

Submission summary

Whilst online shopping has been recognized as an emerging consumer policy issue within the Issues Paper, Groupon's belief is that there is still a lack of recognition of its particular business model as it falls somewhere between the sharing economy and more traditional - as much as ecommerce can be 'traditional' - methods of selling goods and services directly to consumers through online 'shops'.

Groupon's submission aims to outline some the challenges of applying various aspects of the Australian Consumer Law in that context.

Submission topics

1. Groupon's business model – background
2. Broad challenges of applying the ACL in the context of Groupon's business model
3. Misleading or deceptive conduct – fine print
4. Price transparency
5. Product safety
6. Warranties and guarantees
7. Addressing customer complaints made to ACL regulators

1. Groupon's business model – background

Groupon's business is based on closing "deals" with Merchants for Merchants to supply their services and products at special prices, predicated on a large number of sales of those services and products (the Merchant Offering). In general, Groupon's business itself is done through the sale of Groupon's Vouchers (which we call Groupons) through the Groupon Website, mobile site and App (the Website). These Vouchers provide a discount on the standard selling price of the

service or product that a Merchant usually offers (which discounts have been negotiated as the “deals”). Groupon’s revenue is a commission for the service of advertising these deals. Groupon collects the money (i.e. the price of the Voucher) from purchasers of the Vouchers (i.e. Customers) and pays part of that money to the Merchant, with Groupon retaining a percentage of the money collected as its fee for service. The sale, supply and/or provision of the Merchant Offering is the responsibility of the Merchant, Groupon provides a service to the Merchant in advertising their Deal on its website , and to customers in issuing Vouchers which may be redeemed to obtain the underlying product or service included in that Deal.

Since its inception in Australia in 2011, Groupon has invested heavily in customer support staff, both locally and in teams based overseas. Groupon’s customer support team provides pre and post-sales care to customers and often finds itself dealing with complaints regarding the provision of services or goods. As a responsible corporate citizen, and with the desire to act in the best interests of its customers, Groupon will go beyond its legal obligations in attempting to resolve such issues, in many cases providing refunds to customers who feel let down by their interaction with the Merchant. Additionally, Groupon has a no questions asked 7 day cooling off period for vouchers purchased for services; should a customer with an unredeemed voucher contact Groupon within 7 working days of purchase, they are entitled to a cash refund. This policy goes far beyond the consumer-facing obligations Groupon has as a supplier of Vouchers and is one of many examples of the policies it has embedded ensure positive customer interaction with its brand.

2. Broad challenges of applying the ACL in the context of Groupon’s business model

Whilst Groupon has established rigid processing around dealing with complaints, this can be a challenge for the company. Such complaints may come from customers or ACL regulators and often relate specifically to the Merchant Offering. As alluded to in Section 1 of this submission, the application of the ACL has not always provided clear direction on where the responsibility to provide a remedy in such circumstances lies; should it be with Groupon, the Merchant or a combination of the two? Experience has shown that ACL Regulators most often take the view that it is Groupon's responsibility to provide a remedy in cases where a customer has encountered a problem in obtaining the Merchant Offering. An example is a Customer purchasing a Voucher for a 3 course meal only to be served 2 courses when they attempt to obtain the Merchant Offering. In such a circumstance, Groupon has signed a legally binding agreement (supplied separately, and confidentially, to this submission) with the Merchant for the latter to provide a 3 course meal. In good faith, Groupon has produced an advertisement and Vouchers outlining those details. In doing so Groupon has, it seems fair to state, fulfilled its obligations. Despite this, Groupon would step into remedy such problems by, for example, providing a refund to the Customer. Groupon may also take further action against the Merchant, with tools at its disposal including financial clawback for refunds issued and the 'blacklisting' of the Merchant from the Groupon marketplace (ie the Merchant cannot feature any more deals on the Groupon Website). Regardless of those steps, Groupon finds itself in a position where the complaint has been lodged against it, rather than the Merchant.

