

Submission to the Review of Human Rights and Technology

In this submission I wish to concentrate on the *input* to the AI systems that may impact on our human rights, that is, the data that is collected by commercial organizations upon which AI techniques such as machine learning may be applied.

In particular I am concerned about the data collected by customer loyalty schemes. Recently the ACCC conducted a review into Customer Loyalty Schemes. While there were a number of submissions that raised concerns about privacy issues there was relatively little emphasis of privacy concerns in the final report.

<https://www.accc.gov.au/publications/customer-loyalty-schemes-final-report>

Unlike data collected by government agencies data collected for commercial purposes has effectively no oversight in the way it is shared, where it is stored, and how it is used and processed. The purposes for which commercially collected data is used is open ended. Any person contributing their personal data to such a system has no way of knowing all the different purposes that their data may eventually be used for. I cannot see how one can ensure that commercially collected data can be shared, used and processed ethically. Indeed, the data may be stored and processed overseas beyond any Australian oversight. In my view the only feasible protective measure that one can take is to prevent the collection of the data in the first place.

The scale of the data that is collected by loyalty programs, such as flybuys, is terrifying because so many retailers are involved. One has no way of knowing who they share and combine your data with, and you have no idea how your shared data is then subsequently shared onwards with other companies again, and again, and again. Section 5 of the flybuys privacy policy at <https://www.flybuys.com.au/about/#/privacy-policy> states

“To make it easy for you to deal with Participants, including Coles, and Wesfarmers group companies, we may exchange and combine Personal Information with them for the purposes described in our respective privacy policies. You can find their privacy policies of their respective company websites.”

A list of all the ‘Participants’ is not supplied nor are any links to these companies’ privacy policy statements supplied. Quite probably these companies have privacy statements that mirror the flybuys statement. Thus, this is not a privacy statement, this is a broadcasting statement! There is no practical way of detecting and policing the spread and misuse of your data.

Even without any machine learning techniques being applied a large number of discriminatory practices are readily facilitated by sharing and on-selling customer loyalty data. For example:

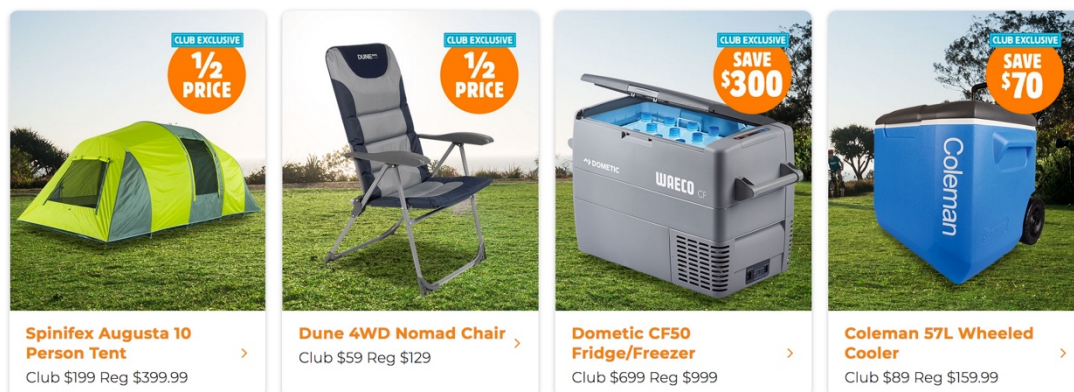
You buy Halal food or Asian vegetables at Coles, or you buy products for managing black curly hair at the chemist ("Thank you for your call but that rental property is no longer available"); You regularly buy petrol at Coles Express and you buy alcohol from Liquorland (Car insurance company: "This person drives a lot and drinks alcohol. We don't want them on our books. Give them a very high quote so they go away"); You buy pet food from Coles ("Thank you for your call but that rental property is no longer available"); You buy hearing aid batteries and denture cream at the chemist ("This person is vulnerable, send our door to door sales team around"); You buy rock climbing gear from an outdoor shop (Insurance company: "We don't want them on our books for income protection and life insurance. Give them a very high quote"); You regularly buy Panadol, flu tablets and vitamins from the chemist for your mother (Potential employer: "This person is a hypochondriac and will spend all their time on sick leave. Don't employ them").

