



ASIC

Australian Securities & Investments Commission

REPORT 12

Book up: Some consumer problems

March 2002



ASIC

Australian Securities &
Investments Commission

“Book up” Some Consumer Problems



A Report prepared
for the Australian
Securities and
Investments Commission
by Gordon Renouf

March 2002

“Book up” – informal credit
given by a trader to consumers
so that consumers can purchase
goods or services from the trader.

Find all ASIC's financial tips and safety checks for consumers and investors at www.fido.asic.gov.au

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Note: The views expressed in this Report are those of the consultant engaged to undertake the project and are not necessarily shared by ASIC.

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What is “book up”?

This Report is about some of the problems that arise for consumers using the “book up” system. “Book up” and “book down” are terms used for forms of store credit which are common in regional and remote Australia.

“Book up” (or “book down”) involves a trader offering small amounts of short-term credit to individuals. Typical traders are stores, taxi drivers, hawkers and regional airlines. Many of these traders are prepared to offer short-term credit only if:

- the consumer has their social security cheque posted care of the store and routinely cashes the cheque there (often for want of an alternative place to do so),
- the consumer hands over their debit card (“keycard”) to the store, often together with their Personal Identification Number (“PIN number”). The store then uses its Electronic Funds Transfer Point of Sale (EFTPOS) facilities to debit the consumer’s account on their social security payday, or
- the consumer completes a blank withdrawal form and gives it to the trader or completes a direct debit authority in favour of the trader.

Book up practices “secured” in these ways have developed in particular historical and cultural circumstances. The consumers involved are mainly Indigenous Australians and the practices are prevalent mainly in rural and regional Australia.

Benefits and problems

In the absence of alternative appropriate financial services, book up offers benefits to the consumer. For example, it is often the only way such consumers can have access to credit. It is also a convenient way of managing money over a fortnightly or weekly payment cycle for consumers who lack financial management skills or are affected by cultural pressure to immediately share resources when they are available.

However, some problems result from the way book up is operated by many traders. These include:

- Consumers are tied to one retailer for all purchases.
- There may be additional or hidden costs.
- There are opportunities for price exploitation.
- Excessive credit may be advanced to consumers.
- Credit may be advanced to third parties without the consumer’s authority.
- The trader may allow the purchase of alcohol on credit in breach of licensing laws.
- There may be a lack of transparency or poor record keeping.
- Consumers have no or limited access to their card or their funds especially when the store is closed.

- Consumers have no opportunity to learn and practice electronic banking or money management skills.
- Consumers may remain unaware of Centrelink breaches.
- Book up can be a source of resentment in Indigenous communities.
- Where keycards and PIN numbers are handed to the trader, consumers are in breach of the bank's conditions of use of the card and may expose themselves to additional liability if an unauthorised transaction is made on their account.

ASIC's role

ASIC is responsible for regulating and enforcing laws that promote consumer protection in the financial services industry, including those that apply to banking and deposit-taking products. ASIC is also responsible for promoting and monitoring compliance with industry codes of conduct, including the Banking Code of Practice and the Electronic Funds Transfer Code of Conduct. Under the Financial Services Reform legislation, ASIC takes on the consumer protection jurisdiction for consumer credit from 11 March 2002.

Since assuming its consumer protection responsibilities in 1998, ASIC has received and investigated a number of complaints about wrongful selling of financial services or misconduct in providing financial products to Indigenous communities. In 2000, ASIC received complaints from consumer advocates about the use of debit cards by some merchants as security for store credit. ASIC is aware that this practice is common among Indigenous communities.

Given this jurisdiction and experience, ASIC commissioned this Report to explore the extent and range of practices associated with book up, to identify existing research and other agencies that have an interest in this area and to canvas a range of potential policy responses.

This Report

This Report is a step towards increasing the awareness of the issues surrounding book up among interested organisations including regulatory agencies, the finance and retail industries, and Indigenous and consumer organisations.

While book up occurs in a number of circumstances, the primary focus of this report is on book up in stores. Likewise, the policy responses proposed are primarily aimed at stores.

A range of possible policy responses are listed in this Report. These include:

- take no action
- address the broader issues of which book up is merely symptomatic
- conduct further research
- improve access to relevant or alternative financial services
- support consumer education and skill development
- improve the way in which book up is conducted
- develop a complaints system
- support locally developed solutions
- better enforcement of existing laws, and
- prohibit or attempt to eliminate retention of keycards or passbooks.

While advantages and disadvantages of each of these responses are listed, no final conclusions on the preferred response are drawn. A combination of many of these responses will be needed.

This Report is about some of the problems that arise for consumers using the “book up” system. “Book up” and “book down” are terms used for forms of store credit which are common in regional and remote Australia.

The project leading to this Report initially focused on problems that can arise where retail outlets and other organisations make use of debit cards (keycards) as a form of “security” for store credit. It is likely that card issuers and financial regulators did not contemplate this use of keycards when they were introduced.

Before the introduction of EFT cards, “book up” accounts were frequently offered in situations where consumers in a remote location had no or few alternatives to cashing their social security cheque at the store where they booked up. In other cases, stores held on to consumers’ bank passbooks to “secure” the book up debt. These practices continue in remote areas where many consumers continue to receive social security cheques and/or continue to hold passbooks. More recently, other practices have come to light including asking consumers to sign blank deposit account withdrawal slips and to complete direct debit authorities.¹

The evidence suggests that, in some instances, these practices cause hardship to consumers or result in exploitation of consumers’ lesser bargaining power or both. Evidence also suggests that a majority of the consumers affected by these practices are Indigenous Australians. It should be noted, however, that for many Indigenous consumers “book up” is perceived as offering an essential service given the lack of alternative financial services available to them.

This project

This project was commissioned by the then Office of Consumer Protection² of the Australian Securities and Investments Commission. Its focus is the use of book up in stores.

The purpose of this project is:

- to conduct a preliminary investigation into the nature of the problems faced by consumers, and
- to identify a range of policy options for consideration by ASIC and other government, industry and community organisations to address any problems with “book up” in general, and with the use of keycards in particular, noting the advantages and disadvantages of each policy option.

A Consultation Paper was prepared based on discussions with 48 individual consumers and representatives of consumer, government and industry organisations. It was distributed to those consulted, to other relevant organisations including industry peak bodies and through a number of

¹ Submission 2

² From 1 July 2001, known as the Consumer Protection Directorate.

consumer networks. Due to the small size of the project, the Consultation Paper was generally distributed by email. There was only a short time for responses. There have been 12 responses (see Appendix E) to the paper received and a number of informal contributions.

This Report has been prepared on the basis of desk research, responses to the Consultation Paper and personal consultations with affected consumers, community workers, Indigenous leaders, relevant Indigenous and consumer organisations, industry groups and government agencies (most of these consultations were conducted before the distribution of the Consultation Paper). Due to the size of the project, it was not possible to conduct a full consultation process. Appendix E provides information on who were consulted and lists the responses to the Consultation Paper. Several organisations have indicated a continuing interest in the issues but have said that, at this stage, they have nothing to add to the existing material in the Consultation Paper.

ASIC's role

ASIC is responsible for regulating and enforcing laws that promote consumer protection in the financial services industry, including those that apply to banking and deposit-taking products. ASIC is also responsible for promoting and monitoring compliance with industry codes of conduct, including the Banking Code of Practice and the Electronic Funds Transfer Code of Conduct. Under the Financial Services Reform legislation, ASIC takes on the consumer protection jurisdiction for credit from 11 March 2002.

Since assuming its consumer protection responsibilities in 1998, ASIC has received and investigated a number of complaints about wrongful selling of financial services or misconduct in providing financial products to Indigenous communities. In 2000, ASIC received complaints from consumer advocates about the use of debit cards by some merchants as security for store credit. ASIC is aware that this practice is common among Indigenous communities.

Although it is unlikely that ASIC would settle on any particular policy based solely on this limited project, it might consider pursuing some specific action in relation to the issue as part of its consumer protection responsibilities. However, if ASIC decided to pursue the issue more broadly, it is likely that ASIC would undertake further consultation processes.

Other interested organisations

In the last few years, a number of organisations have become interested in issues related to “book up” and access to financial services by Indigenous people which include:

- the Australian Competition and Consumer Commission
- the Centre for Aboriginal Economic Policy Research
- the Traditional Credit Union
- the First Nations Advantage Credit Union
- the Australian Banking Industry Ombudsman
- the Northern Territory Anti-Discrimination Commissioner
- Tangentyere Council in Alice Springs
- some Regional and State offices of the Aboriginal and Torres Strait Islander Commission
- some community legal centres, financial counselling organisations and Aboriginal and Torres Strait Islander legal services
- the NSW Department of Fair Trading, and
- the Western Australian Financial Counselling Resource Project.

An expected benefit of the current project will be to identify and link the agencies and other interested organisations with relevant regulatory responsibilities. Appendix A provides more detail about relevant projects being conducted by a range of organisations.

Structure of this Report

This Report is divided into the following sections:

- **Informal credit offered by stores and traders:** This section provides information about the range of practices reported to the consultant and the historical, social and cultural context.
- **Advantages and disadvantages to the consumer:** This section discusses the actual and perceived benefits to consumers of book up practices and lists the range of problems faced by consumers.
- **Relevant current law:** This section discusses a number of issues that arise under current law in relation to the practice of traders holding on to a consumer’s keycard.³
- **Potential policy responses:** This section identifies a range of policy responses that could be adopted by ASIC, other regulatory agencies, parliament, industry bodies, or Indigenous or other community organisations.

3 It has not been possible in the time frame allowed for the project to examine legal issues arising from other practices such as cheque cashing. This subject was addressed in Commonwealth Ombudsman 1997.

- **Existing research and current projects:** This section refers to the research and current projects listed in Appendixes A and B.
- **Conclusions**

This Report also includes the following appendixes:

- **Appendix A: Current work related to the project:** This appendix lists the current research, developmental work, pilot projects and so on that touch on book up, financial exclusion or financial services for Indigenous people.
- **Appendix B: Bibliography:** This appendix lists the relevant published work identified during the course of the project.
- **Appendix C: Scope of the problem:** This appendix provides detail based on information collected on the geographical spread of stores and traders that offer book up. It is by no means comprehensive.
- **Appendix D: Response guide:** This sets out the questions posed in the Consultation Paper.
- **Appendix E: Consultations and responses:** This provides information about the people and organisations consulted and lists the Responses received in response to the Consultation Paper.
- **Appendix F: Direct debit authorities:** This appendix contains an excerpt from a submission by the Commonwealth Bank of Australia about the potential use of direct debit authorities instead of traders holding on to consumer's keycards and PIN numbers.
- **Appendix G: Book up – what to look for (for traders and consumers):** This is the text of a Fact Sheet prepared by the NSW Department of Fair Trading.

Further responses welcome

ASIC regards this Report as part of an ongoing engagement with this and related issues. We welcome your comments on the issues and approaches raised in this Report. Please send your comments to:

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About the consultant

Gordon Renouf was engaged as the consultant for this project. Mr Renouf is a lawyer who has worked for community legal centres and Aboriginal legal aid services over the past 15 years in New South Wales and the Northern Territory. He initially specialised in consumer credit and consumer credit insurance issues. More recently, he has been the Coordinator of Darwin Community Legal Service (1992–1997), the National Convenor of the National Association of Community Legal Centres (1995–1997) and the Director of the North Australian Aboriginal Legal Aid Service (1997–2001). He was a consumer representative on the board of directors of the Financial Industry Complaints Service for six years and is currently a member of the ASIC Consumer Advisory Panel.

Acknowledgements

This Report would not have been possible without the valuable contribution of those consulted and those who provided Responses to the Consultation Paper. Thanks also to Debbie Spindler in the Consumer Protection Directorate at ASIC for her administrative support and coordination role and to Helena Blundell who assisted with editing the Consultation Paper.

The practice of running up a tab with a store or other merchant has existed for many hundreds of years. With increasing access to credit cards and EFTPOS over the past 25 years, this kind of informal credit is much less widespread than it once was, although there remain many instances of shops, cafés and other traders willing to advance short-term credit to trusted customers.

This Report primarily addresses the particular practice of stores and other traders taking possession of consumers' keycards⁴ and/or PIN numbers as a form of "security"⁵ for informal credit. Other problems associated with "book up" such as stores holding on to passbooks and/or cheque-cashing arrangements are also noted. The research undertaken for this project⁶ suggests that these problems primarily affect Indigenous consumers and that they occur particularly, but not exclusively, in the northern part of Australia and in some other rural/regional areas. In these areas, the practice is normally known as "book up" or "book down".⁷

Nature and extent of the practice

The main types of traders that ask consumers to leave their keycard or passbook as a condition of being granted informal credit arrangements are grocery stores and taxi drivers.⁸ Other traders that offer book up or cash advance service based on retention of a keycard or passbook include hawkers, general stores (that is stores offering clothes and consumer goods but not food), hotels in Queensland, Western Australia and NSW, car yards in the Northern Territory and small airlines. There have also been unconfirmed reports of liquor outlets in North Queensland holding keycards. In the Northern Territory, grocery stores normally also hold a licence to sell liquor. This seems less common in other states due to differences in licensing laws.