3. Misleading or Deceptive Conduct: Fine Print

Groupon regularly deals with complaints from consumers who feel they have not received the Merchant Offering as advertised due to restrictions which have been placed upon them when attempting to redeem their Voucher. In some cases, these restrictions relate to the Merchant's

own terms and conditions (which are linked to from the Groupon Website) but, frequently, they relate to points which are covered in the section of the Website entitled “The Fine Print”¹.

Appendix item 1 contains a relatively common ‘Fine Print’ restriction: “Not valid on public holidays”. Experience has shown that a Customer may neglect this piece of information, despite its prominence on the Website. Faced with such a complaint Groupon may, rightfully, refuse to provide a refund. Unfortunately, history has also shown that the Customer, aggrieved at not obtaining a refund, will sometimes escalate that complaint to an ACL Regulator. Such grievances have been classified as ‘complaints’ by Regulators in spite of the fact the restriction is clearly outlined on the Website, which the Customer can see prior to purchase, and on the Voucher, which the Customer can refer to post-purchase and before redeeming the Voucher. Such a complaint resulting in a belief that Groupon has breached the ACL is a big concern, particularly in the context of the soon to be introduced Complaints Register (which is referred to in more detail in Section 7 of this submission).

4. Price transparency

Groupon has encountered some challenges in applying existing ACL provisions on price transparency.

¹ “Fine Print” is, in fact, a misnomer; this section of the Website is given equal prominence to other sections, it simply refers to the terms and conditions that apply to the Merchant Offering. On the Voucher, an example of which is given as Appendix Item 3, the “Fine Print”, along with instructions as to the correct redemption of the Voucher, actually makes up the bulk of the content.

A) Component Pricing

Appendix item 2 aims to illustrate a challenge with component pricing in the context of the multiple channels through which Groupon promotes deals. Further, it highlights problems in applying the letter of the ACL in situations where part of the overall cost payable by the consumer must go directly to the merchant.

Within Groupon's newsletters (ie. An email digest of deals currently featuring on the Website, sorted by factors such as geographical location and Customers' purchase history) there is a restriction as to the amount of information that can be displayed in reference to an individual deal. It is therefore not always feasible to display the full price payable in the newsletter.

Appendix item 2 outlines an example where character limitations are compounded by the structure of the payment; the cost of the Voucher must be paid to Groupon whilst the \$35 'APF and Admin Levy' referred to on the Groupon website must be paid directly to the Merchant. It would therefore prompt more confusion to display the total price payable (the Voucher price plus the cost of the 'levy') in the newsletter. Note that, although the 'headline' on the Groupon website makes mention of this fee, there are parts of the page (seen on the left side of the page in Appendix item 2b) which relate to the Voucher price; these aspects cannot, from a practical point of view, be altered to take additional fees into account. Groupon believes the presentation of the total price payable is clear. Furthermore, it is displayed to customers well in advance of purchase (purchase is instigated by clicking the "Buy Now" button; this leads customers to the payment page seen in Appendix item 3). It is concerning to Groupon that this approach may be deemed to be, at least technically, in breach of the ACL's pricing provisions.

B) Two-price comparison advertising

Groupon regularly uses 'was/now' pricing as a key component of its advertisements. Groupon is reliant on information provided by the Merchant as to the established selling price of the merchant offering and uses this information to make a price comparison the comparison (the established sell price compared to the price at which the Voucher is available for sale; the difference is advertised as a dollar and/or percentage saving to consumers). There may be situations were, unbeknown to Groupon, Merchants change the price of the Merchant Offering to such an extent the original 'established' selling price is no longer accurate. Whilst this is in breach of the terms and conditions contained in the agreement that the Merchant has signed, it is likely Groupon would be considered responsible for the comparison, though it has no control over adjustments made by the Merchant. Furthermore, when advising Merchants of their obligations in this area, it is often difficult to give firm guidelines due the ambiguity of available advice on the topic. For example, guidelines on the ACCC website (seen [here](#)) state, "What's considered to be a reasonable period in the circumstances will vary from case to case and will depend on the type of product or market involved and usual frequency of price changes for that product or in that market" – more clarity in these guidelines would certainly be welcome.

