

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Senate Inquiry into Indigenous Art and Craft Hearing

Questions on Notice: Book Up: ACCC Role and Activities

What is Book Up?

- The practice of running a tab or book with a trader.
- Typical traders using book-up include community stores, taxi drivers, hawkers and regional airlines.
- Customers are able to secure small amounts of short-term credit to purchase goods and services.
- Book up is a common system of credit provision in regional and remote community stores.
- Stores traditionally had the welfare cheques of customers using book up sent to them directly as a form of security.
- The migration to electronic services for banking resulted in some stores adopting the practice of retaining key cards and or pin numbers as security for book-up loans.

Book Up Practices - ACCC Role and Activities

- The Financial Services Reform Act 2002 resulted in the transfer of consumer protection for financial services from the Australian Competition and Consumer Commission (ACCC) to the Australian Securities and Investments Commission (ASIC) on the 11 March 2003.
- In December 2004 the ACCC and ASIC signed a Memorandum of Understanding outlining cooperation between the two agencies. In addition to the formal terms of the MOU, the ACCC and ASIC agreed to administrative arrangements which outline how various agencies will deal with various subject matters.
- The administrative arrangements also deal with the use of delegated powers by each agency. The agencies agreed that the practice of book-up more readily fell within the jurisdiction of the ASIC however any enforcement action is considered on a case by case basis.
- Although the ASIC has assumed responsibility for issues associated with book-up as a credit provision service, the ACCC does maintain a watching brief on this issue via:
 - a. Outreach and liaison with key stakeholders
 - b. Publications and education campaigns
 - c. As a member of the National Indigenous Consumer Strategy group

ACCC Activities 2000 - 2007

a. Outreach

2000: ACCC participates in an informal liaison group of agencies in the Northern Territory

- An informal liaison group consisting of the ACCC the Banking Industry Ombudsman, the Northern Territory Anti-Discrimination Commissioner, the Northern Territory Department of Industries and Business, the Australian Securities and Investments Commission and the Aboriginal and Torres Strait Islander Commission.
- The group was formed in response to a growing number of complaints and concerns about matters such as access to financial services, certain practices associated with the use of 'book-up' and other fair trading issues associated with stores serving rural and remote Indigenous communities in the NT and concern that a joint agency approach was needed to deal with these issues.
- It was recognised that although many of these issues may not breach existing fair trading or consumer protection laws, Indigenous communities were nevertheless vulnerable to exploitation and that there was potential for traders to breach these laws if certain practices were not properly addressed. For example concern about possible coercion where stores allegedly withheld debit cards preventing consumers from shopping elsewhere. It was considered that a code of conduct or a service charter would be a useful mechanism in the first instance to try to address the need for improved standards.

ACCC's co-operation with other agencies on the issue of book-up

- As a member of the SCOCA Indigenous Banking and Financial Issues Liaison Group the ACCC is involved in discussions about emerging issues relating to book up practices and actively explores ways to discourage traders holding customer PIN numbers as a condition of credit. Guidelines for the retention of debit cards and PINs are provided in the ACCC's FairStore publication described below.
- Key ACCC and ASIC staff meet a number of times a year and discuss issues of common interest particularly in relation to consumer protection. This interagency information sharing activity includes discussion of issues impacting on Indigenous consumers such as book-up practices. The emphasis is on productive collaboration:
 - Proper information sharing;
 - Fostering agreement on specific and broad outcomes;
 - Keeping each other usefully informed, and
 - Ongoing development of the organisational relationship by generating results via the forum

- ACCC staff in Western Australia have recently been involved in discussions with staff from DOCEP to provide consultation to an Internal Steering Committee on the problems associated with book-up and possible policy and educational solutions.
- As a part of its watching brief on this issue, the ACCC recently met with staff from Centrelink to discuss the Centrepay system. Centrelink staff advised the ACCC that consumers are moving away from book up in favour of using the Centrepay system.

