

Discussion paper

Book up

Running a tab, buying on tick or
using other forms of **informal credit**

February 2008



Department of Consumer
and Employment Protection
Government of Western Australia

Lodging your submission

Your submission must be received by Friday, 18 April 2008. **Please be sure to lodge the cover sheet with your submission.**

You can post your submission to:
Strategic Development Branch
Consumer Protection
Locked Back 14 Cloisters Square
PERTH WA 6850

Or hand-deliver it to:
Strategic Development Branch
Consumer Protection
Level 7 Forrest Centre
219 St George's Terrace
PERTH WA 6000

You can fax your submission to (08) 9282 0855 or email your submission as a word document to consumer@docep.wa.gov.au.

If you have an enquiry about making a submission, please contact the Consumer Protection Advice Line on **1300 30 40 54** and ask for the Book up Project Officer, or email: consumer@docep.wa.gov.au.

Your submission must be received by Friday, 18 April 2008.

A message from the Minister

The State Government recognises that ensuring indigenous consumers have access to consumer protection on matters relevant to their daily life is an important part of addressing long-term disadvantage for indigenous Western Australians.

In 2007, the Department of Consumer and Employment Protection published "*Indigenous Consumers Count*", which reported findings from a survey of indigenous consumer issues.

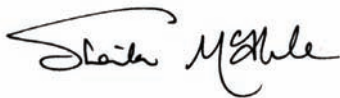
In identifying the top consumer problems, credit-related topics appeared repeatedly.

One issue which received special mention in the report, particularly from respondents from remote small towns and communities, was "book up". Book up is an arrangement where a trader allows a consumer to take goods without immediate payment, sometimes leaving their bank card and possibly even their PIN as security.

The issues around book up are complex. Financial literacy, knowledge and availability of banking services, debt management, contracts with instalment payments and social disadvantage, are often related to the use of book up. Further information from the Western Australian community is needed to understand and address these issues.

This discussion paper is designed to assist Consumer Protection better understand the prevalence of book up, its impact on both consumers and traders, and determine to what extent, if any, intervention may be required. It is equally important any consideration of regulating book up takes account of situations where it may be operating in the interests of consumers.

In addition to this work, Consumer Protection will also be seeking suitable providers to pilot a financial literacy education program in Western Australia.



Sheila M^cHale MLA
MINISTER FOR CONSUMER PROTECTION

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Glossary of some terms used

Australian Competition and Consumer Commission (ACCC)	The Commonwealth agency responsible for fair trading. The ACCC has developed <i>FairStore</i> , a voluntary guide for stores serving Indigenous communities in rural and remote areas of Australia.
Australian Securities and Investments Commission (ASIC)	A Commonwealth authority with a role in regulation of consumer protection in the financial services and credit industries. ASIC monitors industry codes such as the Banking Code of Practice and Electronic Funds Transfer Code.
Department of Consumer and Employment Protection (DOCEP)	The state authority responsible for fair trading in Western Australia. In this document, the Department is also referred to as 'Consumer Protection'.
Electronic Funds Transfer at the Point of Sale (EFTPOS)	EFTPOS allows people to access their accounts and pay for goods using a store's EFTPOS machine.
Key cards	Plastic cards issued by banks or credit unions to allow people to access their savings accounts through ATMs or EFTPOS machines.
Ministerial Council for Consumer Affairs	Consists of all Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading, consumer protection laws and credit laws.
Personal Identification Number (PIN)	The number that someone uses to withdraw or transfer funds using a key card.
Trader	For the purposes of this paper, it includes all businesses that sell goods or services. Traders can include shopkeepers, service stations, taxi drivers, airlines and takeaways.

Introduction

In recent years, the Department of Consumer and Employment Protection ('Consumer Protection Division') has become aware of problems experienced by both consumers and traders involved in the use of informal credit for the purchase of goods and services, or book up as it is commonly called. Nationally, book up has been highlighted as an issue needing attention through work undertaken by the Ministerial Council for Consumer Affairs, the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission. Early in 2007, Consumer Protection established a steering committee made up of agencies that have an interest in book up in order to better understand the practice and explore what might be done to reduce the risks book up may pose for consumers and traders. The agencies represented on the committee is provided in Appendix 1.

This paper aims to describe the practice of book up, detail the benefits and problems associated with book up, outline current laws surrounding the practice and explore possible options for minimising the risks.

The purpose of the paper is to seek the public's views on what, if any, measures should be taken to regulate book up and to canvas ideas on initiatives that can reduce problems linked to book up. Consumer Protection would also like to find out more about the types of consumers that use book up, the types of traders that offer book up and how it is used.

The Department of Consumer and Employment Protection thanks you for your time in considering this paper and welcomes responses from:

- consumers;
- traders;
- organisations representing traders or consumers;
- the banking and finance industry;
- community organisations; and
- members of the public.

