Who bears the cost when your Uber or Airbnb turns bad?

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Companies that bring together a buyer and seller across a platform, disrupting traditional incumbents, continue to grow in number. The platforms are simple to use and either web or mobile-app based. Along with the disruption to industry giants in sectors such as private transport, accommodation and banking, some argue consumer protections have also been disrupted.

What happens if you have an accident in an Uber X car?

Who is responsible for the public liability insurance if you fall down the stairs at an Airbnb apartment?

When it’s clear the seller of a service is a business, Australian consumers have rights in respect of that business. If the transaction is between two individuals, then the rights are less clear. It’s all very well to say caveat emptor (buyer beware) - but this does not help if there has been an injury.

There are a couple of preliminary points to make. The first is that there may be disintermediation, but there is still a platform through which the service is sold. The platform takes a “clip of the ticket” and this may be revenue share or advertising related. The second issue is that the solution is not the incumbent call to have new competitors regulated away. Instead, the consumer protection regime may need some tweaks to ensure that the expected rights are available.

The need to do the right thing

In order to provide the consumer rights that we expect, we need to be certain that both the platform and the seller are doing the right thing. This means being aware of, and compliant with, Australian norms (or, at least, Australian laws). In practice, the major players such as Uber and Airbnb have requirements on their participants that are designed to minimise potential consumer harm.

For the Uber services known as Uber Black and Uber Taxi, the drivers are licensed as hire car or taxi drivers and usually drive a vehicle with hire car or taxi plates and the relevant insurance. The benefit of using Uber for this service is real-time tracking of the car that will pick you up, including a picture of the driver.

On the other hand, Uber requires drivers for Uber X, its low-cost service, to hold fully comprehensive insurance. The critical issue here is that most insurance companies exclude cover when the car is being used as a taxi. The cover rarely excludes ride sharing. The issue for the consumer is whether Uber is a hire car service or a ride sharing service. If an Uber X customer is injured in an accident, that consumer will just have to hope Uber steps into the shoes of the driver in any litigation over insurance cover.

A similar insurance question arises with Airbnb. The public liability cover for most strata properties is held by the body corporate or owners corporation and covers owner-occupiers, tenants and their guests. This insurance often excludes cover where the building is being used for a commercial purpose. If the insurer regards the use of a unit for Airbnb short stays as being a commercial purpose then there may be no cover in respect of short-term paying guests. The effect is that if an Airbnb guest is injured, they may not be covered by the insurance that the owner expects will apply.

There are other and different risks with Airbnb such as the room or unit not being available when the customer arrives. The buyer can give adverse feedback on the site, but that does not pay for the hotel room needed in place of the accommodation that was promised. However, this is also a potentially insurable risk where the platform could take responsibility.

Alternative options
There is a limit to the extent that intermediary platform-based services can eliminate costs. Insurance provides a good example of this limit. Hitting the limit does not create an impossible problem. One reasonable and practical solution would be for the platform to become an insurance reseller. Bearing the cost of the insurance would need to be mandatory and could apply to the seller or the buyer. Whether it became an explicit line item would probably depend on which side was bearing the cost.

Like with many consumer protection issues, it’s likely it will be a high-profile failure such as a death that will trigger the introduction of change. The consumer law tweak might simply be that the platform must take responsibility for all relevant insurances and that their business offers must make this clear.