b. Publications

2002: *Storecharter*

- Following discussions with the liaison group described above The ACCC developed Storecharter, a voluntary service charter for community stores in response to a range of complaints about the trading practices of stores serving Indigenous communities and consumers.
- The principle aims of Storecharter were to assist regional and remote store owners and operators to comply with relevant laws, encourage higher trading standards, and to promote a cultural understanding of their Indigenous customers.
- It was essentially an exercise in benchmarking fair trading standards, and was formulated as a charter that traders could voluntarily agree to adopt.
- Those stores who signed up to the charter displayed a Storecharter logo.
- A key point of focus of Storecharter was to address the exploitation of the book-up system of store credit.
- Storecharter directed that the traders that had adopted it who operated a book up system were to undertake or refrain from undertaking certain practices in relation to their book up system.
- A total of 79 community stores signed up to Storecharter between May 2002 and August 2004.
- The ACCC conducted a targeted campaign in Ceduna on the Far West Coast of SA in 2003 which resulted in the majority of traders in the town adopting Storecharter.
- The Storecharter project was subsequently reviewed in 2004 and the ACCC decided to repackage Storecharter as a 'best practice' guideline, with support and commitment from State and Territory Fair Trading Agencies and ASIC.
- Storecharter has since been superseded by the ACCC's FairStore publication outlined below as it was concluded that a best practice guideline was a more appropriate method of targeting unscrupulous community store practices.

2006: *FairStore*

- *FairStore: A best practice guide for stores serving remote and Indigenous communities* was released in July 2006.

- All stores previously signed up to Storecharter were provided with copies of this guide.
- Attachment 1 contains an extract from the FairStore booklet relating to book-up practices.
- A full version of this publication can be sourced from <http://www.accc.gov.au/content/index.phtml/itemId/752707>
- The ACCC also published FairStore – for consumers in December 2006 to compliment the FairStore best practice guide for stores and to provide Indigenous consumers with guidance on dealing with such stores including advice on book-up.
- The FairStore consumer flyer is available at <http://www.accc.gov.au/content/index.phtml/itemId/779211>

c. National Indigenous Consumer Strategy

- The National Indigenous Consumer Strategy (NICS) is a five year action plan entitled Taking Action, Gaining Trust that adopts a whole of government approach to Indigenous consumer issues.
- The Action Plan was launched on 1 September 2005 with three broad objectives:
 1. To improve Indigenous consumers' knowledge of their rights and obligations under consumer protection laws and achieve greater Indigenous access to consumer protection programs.
 2. Improving the behaviour of traders, through education and compliance activity, to reduce detriment experienced by Indigenous consumers.
 3. The promotion of effective engagement and partnership between consumer protection agencies, indigenous organisations, business and other government agencies.
- The ACCC is a signatory to the action plan and assisted in its development as part of the NICS working group, a sub-committee of SCOCA.
- The strategy identifies specific actions to be taken by each participating agency under eight key priority areas.
- Book-up practices are addressed under National Priority 6: Trading Practices.
- Trading Practices requires that all consumer agencies should adopt a uniform policy that does not endorse the retention of PIN number or other information (re passwords for internet banking) by traders.
 - The ACCC has adopted this policy which is reflected in its FairStore publication outlined above.
- Trading Practices also requires all SCOCA members to promote the use of ASIC's "Dealing with Book Up: A Guide" which contains ideas and strategies for communities and traders to manage book up.
 - The FairStore publication also promotes the use of ASIC's Book-Up Guide.
- Member agencies are also required to promote the ACCC's FairStore publication as best practice so that traders and communities have a benchmark

for fair trading in remote communities. It also requires State and Territory agencies to liaise with the Commonwealth Office of Indigenous Policy Coordination and Indigenous Coordinating Councils to promote store management.

- An extensive community outreach campaign was conducted in September 2006 throughout the Northern Territory by the ACCC's Darwin Regional Outreach Manager to promote the ACCC's FairStore publication and conduct general outreach initiatives.
- An extract from the 2006 NICS implementation report is provided at Attachment 2 and includes the ACCC's responses to the action items under this priority.