Book up practices are not limited to remote areas or pastoral stores. There are at least several traders willing to book up in Darwin and in many regional cities, such as Townsville, Cairns and Alice Springs, and rural towns. The vast

4 Keycards are, of course, a particular brand of debit card issued by a particular bank. However, they have entered the Australian English language with a generic meaning (Australia Oxford Dictionary). Moreover, as almost everyone consulted to date has used this term I will generally use it in preference to the less familiar "debit card".

5 In the typical situation, the consumer's keycard is taken by the store in order to "secure" payment of a debt. It is unlikely however that the card itself can be pledged as a form of legal security in the way goods, real estate or a cheque may be. Accordingly, the word "secure" is generally used in an informal rather than technical legal sense.

6 Which was certainly not comprehensive. In particular, no inquiries were made in South Australia, Tasmania or the ACT.

7 "Store credit" is sometimes used as a formal label for similar kinds of credit, for example in discussions about consumer credit legislation. But recently this term has been used in a different sense to apply to credit cards issued by particular stores. The terms "book up" and "book down" are generally used in northern parts of Australia to refer to a form of store credit offered to Indigenous people that has arisen in particular historical circumstances. In this Report the term "book up" is used in preference to "book down".

8 In one case, an Aboriginal Legal Aid Service assisted a client to recover \$2,000 from a taxi driver who had wrongfully deducted funds from a consumer's account using a keycard over a period of time.

majority “secure” their interests by holding a keycard or passbook or are confident that the consumer will cash their next social security cheque with them. Less often the traders ask the consumer to sign a blank withdrawal form or execute a direct debit authority. Often, in remote locations the cheque is addressed to the recipient care of the store where they book up.

On the other hand, not all traders that have a significant Indigenous client base will book up. The stores run by the Arnhemland Progress Association (ALPA) are examples. These stores are located in Aboriginal Communities in Arnhemland and elsewhere. ALPA’s objective is to provide low-cost goods to community members and to return profits to communities. One reason that ALPA does not offer book up is that it involves significant expense to a store from both deferred cash flow and the costs of debt collection.

Instances of the practice of book up being supported by the deposit of a keycard and PIN number have been reported in all Australian jurisdictions except Tasmania and the Australian Capital Territory. It does not mean that the practice does not occur in Tasmania or the ACT, only that limited consultations to date have not reached far into those jurisdictions. The practice of book up has also not been reported in any capital city except Darwin. Again, it does not mean that it does not occur. It is interesting to note that in some regions of rural NSW and Victoria, “book up”, while apparently commonly used by Indigenous consumers, is little known by anyone other than the consumers and traders involved, employees of some Indigenous organisations and staff of Fair Trading Departments. Appendix C sets out recent information on the geographical distribution of the practice.

Book up arrangements offered by traders vary. Some examples are:

Example 1: In a Queensland regional city, a grocery store located in an area with a high density of housing commission tenants offers book up. The book up service is used mainly by Indigenous families. Many of those families are dependent on social security. Most customers are required to leave their keycard and PIN number with the store in order to have access to the book up service. The store holds several hundred cards. The store does not supply alcohol. Many consumers use Centrepay¹⁰ to have their housing commission rent and, in some cases, utility payments deducted from their social security benefit before it gets credited to their bank account.

Example 2: A store in a major centre holds about 300 keycards and PIN numbers on behalf of customers. Customers come from many different places and a significant proportion has no fixed address. Many customers travel long distances in taxis or on other forms of transport to come to the store.

The store will normally advance them the fare when they arrive. Some customers allege that the store will provide liquor on credit although this

9 Two major banks in their confidential submissions confirmed this assessment. Both suggested that the practice of book up being supported by passbooks or debit cards being held by stores was not known to bank staff in head office or in urban areas. One of the banks noted that staff in the Kimberley region were aware of the practices.

10 Centrepay is a service of Centrelink designed to assist Centrelink clients with budgeting. A payment recipient can authorise Centrelink to pay amounts to approved organisations before crediting the balance of their payment to their bank account.

would be in breach of its liquor licence. It is alleged that the store has poor record keeping, often makes “errors” in its own favour and charges at least some customers a \$10 fee for each book up.

Example 3: A regional community operates a store. It attempts to keep prices down and does not offer book up services. A nearby pastoralist has been operating a store for many years and has long-standing book up arrangements with Aboriginal people from the community. Most customers receive social security payments by cheque addressed to the store rather than through EFTPOS. Although the community store is closer and usually cheaper, consumers continue to patronise the pastoralist’s store because it allows them to book up and/or they are trapped in a book up relationship with the store.

Example 4: A store in a regional town on a major transport route has operated book up practices for many years. Accurate records are kept and no keycards are held. The owner has a very good relationship with people from far and wide and will often let substantial amounts of credit remain outstanding for long periods of time.

Example 5: A service station in a very small town is also the store, post office and bank agent. It is several kilometres away from the nearest town where a bank operates. It offers book up services against cashing of future cheques, mainly social security cheques addressed care of the service station and against keycards which it holds. On the day the welfare payment is available, the bill run up to date is paid and the remaining cash is handed to the consumer. Prices in the store are significantly higher than those in the nearest rural community.

Example 6: A country store providing book up charged interest on outstanding accounts in breach of the Consumer Credit Code. The breach only came to light when a consumer was sued for debt, was unable to pay and sought legal advice about remedies.¹¹

Example 7: A regional airline provides credit to customers for air travel. It holds onto the customer debit cards until the debt is paid.¹²

Example 8: In one central Australian community which has a strong arts focus, the store arranges for consumers to pay their book up accounts by giving a painting to the store.

Example 9: A hotel in rural Western Australia allows alcohol to be booked up. It holds a large number of keycards belonging to Indigenous people.

In most cases where the trader holds the keycard, the PIN number is also held. The trader is usually advised of the regular day for payment into the account so that the amount owing can be deducted using the EFTPOS facilities available to the trader.

The practice of asking or requiring consumers to complete a blank signed withdrawal form in addition to handing over a keycard and PIN number has also been reported.

¹¹ Submission 1. The submitter does not state whether the consumer had any arrangement in relation to cheques being cashed or debit card being held.

¹² Submission 5.

Historical, social and cultural context

Any examination of book up and associated practices must take into account related issues including access to financial services by Indigenous communities, cultural rules underpinning “reciprocity and demand sharing” and the broader issues of socio-economic disadvantage of Indigenous people, welfare dependency and appropriate education and skill development (see generally Hunter 1999, Westbury 1999, Pearson 2000, McDonnell 2000a and 2000b).

Historical development

Current book up arrangements, whether they depend on holding consumers’ keycards or cashing welfare cheques, have developed in a particular historical context. That context includes the circumstances in which Aboriginal people in mainland Australia were brought into contact with the non-Aboriginal economy. Historical events such as Indigenous people’s increased access to social security (as a result of a series of changes mainly over 1958 to 1975), the deregulation of access to alcohol in the early 1960s, and the effects of the equal wage case from 1968 (see for example Rowse 1998) are also relevant as are the practice of stores and others cashing social security cheques and the practice of government welfare authorities posting cheques to Indigenous clients “care of” stores (Commonwealth Ombudsman 1997).¹³

One result of the historical context is that book up is seen by many consumers as normal and even as “essential to their well-being” (Westbury 1999: 7).

More recently, various changes in the banking system have had an impact on financial services available to and chosen by Indigenous people.

An understanding of the impact of these factors and of Indigenous responses to these and other issues will be important in considering any policy responses to the use of keycards with book up systems.

Cultural practices

Indigenous use of financial services and book up systems occurs in the context of specific cultural practices and attitudes. The behaviour and preferences of Indigenous consumers cannot be assumed to be the same as “consumers in general”. This has particular effects on the attitudes and practices Indigenous consumers bring to bear on their choice and use of financial services. Westbury (1999: 6) notes that:

“The pattern of sharing food, cash and other resources within Indigenous communities is strategically determined by kinship ties and social alliances which extend beyond families and physical households. ... These

13 One submission provided recent evidence of the link with historical practices: “Another significant factor relates to historical welfare practices. One community worker estimated that as much as 50% of the population in the Pilbara did not understand that there was a distinction between a book up system and the old welfare system whereby they received an allotment of food and other necessities on a fortnightly or weekly basis. In some instances, the same stores and the same storekeepers were involved in both systems.” (Submission 9)

rules and how they are applied in everyday life are often overlooked or misunderstood and result in policy approaches by service providers that fail to take account of existing community structures and expectations. ... For example banks are seen as cash outlets and not savings facilities, there is low cultural emphasis on savings and Centrelink is viewed as a de facto banking service.”

In this context, a keycard is seen both as a resource to be shared and a pledge to secure a book up arrangement. In the same way, if it is necessary to disclose a PIN number to facilitate meeting a cultural obligation, then it should be disclosed regardless of the bank’s strictures, even in cases where they have been perfectly understood.

Current debates about welfare dependency and development

There are significant current debates about the relationship between Indigenous communities and the provision of government services (see for example ATSIIC 1994, Pearson 2000, Trudgen 2000, Altman 2000). Responses developed should be alive to these issues.

Cheques and direct transfers

A large proportion of welfare recipients in the northern parts of Australia continue to receive welfare benefits through cheques. There are, however, many Indigenous people with poor financial literacy skills who currently receive their payments into a transaction account accessed by a debit card.

As part of the solution to the “Feast, Famine and Fraud” phenomenon identified by the Alice Springs workshop, reported by Westbury (1999), a gradual and appropriately supported transfer of payment of welfare benefits to electronic accounts has been suggested. However, the widespread prevalence of traders holding on to consumers’ cards would probably undermine that approach as consumers will be in a similar position as they were when their cheques were routinely cashed at a particular store.¹⁴

Lack of services in rural and regional areas

Often, there is only a limited number of retailers in a particular town. There may only be one grocery store which means that there are no alternative grocery stores for consumers to use in any case. It has been suggested that increased restrictions, including restrictions on book up, may mean a risk that the one grocery store will close down leaving the town with no access to groceries at all. Others would argue that a shop with a captive market but without book up might well be more profitable as operating book up is in fact a very expensive service.

14 One difference may be that charging a fee for cashing cheques is common, whereas explicit fees for book up based on EFTPOS seem to be the exception rather than the rule.

Coincidence of grocery and banking services

One person consulted noted that in many remote towns the banks have closed down and operate through outlets at post offices or stores. At times the banking outlet and the store which offers book up are the same business. Therefore, the consumer has to deal with the store about banking access whether they like it or not.

Existing research and current work

Any policy response by ASIC should also be developed having regard to the work being undertaken by other agencies on this and similar issues and the existing research undertaken on those issues.

For these reasons, this Report identifies relevant previous research on related issues and relevant current work being undertaken by individuals, organisations and government agencies. Previous published research and current projects that have been identified are set out in Appendixes A and B.

Extent of the use of book up

It has not been possible in the course of this project to provide ASIC an accurate estimate of the number of people who engage in book up practices, let alone the proportion of these that encounter problems or are disadvantaged in some way.

It is nevertheless clear that some form of book up is available in a large number of rural and regional towns in most states of Australia and the Northern Territory, on Aboriginal communities, at stores on pastoral stations and in some regional cities. Appendix C sets out in more detail the information that is available.

Motivation for dealing with stores offering book up

One of the main reasons a consumer might choose to use a store that offers a book up service is that they have no money and have no access to credit. It is, however, possible that dealing with stores that offer book up has become more attractive due to reasons other than the lack of availability of credit. These include the monopoly position of some stores,¹⁵ decreasing availability of face-to-face banking and the lack of any alternative in many places (that is there is no bank agency – or the agency is also the store – and no ATM). There may be other factors such as a reluctance to use or hold cash, a belief that book up can help with budgeting or that it is a way to protect resources from demands from kin.¹⁶ Another issue is that consumers may choose to deal with particular stores not because of the availability of book up but for other reasons such as a feeling of not being welcome elsewhere.

¹⁵ Submission 5

¹⁶ Submission 11 and see McDonald 2001.

In this context, Westbury (2000a) notes that financial service providers have generally failed to take account of the different conceptions that Indigenous people have of financial facilities. For some Indigenous people, this may pose an additional barrier to using financial services and, therefore, motivate them to conduct their financial business elsewhere.

Particular groups affected

It has been suggested that many of the consumers who use book up services are likely to possess certain characteristics and that any proposals for reform need to have regard to the nature of those characteristics.

It was noted that the systematic book up systems operated by stores appear to be primarily used by Indigenous consumers.¹⁷ One view put to the consultant is that a majority of people who have problems with such stores are unable to protect their rights due to alcohol or drug abuse or some other factor, and where these factors are absent there are no problems or there is a significantly lower level of problems.

On the other hand, it has not been difficult to find articulate Indigenous consumers not involved in alcohol or drug abuse who make use of the book up system and report concerns with the practices of particular traders.¹⁸ While book up extends to many consumers not involved with alcohol abuse, and some of those consumers report problems, the combination of consumers with alcohol dependencies and unregulated book up arrangements gives rise to considerable potential for exploitation.

