

18 September 2019

Customer Loyalty Schemes Draft Report
Australian Competition and Consumer Commission

By email: loyaltyschemes@acc.gov.au

Dear Sir / Madam

Submission on Customer Loyalty Schemes Draft Report

We are pleased to provide this submission on the September 2019 ACCC *Customer Loyalty Schemes Draft Report* (Draft Report).

We currently hold the role of Emergency Services Levy (“ESL”) Insurance Monitor and Deputy Monitor in NSW (“Insurance Monitor”), and formerly held similar roles in Victoria. The views expressed in this submission are held by us as private citizens, and do not necessarily reflect those held by the NSW Government; and are based on our knowledge and observations of the practices of general insurance companies, gained principally through our current and former roles in reforms to insurance-based levies, as well as knowledge and experiences of consumer protection, competition and policy and regulatory matters across a number of industries over our professional careers.

We note the ACCC’s review of the major customer loyalty schemes in Australia focuses on consumer issues, data practices and competition issues associated with such schemes. The schemes discussed in the Draft Report are mainly related to the airline, supermarket and other retail industries. Different issues arise in the context of the property insurance industry but with similar effect and this is what we want to highlight in this brief submission.

We share the ACCC’s concerns about business practices which have the potential to cause widespread consumer detriment, including loyalty schemes which:

- do not present their terms, conditions and privacy policies in ways consumers can readily understand
- make unilateral changes to their terms and conditions in a way that may be unfair to consumers
- collect, use and disclose consumer data in ways that do not align with consumers’ preferences or interests (with associated issues of limited transparency or consumer control over their own data).

We support the ACCC recommendations relating to loyalty schemes in the Draft Report and in the Digital Platforms Inquiry Final Report (which is cited in the Draft Report). We also support the ACCC’s calls on operators of customer loyalty schemes to review and consider the above practices in the context of the Australian Consumer Law (ACL), particularly around questions of whether consumers are being misled or subject to unfair contract terms.

The potential for consumers to be misled is arguably of greater concern in industries where information asymmetry and non-transparent pricing are problems. We consider that this is the case with the property insurance industry – mainly home and motor insurance – where a

number of insurers operate schemes which provide discounts on the premium payable by 'loyal' customers. These 'loyalty discounts' may give the impression of a benefit, but in fact we have found that the overall price paid by loyal customers may be higher than the price offered by the same insurer to a new customer.

The Monitor's research indicates there is a significant difference between the average premium insurers charge their renewing customers, as compared with what they charge their new customers. Between 1 July 2015 and 30 June 2018, the average premium paid by a renewing home insurance customer was on average 25% more than that paid by a new customer. What this amounts to is a tax on loyal home insurance customers.

The Monitor noted in the research report that:

*"As the data on premiums relates to premiums received or earned, average premiums for renewals already reflect the impact of any loyalty discounts that the insurer may offer. That is, in the absence of any loyalty discount, the gap in average total premiums would be larger."*¹

Given that loyal home insurance customers are being charged more than their new customer counterparts, it is reasonable to ask whether longer term customers are potentially being misled. This could occur because these customers may be under the impression that they are receiving a specially discounted price by virtue of being a loyal customer, when in fact the insurer may have marked up the price for the 'loyalty tax' prior to applying the loyalty discount.² This perception may affect the decision of a customer to switch, which the ACCC has identified as one of the problems affecting competition in opaque markets which have loyalty schemes:

*"Where a loyalty scheme reward relates to a product or service for which prices are already opaque or inherently complex – for example, because of myriad pricing structures or variables – the variables – the overlay of a loyalty scheme reward may further reduce price transparency, adding to existing obstacles for consumers to make informed switching decisions."*³

We would welcome closer scrutiny by the ACCC of these wider loyalty concerns. We consider that loyalty discounts aid increased personalization of prices and price discrimination in the property insurance industry. The Monitor previously explored issues for consumers and regulators associated with the increasing capacity of insurance companies to employ price optimisation techniques based on big data.⁴ These matters would appear to be of continuing relevance, based on findings and issues raised in the Draft Report and the Digital Platforms Inquiry Final Report.

Appendix B of the Draft Report (pp.87-88) 'loyalty scheme design elements' highlight six examples within the insurance sector (including life, health and general) in Australia, with characteristics including: member access to special offers and benefits from partners; status tiers and benefits based on length of time a member has taken out a policy. In addition to the examples listed, within the general insurance sector, some programs and issues include:

¹ ESLIM Discussion Paper, *Pricing Differences: New vs existing customers*, November 2018, page 28.

https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FINAL.pdf

² We note that the ACCC has commenced proceedings in the Federal Court against Kogan Australia Pty Ltd ("Kogan") alleging that Kogan made false or misleading representations about a 10% discount promotion. The ACCC alleges that Kogan's advertisements were false or misleading because Kogan increased the prices of more than 600 of its products immediately before the promotion, by at least 10% in most cases.

³ ACCC Draft Report, page 73

⁴ ESLIM Occasional Paper: *Monitoring of insurance premiums in the world of big data*, June 2018.

https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/Big%20Data%20Occasional%20Paper%20FINAL_0.pdf

- Opaque pricing exacerbated not only by loyalty offers, but also bundled or multi-product discounts;
- Cross-market tie-ins with the supermarket sector, including benefits for taking out certain insurance products under loyalty programs offered by Woolworths and Coles and co-branded insurance offerings from those entities
- Historical exemptions from regulatory protections available to other sectors of the economy (including from the unfair contract provisions, and in respect of claims handling activities and from consumer guarantees)

We consider issues identified by the ACCC in relation to loyalty schemes, warrant further analysis in relation to their effects or parallels in the general insurance industry in Australia. We would also support ACCC initiatives to examine the cost of 'loyalty taxes' applied by companies more broadly across the economy. In late 2018 in the United Kingdom, the Competition and Markets Authority found loyalty penalties were pervasive across cash savings, mortgages, household insurance, mobile phones and broadband, finding a total loyalty penalty of around £ 4 billion.⁵ Translating the UK government estimate to Australia, the cost to consumers could be approximately \$3.6 billion a year.

Yours sincerely



Professor Allan Fels AO



Professor David Cousins

⁵ Competition and Markets Authority, *Tackling the loyalty penalty: Response to a super-complaint made by Citizens Advice on 28 September 2018*, 19 December 2018, p. 5. See <https://www.gov.uk/cma-cases/loyalty-penalty-super-complaint> and https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfbafa/response_to_super_complaint_pdf.pdf