CAEPR Report

2002: ACCC releases the CAEPR Report: Competition and Consumer Issues for Indigenous Australians

- The ACCC commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) to undertake a research project into the implications of the TPA for Indigenous Australians.
- CAEPR identified the practice of book-up as a key area in which indigenous consumers may be vulnerable and which may raise implications for the TPA. It included a case study on community stores and the use of book-up. A copy of this report was provided to the Committee with the ACCC's initial submission.
- The report highlights a concern that certain practices associated with book-up may constitute unconscionable conduct. It argues that book-up practices may result in exploitation of Indigenous consumers' lesser bargaining position and as such may be considered unconscionable and risk breaching the TPA. This would however need to be considered on a case by case basis
- The report highlights that any evaluation of prospective breaches of the TPA requires a culturally informed understanding of why Aboriginal people may continue to participate in relationships that have the potential to be exploitative (such as book-up).

Activities of other agencies

ASIC

- ASIC released a report in 2002 titled "*Book up*" *Some Consumer Problems* following the NT meeting in 2000 described above. A copy of this can be found at <http://www.asic.gov.au/fido/fido.nsf/byheadline/Consumer+reports+and+papers?openDocument>
- ASIC has also developed, *Dealing with book up: a guide, for communities, community organisations, government agencies and private businesses* available at <http://www.asic.gov.au/fido/fido.nsf/byheadline/Book+up?openDocument>

Attachment 1 Extract from *FairStore*:
A best practice guide for stores serving remote and Indigenous communities

Store credit or ‘book-up’

‘Book-up’ (or book-down) is a term that describes a form of store credit commonly used in regional and remote Australia. It involves a store offering small amounts of short-term credit to customers.

What can I ask for as security for book-up?

It has been the practice of some stores offering book-up to ask customers to provide them with some form of security, such as blank withdrawal forms signed by the customer, debit or credit cards (banking items) and their personal identification number (PIN). Do not ask customers to provide you with a signed blank withdrawal form as a form of security. This can place the customer at risk.

If a store asks customers for a signed blank withdrawal form and the form is misused or lost because the store does not provide for adequate safekeeping, the store owner may be liable for any loss suffered by the customer. Do not ask customers to disclose their PIN, particularly as it may be a breach of the customer’s contract with their bank or financial institution. Remind customers that they have an obligation to the bank to keep their PIN secure and not reveal it to anyone. When possible, avoid asking for the customer’s banking item as a means of security. Rather ask for another form of security in case they need the banking item for other purposes. However, should you choose to hold a customer’s banking items as security for book-up, you should:

- return the customer’s banking item on request, if there is no longer any debt—if there is still a debt outstanding, do not unreasonably refuse a customer’s request to return their banking item, particularly in circumstances where you do not need the banking item to protect the store’s legitimate interests
- ensure that you hold the banking item in some form of secure storage to prevent loss, theft or use by an unauthorised person
- have suitable arrangements in place to allow customers use of their banking items during times when the store will be closed for extended periods.

What else should I consider?

- Provide customers with a clear statement of the terms and conditions of book-up and ensure that they understand and accept the terms and conditions (including any limits to the amount that may be booked-up) before opening a book-up account. Failure to adequately explain the terms and conditions of the contract to customers means that the contract could be set aside at a later time.
- Do not allow third parties to book-up against a customer’s account (for example to obtain cash advances, or to buy goods or services) unless authorised by the account owner.
- Ensure that EFTPOS transactions are authorised and completed by the customer, unless the customer can’t because of a disability.

- Be aware that under certain circumstances, the Uniform Consumer Credit Code¹ may apply to book-up practices, for example if fees are charged or interest rates apply. In many cases the code will not apply, but its principles of transparency and accountability should still be applied to book-up so that customers can be assured that stores are properly accounting for debts and payments.
- Maintain details of customers' account histories and amounts they owe, and give them access to those details.
- Provide itemised receipts to customers for purchases and payments made against their book-up account.
- Keep a record for each customer using book-up. The record should contain clear, accurate and easily understood details (including dates) of credit provided, any service charges, payments made and the customer's current level of debt. The account details should be made available for inspection by the customer, a person acting on behalf of the customer, or officers from a law enforcement agency or regulatory authority (for example a police officer or consumer affairs official with either permission from the customer or legal documentation, such as a warrant).

