

Mr Rod Sims
Chair
Australia Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

loyaltyschemes@accc.gov.au

7 October 2019

Dear Mr Sims,

Re: Submission to the Customer Loyalty Schemes review

Thank you for the opportunity to make a submission on the draft report (Report) of the Australian Competition and Consumer Commission's (ACCC) Customer Loyalty Schemes review.

The Alliance for Gambling Reform supports customer loyalty schemes being a current priority for the ACCC and broadly supports the recommendations in the Report specifically as they relate to increasing transparency for consumers, ensuring they have the information necessary to make informed decisions and providing them with meaningful control over their data to decrease the imbalance in bargaining power and information asymmetries outlined in the Report, and to increase consumer welfare.

We note the similarities between the issues identified in the Report and a number of those in the Digital Platforms Inquiry final report.

Overview

The Alliance is interested in the outcome of this review given the rise of online wagering and pervasive use of Electronic Gaming Machines in Australia, and the loyalty programs associated with each of these addictive products. We are concerned the Report does not adequately consider the unique nature of gambling or alcohol loyalty programs, specifically as they relate to rewarding losses, creating perverse incentives, and tracking and profiling harmful behaviours. We consider the objectives of gambling customer loyalty schemes as markedly distinct to those of the airline, supermarket, credit card, hotel and car rental industries.

At the outset, the draft report outlines the dual strategy of loyalty schemes being both an offensive strategy of acquiring new customers as well as a defensive strategy of retaining existing customers. We submit that gambling companies and venues use loyalty programs for a third strategy of incentivising consumers to *spend more than intended* on a harmful product. The addictive nature of gambling and alcohol products must be distinguished from that of other industries focused on in the Report, and special attention must be given to the way these programs operate to increase harm to vulnerable consumers.

Core Principles

In responding to the ACCC's draft recommendations, the Alliance urges the ACCC to be guided in its final report by a number of principles:

1. Loyalty programs should be prohibited for products that incentivise harmful consumer behaviours.

2. Children should not be tracked, surveilled and monetised, nor should their data be collected, disclosed or used for any profiling or marketing purposes.
3. Vulnerable people, particularly those experiencing gambling or alcohol harm, should not be exposed to the marketing of dangerous and addictive products.
4. Particular care should be taken with the collection and use of sensitive and potentially exploitative data, such as data that points to dependency or mental health concerns.

Who we are

The Alliance for Gambling Reform is a national advocacy organisation and registered health charity formed out of an urgent need to address the harmful and unfair impacts of gambling and its normalisation in Australia. We are a non-partisan alliance of more than 60 organisations who share our objectives of preventing and minimising harm from gambling, and we are entirely funded by individuals, foundations and local governments that do not have any ties with the gambling industry.

We take a public health approach to gambling reform. We seek to collaborate meaningfully with elected representatives, local councils, service agencies, faith and community groups to prevent and reduce harm through policy change. The Alliance also provides coordination, expert advice and practical resources to our supporter organisations, community groups and the media.

Our Champions for Change program centres those with lived experience of gambling harm at the core of our work, based on the principle that those closest to the harm are those closest to the solutions. This submission draws upon testimony from people and families impacted by gambling harm and who have shared insights into the negative impact of loyalty schemes. In some cases testimony has been provided on the condition of anonymity, however, the Alliance is able to furnish further evidence of these claims should this be required.

Language disclaimer

A widely used, standard definition of disordered gambling is that “Problem Gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others, or for the community”¹. While there is no agreement on definitions of “difficulties” or the scale of “adverse consequences” which would constitute harm, the Alliance believes that any difficulties and any adverse consequences are harmful. We avoid the use of the term “problem gambler” as it is stigmatising and victim-blaming. We recognise the Problem Gambling Severity Index used in clinical settings, but consider that even those gamblers characterised using that system as being at low or medium risk, can in fact experience significant harm. The Alliance aims to prevent or reduce harm from gambling, regardless of the risk factor of individual gamblers, and particularly with regard to their families, carers, colleagues and community, who are also impacted by gambling.

¹ Neal, P., Delfabbro, P., & O’Neil, M. (2005). *Problem gambling and harm: Towards a national definition*. Commissioned for the Ministerial Council on Gambling. Prepared by the SA Centre for Economic Studies with the Department of Psychology, University of Adelaide. November 2005. <http://www.adelaide.edu.au/saces/gambling/publications/ProblemGamblingAndHarmTowardNationalDefinition.pdf> .