Submissions suggested that affected consumers are:

- usually but not always Indigenous Australians¹⁹
- have relatively poor financial literacy and consumer knowledge²⁰
- have certain cultural attitudes to income and savings²¹
- lack familiarity with banking generally and debit cards in particular²²
- lack of safe storage facilities at home for example due to overcrowding
- are on low incomes, and
- do not have access to other forms of credit (including informal credit from family members and friends).²³

17 Although one submission suggested that non-Indigenous people also use book up services – and this is no doubt the case – no instance of a non-Indigenous person being required to deposit a keycard and PIN number as a condition of using a book up service was in fact reported to the consultant.

18 Indeed the author is aware of several well-educated and financially skilled employed Indigenous people who use book up services. They are critical of the services and believe they should be regulated (one) or prohibited (the others).

19 Submissions 3, 5

20 Submissions 3, 5, 6

21 Submission 3

22 Submission 3

23 Submission 2

Some submissions also suggested that the relevant consumers are not “creditworthy”.²⁴ If this means that financial institutions would not be interested in lending to them (for example, because they do not fit typical borrower profiles or because the amounts involved are too low), it is probably correct. But it is probably not correct if it means that most individuals would not repay their debts.²⁵

Other contextual issues

A respondent to the Consultation Paper pointed out that stores could or may become dependent on the income from book up to maintain their financial position. They may also be motivated (in regional areas at least) by a desire to help people who may have no access to money to buy food for a few days. Some responses suggest that the monopoly position of traders and/or the considerable direct costs of book up may lead to higher prices. Further, book up will offer no help to buy food for a consumer trapped in a cycle of booking up once they reach the credit limit imposed on them by the trader.

24 Submission 2

25 The Traditional Credit Union, for example, reports very high repayment rates on its small loans to Indigenous clients, many of whom would also be candidates for using book up services.

Book up practices, cheque-cashing arrangements and the practice of businesses holding on to consumers' keycards with or without PIN numbers potentially raise problems for consumers. There is a significant level of complaint, of reported exploitation and disadvantage and of risk of loss flowing from the practice. Despite potential problems, many consumers are choosing to use book up services offered where deposit of their keycard is required. There are several possible explanations, including that reported problems are the exception rather than the rule, that consumers are satisfied with the services offered, that some consumers are not satisfied but feel that they have no choice but to use book up services, and/or that consumers do not have the skills required to protect their own interests.

Advantages

The advantage for consumers in a book up arrangement is that they have access to a source of credit that can help them manage their money between payments. While in many cases this advantage is in fact deceptive,²⁶ there is no doubt that in some cases there is a real benefit to the consumer.

The practice of leaving a keycard or passbook *as a condition of book up* offers no benefit to the consumer other than facilitating book up. In cases where the store would be willing to offer book up if the consumer was not able to leave a keycard or passbook with the store, the requirement offers no benefit to the consumer and can cause disadvantage.

It should be noted that there are other reasons consumers might leave their keycard with a third party. Consumers might wish to leave their keycard with another person as a forced savings plan, to avoid giving account access to people to whom the consumer has customary obligations, for safekeeping or to make it easier to receive assistance to use the card. Third parties include employers, friends and colleagues, trusted employees of community organisations, stores and, where available and willing, financial institutions (re the latter see Westbury 1999, Westbury 2000).

²⁶ See the discussion under the heading "Would prohibition or other attempts to eliminate or discourage the practice be justified?".

Disadvantages

There are disadvantages and actual or potential problems involved for the consumer. Except where noted the following problems are either inherent in the arrangement or have been reported as having occurred in at least one situation.

The consumer is tied to one retailer for all purchases

Consumers must generally make all of their purchases from a particular store where their keycard or passbook is held.²⁷

The consequences of the consumer being tied to a particular store include:

- The consumer is unable to shop around.
- It is difficult for the consumer to stop dealing with a business if they are dissatisfied with its service, quality or prices.
- If the consumer lives a distance away from the store (for example in another part of a town or city), they will incur the expense and inconvenience of travel to the store as they will have no funds to buy everyday items from a closer store.
- The power relationship between merchant and customer is changed so that if there is a dispute the consumer is in a worse bargaining position.

These issues will be less of a problem for a family that jointly manages a number of accounts and passbooks or cards and can use funds paid into other accounts to shop elsewhere.

Additional costs

The store may impose various costs on the consumer including:

- a fee for use of the book up service
- additional charges or “fines” in relation to the book up account
- “errors” in arithmetic as a result of poor record keeping or fraud, and
- a fee for the return of a keycard!²⁸

Each of these practices has been reported to the consultant, although there are clearly many book up arrangements where these practices do not occur.

27 It may be that in some cases where the consumer lives in a remote area he or she may have been effectively tied to a particular store in any case due to the lack of accessible competing stores. However, for most consumers there would have been additional choice available at least some of the time through the possibilities of travel, travel by relatives and requesting friends and relatives to send goods from another place, usually a main town.

28 A fee of \$20 was reported at a store in northern Western Australia (Submission 8).

Price exploitation of a captured market

The Commonwealth Ombudsman has suggested that in some instances where social security cheques are addressed “care of” the stores, those stores gain a captive market and exploitative pricing results (Commonwealth Ombudsman, 1997). This will be equally true of stores which are the only local place where cheques can be cashed and stores which hold on to customers’ keycards. The practices may have anti-competitive effects where book up ties consumers to a particular store.

It has also been suggested that stores which do not label their prices might engage in a two- tiered pricing structure, that is goods would be more expensive for book up as opposed to cash customers. Note, however, that no specific examples of such a practice were reported to the consultant.

Excessive credit

The store may allow consumers to go into debt beyond their means by failing to set an appropriate credit limit.

Credit to third parties

The store may offer credit to third parties (normally relatives of the cardholder including his or her spouse) without the consent of the cardholder. Numerous instances have been reported.

Alcohol sales

The store may allow the purchase of alcohol on the book up system in breach of the store’s licence to sell alcohol²⁹ or, alternatively, the store may give cash advances that consumers then use for the purchase of alcohol which breaches the spirit if not the precise terms of the licence.

Additionally, in States where book up for alcohol is not prohibited and book up is used by pubs/hotels, it may result in a lack of access to money for food and other necessities.

Cash advances

The store may give small cash advances against the book up system, for example to pay taxis to bring consumers to the store or take them home.

Lack of transparency

The store may not operate the book up system in a sufficiently transparent way for consumers to feel confident that they are being treated fairly and the amount of repayment requested or taken is correct. Examples of lack of transparency include poor record keeping and failure to provide detailed receipts at time of purchase.

29 Alcohol licences in the Northern Territory routinely include a condition about credit that reads in part “the practice known as book up or book down is prohibited”.

Risk of fraud

Where a card and PIN number are left with the trader the consumer runs the risk of fraudulent access to the account by:

- the trader
- employees of the trader, or
- third parties who gain access to the cards and PIN numbers (for example after a “break and enter” into the store).

At least one instance of the latter has occurred.

Bank fees

Additional bank fees may be incurred by the consumer as a result of the particular access pattern of the store to the account. In any case, control over access to the account is removed from the consumer. On the other hand, if the trader makes only one transaction per fortnight, bank fees may in fact be substantially reduced.

No access to card or funds

While the store is closed

If the store closes for a period of time, there may be no opportunity to return cards to customers. In one instance, a store held a number of cards. It closed for several weeks at Christmas with the cards locked in the store.

Refusal to return a card

Stores have been reported to refuse to return cards when consumers need them for necessary or emergency travel to another place.³⁰

No opportunity to learn and practice electronic banking skills

Consumers who lack money management skills or skills about the electronic banking system avoid the need to acquire them and so remain disempowered.

Lack of knowledge of Centrelink breaches

When a Centrelink client is “breached” for failure to comply with the terms of receipt of a pension or benefit, their pay is reduced or withheld. Some clients do not receive or understand the written advice that may be sent and only learn of Centrelink’s action by noticing a changed amount of payment. If they have handed over their keycard, they lose the most direct way to gain information about their account and may not discover that they have been “breached” by Centrelink.

30 Submission 8 reports an instance where a store refused to return a card to a consumer who needed to travel from their community to another place for medical treatment.

A source of resentment

The NSW Department of Consumer Affairs (1994: 8) concluded that book up as practised in rural NSW “has long been a source of resentment among isolated Aborigines”.

Breach of bank’s conditions of use

The provision of a PIN number to a third party breaches the conditions of use of most banks’ keycards. This can result in the cancellation of the account but, more importantly, in the loss of protection where fraud occurs because of failure to keep the PIN confidential.³¹

Unregulated credit environment

The book up practice is not subject to the same degree of regulation and consumer protection as is provided in relation to most other forms of credit and so the chances of disadvantage to the consumer are higher.³²

Passbooks

Many of the problems flow from retention of keycards and PIN numbers. While retention of passbooks appears to pose fewer problems as there is less risk of fraud, there is a clear record of all transactions in the book and it is easier to keep track of the account balance,³³ other negative effects of book up are often present.

31 Submission 2. In this context the Commonwealth Bank Group commented: “While the book up system may be perceived by some consumers as a convenient means of obtaining store credit, it exposes the consumer to substantial risk.” Submission 9.

32 Submission 2

33 According to the Consumer Credit Legal Centre of WA, “Retention of passbooks is reported to be less of a problem, primarily because they are less common due to banking policies phasing out passbook accounts. Even if passbooks were retained these posed less of a problem because there is a complete record of banking transactions on the passbook, and the risk of fraud is decreased because the account holder has to present the passbook in order to make a withdrawal.” Submission 9.

Before discussing the various conceivable policy responses, it will be useful to indicate the legal issues that may arise about reported book up practices.

Property in the keycard and its effectiveness as a security

The terms and conditions imposed by most card-issuing banks provide that the card remains the property of the bank. Presumably, the consumer has a right to possession of the card as against any person other than the bank.³⁴

Two questions arise. First, can the consumer effectively give the card as an enforceable security? Second, is the consumer entitled to demand the return of the card having left it with the trader as a condition of obtaining credit?

Different approaches to these questions have been suggested. There is some uncertainty as to whether handing over a card is effective to create a security.³⁵ It seems clear that even if the card is effective as a security, the consumer is entitled to demand return of the card any time that the balance of the debt due to the trader has been settled (for example on pension day after the trader has debited the sum owed).³⁶ This will not be the case, where it is explicitly or implicitly agreed that the trader may hold and use the card and PIN number to access the account until the credit advanced is repaid³⁷.

Application of the Consumer Credit Code

The Uniform Consumer Credit Code applies in all jurisdictions in Australia³⁸. If the Consumer Credit Code were to apply, the trader would need to comply with extensive disclosure and other documentation requirements and the consumer would gain various rights. Many traders would not be in a position to comply with the Code. One of the rights the consumer would gain if the Code applied would be the right to apply to a court or tribunal to reopen a transaction on the grounds that it was 'unjust'³⁹.

The Consumer Credit Code will not apply if there is no charge for the provision of credit and the goods are sold at the same prices they would be available for cash.

34 And, possibly, other banks (and their ATMs) or merchants acting on the banks explicit or implied instructions to hold on to the card in certain situations.

35 Issues include the following:

- that the card is an access method to a bank account, not an item of intrinsic value;
- that in providing the PIN number the consumer is breaching the terms of his or her contract with the bank and that in asking for it the merchant is encouraging a breach of contract; and
- that, depending on the terms of the agreement between the consumer and trader, there may be nothing to stop the consumer cancelling the card or stopping its ability to access the account so any "security" granted is in fact illusory.

Another approach is to ask what are the consumer and trader agreeing to do? One answer is that they are agreeing that the trader will hold the card so that they may debit the account on pension day (that is provision of a means to settle the account rather than a security for credit).

36 Basten 2002

37 Basten 2002

38 The Consumer Credit Code (Old) as adopted by all other jurisdictions, hereinafter "Consumer Credit Code".

39 Consumer Credit Code, section 70

The Code will not apply if the maximum amount of credit offered under the arrangement is \$50 or less, even if there is a charge for credit⁴⁰.

The Code will apply to book up arrangements *where a fee is payable* unless either of the following are part of the contractual agreement with the trader⁴¹:

- the credit is expressly agreed to be provided for a period of less than 62 days and any fee is less than 5% of the amount of credit and there is no interest charged or the interest is less than 24%⁴², or
- the credit is provided as part of a continuing credit contract and the only fee payable "is a periodic or fixed charge that does not vary according to the amount of credit provided"⁴³ and the fee is below the maximum fee prescribed by the Regulations⁴⁴.

Whether or not any particular book up arrangements are properly classified as continuing credit contracts will depend on the nature of the particular arrangement. It is quite likely that many arrangements do amount to continuing credit contracts. If so, where a fee is charged per transaction, the arrangement will not fall within the exception and the Consumer Credit Code will apply.

Where a book up arrangement is not a continuing credit contract and a fee is charged it will escape regulation by the Code if the fee is less than 5% of the amount of credit advanced and there is clear agreement that the debt must be paid off in less than 62 days⁴⁵.

Where book up is used to purchase goods at a price which is higher than for similar goods bought for cash, then it can be inferred that a fee is charged for the provision of credit because the variation in price depends only on whether credit is provided.⁴⁶

Application of the Electronic Funds Transfer Code

The EFT Code sets out the situations where the consumer will be liable for all or part of any unauthorised electronic transactions.⁴⁷ The Code would apply:

- if an EFT merchant, such as a store, transfers a greater amount of funds to its own account than the consumer has authorised,

40 Consumer Credit Regulation, Old, clause 6

41 This account assumes, as will normally be the case, that Section 6 (a), (b) and (d) of the Consumer Credit Code are satisfied, that is that the consumer is a natural person, the credit is provided wholly or predominantly for personal or domestic purposes and the credit is provided in the course of a business.