Even if one could somehow prevent customer data from being used by insurance companies, real estate agents and employment agencies, and only limit its use to targeted advertising we still have a highly discriminatory regime. Any kind of targeted advertising scheme facilitates discrimination. Indeed, it implies it. You decide on the groups of people that you do, or do not, want to be aware of your product or services (accommodation, restaurant, night club, insurance, employment opportunities, etc.)

As a society I believe we have been sleep walking into the use of loyalty schemes. In exchange for some 'points' that are often hard to redeem and regularly expire a large section of society has given up its privacy and has unwittingly created a terrifying situation. The benefits to consumers are marginal compared to the potential harm we have exposed ourselves to.

Other than a points system, such as flybuys, the other common form of customer loyalty programme is the member benefit/discount scheme. Here a retail chain will offer discounts of 10% to 20% and sometimes even more than 50% on special items to 'club' members. Accordingly, people wishing to retain their privacy, by not being members of the benefit scheme, have to pay a financial penalty. The penalty may be quite punitive, perhaps several hundred dollars on major items.

LATEST SPECIALS



Item	Discount	Club Price	Regular Price
Spinifex Augusta 10 Person Tent	1/2 PRICE	\$199	\$399.99
Dune 4WD Nomad Chair	1/2 PRICE	\$59	\$129
Dometic CF50 Fridge/Freezer	SAVE \$300	\$699	\$999
Coleman 57L Wheeled Cooler	SAVE \$70	\$89	\$159.99

Ultimately what it comes down to is that people are being offered financial inducements to give up their privacy. I find this very troubling.

An additional concern with these membership schemes is that there cannot be any meaningful security for customers' personal data. For a retailer to operate a member benefit/discount scheme the customer's membership details have to be instantly available at every till in every store of the retail chain. Thus, there may be hundreds of till operators who have uncontrolled access to your data.

Another form of data collection increasingly employed by retail chains is to request your mobile phone number so that an electronic receipt can be sent rather than providing a paper one. Here the only inducement being offered is the idea of convenience. However, by providing a phone number the consumer has, in effect, provided all their personal details to the retailer, readily available via reverse lookup. In my experience some retailers can be quite insistent that you provide your phone number.

There is also the issue of consumers under the age of 18. Should retail chains be allowed to enroll children into customer loyalty schemes? Clearly no. If children cannot be members of a benefit scheme then does this mean they suffer a potential financial penalty when making purchases simply because of their age?

The Discussion Paper repeatedly states that privacy is a right. If privacy is a right then there should never be any penalty, financial or otherwise, for wishing to retain your privacy.

The idea that a different price can be charged, or benefit points earned, for a product depending on whether a person is prepared to give up their privacy is extraordinary. We would never tolerate different prices being charged for people of different religion, why should it be tolerated with respect to privacy?

There are many in society who experience discrimination. Privacy is a key mechanism by which people can minimise the discrimination they experience. Many such people must be currently incurring a financial penalty in order to maintain their privacy. Many others may be unknowingly experiencing discrimination because they have not protected their privacy.

In summary: The vast quantities of data being collected through customer loyalty schemes is a major threat to our privacy. The discrimination that this data potentially facilitates via relatively simple AI techniques is unknowable but very large. The financial inducements being offered for people to give up their privacy and provide their data to these schemes are discriminatory against those who wish to retain their privacy. The inducements are incompatible with the idea that privacy is a right. People should not have to incur any financial disadvantage to keep their privacy.

The loyalty industry should be banned. It should be shut down.