Overview of Online Wagering Loyalty Programs

Online wagering has grown substantially in the last decade and is emerging as a significant contributor to gambling-related harm. Intensive marketing combined with rapid development in mobile technologies has led to an expansion of the industry and growing normalisation of the relationship between gambling and sport.²

Australian Gambling Statistics indicate this industry is currently growing by 15% per annum. The money lost to online sports gambling has doubled in the five years to 2016-2017 and now equates to more than \$1 billion.³ According to the Federal Government's own figures, there are an estimated one million Australians actively using online wagering accounts, 24% percent of whom are at-risk of or already experiencing significant harm caused by online gambling. The rate of those experiencing high-levels of gambling harm online is triple that of gambling on other traditional platforms.⁴

Loyalty programs as incentives to gamble

Loyalty programs are commonly used by online wagering firms to recruit, retain and incentivise customers based on the amount of money they lose. While incentives to open accounts or refer others have been banned under measure four of the National Consumer Protection Framework, online wagering firms still offer incentives to customers through approved loyalty programs.⁵

The majority of online wagering firms will offer some form of a loyalty program, often using a points system to calculate rewards. This serves the dual purpose of reinforcing the rewards system while also dissociating this from the total amount lost. The mechanism for earning points can deviate significantly across sites, however are typically associated with frequency of play, the amount of money wagered, the amount of money lost, or the average amount wagered per bet.

Wagering firms use loyalty programs to 'gift' their consumers bonuses based on their gambling activity. This makes them distinct from other types of commercial loyalty schemes in that they incentivise harmful behaviour. As Libby, a teacher from Mount Martha, VIC explains:

"The loyalty program I used was when Tabaret venues [owned by TabCorp] used cards that recorded the points but did not let you know how much you were spending!! Having spent hundreds no doubt, the venue manager would then treat you like a prize winner and take you to the 'prize cabinet' to choose your 'gift'!! It was ridiculous....cheap crap in return for so much spent but it made you feel like you were getting 'something' back at least!! So you would return to that same venue 'to get your points up'!! Absurd thinking...but addicts do become absurd."

² Thomas, SL, Pitt, H, Bestman, A, Randle, M, Daube, M & Pettigrew, S (2016) Child and parent recall of gambling sponsorship in Australian sport, *Victorian Responsible Gambling Foundation*, Melbourne.

³ Australian Gambling Statistics (2018) *Queensland Government Statistician's Office*, 34th Edition
<https://www.qgso.qld.gov.au/statistics/theme/society/gambling/australian-gambling-statistics#current-release-australian-gambling-statistics>

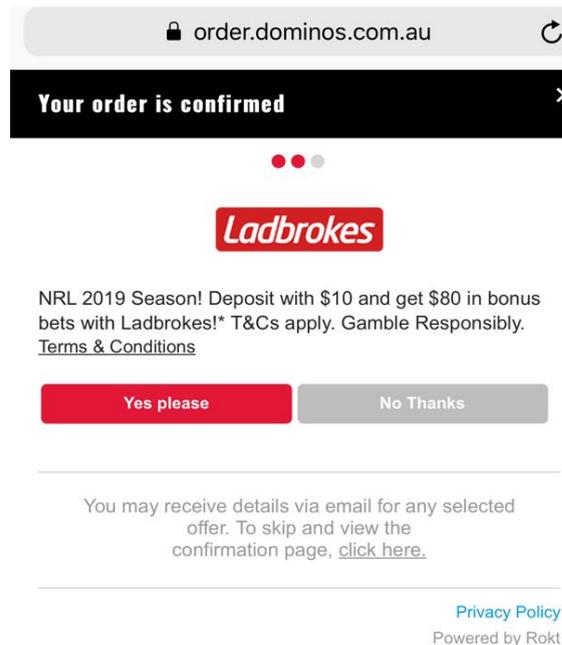
⁴ National Consumer Protection Framework Factsheet (2018) Australian Government *Department of Social Services*
https://www.dss.gov.au/sites/default/files/documents/11_2018/ncpfow-fact-sheet28-nov-2018-2.pdf

⁵ National Consumer Protection Framework for Online Wagering – National Policy Statement (2018) Australian Government *Department of Social Services*
<https://www.dss.gov.au/communities-and-vulnerable-people-programs-services-gambling/national-consumer-protection-framework-for-online-wagering-national-policy-statement>

Data sharing and direct marketing

Case study one - Rokt

As outlined in Case Study 4.8, the Report identifies the rise of third-party marketing companies, such as Rokt, displaying pop-up advertising during online transactions with another company. While the Report rightly highlights the concerning data practices of Rokt, it does not consider the risks associated with indiscriminate marketing of this kind, particularly as it relates to children. In this instance, an order was placed with Dominos Pizza online, however age was not required to be provided so there is no way for Dominos or Rokt to ensure they are not marketing this gambling product to children. Children should be protected from this form of indiscriminate marketing as a priority.



