fair trading and consumer protection. It contains the Australian Consumer Law, which sets out Australia’s consumer protection regime. The consumer law prohibits certain conduct by traders and sets out the rights of consumers. It protects consumers and also traders when they are acting as consumers themselves (purchasing goods or services, except those that will be resold or incorporated into another product).

Many of the obligations discussed in this guidance apply to people engaging in trade or commerce. This means that they are engaging in some type of regular or business-like conduct. People that engage in a one-off transaction are unlikely to be engaging in trade or commerce and may not be required to comply with many of the requirements in the Australian Consumer Law. However, a best practice approach is to always act as though the consumer law applies.

As a trader, under the consumer law you have both obligations in supplying goods or services to consumers, and rights in your capacity as a purchaser of platform services.

To avoid any doubt, if you intend to supply goods or services via sharing economy platforms, it is best practice to assume that you are acting in trade or commerce and comply with the obligations outlined in this guidance.

The ACCC is an independent government body with the authority to enforce the Competition and Consumer Act and Australian Consumer Law. Penalties may apply for failure to comply with these laws.

### **Example**

In the above example, as Jayne is receiving income from this activity and it is occurring repeatedly, she may be considered to be engaging in trade or commerce. Therefore, Jayne needs to ensure she complies with Australia's consumer laws.

## **2. How the sharing economy works**

The sharing economy encompasses a range of business models. In this document we are focussing on arrangements where a platform operator acts as an intermediary (or middle person) to connect traders and consumers.

As a trader, you will have relationships with both a platform operator and consumers. You may also have relationships with other suppliers. However, this guidance only covers the primary relationships between platforms, traders and consumers.

### **Platform operators (such as Uber and Airbnb)**

Platform operators act as a facilitator, and will generally:

- operate the technology necessary to manage the transaction and connect consumers with traders
- provide administrative functions
- act as a booking service
- provide 'back office functions' such as billing
- facilitate communication between you and the consumers, which may include dispute resolution processes
- manage a (often bi-lateral) review system, which allows consumers to review you and you to review consumers
- charge a commission fee for transactions that it facilitates.

While platform operators are at the centre of the sharing economy, they generally do not supply the primary good or service to the consumer. It is you, the trader who supplies the primary good or service. You will have a relationship with the consumer, while also having an independent relationship with the platform operator. You provide the good or service to the consumer and the consumer pays you (usually with the platform operator acting as a payment intermediary).

## Consumers

The consumer is a person who buys a good or service from you. As the trader, you will directly supply the good or service to the consumer and need to understand your legal obligations.

Your rights and obligations will also depend on the terms and conditions of the platform operator and how it operates. However, regardless of the terms and conditions that a platform operator requires you to agree to, your rights and obligations under the consumer law will apply. It is important that you read and understand the terms and conditions specified by the platform operator, or obtain independent advice.

### 3. Your obligations under the Competition and Consumer Act

Consumers who purchase goods or services from traders (via a platform) are entitled to the general consumer protections available to all consumers. This includes the right to be dealt with honestly and the right to a remedy when things go wrong.

This chapter sets out a number of obligations that are likely to affect you. For a more detailed list of all obligations, you can visit the [ACCC website](#).

The most important obligations that you need to be aware of are:

1. You must not make false or misleading representations or statements or engage in misleading or deceptive conduct, including via fake or inaccurate reviews.
2. You must comply with the consumer guarantees.
3. You must comply with your product safety obligations.

#### 3.1. False or misleading conduct or statements

It is illegal for you to make statements to consumers that are not correct or are likely to create a false or misleading impression. Advertisements, statements or images in any media (including print, radio, television, online and on a sharing economy platform), including any statement made by a person representing you, must be accurate. It is the overall impression conveyed that counts. It is important to consider whether a statement may create a misleading impression in the mind of a consumer. In some circumstances, not mentioning an important fact can be misleading.

For example, a business is likely to break the law if it creates a misleading **overall impression** about the price, value or quality of the good or service. Failing to pass on relevant information may also be misleading if a customer has the wrong idea about your good or service and is relying on your advice.