42 Consumer Credit Code, section 7 (1).

43 Consumer Credit Code, section 7 (3).

44 Currently \$200 per annum in the first year and \$125 in subsequent years, Consumer Credit Regulation, Old, Clause 5.

45 And, as is normally the case, there is no interest charge or the interest charge is less than 24% per annum.

46 Basten 2002: 14

47 The EFT Code has recently been revised. Most of the revised code will come into force on 1 April 2002. The relevant provisions of the existing Code are substantially reproduced in the new Code.

- if an employee of the store engages in fraudulent conduct, and
- if a third party obtains the consumer's card and PIN number, for example through theft from the store, and uses them to obtain funds from the consumer's account without their authority.

The normal rule is that the consumer will be liable for the actual loss (subject to some limits) incurred if he or she contributed to the loss by voluntarily disclosing the PIN number for the account to another person. The Code provides that the consumer is not liable for the fraud of the merchant or their employees (cl 5.2 (i)),⁴⁸ however, it is unlikely that this provision will protect a consumer who has voluntarily revealed their PIN number and so enable the person to commit the fraud. The consumer may have a right to recover the missing funds from the store. This will, however, be hard to enforce without ready access to legal assistance. The consumer is also likely to remain liable (as against the bank) for losses which flow from theft of the card from the trader. Depending on the circumstances, they may have a remedy against the trader, for example if the trader has been negligent in the storage of cards.

Unconscionable conduct, fraud and other remedies

In certain circumstances, a consumer may be able to resist recovery of a debt claimed by a trader, or even seek to recover amounts that have been fraudulently or unconscionably obtained. In most cases, there are serious practical difficulties including availability of evidence and willingness of stretched civil sections of legal aid organisations to assist consumers resolve disputes involving low dollar value amounts.

One submission pointed out the problems in relying on individual consumers to enforce their rights. "It is unsatisfactory ... to take action on an individual basis, as it often does not affect how the provider of the service operates vis-a-vis other consumers nor does it necessarily change industry practices."⁴⁹ Consumers' rights to take action individually or as a group should, of course, be preserved and possibly strengthened⁵⁰ as in many situations regulatory agencies will not be in a position to take action due to resource limitations, priorities which have been set or other reasons.

48 The equivalent clause in the revised EFT Code is 5.2 (a).

49 Submission 1

50 A number of submissions pointed to practical problems with current legal procedures in relation to collecting evidence and the cost incurred by legal aid agencies in relation to the amounts of money involved. It is outside the scope of this Report to discuss these issues which are characteristic of the legal system in general.

This section describes some possible policy responses to the problems outlined above. The Consultation Paper produced before this Report contained a similar list. Feedback was sought on whether any of these responses would be justified, whether they would be effective, in what way they ought to be fine-tuned and whether the responses would themselves raise other problems for the affected consumers or other consumers. This feedback has been incorporated in the text below. Additional possible policy responses were raised in submissions and these have been included in this section.

In general the policy responses considered address problems with book up offered by stores. The additional problems that arise in relation to book up offered by other traders, particularly hotels and taxis, may justify alternative responses.

The final section of this Report, “Conclusions”, presents the main conclusions that have been drawn from the project. In respect of a number of policy options, no specific conclusion has been drawn other than that the proposal requires further specification and consultation with affected parties before it can be seriously considered for implementation.

Take no action

Taking no action at all might be justified if there is no real problem, if existing remedies are sufficient to respond to the problems that do exist, if the costs of taking each possible course of action outweigh the benefits from that course of action, or if there are other processes in train which when implemented will solve or substantially alleviate the problem.

It might, for example, be argued:

- that the incidence of problems is so rare that no action is warranted,
- that consumers are aware of the problems that can arise but nevertheless are attracted to the service (that is short-term credit supported by handing over a keycard and PIN number or a passbook, or through cheque-cashing arrangements) and freely choose to use it, or
- that existing legal remedies are adequate for any consumer who is exploited.

Consultations indicate that none of the previous three statements are true in all cases. All responses to the Consultation Paper accepted that the problems identified in that paper were real; none suggested that existing responses were adequate and no submission argued that no action should be taken.⁵¹

⁵¹ Although one submission suggested that it “may be that where there are no alternative [financial] service providers [it] is better to do nothing than to regulate book-up out of existence”.

Address underlying development issues

Book up practices as they relate to Indigenous people arise out of a particular set of historical and socio-economic circumstances which include:

- long familiarity with book up as a way of doing business in parts of Australia,
- socio-economic deprivation (see for example Hunter 1999),
- powerlessness and welfare dependency (see for example Trudgen 2000, Pearson 2000),
- lack of budgeting and financial literacy skills and resultant familiarity with other financial services (Westbury 2000), and
- lack of access to appropriate financial services (Westbury 1999).

It could be argued that government and Indigenous organisation responses should focus on promoting long-term solutions rather than approaches that may be paternalistic and serve to reinforce long-term dependency or fail to support skill development. It is, however, surely possible to combine short-term and long-term strategies that are consistent with development but also address consumers' current needs.

Respondents generally suggested that specific responses should be made to the particular issues associated with book up, holding debit cards and cheque cashing in addition to any action taken to address underlying issues.

One submission suggested that financial institutions be "obliged to provide/expand upon the Indigenous/disadvantaged consumers programs to empower those consumers".⁵²

Conduct further research

Only a small amount of published information and ongoing work in relation to book up has been identified (see Appendixes A and B). Moreover, there is only limited Australian research in relation to related issues such as Indigenous access to financial services (Westbury 1999 and 2001, McDonnell 2001a and 2001b) or the particular needs of Indigenous consumers (NSW Department of Consumer Affairs 1994 and Cultural Perspectives 1998).

The Consultation Paper suggested that it might be worthwhile or necessary to undertake additional detailed research before developing policy responses. The research would seek to gain a more detailed understanding of the variety of dynamics that underpin and influence consumers' use of book up. The research might also consider the attitudes of consumers, family members and community leaders to the availability of book up and the costs and benefits of the practice and of possible policy responses. It could also identify in more detail the prevalence of the practice including, for example, the extent to which it involves non-Indigenous consumers.

52 Submission 2

Responses to the Consultation Paper suggested that there were areas where further research would be desirable. First Nations Credit Union argued that “the stakeholders need to establish, understand and quantify the issues arising from Book Up and adoption of electronic banking. The research needs to ‘get into the minds’ of the relevant consumers and understand why current practices are occurring.”⁵³ Further documentation of the problem may also be necessary to gain support for appropriate action. One bank noted that “it is difficult to comment on ways in which financial service providers such as [the bank] could contribute to easing problems associated with book up until there is further detailed evidence on the extent of the practice, the reasons for it and the existence of associated problems”.

One submission suggested that the problems are clear and further research is unlikely to add much to what is already known.⁵⁴

These positions are not irreconcilable. All respondents, including those who favour additional research, recognised a need for some immediate response.⁵⁵

Should any further research be undertaken, it would be desirable for research affecting Indigenous consumers to be undertaken in partnership with affected communities.

Apart from primary research about consumer behaviour, such as that suggested by the First Nations Advantage Credit Union, there is a need for ongoing consultation with organisations and individuals likely to be affected by specific proposals.

Areas that may justify further research include:

- the precise motivations of consumers and traders in relation to book up,
- how best to improve the access to financial services of Indigenous Australians and Australians living in remote areas,⁵⁶
- the views of providers of book up services,
- the degree to which any proposals implemented to address problems associated with book up, traders holding keycards, passbooks or direct debit authorities or cheque-cashing practices are effective and the take up rate and effectiveness of the proposed voluntary Store Charter (see “Improve the way book up is conducted”), and
- the development of more detailed alternative responses including regulatory responses.

53 Submission 3

54 Submission 5

55 First Nations Advantage Credit Union, for example, suggested that “to do nothing gives implicit approval to current practices” and supported improved education, “management of the risks” to consumers involved in book up and development of alternative methods of settling book up accounts.

56 The Consumer Credit Legal Service WA suggested that research should address the following related issues: “Are there existing alternatives that could be accessed, eg stores/banks in nearby towns, community based initiatives (one worker cited the example of a community centre that retained banking receipts on behalf of consumers and helped them with budgeting). If alternative services were introduced, could they and would they be used by relevant consumers, eg electronic banking is touted as an alternative to face-to-face banking, however it also poses some barriers to access.”

Improve access to relevant or alternative financial services

It is argued that a key factor that motivates consumers to utilise book up services is their exclusion from all or some aspects of the financial system (Westbury and Taylor 2000: 48 and Connolly 2001). Consumers may be excluded through lack of access to banking and credit services or through a lack of skills required to use whatever services they would otherwise have access to.

Policy approaches could concentrate on developing alternative financial services, such as the promotion of micro-credit projects, or could reduce the demand for book up through offering other services that meet consumer needs.

Alternatives include, for example, attempting to smooth out the bumps in the receipt of income as proposed in Alice Springs in 1999 (Westbury 1999),⁵⁷ and other ways of organising budgets such as Centrepay. They could also include the replacement or introduction of missing financial services through new approaches such as pooled community resources, rural transaction centres, community banking models, credit unions, Giropost or provision of ATMs located where there presently are none. Finally, some commentators suggest re-regulation of the banking sector to the extent required to ensure that all Australians have access to essential banking services.

In reviewing book up as part of a larger consideration of the experiences of Aboriginal consumers in NSW, the NSW Department of Consumer Affairs (1994: 8) concluded that it would be desirable and possible to develop alternatives to book up “based on a combined community approach and pooled resources”.

Rural transaction centres

Under the Rural Transaction Centre Program, a non-profit organisation representing a small rural community can apply for funding to establish a centre to provide access to various services including financial services. Rural communities have established transaction centres or had funding approved and many have received funds to develop a business plan. Many of⁵⁸ the approved RTCs are located in remote Indigenous communities.

57 Note that on 20 April 2001 the Minister for Community Services announced that the government would offer access to weekly rather than fortnightly payments for a small number of welfare recipients in Tangentyere Community in Alice Springs. Offering weekly payments was a key recommendation in Westbury 1999. This is, however, a relatively small first step with up to 350 people expected to be involved initially (personal communication departmental officer 6 July 2001).

58 Department of Transport website: <http://www.dotrs.gov.au/rtc/info/index.htm> (6 May 2001), McDonnell (2001a) provides figures on the establishment of RTCs generally and in Indigenous communities in particular.

Centrepay

Centrepay is a facility offered by Centrelink and the Department of Family and Community Services. Centrelink clients may direct that part of their entitlement be paid to one of 2,900 registered organisations and companies before the balance of their payment being credited to their account or sent to them by cheque.

They can then ensure that commitments such as rent, utilities, funeral benefits, education fees and other expenses are met. The service is not currently available to people who do not receive an eligible Centrelink payment.⁵⁹

The Centrepay scheme could be extended to offer the facility for consumers to direct payment of up to a set proportion of their benefit or pension (perhaps 25%) to their chosen local store provided the store was prepared to comply with agreed standard terms and conditions.⁶⁰ With good record keeping, this would give consumers access to credit up to that amount in the later part of their payment period without the disadvantages of having to leave a keycard at the store. One potential problem with this proposal is that consumers might not cancel the Centrepay arrangements if they stop using the store (for example if they move location).⁶¹ This could be partly addressed by requiring the arrangement to be renewed on a regular basis, for example every three months, and requiring the store to cancel the arrangement and refund any credit balance if consumers have not used the arrangement for, say, two payment periods after they had a nil or credit balance.

Credit unions and community banking

Credit unions and community banking projects have been set up or are under discussion with a focus on meeting people's needs in rural and remote areas. Several of these are focused on Indigenous consumers' needs.

The Traditional Credit Union (TCU) has been in operation for a number of years. It has branches in seven remote communities in the Northern Territory and a head office in Darwin. While there is no race-based limitation on who can be a member, the TCU targets its services to the needs of Indigenous people in remote communities, employs Indigenous staff and offers face-to-face financial services. The TCU offers credit to its members and claims the lowest default rate of any financial institution in the country. The TCU is in the process of offering members access to funds through the national credit union debit card (known as a CUE card) and plans a program of community education to support its members' use of those cards.⁶²

59 It is not therefore currently available in relation to CDEP payments. This will become less significant when the "Family Tax Payments" and any associated Rent Assistance payment is included in the Centrepay scheme, currently expected to be in March 2002. (Personal Communication, Sam Cavalli, Department of Community Services, 6 July 2001).

60 These would cover at least accurate record keeping, third party credit, and notification to Centrepay and the consumer if the consumer was in credit above a certain amount or for more than a specified number of weeks.

61 The practicalities of this suggestion would need to be discussed with the Department of Family and Community Services and with a sample of consumers who may benefit from the idea.

62 Traditional Credit Union 2000, Personal Communication, Barbara Bradshaw, General Manager TCU.

The First Nations Advantage Credit Union was launched in 1999. It “is an Aboriginal initiative to create a Credit Union with national access owned and operated by Aboriginal people. First Nations is being incubated inside Endeavour Advantage Credit Union as a safe and secure way to create a new Credit Union”.⁶³ First Nations advises that it has over 2,500 members nationwide including 500 members in the Kimberley region.