5. Product Safety

Feedback from Merchants, as well as work undertaken by Groupon itself, indicates that greater clarity is required on the alignment of Australian voluntary standards and trusted international standards. This information needs to be more readily available, as do product safety standards which, at present are often hard to locate and costly to access in their entirety. Working with Merchants who are based overseas has often involved complexity in imparting a comprehensive

understanding as to the alignment of various international standards with those applicable in Australia.

As outlined previously, Groupon has a somewhat unique business model and the ACL appears to struggle to address it when it comes to defining the level of obligation that rests with Groupon in ensuring the compliance of goods sold on the Website. Groupon makes extensive efforts to ensure all goods listed in the marketplace are fit for sale; this is an ever-increasing challenge with a rapidly growing number of Merchants and Offerings appearing in the marketplace. Is the ACL equipped to provide a distinction between Groupon's responsibilities and those of the Merchant? Or will it continue to rely on traditional definitions such as 'retailer', 'manufacturer' and 'supplier', none of which truly reflect Groupon's position.

6. Warranties and guarantees

The nature of the marketplace industry in which Groupon operates also raises questions as to where responsibility for automatic consumer guarantees should rest. As explored elsewhere in this submission, Groupon's business model is not fully accounted for in the ACL. It often finds itself in the difficult position of acting as an intermediary between Customer and Merchant in situations where the former believes they are entitled to a remedy due to goods not being of acceptable quality, or services not being provided with acceptable care and skill (and/or any other applicable consumer guarantees). Groupon is not a retailer, yet often finds itself providing a suitable remedy in cases where consumer guarantees have apparently not been met by the Merchant, the supplier of the Merchant Offering. Groupon believes there is scope to provide greater clarity on where responsibility for abiding by guarantees sits within marketplace, and similar, business setups.

Groupon also believes the current wording of ACL, and related guidelines, can be clearer in reference to guarantees. It is difficult to apply the Law which refers to concepts such as “...acceptable quality...” and “....reasonable time.....” Interpreting this language is not easy and has challenged Groupon and Merchants alike. One would suspect that the lack of clarity also raises uncertainty in the consumer’s mind as to their rights under the ACL.

7. Complaints to ACL Regulators

Earlier in this submission, we referred to cases where a Customer is not satisfied with the action taken by Groupon’s customer support team and subsequently escalates their complaint to an ACL Regulator. It is also worth noting that there are circumstances in which a Customer will contact the Regulator prior to seeking a resolution through standard customer support channels. Groupon notes the Regulators’ standard policy is to direct the Customer to Groupon to seek a resolution in the first instance. Groupon is striving to reach a position where Customers do not feel any need to escalate complaints to ACL Regulators but accepts that if, for example, a refund is denied them due the terms and conditions attached to a deal (as in the example outlined in Section 3 of this submission), the Customer may pursue an alternative avenue of recourse. Groupon assists with such enquiries from Regulators, offering assistance to provide the most appropriate resolution (which may often not deviate from that provided to the customer upon their initial contact with Groupon). Groupon’s concern lies in the level – or lack- of filtering that is applied to such complaints by the Regulator. This is not merely a consideration of workload; it becomes a highly relevant reputational concern in the context of the Complaints Register to be introduced by New South Wales Fair Trading in August 2016. The premise of the Complaints Register is to inform consumers of businesses that have been subject to 10 or more

complaints to NSW Fair Trading in the proceeding calendar month. Consumers will be better informed in their decisions to interact with businesses. Groupon wishes to raise the following concerns in regard to this initiative:

