

# AUSTRALIAN GROUP BUYING CODE OF CONDUCT

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## 1. Introduction

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Group Buying is a relatively new phenomenon in Australia and it is growing at a substantial rate. A new market report published by Telsyte shows that the group buying market grew from \$123.9 million in quarter 2 2011 to \$158.5 million in quarter 3 2011 and is well on track to exceed market forecast of \$400m for the 2011 calendar year.

Group Buying offers benefits for both consumers and Merchants. Consumers benefit from being able to access discounts on compelling activities and experiences. Merchants benefit by being able to access new customers and promote their business to a broader audience.

As the Group Buying channel grows into an established channel the industry recognises the importance of coming together to develop a Code of Conduct that is specific to the Group Buying experience.

The Code has also been developed to demonstrate the industry's commitment to high ethical standards and best practice.

### **Objectives of the Code**

The objectives of the Code are to:

- a) Ensure that consumers (Subscribers) have access to product and service information they need to make informed choices;
- b) Promote compliance within the industry with relevant laws including *Competition and Consumer Act 2010*, *Privacy Act 1988* including the National Privacy Principles and the *Spam Act 2003*;
- c) Promote fair, honest, ethical best practice within the Group Buying industry;
- d) Increase consumer confidence in dealing with Group Buying Platforms (GBPs).

This Code outlines best practices that GBPs should observe when engaged in Group Buying activities including ensuring that:

- a) the Subscriber fully understands the Offer before accepting it
- b) appropriate policies and procedures are in place
- c) all commercial electronic messages comply with relevant legislation.

### **About Group Buying**

Group Buying, offers products and services at significantly reduced prices usually on the condition that a minimum number of buyers would make the purchase. Typically, these websites feature a deal of the day, with the deal kicking in once a set number of people agree to buy the product or service. Buyers then print off a voucher to claim their discount at the retailer.<sup>[1]</sup> Many of the group-buying sites work by negotiating deals with local merchants and promising to deliver new customers in exchange for discounts.

To find out more about Group Buying go to [http://en.wikipedia.org/wiki/Group\\_buying](http://en.wikipedia.org/wiki/Group_buying).

## 2. Definitions

Code this document

Group Buying offers products and services at significantly reduced prices usually on the condition that a minimum number of buyers would make the purchase. Typically, these websites feature a deal of the day, with the deal kicking in once a set number of people agree to buy the product or service. Buyers then print off a voucher to claim their discount at the retailer.<sup>[1]</sup> Many of the group-buying sites work by negotiating deals with local merchants and promising to deliver new customers in exchange for discounts.<sup>1</sup>

Group Buying Platforms (GBP) are organisations that promote Group Buying Offers.

Subscribers are consumers that sign up to Group Buying Platforms to access Group Buying services.

Offer means an invitation on behalf of and / or for a Merchant to a Subscriber to purchase a specific good or service.

Merchants are vendors who advertise through Group Buying Platforms and offer goods and services to the Group Buying Platform's Subscribers.

Signatory means a Group Buying Platform that it is signatory to this Code.

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<sup>1</sup> [http://en.wikipedia.org/wiki/Group\\_buying](http://en.wikipedia.org/wiki/Group_buying)

### **3. COMPLIANCE WITH AUSTRALIAN LAWS**

3.1 All GBPs must comply with all relevant Australian laws including but not limited to:

a) the *Competition and Consumer Act 2010 (Cth)*

b) the *Privacy Act 1988 (Cth)*

c) the *Spam Act 2003*

## 4. MARKETING CLAIMS

### 4.1 MISLEADING AND / OR DECEPTIVE CONDUCT

- 4.1.1 GBPs should promote the Offer in clear and easy to read language.
- 4.1.2 GBPs should not engage in false and misleading conduct.
- 4.1.3 GBPs should provide Subscribers with accurate information about each Offer provided including:
  - a) The price of the goods or services
  - b) The description of the goods or services and
  - c) The discount
- 4.1.4 GBPs should include more detailed terms and conditions as part of the Offer or via a link from the Offer (where more detailed terms and conditions exist).
- 4.1.5 The terms and conditions for each Offer should include the following information:
  - a) The period for which the Offer is available
  - b) Any limitations or restrictions on the Offer
  - c) any date by which the Member has to book the Offer (especially if this is different from the expiry date)
- 4.1.6 GBPs should confirm with Merchants the accuracy of any claims made about the benefits, value or characteristics of the Offer.
- 4.1.7 GBPs should take care not to portray products as free when purchase of another product is required to secure the good or service. Terms such as complimentary should be used instead.

