



8 March 2016

Media Release

VULNERABLE CONSUMERS MUST BE PROTECTED FROM UNSCRUPULOUS BOOK UP OPERATORS

While acknowledged as a necessary service with numerous benefits, particularly for those living in regional and remote areas, book up continues to fall through the gap in terms of legislative regulation against unscrupulous practices.

In the latest edition of the [Indigenous Law Bulletin](#), the Australian Securities and Investments Commission's* (ASIC) Nathan Boyle reports on the findings of book up research recently undertaken for ASIC by Dr Heron Loban of Griffith University, and the subsequent ASIC report, 'Book up in Indigenous communities in Australia: A national overview'. The research findings reveal some concerning practices, including:

- operators retaining customers' debit cards and PINs, and withdrawing funds at their discretion;
- the failure to agree on terms and provide documentation upon provision of the service to a customer;
- unauthorised use of a book up accounts by account holders' family members; and
- creating dependency on the book up system by allowing customers to accrue high debt levels.

Boyle, an analyst for ASIC's Indigenous Outreach Program, is quick to point out that this report is not the first to highlight unscrupulous practices of some book up operators. And while book up operation is regulated by both the *National Consumer Credit Protection Act 2009* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth), in practical terms neither instrument is effectively preventing the unscrupulous conduct, reported above, which affects the most vulnerable consumers.

One of the reasons for this is that the great variance between different providers' operations means that book up won't always be captured by the National Credit Act's prescriptive definition of 'credit activities', which, for example, requires a 62-day period of deferment of debt, and fees and charges exceeding 5 per cent of credit provided. Even when a particular operator's book up provision is captured by the Act, the absence of record-keeping requirements for book up operators means that where unscrupulous conduct is alleged, a lack of records often means proving that the credit activity in question satisfies the National Credit Act's definition of a credit product is difficult.

Regulation through the ASIC Act is also problematic, as the unconscionable conduct provisions of that Act are subjective and require a court's determination, which has led to various state and federal courts arriving at different interpretations, making it, as Boyle states, 'almost impossible to predict with any confidence the prospects of success in a matter being run purely on the basis of alleged unconscionable conduct, meaning law enforcement agencies must consider the expense and resources required to run this type of litigation and weigh this against other regulatory tools (such as informal negotiations)'.

Adding to the disincentive is the fact that not a single instituted proceeding prosecuting unconscionable conduct in book up operation has yet proceeded to a final judgment, though a pending decision in the case of *ASIC v Kobelt* (SAD100/2014) may soon provide a valuable precedent. ASIC Commissioner Peter Kell said on that matter: 'In bringing this action before the courts, we hope to make clear the circumstances under which book up can be offered and the legal provisions by which traders must abide.'

Boyle argues that while there seems to be a strong argument for mandating the way book up services operate, requirements like those already imposed on other financial service providers by the National Credit Act are not the answer, as they would impose onerous obligations which would be impracticable. Rather, Boyle suggests amendment to the ASIC Act setting out minimum documentation requirements and stipulating the maximum amount of indebtedness allowable, with failure to comply attracting an Infringement Notice penalty. Such an approach would allow the continuation of what is a valuable service with numerous benefits, while giving regulators the tools needed to stamp out misconduct and to ensure the most vulnerable consumers are adequately protected.

**Please note: this article was written by Nathan Boyle in his personal capacity. It reflects his own opinions and does not necessarily reflect the views of ASIC.*

[Click here](#) to access a copy of 'BOOK UP: CURRENT REGULATION AND OPTIONS FOR REFORM' by Nathan Boyle.

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