No interest loans schemes

There is an increasing interest in the development of “No Interest Loan (NIL)” schemes to assist low-income consumers gain access to credit for essentials such as whitegoods. Schemes exist in Victoria and Western Australia and are currently being promoted in NSW.⁶⁴ In general, such schemes lend a one-off \$500 to \$1,000 to consumers. There is a very good rate of repayment. The statewide WA scheme lends to about 100 people a month. About 35% of its clients are Indigenous consumers.

These NIL schemes are not, of course, a remedy for book up arrangements which are desired by the consumer to smooth out income flows on a regular fortnightly basis. However, a small proportion of the reported book up practices involve credit advanced for whitegoods and electrical goods on condition that a keycard and PIN number is deposited with the store until the credit is repaid. To prevent the need for book up in a small number of cases, the success of NIL schemes may be used as a basis for piloting local initiatives which directly address consumer’s fortnightly financial management needs.

Alternative settlement methods

The First Nations Advantage Credit Union suggested that one approach to the problem would be to develop alternative settlement methods for payment of book up accounts such as telephone or Internet BPay or Internet-based electronic transfer. This approach will be useful to assist a certain percentage of consumers who can, or become able to, use the suggested transfer methods. It will be relevant as much as the trader requires the card to facilitate payment rather than as a form of security for the credit advanced.

The Commonwealth Bank Group suggested that modified direct debit arrangements might overcome some disadvantages of leaving a keycard and PIN number with the trader. They may, for example, place consumers in a stronger position with the trader. An excerpt from their submission in support of this proposal is at Appendix F. The bank acknowledges that there may be some dangers for consumers associated with the proposal but suggests that consumers would generally be better off than if their keycards were held.

63 Submission 3

64 More information about NIL schemes can be found at the following website:
<http://www.ncoss.org.au/nils>.

North American initiatives

Relevant initiatives in North America include the reinvigorated Community Reinvestment Act, which provides incentives to financial institutions to provide services to lower income consumers and to disadvantaged regions, and the Indigenous banking programs undertaken by a number of major banks (Westbury 2001, McDonnell 2001b).

Feasibility study

Improving access to financial services is, of course, a goal that would have benefits far beyond reducing the need for Indigenous consumers to rely on book up services. As Westbury (1999: 24) notes:

“Issues surrounding cheque disbursements [and we would add issues surrounding stores holding keycards] are merely symptomatic of Indigenous people’s lack of access to, knowledge of, and equitable participation in Australia’s wider financial system and related market economy. It is on the basis of being able to equitably access essential financial services that people can: manage and budget their incomes; arrange to pay third parties; purchase food, goods and services; maintain a level of financial and economic independence; and plan for the future.”

Westbury recommends that a feasibility study into the possible delivery of alternative financial services to Indigenous communities should be conducted. When complete, its findings should be presented to a conference of relevant Indigenous and other people with the express purpose of raising awareness of the impact of lack of access to financial services on Indigenous people and highlighting the possible remedies.

This project received two confidential submissions from major banks. Those responses indicated willingness on the part of those two banks to consider involvement in local initiatives to improve access to financial services by disadvantaged remote consumers.

Support consumer education and skill development

Several authors have pointed to the lack of budgeting and financial literacy skills and resultant familiarity with financial services among *some* Indigenous people. Many people have a poor understanding of how to use and make the most of relevant banking and financial services.

This comment could be extended to general consumer skills. It would, of course, be simplistic to analyse Indigenous consumer behaviour solely in terms of a lack of skills and respond by promoting education or skill development without regard to the cultural context. As one person consulted noted, “[t]he motives and cultural context of behaviour patterns are so often forgotten”.

While there have been a number of consumer education projects targeted at Indigenous consumers, there is little readily available Australian research about their effectiveness.⁶⁵ There is also little published research available on how consumers acquire financial literacy and consumer skills.⁶⁶

There are two current Australian education projects which address book up. The Western Australian Financial Counselling Resource Project is in the course of preparing a Credit Information Kit on the subject. The target audience is financial counsellors, rural counsellors and community workers who are likely to have contact with consumers affected by the practice. The NSW Department of Fair Trading is currently working on a project that will involve education of Indigenous consumers about issues related to book up. The Department has published a Fact Sheet that includes checklists for both traders and consumers about how to operate book up in a way which will minimise problems. A copy of the Fact Sheet is at Appendix G.

Both the Traditional Credit Union and the First Nations Advantage Credit Union have placed a high priority on consumer education and have developed and implemented strategies and produced materials for this purpose.

In recent years, the US Treasury has undertaken large-scale education programs in relation to electronic banking. These projects were undertaken at the time that payments to welfare recipients were changed from cheques to electronic funds transfer (McDonnell 2001b).

Education in financial literacy and consumer skills was strongly supported by most submissions provided it was appropriate to the particular context of the consumers involved. Some respondents pointed to the responsibility of financial institutions to contribute to consumer education and, as noted above, the two credit union respondents have clear commitments to being involved in such education.

Well-coordinated, effective and culturally appropriate measures to improve financial literacy and knowledge about consumer rights should certainly be supported. However, as several submissions noted, improving standards of financial literacy and consumer skill is neither easy nor something that is likely to be achieved by a few isolated projects or in a short-time frame.

There is a risk that information and knowledge about what is effective will be gained in one project but not shared with other organisations interested in providing consumer education. This risk could be addressed through improved information sharing and/or coordination of consumer education.

65 In 1998, the NSW Department of Fair Trading conducted research into a range of consumer affairs issues and the NSW Aboriginal community. Some conclusions about preferred information sources were drawn and a communication strategy for the Department prepared. This report has not been released publicly but is apparently widely used within the Department.

66 ASIC has commissioned the Centre for Popular Education at the University of Technology Sydney to conduct a literature survey of research on consumer education issues, and to review the material to identify the lessons for ASIC's future consumer education work, including the factors that make an education initiative successful.

Improve the way book up is conducted

Another approach would be to attempt to improve the conduct of book up practices through a *code of conduct*, a *charter*, *regulation* or *licensing*. This approach would seek to eliminate some of the characteristics of book up practices that cause problems (for example failure to provide receipts or keep accurate records, inappropriate credit limits, book up of alcohol).

Regulation or voluntary code

Changing traders' conduct could be attempted through a charter or code of conduct. Compliance with the code or charter could be voluntary or required by law through amendments to relevant legislation such as the Consumer Credit Code or by enacting specific legislation. The regulation of pawnbrokers (which attempts to promote transparency through accurate record keeping and disclosure, regulates particular practices and provides for a licensing system) may be a rough model for the latter. Alternatively, certain standards could be set and applied as a condition of a relevant licence to trade. If a licensing system was contemplated, a system of "negative licensing" (that is empowering a regulatory authority to exclude a trader from certain activities) may be considered more appropriate than "positive licensing" (that is requiring a trader to obtain a licence in advance).

The prospect of seeking compliance with a code of conduct through working with the finance industry to require observance of a code as a condition of EFTPOS merchant agreement is outlined under the heading "Ways of implementing a prohibition or discouragement approach".

A difficulty with this approach may be that, as it relates to keycards and PIN numbers, such a scheme might effectively acknowledge and legitimate a practice that is contrary to the contract between the bank and consumer and with the Electronic Funds Transfer Code of Conduct, both of which work on the basis that the consumer is obliged to keep possession of their card and must never disclose their PIN number.

Further questions would need to be resolved if an enforceable code were to be introduced including:

- Does a legal structure exist to support a code?
- Who should have the responsibility for enforcing a code and hearing complaints?

The Australian Competition and Consumer Commission has proposed a voluntary store charter and circulated a draft for comment.⁶⁷

⁶⁷ For further information or copies of the current draft, contact Petras Kruzas at petras.kruzas@acc.gov.au or by telephone on 03 9290 1952.

Responses to the Consultation Paper were mixed in relation to the need for regulation. The ACCC envisages a voluntary Charter. Several respondents indicated they were opposed to “regulation”. These submissions, however, appeared to address the prospect of an outright ban on particular practices, for example holding on to consumer’s keycards,⁶⁸ rather than regulation of the way in which particular practices were conducted. Some submissions suggested that a form of regulation would be desirable.

One submission (and a significant number of people consulted during the preparation of the Consultation Paper) assumed that some practices referred to were unlawful and advocated enforcement action by the relevant regulatory authorities.

Several responses were sceptical about the effectiveness of a voluntary code of conduct. One argued that a voluntary code of conduct would only be adopted by stores and other organisations that currently “do the right thing in the first place”. It suggested that a compulsory code of conduct would be desirable and that it could be supported by specific legislation such as amendments to the Consumer Credit Code or the State Fair Trading Acts. Another response pointed out that Codes were most effective where the broad public reputation of a business was an important factor contributing to its successor failure, but that this was generally not the case with traders involved in the less desirable aspects of book up.

Undoubtedly, traders who are consciously exploiting their customers are unlikely to respond to a voluntary code of conduct or charter. A voluntary code or charter is more likely to affect the behaviour of traders who have mixed motives or believe that their practices, no matter how shoddy they appear to an external observer, are primarily for the benefit of their customers.

It will also have the benefit of publicly proclaiming the standards that are expected against which the practices of an individual shop can be measured. They may be useful in various negotiations and discussions, for example between a community and the stores that operate in the community, between Aboriginal Community Government Councils and store managers and between an advocate for a consumer complainant and a store complained about.

Whether rules which govern how book up operates should be enforceable or voluntary depends to some extent on the nature of the rules, for example how extensive or how intrusive they are. MacDonald has suggested that the Credit Code should require that all transactions be documented including credits, debits and any charges made (Macdonald 2001). This would apply to unregulated credit, presumably limited to situations where the credit was provided in the course of a business. If this proposal was adopted, it would need to be finely crafted to avoid applying to circumstances not intended to be covered such as a one-off informal credit that a trader may offer to regular customers on an irregular basis.

68 They suggested that such a ban would not be appropriate (as consumers have found it desirable or necessary in certain circumstances to use book up services) or effective (as consumers and traders in remote areas would, according to the submission, continue current practices).

Using the liquor-licensing scheme

As noted under “Liquor licensing laws”, in some jurisdictions liquor licencees are prohibited from selling liquor using informal credit such as book up.

One submission suggested that the worst problems were those occurring at the intersection of book up practices with alcohol abuse. It suggested that in jurisdictions where grocery stores are permitted to sell alcohol, the liquor-licensing scheme could be extended to regulate the licensee’s behaviour in relation to all its dealings with customers. For example, it could require that, as a condition of holding a liquor licence, the licensee must not engage in book up or store credit practices of any sort, or that any book up or store credit must be provided in accordance with guidelines which would specify, for example, that no cards were held as security, no fees were charged and proper records were kept.

Taxi drivers and airlines

Codes need not apply in the same way to stores as to other traders. There would seem to be few situations where it is desirable for individual taxi drivers to hold on to a consumer’s debit card. The Northern Territory Taxi Drivers and Operators Code of Conduct recognises this and provides that:⁶⁹

- drivers are not to hold or take any form of passenger’s credit or savings card, or other electronic cash transaction card for future journeys, booked or otherwise, and
- drivers are not to hold or take any items or goods as bond until the passenger has furnished the driver with the prescribed fee as noted on the taximeter, unless a receipt for that item is issued and the communication network is notified.⁷⁰

By virtue of the Commercial Passenger (Road) Transport Act, drivers and operators of a taxi are required to comply with the code. If they do not, they may be subject to fines and/or restrictions on their operations. Similar provisions are contained in a code that applies to minibus operators in the Northern Territory.

These or similar provisions could be considered in other jurisdictions.

The practice of airlines holding on to consumers’ cards appears to be relatively new. No specific complaints (apart from the fact of holding on to consumers’ cards) were recorded during the course of the project, although there is clearly the potential for similar disadvantage for the consumer. Any future research should consider whether airlines ought to be treated in the same way as suggested for taxi companies or, alternatively, included in the processes adopted in relation to stores.

69 Draft 24/10/00 – the code is still being finalised as at 5 July 2001.

70 Director, Commercial Passenger (Road) Transport, Northern Territory Taxi Drivers and Operators Code of Conduct approved 16 May 2001. The Code was approved pursuant to section 72(1) of the Commercial Passenger (Road) Transport Act.

Content of a code, charter or regulation

The matters that any charter, code of conduct or formal regulation should cover include:

- a requirement to provide itemised receipts at purchase and at payment time,
- a requirement to keep an account book available for inspection by the consumer, an advocate on behalf of the consumer and a relevant regulatory authority, for example a police officer,
- restrictions on the maximum amount of book up, for example a certain percentage of the amount of the consumer's regular payment,
- a prohibition on the use of a person's account to advance funds to a third party including relatives (or a prohibition on the use of the account in the absence of specific authorisation),
- a requirement that the consumer actually operate the EFTPOS transaction (for example the store holds the card so long as the consumer agrees but must not request the PIN, the consumer would come in on payment day or when next they wanted to and transfer the funds themselves),
- rules on storing cards,
- rules on liability between the trader and the consumer in the event of loss caused by a third party,
- rules on return of cards or passbooks,
- rules on cheque-cashing transactions, and
- rules on the use of direct debit as credit as an alternative to retention of keycards.⁷¹

This list has been prepared with stores in mind. The content of any code, charter or regulation may cover different matters for taxi drivers, airlines, hawkers and other traders (should a code be considered appropriate for any of those types of traders). Note that the fact sheet prepared by the NSW Department of Fair Trading (reproduced at Appendix G) includes a similar list of things that a trader should do to operate book up in an acceptable fashion.