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NRL 2019 Season! Deposit with \$10 and get \$80 in bonus bets with Ladbrokes!* T&Cs apply. Gamble Responsibly.
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Yes please No Thanks

You may receive details via email for any selected offer. To skip and view the confirmation page, [click here](#).

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Powered by Rokt

Case study two - NAB & Quantum

As the final report of the Digital Platforms Inquiry outlines, Woolworths uses its loyalty rewards program to personalise offers to customers. A recent *7:30 Report* found between January 2013 and June 2018, Sportsbet paid more than 1,500 entities a combined sum of \$490.5 million in marketing and promotional endeavours. Among the entities was data analytics firm Quantum, who was supplied with de-identified customer transaction data by the National Australia Bank from all NAB account holders. Quantum is part-owned by Woolworths (also Australia's largest poker machine operator) and uses the NAB data to analyse spending habits for sectors including online gambling, raising serious concerns around the opaque nature of data consent and privacy, particularly as it relates to the targeting of vulnerable consumers.

Case study three - Affiliate marketing

The Report focuses on affiliate marketing insofar as it relates to commercial loyalty schemes largely connected to retail and airline sectors, however most online wagering firms also offer trailing commissions based on the amount of traffic driven from third party sites. Prospective affiliates can join, get a code assigned to their profile and generate links to track the success of their referrals back to online wagering firms. Accounts established under affiliate marketing schemes entitle the referrer to a trailing commission of between 25 to 35 percent of consumer losses. This not only creates a perverse incentive for the referring party offering "advice" via social media, blogs or websites, but many consumers would also be unaware of this loyalty scheme structure and how their data is being used.⁶

⁶ ABC Hack (2017) 'Why you received so many gambling texts on Melbourne Cup Day' November 10
<https://www.abc.net.au/triplej/programs/hack/why-you-received-so-many-gambling-texts-on-melbourne-cup-day/9137678>

Overview of Poker Machine Venue Loyalty Programs

Australia has 76% of the world's club and hotel poker machines,⁷ with around half of those in NSW. Approximately 60% of Australia's expenditure on gambling is through poker machines. Loyalty programs (also known as player reward schemes) are routinely used in gambling venues to attract, retain and incentivise gambling in a similar manner as that of online wagering firms.

Loyalty programs are regulated under state-based legislation, for example, the NSW Gaming Machine Act 2001, which explicitly defines player reward schemes:

player reward scheme means a system, used in connection with the operation of approved gaming machines in a hotel or on the premises of a club, in which the players of such gaming machines accumulate bonus or reward points from playing the gaming machines.

promotional prize means any prize or reward (including bonus points) offered by a hotelier or club to the patrons of the hotel or the premises of the club in connection with a player reward scheme or any other marketing or promotional activity that involves approved gaming machines.

In practice, loyalty programs work in a variety of ways with the ultimate aim of keeping consumers at the venue longer, spending more, which we argue leads to exacerbated harm. Some venues offer benefits to loyal patrons, such as VIP parking, assistance buying cigarettes, serving drinks and food at the machine, or providing free refreshments (free alcohol is legal in some states). As Stuart from Preston, VIC told us:

"The Ivanhoe Hotel staff used to come round on Fridays with free drinks, coffee, lollies and tickets to the raffle. Of course, the tickets were handed out at 4pm and the draw was at 7 or 8pm - and you had to be physically present to win!"

Research suggests loyalty programs that facilitate patrons staying at a machine longer may increase their risk of harm. Length of time at a machine, particularly gambling for more than 3 hours without a break (reported by 90% of patrons severely harmed by gambling), is a key indicator of gambling harm. Gambling through a normal lunch hour, in combination with 5 other behaviours, is one of the strongest predictors of harm.⁸

Kate* (not her real name) from Brisbane also told us of similar incentives offered by a local poker machine venue:

"A local sports club texts members to say they have been given \$10 (or more) and to claim they have to present their membership card at the pokie area counter. Then they make people wait for up to half an hour to 'process' it. Needless to say a lot of people end up gambling while waiting just to pass the time. Plus it gets people into the club when they might not have otherwise gone as it has to be claimed within 3 days. One way of getting people to turn up on a day when they might not normally have gone out."