¹ Further information about the Uniform Consumer Credit Code may be found at <http://www.creditcode.gov.au>

Attachment 2 Extract National Indigenous Consumer Strategy: ACCC Implementation Progress Report October 2006

National Priority 6 - Trading Practices

Required Actions	Responsibility	Timeline	Actions carried out by the ACCC
1. Compliance and enforcement activity by consumer agencies to penalise inappropriate behaviour by traders.	All Australian SCOCA members.	Ongoing.	In September 2004, the ACCC instituted proceedings in the Federal court in Darwin against a trader from Perth, Mr Ramon Keshow, for alleged unconscionable conduct and misleading and deceptive conduct in the promotion and supply of educational materials to Indigenous communities in the Northern Territory. On 21 July 2005, the Court ordered Mr Keshow pay compensation to eight Indigenous women totalling \$26,530. In May 2006, the Court banned Mr Keshow and any of his servants or agents from entering Northern Territory Indigenous communities to conduct his business after finding that he had engaged in unconscionable conduct.
2. All consumer agencies should adopt a uniform policy that does not endorse the retention of PIN number or other information (re passwords for internet banking) by traders.	All Australian SCOCA members.	December 2005.	<p>The ACCC has adopted this policy which is reflected in its FairStore Publication, which was released in July 2006, and continues to be distributed to community stores catering to Indigenous consumers.</p> <p>The ACCC is also currently developing a FairStore consumer brochure to educate Indigenous consumers about their rights and obligations when dealing with rural stores.</p> <p>This brochure will accompany the FairStore booklet produced as a guidance document for to operation of such stores.</p>

Required Actions	Responsibility	Timeline	Actions carried out by the ACCC
3. Through the SCOCA Indigenous Banking and Financial Issues Liaison Group explore ways to discourage traders holding customer PIN numbers as a condition of credit, including the possibility of a prohibition in EFTPOS contracts on traders holding PINs. Breaches of the provision could result in traders losing their EFTPOS capacity.	SCOCA Indigenous Banking and Financial Issues Liaison Group.	Ongoing.	The ACCC is a member of this Liaison Group and explores ways to discourage traders holding customer PIN numbers as a condition of credit. Guidelines for the retention of debit cards and PINs are provided in the ACCC's <i>FairStore</i> publication.
4. Ongoing monitoring of door to door and itinerant traders including coordinated action between agencies to address emerging problems.	All Australian SCOCA members.	Ongoing.	The ACCC will continue to monitor this area and vigorously pursue enforcement action against any traders found to be breaching the Trade Practices Act 1974.
5. Promotion of ACCC's FairStore as best practice so that traders and communities have a benchmark for fair trading in remote communities.	ACCC to continue to set the standards through FairStore. State and Territory agencies to liaise with the Commonwealth Office of Indigenous Policy Coordination and Indigenous Coordinating Councils to promote store management.	Ongoing.	<p>The ACCC will continue to set the standards for fair trading through the promotion of FairStore as a Best Practice Guide.</p> <p>An extensive community consultation campaign was conducted throughout the Northern Territory in September 2006 by the ACCC's Darwin Regional Outreach Manager to promote the ACCC's FairStore publication and conduct general outreach initiatives.</p>

Required Actions	Responsibility	Timeline	Actions carried out by the ACCC
6. Consumer protection agencies to provide relevant and appropriate information for Indigenous consumers on warranty rights and obligations.	All Australian SCOCA members.	Ongoing.	<p>The ACCC publishes and distributes a brochure on warranties and refunds which contains advice for consumers.</p> <p>The ACCC is currently developing an information kit of ACCC publications for its Regional Outreach Managers to distribute to remote Indigenous community organisations and business that deal with Indigenous consumers. The kit will include the warranties and refunds brochure, 'Don't take Advantage of Disadvantage, which is a compliance guide for businesses dealing with disadvantaged or vulnerable consumers, Dealing with debt, your rights and responsibilities (a joint ACCC and ASIC publication aimed at consumers) and the Referral Guide.</p> <p>The ACCC has re-released the 'Don't get tricked: Know the rules' poster and is also developing a Know how to complain flyer (see above).</p>
7. Identify appropriate matters for enforcement to improve marketplace behaviour.	All Australian SCOCA members.		<p>The ACCC continually monitors market behaviour to identify any potential breaches of the Trade Practices Act 1974 and assesses matters for enforcement action in this area. For example see above in relation to the ACCC's proceedings against Mr Ramon Keshow.</p>