Develop a complaints system

Several industries have developed and improved external self-regulatory complaints handling systems over the past 10 years. These include many sectors of the finance industry (that is banks, credit unions, insurance, financial advisers) and the telecommunications industry.

The establishment of some form of complaints handling system is theoretically possible with the various traders who may wish to offer book up. The scheme could be based around a code of conduct, charter or set of

71 Suggested in Submission 2.

standards. It could be supported by legislation which provides that various practices were prohibited unless the trader subscribed to both the code of practice and joined an approved scheme for handling complaints.

There are practical difficulties that would need to be overcome for such a proposal to be put into place. The traders involved are typically much smaller businesses and would often be much more reluctant to comply with such a scheme's administrative and financial membership requirements than the members of existing industry-based dispute resolution schemes. It is likely that a reasonably high proportion would either ignore the requirements or decide that offering any form of credit to their customers was more trouble than it was worth.

Support locally developed solutions

Local communities could be given the capacity to develop their own responses. A number of people consulted have suggested that as the problems vary between communities, and as there are different attitudes derived from different historical and cultural factors, the solutions should be developed locally. Concerns have been raised that imposing solutions from outside the affected communities may not be effective,⁷² may not take account of the differences in circumstances and practices⁷² or may be seen to be interfering with longstanding entitlements.

Accordingly, it may be possible to develop responses which facilitate and encourage local solutions.

One example may be to establish model codes of conduct that could, with suitable amendment, be adopted by a remote community as a condition of a store operating in their community. There are some obvious problems with this model, for example it would not be applicable where the local community does not have some control over the store.

An alternative approach may be to regulate or even prohibit certain practices subject to the possibility of relaxing the regulations or lifting the prohibitions where a community has developed a local response. This response could be embodied in a local community plan agreed between the appropriate representative community organisations and the relevant traders and approved by a suitable authority. Some options include:

- prohibition of traders holding keycards or passbooks unless a community plan is prepared and approved by an appropriate authority. A long lead in period and suitable publicity would be required in order that communities and stores had time to consider whether they wanted to develop such a plan;
- application of an enforceable code of conduct unless a community plan is prepared and approved by an appropriate authority;

72 Submission 9 advises: "Anecdotal information from a number of WA communities indicate widely differing incidences of problems with book up, some seemingly trouble-free book up schemes and a high relevance of local factors. Indications are that a top-down, one size fits all, metropolitan conceived solution is likely to fail."

- amendment of the Credit Code to apply to book up in certain circumstances (for example where a welfare cheque is cashed or a keycard held) with the possibility of exemption under Credit Regulations approved by the State or Territory Consumer Affairs Minister provided particular conditions agreed with the community are met; and
- passage of specific legislation to enable communities to develop a local plan that would become binding on business operating in the area once approved by the nominated Minister. Precedents for such arrangements exist in the provisions of the Northern Territory liquor licensing legislation that supports the creation of “dry” communities.

Community plans could include matters beyond the operation of the book up scheme such as local employment, local investment and trading hours.

Some difficulties to overcome in these schemes would be the need to support communities in developing plans, the possibility of the plan “falling down as personnel change or other problems occur in the community”⁷³ and the greater difficulty of developing such plans in larger towns where interests are more diverse. As one response noted, the development of local solutions may be hampered by “local power structures, not least the often uneasy dependencies that develop between individual store managers and community power brokers/powerful families and individuals”.⁷⁴ None of these problems, however, would seem to be complete arguments against the proposal in all cases.⁷⁵

With one exception,⁷⁶ responses to the Consultation Paper’s treatment of this issue generally supported the development of local solutions, however, there was little comment on the particular mechanisms that would be needed to support such development.

There is likely to be a need for more information about the issues involved with book up and associated practices that are of concern and the possible actions that local communities might take in response. This information should be made available to communities themselves and to relevant support agencies such as ATSIC, departments of local government, advisers to communities including land councils, legal aid services, and consultants and private solicitors working in that area.

73 Submission 5

74 Comments received on draft of this Report.

75 As this was being concluded, news was received of several communities in Central Australia that have chosen to ban or seriously limit book up in their own communities.

76 Submission 5. This submission preferred a prohibition approach.

Better enforcement of existing laws

Two submissions⁷⁷ suggested that the better enforcement of existing laws should be considered (a topic not specifically raised in the Consultation Paper). If there are instances of fraudulent, unconscionable or otherwise illegal conduct, then there is scope for regulatory authorities to take action.

Regulatory enforcement was preferred to individual action “because it changes practices across the industry as well as the targeted provider of the service. It also makes it easier for consumers to come forward and complain. ...[a consumer who takes action] may be ostracised by others who continue to use the service...”⁷⁸

Both submissions acknowledged that regulatory authorities had limited resources and that there are particular evidentiary problems in many of the cases.

Liquor licensing laws

In some jurisdictions, grocery stores often hold licences to sell liquor. There have been reports of hotels and stores selling liquor on credit, that is, through use of a book up system. In the Northern Territory, this is in breach of the standard conditions of liquor licences. The relevant condition prohibits “the practice known as book up or book down” and provides that the licensee may sell liquor on credit only by way of a “nationally recognised credit card” or in accordance with certain conditions (including keeping copies of invoices signed by the purchaser, setting out the current amount owed).

It has been reported that stores have attempted to get around this provision by advancing cash under the book up arrangements and the consumer then using that cash to purchase alcohol. This may be against the current licensing conditions, in which case the licensing authorities ought to consider taking enforcement action; alternatively, the conditions of the licences ought to be broadened to cover this behaviour which is clearly in breach of the spirit of the guidelines. It may also be appropriate to specifically prohibit a licensee from holding on to consumer’s keycards for any purpose. While the later suggestion may be effective in preventing book up occurring in many of the situations where consumers are most vulnerable to exploitation, it may in a limited number of circumstances cause hardship to other consumers. A narrower approach would be to prohibit the sale of alcohol to anyone for whom the store operates a store credit account and/or holds a keycard, passbook or direct debit authority in addition to the current rules prohibiting sale on credit.

77 Submissions 1 and 4

78 Submission 1

Prohibit or attempt to eliminate retention of keycards or passbooks

Would prohibition or other attempts to eliminate or discourage this practice be justified?

Undoubtedly, some stores will not offer credit at all, or not offer it to some consumers, if they are not able to “secure” their interests through holding on to a passbook or a card and PIN number. Two issues arise: first, whether this interference in the freedom of consumers and traders to contract as they see fit can be justified, and, second, whether the attempt to solve one set of problems will in fact create new problems or hardships for consumers.

The first issue is to some extent a philosophical or ideological question. It is probably sufficient to note that where government has determined that substantial harm is caused to consumers, usually in situations where there is a significant power imbalance between consumers and industry, it has not hesitated in regulating provided the benefits are considered to outweigh the costs including the interference with liberty. The Credit Code is itself an example, as are the proposed amendments to credit regulation aimed at regulating payday lending.

As to the second issue, there is a real debate about whether prohibition would cause any disadvantage to consumers and, if so, the magnitude of that disadvantage.

A significant number of people consulted have suggested that the disadvantage to consumers would be slight or non-existent. Various arguments have been proposed.

First, some stores would still be willing to offer credit to some consumers. Before the introduction of keycards, some stores offered credit to trusted customers without insisting that social security cheques be cashed at their store. Moreover, a small number of stores and taxi drivers continue to offer a book up service without insisting on any form of “security”.

Second, alternative forms of credit are gradually becoming available to at least some of the affected consumers (for example through Indigenous operated credit unions). These developments could be further promoted.

Finally, and most significantly, it is argued that once a consumer is fully caught in the cycle of credit they are in no better a position in relation to the “feast and famine” cycle than they would be if they had not been offered credit at all. For example, in a common situation the consumer is offered credit up to the limit of their benefit payment. On benefit payment day, the trader will withdraw the full sum owed from the consumer’s account leaving a nil balance. The consumer now has access to credit at the store up to the agreed maximum (that is the amount of fortnightly benefit). If the store allows the consumer to use this credit as they see fit, then the consumer is in the same position as if they had access to a full fortnight’s benefit in cash.⁷⁹ It would only be if the consumer and store agreed to limit the amount of credit available on a given day in order to assist the consumer to spread their

money over the fortnight that the consumer would be in a different position.

Despite these arguments, it is very likely that any prohibition of the practice of depositing keycards to support book up would result in a number of consumers who would be denied access to credit where they believe it will be of benefit to them at least in the short term. A possible consequence is an increase in the incidence of short term loan sharking.

As discussed in the heading “Regulating the way book up is conducted”, respondents to the Consultation Paper hold a range of views about the benefits of prohibition of any particular conduct. Those in favour of regulation in general, and prohibition of holding debit cards in particular, conceded the practical difficulties that may be involved and the likely complaints from some affected consumers and storekeepers, but nevertheless felt that in the long term prohibition would be beneficial.⁸⁰

In any case, it is clear that the various current problems are not going to be adequately addressed in the short term by one measure alone. Voluntary codes, consumer education and improving the access of Indigenous consumers and consumers in remote areas to credit and banking services should, to varying degrees, contribute to alleviating problems. Each of these approaches should be pursued, but that should not be the end of government responsibility or action. The effectiveness of each policy change ought to be monitored. Further research and consultation should be undertaken in relation to specific measures, regulatory and non-regulatory, aimed at avoiding or limiting the specific problems that arise from traders holding keycards, passbooks or direct debit authorities and from cheque-cashing practices associated with book up.

Scope of any prohibition

If it was decided to prohibit or attempt to eliminate the use of keycards to support book up, the challenge would be to develop rules that outlawed the practice engaged in by traders but did not interfere with consumers’ ability to effectively obtain assistance to use their EFT account and PIN number where they have a legitimate reason for doing so. Such reasons might be an inability to use ATMs as a result of a disability⁸¹ or lack of skills.

Moreover, many consumers like to give their card to a third party such as a friend or family member, guardian, co-worker or service provision organisation⁸² for safekeeping (to prevent loss or to prevent them succumbing to pressure from another person to access their funds). But this practice does not require that the third party also hold the consumer’s PIN number.

79 The fact that they are tied to a store, likely to incur additional charges or higher prices and so would suggest they are in a worse position.

80 Submission 5

81 The need for consumers to seek such assistance is likely to be reduced with the development of new technologies (eg thumbprint or iris recognition) and through work such as the ABA Draft Disability Access Code. There are, however, still likely to be consumers not catered for by these developments.

82 The First Nations Advantage Credit Union suggested that if there was to be a prohibition on third parties holding cards that the prohibition should not apply to Indigenous organisations doing so at the request of the consumer.

Limiting any prohibition to situations where the person holding the card is in some commercial relationship with the cardholder (for example store, taxi driver) may overcome many of these problems.

Ways of implementing a prohibition or discouragement approach

If it was concluded that the practice of stores holding keycards should be prohibited or strongly discouraged, there are many ways in which this could be implemented.

Offence

An offence could be created under an appropriate Act. The offence would be subject to whatever limitations are necessary to allow legitimate transfer of cards and PIN numbers (see “Scope of any prohibition” above). While an offence may deter some, enforcement may be difficult and may not often rank as a priority for enforcement agencies.⁸³ On the other hand, one successful prosecution can often deter many others.⁸⁴

Code of Practice

A Code of Practice could be negotiated with suitable industry representatives, for example retail traders association, chambers of commerce and financial institutions.⁸⁵ Once agreed, it would be promoted to retailers. Breach of the code might result in certain penalties or loss of privileges, for example loss of various required licences, or loss of access to EFTPOS facilities. Enforcement of a code through loss of licences would require the cooperation of various licensing bodies and possible amendments to their enabling legislation. This may be considered too cumbersome.

Terms of EFTPOS merchant agreements

With the cooperation of the banking industry, certain conditions could be added to the merchant agreement that applies to the use of EFTPOS facilities by retailers. These could prohibit the trader holding cards or cards and PIN numbers. A substantiated complaint (for example to the Australian Banking Industry Ombudsman) might lead to withdrawal of EFTPOS facilities for a period of time.

83 Submission 5

84 Submission 2

85 Submission 5 pointed out the vast range of organisations involved in trading in the NT alone and the various business structures and regulatory regimes that apply. This may make negotiation of code, where most of the affected people and organisations have a chance to have input through a skilled representative body, quite difficult.

If this system was introduced, it would need to be supported by a cooperative information-sharing system between financial institutions that provide EFTPOS facilities to ensure withdrawn facilities from one institution were not immediately replaced by another institution.⁸⁶ One problem that may arise is that in communities where there is only one EFTPOS facility, withdrawal of the facility may harm or at least inconvenience community members.⁸⁷

This last proposal may raise competition policy issues.