Kate goes on to explain how loyalty data is used to target and draw customers into the venue on a day they would not normally visit:

⁷ Pokies Pub Test, Browne and Minshull (2017) The Australia Institute

⁸ P. Delfabbro, A. Thomas & A. Armstrong, *Journal of Behavioral Addiction* (2016) "Observable indicators and behaviors for the identification of problem gamblers in venue environments", s 5 (3), 419-428

“Other things they do is give out rewards depending on how much people spend on gambling. People put their card in the machine and it slowly gives you points that might eventually add up to a \$5 bonus or \$10 meal voucher, [but you] would have to gamble hundreds of dollars first. They also specify when the meal voucher can be used eg a Monday or Wednesday (again trying to get people in on days they would not normally spend at a club).”

Anna, who gambled on poker machines for more than 10 years, told us of how these rewards directly exacerbated the harm she experienced:

“I had a card for Crown Casino. It made me feel special, gave me free parking on a level that had easy access to the casino. I worked in the city at the time, so I would often use it if I needed to pass some time if I was early for something or needed to wait out the traffic. It gave me entry to a special room with its own staff and a bar. It was not as crowded as the main casino. When I put my card in the machine I gathered points, which gave me other free things. The staff came to the machines to see if you needed anything which made it easier to drink, which made it easier to stay, which meant I lost more money. The card made me feel special and I liked checking how many points I had acquired. I often organised my life around those happy hours.”

Dee Why RSL in NSW is currently facing disciplinary action over this type of loyalty program in relation to the death by suicide of ‘VIP patron’ Gary Van Duinen, after a 13-hour gambling binge. Gary’s mother, Joy, has spoken publicly about her grief:

“She is angry that the Dee Why RSL club did nothing to help her son stop gambling, but also that it appeared to encourage his habit. It made him a member of its “Ambassador” program for big spenders, allowing him access to a special car park and red carpet entrance, sidestepping the sign-in process at the front door. He accumulated loyalty points for his heavy gambling expenditures, which he spent on drinks that staff brought to him at the machines. When he wanted cigarettes a staff member would leave the club to buy him his preferred brand at a nearby shop and deliver them to him at the machine.”⁹

This case highlights the perverse incentives offered by venues to encourage consumers to gamble more, most explicitly through the use of loyalty programs.

Matthew McGee, a former gambling-room server at Dee Why RSL who quit in 2016 over the venues’ practices describes being: “disgusted at how the club encouraged heavy gamblers to stay at pokie machines and keep spending.” He reported that, “by using the rewards system, the club was able to keep detailed real-time records of spending by big gamblers, such as Mr Van Duinen, on dedicated profile pages, which included personal details and a photo so staff could provide a more personalised service.”¹⁰

Other loyalty programs offer members different numbers of tickets in promotional draws, depending on spending activity or presence on the premises. Those clubs which have tiered membership schemes typically allow points to be accumulated through expenditure at the club, including on poker machines, leading to members moving up the tiers of membership. The

⁹ SMH (2018) ‘Gary went on a 13-hour gambling binge. By the time his family raised the alarm, it was too late’, July 1
<https://www.smh.com.au/national/nsw/gary-went-on-a-13-hour-gambling-binge-by-the-time-his-family-raised-the-alarm-it-was-to-o-late-20180701-p4zov1.html>

¹⁰ SMH (2018) ‘Why a Dee Why RSL staffer quit in disgust before gambler’s suicide’, July 6
<https://www.smh.com.au/national/nsw/why-a-dee-why-rsl-staffer-quit-in-disgust-before-gambler-s-suicide-20180706-p4zpxi.html>

higher the tier, the greater the rewards - in a recent promotion with a car as first prize, members at Wests-Ashfield could obtain up to 4 bonus tickets a day in the draw.

As Libby from Mount Martha, VIC again explains:

“As to 'incentives' like giving gamblers tickets in the Wheel Draws....so they kept playing to get the most tickets in the next draw....maybe an hour away....also were real traps. The gambler who got the biggest win (so bet higher) would get 2 or 3 tickets every time he won....so gamblers raced each other to get as many tickets as possible before the next WHEEL Spin....so of course they played faster! More tickets gave more chances....so the Wheel Spin gave a chance to win!! Fffing silly looking back!!”