- A Customer failing to abide by a deal's 'fine print' may justifiably be denied a refund by Groupon. If that customer then raises this to NSW Fair Trading, it will be registered as a 'complaint' against Groupon, and contribute towards the tally for the month
- There will be no detail as to the nature of the complaints which have led to a business' name being published on the Complaints Register. There is a very real possibility that one business which has indisputably broken the law on 9 occasions in a calendar month will be absent from the list, whilst a business subject to what may ultimately transpire to be unfounded complaints will appear on it
- 10 complaints, in the context of the 250,000 units Groupon sells in a month, is a very small ratio. The number has been applied in a 'one size fits all' approach and apparently makes no consideration for the volume of units sold by, or the overall size of, a business. A ratio based approach, or similar, would seem to be more sensible.
- The damage caused to the Groupon brand could be significant. We strongly believe that being subject to only 10 complaints each month whilst selling 250,000 units is not something Groupon should be penalised for.

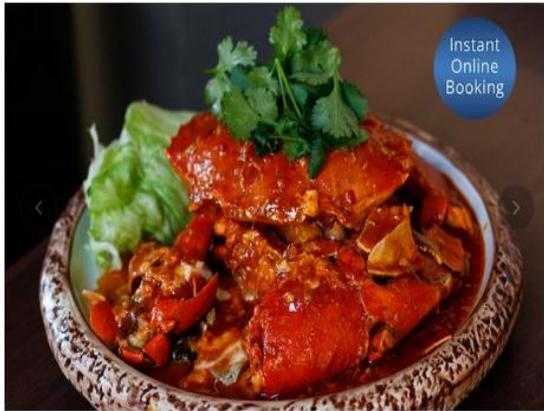
Whilst Groupon understands the need for a variety of measures to punish, rectify and/or highlight breaches of the ACL, it believes greater scrutiny of this initiative, and the interactions that contribute to complaint creation and resolution, is required.

Appendix

Appendix Item 1

An example of a deal from the Groupon website, including relevant terms and conditions under the heading “The Fine Print”

Malaysian 1kg of Crab and Wine for Two (\$69) or Four (\$99) at Jonker Walk Malaysian Restaurant & Bar (Up to \$157 Value)



Malaysian cuisine is known for its rich flavours, aromatic spices and the fact that roti makes an excellent makeshift pillow after a big meal. Find out what it's about with today's Groupon for Jonker Walk Malaysian Restaurant & Bar, Pyrmont:

The Deal

\$69 for a Malaysian crab banquet with glass of wine for two people (total value up to \$103.80)

- One entrée to share
- 1kg crab to share
- Two glasses of wine

\$99 for a Malaysian crab banquet with bottle of wine for four people (total value up to \$157.40)

- Two entrées to share
- 1.2kg crab
- One main
- Two servings of rice
- Bottle of wine



Select from Options

- Malaysian Crab Banquet with Glass of Wine, Two People
\$69 ~~\$103.80~~ | Save \$34.80
198 bought
- Malaysian Crab Banquet with Bottle of Wine, Four People
\$99 ~~\$157.40~~ | Save \$58.40
123 bought

Buy!

Give as a Gift

LIMITED TIME ONLY!
12 days 12:43:29

SHARE THIS DEAL
Facebook 127

In a Nutshell

Try something different with an authentic Malaysian banquet, including crab served in one of five styles, like sweet wine or black pepper

The Fine Print

- Limit of 3 vouchers per option
- Not valid on public holidays
- Valid for eat-in only
- Additional diners must order from full price menu
- Strictly no walk-ins permitted

Appendix Item 2

A) Excerpt from Groupon newsletter



All-You-Can-Eat Seafood Buffet [View it!](#)
 Grange Buffet
 Over 700 bought
 \$36-50 **\$29**



2-Month Audible.com.au Membership [View it!](#)
 Over 1,150 bought



Up to 15,000ft Tandem Skydive [View it!](#)
 Adrenalin Skydive Goulburn
 Over 100 bought
 \$340 **\$165**