#### Example 1 Disclosure of Discounts

A GBP offers a \$29 deal on an eat-in dinner at a discount of 50% on the usual price. The same Merchant is currently offering a \$35 special during the period of the Offer. The consumer is misled regarding the size of the discount.

Remedy – the GBP should revise the discount based on the price currently offered by the Merchant.

## 4.2 PRODUCTS THAT CAN'T BE ADVERTISED

4.2.1 There are certain categories of advertising that may be subject to regulation. GBPs should consider the application of the following statutes to their business and the Offers that they are making available to Subscribers:

- a) Tobacco Advertising Prohibition Act 1992 (Cth)
- b) Therapeutic Goods Act 1989 (Cth)
- c) state based legislation including the Liquor Licensing Act 1997 (SA), Liquor Control Reform Act 1998 (VIC), Liquor Act 2007 (NSW), Liquor Control Act 1988 (WA)
- d) Interactive Gambling Act 2001 (Cth) and various state legislation relating to gambling and betting
- e) The Health Practitioner Regulation National Law.

## 4.3 REFUNDS AND CREDITS

4.3.1 GBPs should have a refund policy.

4.3.2 A GBPs refund policy should be clear and unambiguous.

4.3.3 A GBP refund policy should include an example of what will occur in the following three situations:

- a) The Merchant goes into liquidation
- b) The Merchant fails to provide the goods or services
- c) The goods or services provided by the Merchant are not as advertised.

4.3.4 GBPs should prominently display its refund policy on its website.

4.3.5 GBPs should ensure that its refund policy can be easily accessed through the purchase process and the home page of its website.

## 5. COMPLYING WITH THE SPAM ACT

### 5.1 CONSENT

5.1.1 GBPs must only send emails that promote and advertise offers, goods and services to individuals when the GBP has consent.

5.1.2 Consent can exist where:

- a) Someone has opted in to receive offers
- b) Where someone has an existing business or other sort of relationship with the GBP
- c) Where an individual sends a promotional email to a friend, relative or family member in accordance with the [e-marketing code of practice](#).

5.1.3 Factual messages such as bills, service messages, refunds can be sent by GBPs regardless of whether there is consent or not.

### 5.2 IDENTIFICATION

5.2.1 GBPs must include information that identifies them including:

- a) Name of the organisation
- b) Australian Business Number (ABN) or Australian Company Number (ACN)
- c) Business address or website
- d) Telephone number or email address

### 5.3 OPT OUT

5.3.1 GBPs must include an electronic and functional opt-out.

5.3.2 Opt out facilities provided by GBP:

- a) Must go back to the GBP
- b) Must be operational for 30 days

5.3.3 Where a consumer opts out of receiving electronic commercial messages from the GBP this opt out request must be actioned within five days.



## 6. PRIVACY

- 6.1 GBPs should have a clear and easy to read Privacy Policy.
- 6.2 GBPs should prominently display their Privacy Policies on their websites.
- 6.3 GBPs Privacy Policies should include information such as:
  - a) the company's name
  - b) how the GBP uses personal information
  - c) the companies or types of companies the GBP discloses personal information to
  - d) how individuals can request access to the information that a GBP hold on that individual
  - e) what will happen if an individual doesn't provide their information (for example the GBP won't be able to provide the service)
  - f) any laws that requires the GBP to collect information
- 6.4 GBPs should not use or disclose personal information except as outlined in their Privacy Policies.
- 6.5 Where an individual requests not to receive marketing communications, GBPs must, as soon as possible, take action to ensure that the individual isn't contacted in the future for marketing purposes.

### *Note*

Actions that might be taken to ensure the individual doesn't receive any further marketing communications include the GBP removing the recipient's data from it's marketing database or adding them to a suppression list.