Any statement you make about your goods or services should be true, accurate and able to be substantiated. As a trader, you may be fined or face court if you mislead consumers. It does not matter whether a false or misleading statement was intentional or not: if you mislead consumers, you are breaking the law.

#### Example

Tien has just listed her house on a house sharing platform. She describes the house as 'close to the beach with ocean views'.

In fact, the house is 10km from the beach and the ocean cannot be seen from the house. Tien is engaging in misleading or deceptive conduct, and breaking the law. She should immediately change the description to ensure it accurately reflects her property's characteristics.

### **Example**

Bob is a handyman who has lots of tools. He joins a tool sharing platform, so that he can make some money by hiring out his tools to people that need them for a short time.

One of Bob's tools is an old and worn drill. On his platform page, Bob claims that 'All tools are in as new condition'. This statement would be misleading or deceptive.

### **3.1.1. Fine print qualifications**

You cannot rely on small print, acronyms or disclaimers to excuse a misleading overall message. If you need to make any qualifying statement, make sure it is clear and prominent so that consumers know what the real offer is.

The fine print qualification cannot directly contradict prominent features of the advertisement (such as advertising a product as 'free' when the fine print indicates some payment must be made). It is the overall impression of the statement which is important.

### **Example**

Yuki is a home cook. She joins a food sharing platform that connects her with consumers wanting to engage with traders who produce meals for sale. Yuki creates a page on the platform and includes lots of photos of meals she has cooked and lists of the types of food she cooks. At the top of the page Yuki states that she cooks food to order and that all food is charged at a flat rate of \$15 per meal.

However, small print at the bottom of the page states 'Special orders will be charged at the flat rate price plus 30%'.

Yuki is engaging in misleading or deceptive conduct, because the small print directly contradicts the main advertisement.

### **3.1.2. Online reviews**

Many platform operators provide a review mechanism that allows consumers and traders to review each other. When you review consumers, it must be accurate and should reflect your genuinely held opinion.

It is misleading to write (or ask or pay someone to write) a fake review about your business. Similarly, if you write (or ask or pay someone to write) false reviews about a competitor, you will be engaging in misleading or deceptive conduct. It could also be misleading to hide bad reviews.

## **3.2. Consumer guarantees**

Under the Consumer Law your customers are automatically provided with a set of consumer guarantees when you supply them with goods or services. These guarantees set out the circumstances when you are required to provide a consumer with a remedy. They are sometimes referred to as statutory warranties.

The type of remedy will depend on the circumstances but may include a repair, replacement, refund, having the service performed again or compensation for foreseeable loss. It will also depend on whether the failure is major or minor. More details on remedies follows.

### 3.2.1. Goods

When goods are supplied to consumers, they come with a number of guarantees, including that they are:

- safe, durable and free from defects
- match their description
- do all the things someone would normally expect them to do
- meet any extra promises made about performance, condition and quality, such as lifetime guarantees and money back offers.

In the sharing economy you will often be leasing goods rather than selling them. These guarantees apply regardless of whether you are leasing or selling a good.

#### Example

Liam recently signed up to a car sharing platform. Consumers pay Liam for the right to use his car (by driving it themselves).

Liam is therefore leasing his car to the consumer and supplying a good. This means that the consumer guarantees will apply to the car. For example, it must be safe.

### 3.2.2. Services

Under the consumer guarantees, when you provide services:

- you must provide those services with due care and skill
- the services must be fit for any disclosed purpose
- the services must be provided within a reasonable time of being purchased, if there is no agreed timeframe.

#### Example

Dave is a member of a ride-sharing platform. He regularly transports consumers in his own car to requested destinations in return for payment. Under the Consumer Law, Dave is considered to be supplying a service.

Under the consumer law, there are automatic guarantees that Dave will provide his service with due care and skill. If Dave fails to comply with this guarantee by delivering the consumer to the wrong destination, the consumer is entitled to a remedy.

### 3.2.3. Failing to meet a guarantee

If a **good or service** fails to meet a guarantee, a consumer will have a right to obtain a remedy. The type of remedy, and who may choose it, will depend on the extent of the failure.