Some clubs allow a member to obtain a ticket several times a day, which encourages patrons to remain on the premises until the clock ticks over and they can obtain another ticket. Bankstown Sports Club allows members to swipe for a ticket once every 4 hours in a current promotion with a BMW car as first prize.

Misuse of data

Researchers using loyalty program data to examine impacts on gamblers habits have remarked on the potential for misuse of gamblers' information, noting that few gamblers are aware of the amount of data recorded in loyalty programs.¹¹

The 2018-2019 revelations from whistleblowers in Australian Leisure and Hospitality Group (ALH) hotels in three states detailed ways in which unofficial loyalty programs operated. Examples included:

'When she comes in, day or night or whatever, just treat her like Queen Bee.' Like she will get this, that, free drinks, free food. They kept her there. If the music was not to her liking, in the gaming room, bang bang bang. We would go there and change the music back to hers," a whistleblower told one anti-pokies campaigner and MP Andrew Wilkie's staff in a video-recorded interview.¹²

Two hotels in NSW have been referred to the NSW Independent Liquor and Gaming Authority for disciplinary action as a result of these allegations. It is not yet clear if all the actions involved breaches of laws or regulations, nor if personal details were collected in a formal scheme, but the testimonies of staff indicate that both official and unofficial data was recorded.

Nothing in the Victorian or NSW legislation prohibits the operators of loyalty or player reward schemes from divulging the information they hold on to third parties. This information is typically the person's name, address (optional), email (optional), password, dates and times of gambling activity, net losses and gains and details of any pre-commitment.

¹¹ “How much have you won or lost? Personalized behavioral feedback about gambling expenditures regulates play” [M. Wohl, C. Davis & S. Hollingshead, Computers in Human Behavior, 70, 437-445](#)

¹² SMH (2018) 'Clear breach' - watchdogs to probe Woolworths' pokies pubs 28 February <https://www.smh.com.au/business/companies/woolworths-admits-pub-staff-collected-personal-data-on-pokies-players-20180806-p4zvpo.html>

Impact on gambling behaviour

As the case studies noted above indicate, the incentive to increase the chance of winning a car, or similarly valuable membership prize, are obvious, and in the grips of an addiction, the value of the prize can be irrelevant. Gambling on poker machines at all, or for longer, or with more money, is a clear pathway to obtaining increased chances of winning incentive prizes, and clearly offers more reward points than buying coffee at the club cafe or parma at the pub bar.

Research indicates that, at least in Australia, Smart Cards, which were initially introduced as a pre-commitment technology, have been incorporated into loyalty or player reward schemes. There is evidence that they are not particularly effective in any voluntary precommitment system particularly if there is no bio-metric component (as determined gamblers swap them with venue staff, other gamblers or have multiple cards). However, as part of loyalty schemes, they are even more dangerous.

In short, loyalty programs “serve to reward people for their amount of gambling so as to induce them to gamble even more (which they successfully do)...This is obviously not conducive to responsible gambling, and is a practice that would not be acceptable for alcohol or tobacco consumption. Although there may be better justification for loyalty/reward cards when there are multiple providers for customers to choose between, rewarding people for the amount they gamble is still incompatible with efforts to constrain gambling behaviour through pre-commitment. Furthermore, in addition to promoting further gambling, these rewards/’comps’ likely help heavy gamblers and problem gamblers to reconcile their losses.”¹³

Thank you once again for the opportunity to raise these important issues with you. If you have any questions about this submission, please do not hesitate to contact our NSW Campaigner Kate da Costa at kate@agr.org.au.

The Alliance looks forward to the release of the final report.

Yours sincerely,

Tony Mohr
Executive Director

¹³ *Prevention of problem gambling: A Comprehensive Review of the Evidence and Identified Best Practices*, R. Williams, B. West, R. Simpson, report prepared for the Ontario Problem Gambling Research Centre and the Ontario Ministry of Health and Long Term Care, 2012 quoting: Lucas, A.F., & Bowen, J.T. (2002). *Measuring the effectiveness of casino promotions*. *International Journal of Hospitality Management*, 21, 189-202; Lucas, A.F., & Kilby, J. (2008). *Principles of casino marketing*. Norman, OK: Oki International; Suh, E. (2012). *Estimating the impact of free-play coupon value on players’ slot gaming volumes*. *Cornell Hospitality Quarterly*, 53(2), 134-143.