- 6.6 GBPs should keep personal information they hold secure and have appropriate information security and data security procedures in place.
- 6.7 GBPs should allow individuals whose information they hold to access and correct that information.
- 6.8 Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.
- 6.9 GBPs should only transfer information overseas if:
  - a) the information to be transferred is going to a country with a similar privacy protection regime to Australia's; or
  - b) the GBP or related company has a contract in place with the overseas party that specifies that the party will comply with the Australian Privacy Act or that the party will treat the information as confidential; or
  - c) if the transfer is a necessary part of the offer (for example, the offer relates

to an overseas holiday or goods where the merchant is based overseas).

#### 6.10 Sensitive Information

6.10.1 GBPs should only collect sensitive information directly from the individual.

6.10.2 Sensitive information includes:

- a) Health information
- b) Criminal record
- c) Sexual preferences or practices
- d) Membership of a professional or trade association
- e) Membership of a trade union
- f) Religious beliefs or affiliations
- g) Philosophical beliefs
- h) Membership of a political association
  - i) Political opinions
  - ii) Racial or ethnic origin

## 7 COMPLAINTS

- 7.1 GBP should display contact details for how a Member can make a complaint. This should include at least one of the following:
  - a) telephone number
  - b) email address
  - c) postal address
  - d) online chat
- 7.2 GBP should acknowledge receipt of complaints promptly within five working days of a complaint being forwarded to them.
- 7.3 GBPs should have clear and effective procedures for handling complaints.
- 7.4 GBPs should take appropriate action to resolve complaints reasonably promptly.

## 8 ENFORCEMENT

Complaints in relation to this Code will be administered by the ADMA Code Authority.

### 8.1 COMPLAINTS RECEIVED BY ADMA

8.1.1 Any regulator, individual or consumer who considers that a Signatory has breached a provision of the Code may lodge a complaint with ADMA.

8.1.2 Complainants are encouraged to lodge complaints via the ADMA website at

8.1.3 Complainants that do not have access to or do not want to use the ADMA website may send complaints by postal mail to the following address.

Code Compliance Officer  
Australian Direct Marketing Association  
GPO Box 3895  
Sydney NSW 2001

8.1.4 The complainant should set out the following details:

- a) his or her name and contact details;
- b) the name and, if known, the contact details of the GBP;
- c) a brief outline of the complaint including substantiation of the claim.

### 8.2 COMPLAINTS OUTSIDE THE SCOPE OF THIS CODE OR AGAINST ORGANISATIONS THAT AREN'T SIGNATORIES

8.2.1 Complainants that make complaints to the Code Authority that do not relate to this Code or do not relate to a signatory of the Code will be referred to the appropriate regulatory or advisory body.

### 8.3 POTENTIAL BREACH OF THE CODE BY A SIGNATORY

8.3.1 The Code Authority officer will assess each complaint and if it appears that the Signatory may have breached the Code the officer will send the complaint to the Signatory.

8.3.2 Signatories must respond to complaints within 15 days.

8.3.3 If a Signatory can provide clear evidence that they haven't breached the Code or resolves the matter successfully with the complainant then the Code Authority officer will advise the complainant that no breach has occurred and will close the complaint.

8.3.4 If a Signatory can provide clear evidence that they haven't breached the Code then they may respond with a clear outline of the steps that they have taken to resolve the matter to the satisfaction of the complainant.

- 8.3.5 If the Signatory doesn't respond within 15 days or the matter cannot be resolved with the complainant then the Code Authority officer will refer the matter to the Code Authority.
- 8.3.7 Upon reviewing the complaint, the Code Authority may:
- a) direct the Code Authority officer to investigate the complaint further and report the results of the investigation to the Code Authority;
  - b) cause the Code Authority compliance officer to send a notice to the Signatory inviting the organisation to attend a hearing regarding the alleged breach of the Code by the signatory.

