

# ONLINE REVIEWS AND THE AUSTRALIAN CONSUMER LAW

## Online reviews have a great potential of promoting your business

However, caution must be taken in using and managing online reviews when promoting your business to ensure that the business is not inadvertently failing to comply with the Australian Consumer Law (ACL).

### What is an online review?

An online review is a review by a consumer of services or products received from a business. Online reviews can be made on your business' website, on a social media platform or a website platform allowing reviews to be posted about different businesses (together referred to as Platforms).

### How can an online review fail to comply with the ACL?

If an online review is false or misleading then it will fail to comply with the ACL. There are several ways that an online review can be false or misleading, including online reviews:

- that are fake, as these mislead the consumer by providing a review that does not present the actual opinion of the person posting the review. Such reviews may have been put on a Platform by the business itself or by a competitor of a business. For example, the business may write a positive review for their business or a negative review for a competitor using a false name, or ask another person to post a positive review for the business or a negative review for a competitor (often without having used the product or service);
- that are written by family or friends of the business without disclosing their relationship to the business;
- that are written by a person who has received a financial or non-financial benefit to write an exaggerated positive review about a product or service they have used; or
- that are written by a person who has received an incentive, such as a discount on the next service, to write a positive review (details on how to approach incentive offers for reviews is set out under the heading "Offering incentives for reviews").

A misleading impression is also likely to be created where online reviews are manipulated, including:

- removing or hiding negative reviews posted to a Platform;
- editing a negative review on a Platform; or
- preventing consumers from having the opportunity to provide a review. For example, the Federal Court of Australia found that an accommodation provider manipulated TripAdvisor reviews by changing customer

emails, or withholding customer emails, to prevent a review invitation being sent to customers who may have had a negative experience.

If the Platform uses an aggregated rating system (such as a point system), then the number of reviews making up the aggregated rating should also be provided, for example "15 reviews average seven points".

### Offering incentives for reviews

If your business wishes to offer incentives to consumers to provide reviews, it is important not to be misleading in doing so. The following guidance is provided by the Australian Competition and Consumer Commission (ACCC) to assist:

- ensure that the incentive is offered and provided to consumers regardless of whether the consumer is likely to make a positive or negative review;
- make sure that the consumer is aware that they will receive the incentive regardless of whether the review is positive or negative; and
- ensure the incentive is prominently disclosed to persons reading the review.

### What can be done about negative reviews?

If a negative review is posted about your business, it is important to be cautious in the steps the business takes.

If the review is a genuine review from a customer, the business will likely be engaging in misleading conduct if the business deletes, hides or edits the review.

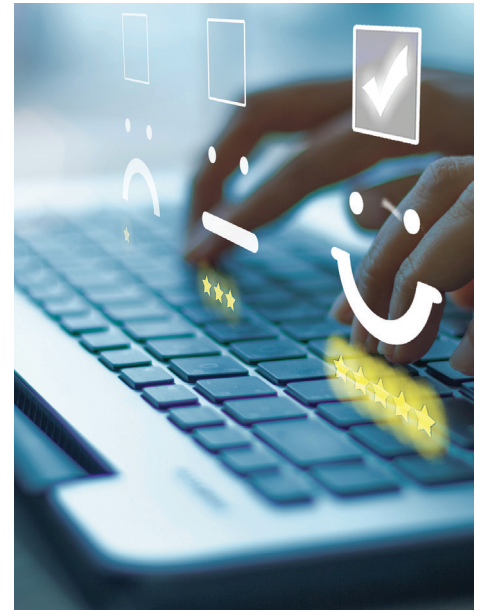
A positive step that the business may wish to take is to place a public post in response to the negative review. In doing so, the business should also be genuine and consider the wording and approach used with a view to minimising the situation.

The negative review may only be removed if the business actually believes the review is fake. Indeed, fake reviews should be removed as they are misleading. If a fake review is removed the business should keep a file on the reasons it considered the review to be fake as the business may be required to prove its decision to remove the review.

### Non-Compliance

If you promote your business using online reviews which are found to contain false or misleading representations, the following may apply:

- the ACCC may issue an infringement notice,



carrying a financial penalty of 60 penalty units for a body corporate (currently totaling \$12,600), and 12 penalty units for an individual (currently totaling \$2,520);

- the court may impose a maximum criminal or civil penalty for a body corporate of up to the greater of \$10 million, three times the value gained or if this can't be determined, then 10 percent of the annual turnover of the body corporate in the 12 month period before the act, or for an individual up to \$500,000;
- Non-punitive orders may also be made, such as corrective advertising and the establishment of a compliance program.

### Takeaways

The key takeaways are:

- Take steps to ensure your online reviews are genuine and ensure family and friends posting reviews disclose their relationship.
- If offering an incentive for a review ensure you follow the ACCC guidance.
- Do not post, or request others to post, fake reviews.
- Do not edit, or hide or delete, a negative review (unless you are sure it is a fake review).

### AAAA Member Benefits

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If you have any questions relating to the above case, please contact Industry Legal Group on 1300 369 703 or [aaaa@industrylegalgroup.com.au](mailto:aaaa@industrylegalgroup.com.au)