Generally, if the failure to comply with a guarantee for a good is *minor*, you can choose whether to remedy it with a replacement, repair or refund. If the failure is *major* or cannot be fixed within a reasonable time, the consumer can choose to reject the good and obtain a full refund or replacement.



A failure will be major if:

- a reasonable consumer would not have bought the good if they had known of the failure
- the goods aren't what they were said to be or what you demonstrated
- the goods can't be used for what they are normally used for; or
- the goods are unsafe.

If the failure to comply with a guarantee for a service is minor, the consumer must give you a chance to fix the problem free of charge and within a reasonable time. If the problem is *major* or you have refused to fix it or failed to fix it within a reasonable time, the consumer can choose to cancel the contract and get a refund, or keep the contract and get compensation for the difference between the service delivered and what they paid for.

If the consumer incurred costs or suffered losses because of the failure to comply with a consumer guarantee, the consumer can also claim compensation from you, if the cost or the loss was a reasonably foreseeable consequence of the failure of the service.

### **Example**

Charlie recently rented a house for his family on an accommodation-sharing platform from Christine. On arriving at the premises, he discovered that the electricity was not available or connected.

Christine will have failed to comply with the guarantee that goods are of acceptable quality. This is because a reasonable consumer would not regard a holiday rental house with no electricity as being fit for the purpose for which holiday rental properties are commonly supplied.

It is a major failure because a reasonable consumer who was made aware that the property did not have electricity would not have rented the property.

Charlie can reject the property and request a refund.

You may also give a voluntary warranty about your goods or services. In some cases, the platform operator may give one as well. The consumer guarantees apply in addition to any voluntary warranty that you or the platform operator give. The automatic consumer guarantees cannot be excluded, limited or waived. If a consumer has a problem with a good or service that you have supplied and you have failed to meet one or more of the consumer guarantees, you must provide an appropriate remedy.

### **3.2.4. Change of mind**

Consumer rights are not limitless—the consumer guarantees only require a remedy if one of the guarantees has not been met. You are not legally required to provide a remedy if the consumer:

- simply changes their mind, decides they do not like the purchase or decides they have no use for it
- discovers they can buy or rent the goods or services at a cheaper price elsewhere
- damages the goods by using them in a way that is unreasonable or unintended.

### **Example**

Jill rents out her Barossa Valley holiday house to Harriet on an accommodation-sharing platform for the Easter long weekend. Both parties agree that cancellations are not allowed.

The day before the rental is due to start, Jill receives a message from Harriet, cancelling the booking and demanding a refund. Harriet claims that she no longer wants to stay in the property.

Jill is entitled to decline her request for a refund because Harriet has simply changed her mind.

### 3.3. Make sure your products are safe

In Australia, certain goods are banned from sale. There are also some goods that must meet mandatory safety standards.

If you supply goods in trade or commerce (including second hand goods) then those goods should not be unsafe and should meet the safety requirements of any relevant mandatory consumer product safety standards. Goods should not be supplied if they are subject to a ban.

Information about product safety, including lists of standards and bans is available on the Product Safety Australia website [productsafety.gov.au](https://productsafety.gov.au).

In the event that a product supplied has been recalled for safety reasons (whether regulated or not), you would be expected to assist the party recalling that product and minimise any exposure that consumers would have to the associated hazard.

#### **Example**

Atticus rents out his house for seven weeks to Simon and his three young children after Simon found the property on a popular home sharing platform. Atticus advertises his property as 'child friendly'. He supplies equipment for holiday makers who have young children such as high chairs and cots. Atticus ensures that the goods he supplies with the property meet the safety requirements where these apply and he regularly checks the recalls website.

A week before Simon is due to stay at the property Atticus receives a notification of a recall on the brand of cot that he supplies with the property. Atticus returns the cot promptly to the supplier and provides a substitute cot that is compliant with safety standards in Australia and is not the subject of a recall. Atticus has complied with his product safety obligations.

## 4. Your rights when dealing with platform operators

The Competition and Consumer Act and Australian Consumer Law also provide you with rights that apply when you are purchasing goods or services, for example from a platform operator. It is important to understand the obligations that a platform operator has to you.