#### 8.4 HEARING BEFORE THE AUTHORITY

- 8.4.1 A signatory will be given access to any documents that relate to the case or case(s) before the Code Authority and may also provide written submissions to the Code Authority prior to the hearing.
- 8.4.2 At the Code Authority hearing, the signatory will be given a reasonable opportunity to present its case. The signatory may make verbal submissions in relation to the allegations. The signatory may appear in person or may be represented by some other person. The Code Authority may, at its discretion, invite a complainant to participate in the Code Authority's hearings through written and/or verbal submissions.
- 8.4.3 Within 14 days of the conclusion of the Code Authority hearing, the CEO of ADMA will send the Signatory a notice containing the decision of the Code Authority.
- 8.4.4 If the decision affirms the allegations, then the notice may also include any remedial action and/or sanctions the Code Authority considers appropriate the Code Authority should advise the complainant in writing of the decision of the Code Authority in relation to his or her complaint and provide a statement of any reasons the Code Authority has for making that decision.
- 8.4.5 The signatory will have 14 days unless impractical from receipt of the decision of the Code Authority to take the necessary steps to comply with the decision.
- 8.4.6 If within 14 days from receipt of the decision of the Code Authority the Signatory is unable to demonstrate compliance with the decision, the Chair of the Group Buying Code Committee will call a special meeting of the Group Buying Code Committee to consider removing the Signatory status of the organisation to the Group Buying Code of Conduct.
- 8.4.7 If the Code Authority records indicate that the Signatory has breached the Group Buying Code on two or more occasions in the preceding 12 months, the Code Authority may recommend to the CEO of ADMA that that status of signatory to this Code be revoked.
- 8.4.8 If the signatory withdraws from the Group Buying Code at any point:

- a) during the consideration of a complaint by the Code Authority; or
- b) subsequent to a determination being reached by the Code Authority rendering sanctions unenforceable;

the Code Authority forwards the complaint, including relevant documentation and the determination, to the appropriate regulatory authority for further action.

## 8.5 SANCTIONS FOR BREACH

8.5.1 Where the Code Authority finds that a Signatory has been in breach of the Code it may impose such sanctions as it considers appropriate including, without limiting the generality of its powers to:

- a) requiring a formal apology for breach;
- b) requiring corrective advertising or the withdrawal of offending advertisements or statements;
- c) requiring the correction or deletion of relevant records and personal information;
- d) recommending refund or replacement of goods or services where appropriate;
- e) requiring the Signatory to take specified remedial action to correct the breach and avoid re-occurrence;
- f) seeking a written undertaking from the Signatory that the breach will not be repeated;
- g) recommending the relevant supply chain or media channel used by the Signatory to communicate with its customers cease to supply and not cooperate with the Signatory in respect of future direct marketing activities planned by the Signatory until the breach is rectified;
- h) recommending to the Group Buying Code Committee that Signatory status be suspended or revoked.

8.5.2 The CEO of ADMA may, on recommendation of the Code Authority, impose the following sanctions:

- a) order the payment of money, the transfer of property (including goods) or the delivery of goods;
- b) suspend or cancel Signatory status of the organisation;
- c) issue a formal written admonishment to the non-compliant Signatory, which may, where appropriate, be made public.

8.5.3 This will include specifically informing other signatories to the Group Buying Code that action has been taken. The non-compliant Member will be given the opportunity to both see and comment on the statement prior to publication.

8.5.4 During suspension or after termination, the Signatory should take immediate steps

to cease implying in any way that it is a Signatory to this Code.

- 8.5.5 On suspension or termination, the CEO of ADMA may notify any relevant industry body and/ or issue a public statement giving reasons for the suspension or expulsion.

## 8.6 PUBLICATION OF ENFORCEMENT ACTION

- 8.6.1 The ADMA Code Authority will publish in its Annual Report:

- a) the number of the complaints received by the Code compliance officer during that year;
- b) the number of breaches established by the Code compliance officer and Code Authority during that year;
- c) an analysis of the enforcement action taken during that year;
- d) a statistical analysis of complaints by company.

## 9 REVIEW

- 9.1 This Code will be reviewed in 12 months of its implementation.
- 9.2 Comments in relation to the Code and its operation can be directed to [Code@adma.com.au](mailto:Code@adma.com.au) at any time.



## FOUNDING INDUSTRY ASSOCIATIONS

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adma



## SIGNATORIES

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