2-Hour Pamper Package [View it!](#)
 Amalia Day Spa
 \$295 **\$89**

B) Groupon Website

\$165 (+\$37 APF Levy and CI Charges) for Tandem Skydive Up to 15,000ft with Adrenalin Skydive Goulburn (Up to \$340 Value)



Everyday thrills include racing to take the washing off the line before the storm rolls in, and eating a chip from the floor after the five-second rule. Get out of your comfort zone with today's Groupon for Adrenalin Skydive Goulburn:

The Deal

\$165 for a tandem skydive up to 15,000ft for one person (total value up to \$340)

Select from Options

- Tandem Skydive up to 15,000ft, One Person
\$165 \$340 | Save \$175
 45 bought
- Tandem Skydive up to 15,000ft, Two People
\$330 \$680 | Save \$350
 32 bought
- Tandem Skydive up to 15,000ft, Four People
\$660 \$1,360 | Save \$700
 6 bought

Buy!

Give as a Gift

Limited time remaining!

C) Groupon payment page

Is all your information correct?

Please check your billing information and item contents before finalizing your order

 Secure Transaction

Your Items



Tandem Skydive up to 15,000ft, One Person - Adrenalin Skydive Goulburn

\$165.00

Quantity: 1 

Order Summary

Subtotal \$165.00

[Promo or Gift Code](#)

Order Total: \$165.00

[Buy Now](#)

By clicking "Buy Now" you agree to the Groupon [Terms of Use](#), [Privacy Statement](#) and voucher [Terms of Sale](#).



Give as a Gift

Make this item a gift



Appendix Item 3: Groupon Voucher

Sydney Observatory Night Tour Admission, Two Adults

This voucher is valid until: 31.12.2017

Voucher value: \$40.00



Locations

Watson Road Millers Point 2000
<http://www.sydneyobservatory.com.au/>
+61292213485
[View 1 location](#)

Fine Print

- Limit of 40 vouchers per option
 - Night tours valid Mon-Thu only
 - Prior to purchase, please check availability
 - Booking via Booking Tool essential - Walk-ins will not be accepted.
 - Day telescope viewing sessions take place regardless of the weather
 - Select day or night tour at time of purchase
 - Booked sessions are not transferrable once a date has been confirmed
 - Child option valid for ages 4-15
 - Family options valid for 1 adult, up to 3 children or 2 adults and up to 2 children
 - Tours subject to seasonal schedule. For details: <https://maas.museum/event/sydney-observatory-day-tours/>
 - Values based on entry prices as of 11 Feb 2016
 - Standard fine print for all deals
- #### How to Redeem
- Valid to: 31 Dec 2017
 - [Check Availability](#) / [Make a Booking](#)
 - Enter your email and Groupon Security Code
 - Select number of people, date and time of booking
 - You'll receive an email and/or SMS to confirm reservation details
 - Present printed or smartphone voucher on arrival
 - Download free Groupon app for Android and iOS
 - Valid Hours:
<https://maas.museum/event/sydney-observatory-day-tours/>

This is how it works

1. Check the Fine Print for booking instructions
2. Make a booking if required
3. Present your Groupon Voucher to the merchant
4. Enjoy!

WE LOVE WHAT WE DO

We spend our days tirelessly searching the globe for the best deals on things to do, see, eat and buy in your city. It's back-breaking work, but we love it! And we hope you do too? Remember to download the Groupon app - which is all kinds of awesome - and have thousands of great deals at your fingertips every second of the day #checkgrouponfirst.

BUT WAIT, THERE'S MORE!

Visit dealhub.groupon.com.au to find more great deals in your area!

SAVE A TREE. TRY OUR MOBILE APP



FOR MERCHANTS



Total bill amount

QUESTIONS ABOUT THIS DEAL?

Visit: <http://contact.groupon.com.au>

Your customer ID is: 729982894