Consequences of eliminating the practice

It is likely that some businesses would stop offering book up altogether, or stop offering it to some consumers, if the practice of holding passbooks or keycards and PIN numbers was prohibited or discouraged. Some arguments about the consequences were canvassed above. There may be other consequences.

86 One financial institution pointed to the problems of banker customer confidentiality. It may be possible to overcome this barrier by making it a condition of entering into a proposed merchant agreement that the details of previous agreements are provided to the bank and the merchant authorises the bank to make inquiries with the merchant's previous bankers. The Commonwealth Bank went further and proposed that ASIC investigate the establishment of a database of fraudulent traders to record instances where a bank has terminated a merchant agreement on the basis of suspected fraud. Banks would routinely check this database before entering into a new merchant agreement. The submission noted that the proposal was within the spirit but maybe not the letter of the National Privacy Principles and that if the proposal was to go ahead some negotiation with the Privacy Commissioner may be required.

87 Submission 5

Appendix A lists current research, pilot projects and other work which is or may be relevant to the project. One of the purposes of listing this work is to promote cooperative approaches to the issue between agencies and researchers.

Appendix B lists research and other publications that are relevant to financial services for Indigenous people, store credit or some of the background issues.

Conclusions about book up practices

1. A significant number of consumers from most, if not all, Australian jurisdictions choose to make use of book up services offered by stores and other traders including taxi drivers, hawkers and airlines.
2. It is often a condition of book up services to apply one of the following in order to “secure” the trader’s interest in having the credit repaid:
 - The consumer routinely cashes a social security cheque with the trader.
 - The consumer leaves their keycard and PIN number with the trader.
 - The consumer leaves a signed bank withdrawal slip with the trader.
 - The consumer executes a direct debit authority in favour of the trader.
3. Indigenous consumers are the primary, but not exclusive, users of book up services.
4. There are various possible motivations for using book up services including:
 - lack of access to banking services, lack of access to alternative forms of credit,
 - poor financial literacy and budgeting skills, historical and cultural factors,
 - convenience,
 - monopoly position of the trader, and
 - feelings of being unwelcome elsewhere.Of these, it is probably the first four that are the most significant.
5. Practices associated with many book up arrangements cause a range of problems for consumers as set out in the section “Advantages and disadvantages”.
6. Most people do not regard the existence of book up arrangements themselves as a significant problem. The problems that cause consumer hardship are the practices associated with book up including those arising from:
 - holding on to keycards, passbooks or direct debit authorities,
 - cheque-cashing arrangements,
 - unregulated fees, fraud and unfair pricing,
 - the anti-competitive effects of tying consumers to a particular store,
 - poor record keeping,
 - unauthorised advances to third parties, and
 - use of book up to supply alcohol, particularly to people dependent on alcohol.

7. Mainly because of the lack of alternative sources of credit, and to a lesser extent due to the lack of access to banking facilities, there is no simple regulatory solution available at present which would overcome all of the disadvantages for affected consumers without causing perceived or possibly real problems for those or other consumers.
8. Despite this, there is a significant number of well-informed people and organisations (including Aboriginal leaders and Indigenous-controlled organisations and users of book up services) who believe either that book up should be abolished altogether or that the practices of holding on to consumers' keycards, PIN numbers and passbooks should be prohibited.
9. Many of the features of book up and related practices are well-known to the consumers involved, organisations that are in regular contact with them,⁸⁸ and some regulatory agencies. However, many other relevant organisations, in particular the major financial institutions and the peak retail industry organisations, have until now been relatively unaware of the issues involved.
10. There is some uncertainty about the legal consequences of typical book up arrangements involving debit cards being held by traders.

Conclusions about possible policy responses

11. There are a number of measures that could be taken by government, industry, Indigenous organisations and/or other organisations which would improve the situation of consumers currently affected by practices associated with book up arrangements. These include at a general level:
 - improving consumer education and financial literacy skills in Indigenous and disadvantaged consumers and those living in remote areas,
 - supporting initiatives to improve access to financial services in remote and regional areas and by low-income consumers and consumers with poor financial literacy skills including Indigenous consumers with poor financial literacy skills, and
 - supporting the development of alternative ways of operating book up services with possibilities including alternative payments devices (Centrepay, consumer initiated direct credit arrangements), codes of conduct and regulation of particular practices.

88 Such as financial counsellors and Indigenous organisations (including the two Indigenous credit unions).

12. The various current problems are not going to be adequately addressed in the short term by one measure alone. Voluntary codes, consumer education and improving the access of Indigenous consumers and consumers in remote areas to credit and banking services should, to varying degrees, contribute to alleviating present problems. The effectiveness of each policy change ought to be monitored. Further research and consultation should be undertaken about specific proposals including potential regulation aimed at avoiding or limiting the problems that arise.
13. There is no agreement about whether prohibition of stores holding keycards, passbooks or direct debit authorities would ultimately advantage consumers. There are strong arguments put forward on both sides.
14. There are practical difficulties in enforcing any kind of prohibition in the short term, but they can probably be overcome.
15. Prohibition of practices, such as holding on to keycards in the near future, is likely to result in short-term disadvantage for some consumers.⁸⁹ Further, some consumers may regard this action as a significant interference in their life. If prohibition of certain practices was introduced, either alone or in tandem with locally developed solutions or the promotion of alternative arrangements, then it ought to be preceded by wide-ranging consultation about the particular measures envisaged. It should also be accompanied by appropriate consumer and trader education about the consequences of the measures, its benefits and alternatives available. This consultation and education would need to focus particularly on traders, affected consumers and those responsible for whatever method of enforcement was envisaged.
16. There is support for the idea that government should provide the mechanisms to allow local communities to develop solutions that suit them. However, at this stage, those mechanisms have not been given much attention.

⁸⁹ As it is likely although not certain that many stores would cease to offer book up.

Appendix A: Current work relevant to the project

This appendix lists pilot projects, proposals, current research and informal networks that have been identified to date that are relevant to the project.

Alice Springs pilot projects on improving Indigenous access to banking and financial services

In response to the 1999 report prepared by Neil Westbury (Westbury 1999), a pilot project involving a partnership between Tangentyere Council, the Department of Family and Community Services and Westpac Bank was undertaken. On 21 April 2001, the Minister for Community Services launched a weekly payments project involving the Department and Tangentyere Council.

WA financial counsellors resource project

This project is preparing a credit information kit for use by financial counsellors and other community workers. The second part of the kit will be devoted to the practice of book up. The kit is relevant to Indigenous consumers.

NSW Department of Fair Trading

The NSW Department of Fair Trading is currently working on information materials about book up targeted at Indigenous consumers in NSW. They have prepared a Fact Sheet (see Appendix G) with information about good practice for both traders and consumers. In addition, its Aboriginal Customer Service Officers are actively involved with book up and are engaged in community consultation on the issue.

Research project commissioned by the ACCC

The Australian Consumer and Competition Commission has commissioned a substantial research project focusing on the identification of issues relevant to the Trade Practices Act in rural and remote communities.

Informal working group on community stores

The Australian Competition and Consumer Commission, the Australian Banking Industry Ombudsman and the NT Anti-Discrimination Commissioner have set up an informal collaborative group. The Banking Ombudsman, a commissioner and staff member of the ACCC and the NT Anti-Discrimination Commissioner recently visited a number of stores in central Australia and met with Indigenous groups to discuss this issue. This group is also working with the Alice Springs and Adelaide offices of ATSIC and the NT Office of Consumer Affairs.

Store Charter

The Australian Competition and Consumer Commission has prepared a draft Store Charter that is particularly focused on stores that service Indigenous communities (see main text under the heading “Improve the way book up is conducted”).

Proposed conference on indigenous financial services

A proposal to hold a conference in Alice Springs on financial services for Indigenous people and organisations has been mooted by ATSIC staff.

Torres Strait community banking model

Discussions are being held about setting up a community bank in the style of a Bendigo Bank on Thursday Island in the Torres Strait (Torres News 2001: 13 cited in McDonnell 2001a).

Banking code review

A review of the Banking Code of Practice was completed in late 2001 and the code is being revised. See <http://www.reviewbankcode.com/index.htm> for more information.

Traditional Credit Union and First Nations Advantage Credit Union

See main text under the heading “Improve access to relevant financial services”.

Barwon Darling Alliance Credit Union

Westbury and Taylor (2000) report on proposals to establish a credit union in western NSW. One motivation for doing so is to respond to a lack of appropriate financial services for Indigenous people in that region.

Payday lending reforms

Proposed amendments to the Consumer Credit Code will change the circumstances in which credit is not subject to the Consumer Credit Code. In some situations, they *may* render some book up arrangements subject to the Consumer Credit Code. This will only be where there is a charge made for the book up and only then if certain other conditions are met. If the Code applies, the consequence would be that the trader would be required to document the credit in ways that may render the arrangements unprofitable. Failure to do so would mean that the trader was committing an offence. It is not clear, however, whether such changes would make a great deal of practical difference given the difficult evidentiary and enforcement questions involved in taking any legal action.

ABA draft disability access plan

The Australian Bankers Association has issued a draft disability access plan that has been prepared in consultation with the disability discrimination section of the Human Rights and Equal Opportunity Commission. See also http://www.humanrights.gov.au/disability_rights/inquiries/ecom/ecom.html

- Altman J 2000 *'Mutual obligation' the CDEP scheme and development: Prospects for Remote Australia*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra
- ATSIC 1994 *Recognition, Rights and Reform: a Report to Government on Native Title Social Justice Measures*, ATSIC 1994
http://www.atsic.gov.au/issues/social_justice/recogmit/index.htm
- ATSIC Alice Springs Office 2001 *Regional Issues Brief*, Briefing Paper for Papunya Regional Council Meeting 2001
- Basten J Memorandum of Advice to ASIC
6 February 2002
- Commonwealth Ombudsman 1997 *One Size Does Not Fit All – Own Motion Investigation into the Department of Social Security's Service Delivery to Clients in the Town Camps of Alice Springs*, Commonwealth Ombudsman, Darwin
- Connolly C and Hajaj K 2001 *Financial Services and Social Exclusion*, Centre for Financial Services Consumer Policy, UNSW
- Council for Aboriginal Reconciliation *Overcoming Disadvantage*, Council for Aboriginal Reconciliation, Canberra, 2000
- Cultural Perspectives Pty Ltd 1998 *The Gabami Report: Aboriginal Consumer Issues and Education Strategies*, a report prepared for the NSW Department of Fair Trading (unpublished).
- House of Representatives Standing Committee on Economics, Finance and Public Administration *Regional Banking Services: Money too far way*, HRSCEFPA, Canberra
- Hunter B 1999 *Three nations, not one: indigenous and other Australian poverty*, CAEPR Working Paper No. 1/1999, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra

- Kliger B and Ives B 2001 *You can bank on it: An action plan for delivering financial services to low income and vulnerable consumers – Report of the National Australia Bank Community Consultation Forum*, Beverly Kliger and Associates, Melbourne
- MacDonald I 2001 *Protecting Vulnerable Consumers: Informal Credit in Remote Regions of Western Australia* (unpublished conference paper)
- McDonnell S and Westbury N 2001a *Giving credit where credit's due – A study of the delivery of banking and financial services to Indigenous Australians in rural and remote areas*. Discussion Paper 218, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra
- McDonnell S and Westbury N 2001b (forthcoming) as yet untitled paper covering alternative models for Indigenous financial services
- NSW Department of Consumer Affairs 1994 *Grin and Bear It: Experiences of Aboriginal consumers in rural New South Wales*, Report of the Aboriginal Consumer Education Project, Department of Consumer Affairs, Parramatta
- Pearson N 2000 *Our Right To Take Responsibility*, Ben Chifley Lecture, 20 August 2000
<http://www.capeyorkpartnerships.com/developments/noelpearson/lightonhill.htm>
- Ralston D and Beal D 1997 *Economic and Social Impacts of the Closure of the Only Bank Branch in Rural Communities*, a report prepared for Credit Care Centre for Financial Institutions, University of Queensland, Brisbane
- Rowse T 1998 *White Flour, White Power: From Rations to Citizenship in Central Australia*, Cambridge University Press
- Traditional Credit Union 2000 *Annual Report*
- Taylor J and Westbury N 2000 *Aboriginal Nutrition and the Nyirranggulong Health Strategy in Jawoyn Country*, CAEPR Research Monograph 19, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra

- Trudgen R 2000 *When Warriors Lay Down and Die: Towards an understanding of why the Aboriginal people of Arnhem Land face the greatest crisis in health and education since European contact*, Aboriginal Resource Development Service, Darwin
- Wells S 1993 *Taking Stock*, North Australian Research Unit
- Westbury N 1999 *Feast Famine and Fraud: Considerations in the delivery of banking and financial services to remote indigenous communities*, CAEPR Discussion Paper 187/1999, Summary at <http://online.edu.au/caepr>
- Westbury N 2000 *What's in it for Koories? Barwon Darling Alliance Credit Union*, CAEPR Working Paper No. 7/2000, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra
- Westbury N 2001 *Myth making and the delivery of banking and financial services to Indigenous Australians in regional and remote communities in Australia*, in Altman, J and Sanders, W (eds), *The Indigenous Welfare Economy and CDEO*, CAEPR Monograph No. 20 (forthcoming), Centre for Aboriginal Economic Policy Research, Australian National University, Canberra
- Young E, Crough G and Christensen C 1994 *Outback Stores: Retail Services in North Australian Aboriginal Communities*, North Australian Research Unit

NB: There is a considerable number of relevant North American Resources cited in Westbury 2001.