### 4.1. False or misleading conduct

Just as you must not mislead consumers, platform operators must not mislead you. When you buy services from a platform operator, the statements or claims the platform operator makes to you about its services must be accurate and not misleading.

### 4.2. Consumer guarantees

In some circumstances, you may be a consumer when purchasing services from a platform operator. For example, if you acquire services from a platform operator and the amount payable is less than \$40 000, you will be regarded as a consumer.

This means that the platform operator must provide the services with due care and skill; the service must be fit for purpose, be supplied within a reasonable time and must achieve the desired result made known to the platform operator. The platform operator cannot exclude or limit liability for these guarantees.

If a service purchased from a platform operator does not do what you said you needed it to do or is not provided with due care and skill, you may exercise your right to a remedy under the consumer guarantees.

### Example

Laura is a photographer and has lots of camera equipment. She joins a platform that connects her with people that want to rent some of her equipment. The platform manages the communications between Laura and her customers. It also processes the payment. In the first week of her membership, Laura rents different pieces of equipment to three different people. Under her agreement with the platform, payments are processed within one week. After waiting a week Laura checks her accounts and has not received any payments. She checks with the platform and is told that it transferred her payments to another member by mistake.

The platform will have failed to provide its service (payment processing) within a reasonable time. Laura asks the platform to remedy the failure by transferring the money paid by her customers to her. After a month, Laura has still not received her payments. Laura can end her agreement with the platform and recover damages for her loss.

## 4.3. Refusal to supply

You have the right to choose who you buy goods or services from. Likewise, platform operators are able to choose whether they deal with you or not. However, there are certain circumstances where the law prevents them from refusing to supply services to you.<sup>1</sup>

For example, a platform operator cannot force you to buy goods or services from a third party as a pre-condition to supplying its goods or services to you. This is illegal. This behaviour is referred to as 'third line forcing'.

You can use competing services. Platform operators must not refuse to supply you because you have used someone else's (such as a competitor's) services. However, this is only illegal if it would lead to a substantial lessening of competition.

For further information on these concepts and the competition law visit the [ACCC website](#).

## 4.4. Unfair contract terms

The Consumer Law protects consumers from unfair contract terms. From 12 November 2016, this law will also protect small businesses.<sup>2</sup> These laws apply to small businesses if they employ less than 20 staff and the contract is for less than \$300 000 (or \$1 million if the contract is multi-year).

If a platform operator includes a term in a standard form agreement with you that is unfair, a court can find that the term is void – which means that the term is not binding. A term may be unfair if it:

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<sup>1</sup> The Competition and Consumer Act allows the ACCC to approve this type of conduct where it is likely to result in a public benefit that outweighs any resulting public detriment.

<sup>2</sup> For the purposes of business to business unfair contract terms a business is a small business if it employs less than 20 people (including casual employees employed on a regular or systematic basis).

- causes a significant imbalance between your rights and obligations and those of the platform operator
- is not reasonably necessary to protect the legitimate interests of the platform operator
- would cause you detriment (financial or non-financial) if the platform operator tried to enforce it.

There are limitations on the type of contracts that unfair contract terms apply to. More information on [business-to-business](#) unfair contract terms is on the ACCC website.

## 5. Dispute resolution

### 5.1. Internal

Many platform operators include their own dispute resolution processes. These processes often cover disputes between you and a consumer as well as disputes between you and the platform operator.

Generally, the best approach to take where you have a dispute is to follow the platform operator's dispute resolution process or contact the platform operator if there is no formal dispute resolution process.

### 5.2. External

There are also a number of government organisations that can assist you with dispute resolution.

Each state and territory has an agency that is responsible for regulating the consumer law in that state or territory. These agencies can assist in resolving disputes involving the consumer law.

If you are unable to settle a dispute with a platform operator and consider that the law has been broken, you can report this to the ACCC small business help line on 1300 302 021.

The federal government and many states and territories also have Small Business Commissioners, who can help in mediating commercial disputes.

## 6. More Information

The [ACCC website](#) includes a range of detailed guides and other information that may help you to understand your legal rights and obligations under the Competition and Consumer Act and Australian Consumer Law.