The types of traders that offer book up services vary and the practice is not universally prevalent across Australia. Various local factors including liquor licensing laws, attitude of police, Indigenous involvement in management of stores, historical involvement of Indigenous communities with particular stores or practices and the skills interests and attitudes of traders influence how a particular arrangement is operated and affect the consumer.

Cities, towns, rural areas and remote communities

Instances of currently operating book up systems supported by the trader holding on to consumers' keycards have been reported in a wide range of locations. Because of anecdotal information, research has concentrated only on WA, Qld, NSW and the NT. In the following table, "Yes" indicates that consumers or other sources have confirmed the practice. A question mark ("?") indicates that reliable sources claim to have heard about the practice in this area but have not experienced or observed it directly. A blank square indicates that the consultant has not received any reports.

Note that in many instances it has been suggested that individual stores are holding on to dozens and in some cases several hundred keycards.

State/Territory	WA	NT	Qld	NSW	Victoria	SA	Tasmania and ACT
Capital City		Yes					
Regional Cities	Yes	Yes*	Yes**				
Rural Towns	Yes	Yes	?	Yes	Yes	Yes	
Pastoral Stations/Communities	Yes	Yes	Yes	Yes		Yes	

*(Alice, Katherine, Tenant Creek)

** (Cairns and Townsville) ?

Readers of the Consultation Paper were provided with the following question as an optional way to guide their responses.

Question 1: Can you provide any information in relation to the extent to which book up services cause problems for consumers?

Question 2: Are there particular reasons other than the availability of short-term credit why consumers are attracted to dealing with stores that offer book up services?

Question 3: Are there particular characteristics of the consumers who leave their keycard with stores that need to be taken into account in any response to this issue?

Question 4: Are there any other background or contextual matters which ought to be considered in responding to this issue?

Question 5: Are there other ways in which book up practices of stores and other traders might disadvantage consumers?

Question 6: Do the problems encountered by consumers vary according to particular factors, for example whether the store/trader is located in an urban or remote area?

Question 7: Is the best policy response to do nothing? Why?

Question 8: Should policy responses focus on addressing broader underlying issues such as those listed? If yes, what particular responses do you advocate? What role, if any, should the Australian Securities and Investments Commission play?

Question 9: Should responses to the broader or underlying issues be the only policy response to this issue?

Question 10: Should additional research be undertaken? What particular issues should be addressed and what research methods should be used?

Question 11: Can you suggest proposals that would reduce the need for consumers to rely on book up systems either in the short term or the long term?

Question 12: Having regard to the cultural context, can you suggest proposals which would effectively assist consumers to develop the skills and ability to protect their own interests in relation to consumer and financial matters including the use of their keycard and their use of book up systems?

Question 13: Is there any merit in regulating the conduct of book up practices including the use of keycards or passbooks as 'security'? If so what matters should be covered? What form should such regulation take? What difficulties need to be addressed and how should they be overcome?

Question 14: What form should any scheme of regulation of book up take?

Question 15: Would it be possible to create an effective complaints handling scheme in relation to book up and similar practices?

Question 16: If a regulatory scheme was introduced, what kind of sanctions ought to apply to traders who breach the scheme? Should sanctions include empowering a regulatory authority to prohibit a trader from undertaking certain actions (for example holding individual's keycards or passbooks) or holding certain licences?

Question 17: Are locally developed solutions appropriate and likely to be effective? How could they be supported?

Question 18: Do you think that the practice of holding consumers' passbooks or keycards and PINs should be prohibited or strongly discouraged in some way? If so, should this prohibition or discouragement also apply to a person holding consumers' keycards alone?

Question 19: If there was to be a rule that a business should not hold a consumer's passbook, keycard or PIN number, are there any situations where the rule should not apply?

Question 20: Do you have any comments on the feasibility and effectiveness of any of the suggested ways in which the practice of stores holding on to consumer's keycards could be prohibited or strongly discouraged? Can you think of alternative approaches?

Question 21: Would the prohibition or discouragement of the practice of stores holding on to consumers' passbooks or keycards have consequences that would disadvantage consumers? Is it possible to overcome or lessen the impact of those consequences? How?

Question 22: If you think that the practice ought to be prohibited, should there be any exceptions and if so on what basis would they be required or justified?

Question 23: Can you suggest other kinds of policy responses?

Question 24: Are there any assumptions made in this paper that you think are unfounded or overlook important matters? Please give details.

Question 25: Are you aware of any other existing programs or practices that address any of the issues raised in this paper?

Question 26: Are you aware of any organisations or agencies other than those listed at Appendix A with an interest in this issue?

Question 27: Are you aware of any other research or other publications *particularly* relevant to this project?

Question 28: Are you aware of any overseas research or work that is relevant to this project.

Appendix E: Consultation and responses to the Consultation Paper

The initial Consultation Paper was prepared following discussions with 48 people. The interests or organisations represented can be categorised as follows:

Consumers	5
Indigenous organisations	10
Financial counsellors	10
Other community organisations (mainly community legal centres)	7
Finance industry organisations*	2
Retailers / Retail organisations	2
Academic/ Other	2
Government (Consumer Affairs Agencies, Police, ACCC, ASIC)	10
Total	48

* Note that a number of banks and the Australian Retailers Association were approached and advised that they would rather respond to the Consultation Paper than make any earlier contribution.

Note that most of these consultations were detailed, however, several were limited to specific points of interest to the Consultant or the person consulted.

Responses to the Consultation Paper were received in writing, verbally or by email from the following people and organisations. Some responses addressed all or most of the issues raised in the paper while others concentrated on a smaller number of points relevant to the interests of the respondent.

1. Loretta Kreet, Consumer Protection Unit, Queensland Legal Aid
2. Anthony Beven, Regional Commissioner, Northern Territory, ASIC
3. First Nations Advantage Credit Union
4. Australian Competition and Consumer Commission
5. Barbara Bradshaw, CEO, Traditional Credit Union
6. Confidential (major bank) (verbal response)
7. Confidential (major bank)
8. Consumer Credit Legal Centre Western Australia
9. Commonwealth Bank Group
10. Department of Family and Community Services (email and verbal response)
11. Siobhan McDonnell, Centre for Aboriginal Economic Policy Research
12. Fiona Guthrie (email and verbal response)
13. Chips Mackinolty (comments on draft report)

As noted in the section “Improve access to financial services”, the Commonwealth Banking Group suggested that ASIC give consideration in promoting the use of direct debit authorities in place of traders holding on to keycards and PIN numbers. The following is the relevant part of their submission.

A modified version of a direct debit authority may be another possible policy proposal ASIC might wish to consider as an alternative to the book up practice. This would involve the consumer providing a direct debit authority to a merchant so that authorised payments from the consumer’s account can be directly credited to the account of the merchant.

This method would overcome some of the difficulties of the book up practice which prevents consumers from using their keycard at other stores or indeed for anything else. Direct debit arrangements may:

- mitigate the inequality in the bargaining position of the parties, as the trader would no longer have control over the consumer’s keycard;
- partly solve the fraud problem because the consumer will need to give a written authority to the merchant which will at least set out in writing the parameters that apply to the direct debit; and
- prevent the trader from extending credit on behalf of the consumer to third parties without the consumer’s consent (unless the trader is specifically authorised to do so by the direct debit authority).

The direct debit system would need to strictly limit the trader’s ability to draw on the consumer’s account to a maximum specified amount for each drawing. However, even in these circumstances there is still a risk that a dishonest merchant could make multiple unauthorised drawings in the same amount, credit those drawings to its account and then draw the money out before the fraudulent transaction is uncovered by the bank).

While a direct debit system therefore still relies on the honesty and integrity of the trader, at least such a system does not require the trader to take possession of a keycard or to obtain the PIN – a fundamental concern about book up which we have discussed above. The other added advantage is that the consumer would still be able to retain use and possession of their keycard.

Whether such a system would be attractive to the relevant parties is another question. We note the consultation paper’s discussion about features of the book up system which are attractive to Indigenous consumers such as:

- the fact that the card is, in theory, safely stored; and
- long familiarity with the book up practice.

However, we do consider that some form of direct debit arrangement may balance the needs of consumers in remote and rural areas against legitimate security concerns with respect to the book up system.

Appendix G: Book up – what to look for (for traders and consumers) – Fact Sheet prepared by the NSW Department of Fair Trading.

Book up is credit given by a trader to consumers so that consumers can purchase goods from the trader's shop. This may require some form of security to be left until payment is made for the goods and services.

Benefits of book up

Consumers can distribute their purchases evenly instead of one major shopping day per week/fortnight. It allows consumers to have access to credit which may not otherwise be available.

Disadvantages of book up

Traders sometimes don't keep accurate records of purchases. Traders may require some form of security. Consumers sometimes overspend.

Traders' checklist

Give the consumer a written agreement that includes terms and conditions and any interest or charges that will apply. Written authority should also be established for others who may use the account. If interest applies or if the fees and charges exceed 5% of the amount of credit, then the requirements of the Consumer Credit Code will apply. Display a copy of the conditions in the store so people are fully aware. Provide copies of receipts/statements showing details of the goods and services provided. These should include the date, items purchased and who bought them. Keep accurate records of the total amount owing. This will help if the need to recover money owing to your business occurs. Keep all records in a safe and secure place. Ensure confidentiality concerning the amount owed by individual people.

If security is required, there must be clear consent and full disclosure of all terms and conditions. Steps for the discharge of liabilities and return of security must be clearly set out.

QUICK TIP: Set a maximum limit for book up.

CASE STUDY: David has an account with the local shop to purchase items on credit. David was not sure how much he owed, the cost of the items he had purchased or what had been put on credit during the week. He approached the trader to see how much he owed but the trader was not sure of the amount. The trader had no record of what was booked up or how much the items cost. David decided that he was not going to pay the amount the trader said he had to pay. There was no proof of the amount owed. The trader had little chance of recovering the money from David. He had not issued receipts, kept accurate records of purchases or informed David of the total amount owing in the form of a statement. Good practices may have averted this situation.

Traders must take care about demanding security as it may be, in certain circumstances, unconscionable conduct under the *Fair Trading Act 1987* (or the *Trade Practices Act 1974* in the case of corporations) if, for example, the trader is abusing the trader's bargaining power or placing undue influence or pressure on the consumer to give some security.

Consumers' checklist

When you set up book up take someone with you. Ask about the terms and conditions and get them in writing. They should include an undertaking by the trader to give you receipts for purchases and an itemised statement of goods or services purchased with dates of purchase and prices; fees and charges for the book up, if any; the length of time the trader will give you before you have to pay for the goods; a requirement that the trader keep records of purchases and money owing in a safe and secure place; and a requirement that the records be kept confidential. Try not to buy things you don't really need. It can be hard to get out of debt if you overspend.

When things go wrong

If there is a problem with your account, first try to work it out with the trader. Show the trader copies of the receipts that you have kept as proof of purchase. If you can't come to an agreement, contact your nearest Fair Trading Centre. They can help mediate between you and the other party. If the matter is not resolved, you may be able to take it to the Fair Trading Tribunal.

QUICK TIP: Ask a friend or family member to help you keep your records up to date.

CASE STUDY: Jill had been booking up items with a corner store. When she went to check how much her account was, she questioned why her bill was so high. The trader told her he had been letting her relatives book up on the account as well. Jill told the trader that she was not responsible for the items that she had not authorised. The trader said she was. Jill told the trader that she gave approval for her daughter and aunty to book up on the account. Jill was able to show the trader her copy of the letter she gave to him stating who could use the account. The trader still wanted the full amount owing from Jill. Jill contacted the Department of Fair Trading to get information on how to solve the problem. A Customer Service Officer was able to help her resolve the matter with the trader. This was possible because Jill had kept all her receipts and the agreement she had with the trader.

This fact sheet must not be relied on as legal advice and does not have all the information relating to book up. For more information about this topic and the Consumer Credit Code, please contact your nearest Fair Trading Centre or refer to the appropriate legislation.

For more information

Please contact your nearest Fair Trading Centre. You can ask to speak to an Aboriginal Customer Service Officer, Department of Fair Trading. Fair Trading Centres, telephone 1 13 32 20; TTY Telephone service for hearing impaired, telephone 9338 4943; Website: www.fairtrading.nsw.gov.au



ASIC at a glance

The Australian Securities and Investments Commission enforces company and financial services laws to protect consumers, investors and creditors.

We are an independent Commonwealth government body, responsible for consumer protection in shares and other financial investments including managed funds, superannuation, insurance and deposit taking.

We regulate and inform the public about Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance and deposit taking.

The *Australian Securities and Investments Commission Act 2001* requires us to

- uphold the law uniformly, effectively and quickly
- promote confident and informed participation by investors and consumers in the financial system
- make information about companies and other bodies available to the public
- improve the performance of the financial system and the entities within it.

We work with other financial, consumer and law enforcement bodies in Australia and internationally.

For consumers and investors



fido

Australian Securities & Investments Commission's financial tips & safety checks

www.fido.asic.gov.au