Making a submission

This consultation paper has been released for public comment. Each section discusses the issues identified so far and your views would be most appreciated. You are not limited to answering the questions raised in this paper. Please feel free to comment on other matters important to you, your organisation or your community.

A list of all of the questions is outlined at the end of this paper for your reference. It is set out in such a way that, if you wish, you can write your responses to the questions directly into the pages at the back, cut them out and send them in as your submission, with or without additional information or comment. Your submission does not need to be long or complex - simply filling in all or some of the questions would be fine. There is a 'cover page' for submissions at the back for you to complete.

Please clearly state your views or opinions, the reasons for them and your suggestions. Where possible, give examples to help clearly illustrate the issues you raise. If further space is needed, simply attach additional pages to your submission. For any factual data such as reports or statistics that you may use in your submission, if possible please include the author's name, the name and date of the publication, the relevant page numbers and where the information can be located.

Consumer Protection representatives will also meet with community members face to face to gather feedback in locations where reports of book up have been more prominent. Details of proposed visits can be obtained from Wayne Bynder on (08) 9282 0645.

Confidentiality

When you lodge your submission it is important to realise that it may become a public document. Your submission could be viewed by others or used as a quote in another document. If you do not wish your submission to be made public or quoted from, please advise Consumer Protection in a covering letter or by ticking the appropriate box on the submission cover sheet.

Please be aware that the rights of third parties to access documents under the *Freedom of Information Act 1992* means that Consumer Protection cannot guarantee the confidentiality of your submission, but we will not publish it, without your consent.

1. What is book up?

Book up is an agreement that allows a consumer to buy goods or services now and pay for them later. Book up is a type of credit. Sometimes it is also referred to as 'book down' or 'having an account' with a store. The practice of booking up goods or 'running a tab' with a trader has been going on for a very long time, although it appears that with an increase in the use of credit cards and EFTPOS, less people now use book up arrangements.

The Uniform Consumer Credit Code ('the Code') regulates consumer credit in all the States and Territories. Book up will generally be covered by the Code when:

- a) more than \$50 is booked up; and
- b) a credit fee is charged that exceeds 5% of the amount booked up or the annual interest rate charged is more than 24% of the amount booked up.

It is understood, however, that most book up arrangements do not involve the charging of the relevant credit fee or interest and are therefore not regulated by the Code. Even where book up arrangements may come under the jurisdiction of the Code, it can be difficult to establish this for the purposes of any compliance action because there are often very little, if any, documentary records of the book up arrangements. Book up agreements are usually verbal, that is, there is no written contract.

When managed properly, book up can be a system that works well for consumers and traders. However, it can also be open to unfair trading practices, abuse, over reliance and exploitation, thereby causing problems for consumers as well as traders.

Some traders providing book up ask for a key card as security, to ensure that the customer will pay the debt. Of these, some traders may also ask for the card's Personal Identification Number (PIN) as well, to allow the trader to access the account directly for all or part of the debt. Whilst not as common as key cards, other forms of security can include passbooks, signed withdrawal forms, telephone banking details or internet banking details. The holding of cards and PINs by traders is one of the areas of book up management that can cause the most problems.

Book up is a complex issue. On one hand it offers people an important service in managing on low incomes, especially where there is not a lot of access to financial services and other credit options. On the other hand, if not managed properly, book

up practices can reduce consumer choice and increase the risk of fraud and/or price exploitation. It may also reduce competition between traders.

1.1 The prevalence of book up

It is difficult to assess the full extent to which book up is currently used. However, Consumer Protection's report on consumer issues faced by Indigenous Western Australians, *Indigenous Consumers Count*, found that book up and credit problems were more likely to be an issue for people in regional and remote areas than in metropolitan areas.

In trying to understand further the extent of book up, any problems that might be associated with such arrangements and what options, if any, should be explored to regulate the practice, Consumer Protection is keen to hear more about where, when and how book up is used.

See consultation question 1 and 2 at the back of this discussion paper.

2. Benefits of book up

Book up has developed out of consumer needs, historical practices and socio-financial disadvantage. For people on a low income, with little or no access to credit, book up can be a way to manage between payments or deal with unexpected costs.

Book up can also assist people who have difficulties getting access to money at regular intervals. For example, in some remote parts of Western Australia there are few, if any, banks and automatic teller machines (ATMs). In some places, the local store is the only place to do banking or access cash.

Sometimes people using book up want to make lots of small purchases over a week, rather than one big purchase. The reasons for this vary and can include lack of refrigeration, not wanting to stock pile food, or the use of Pre-paid Power Meters (some people may not want to run their fridges to extend the amount of time they get from their meters). Making lots of small withdrawals from a bank account may result in higher bank charges, depending upon the type of account. Book up allows people to make small purchases but pay less frequently, thus reducing certain types of bank transaction fees.

Some people do not want to hold their key card or carry cash on them for security reasons and like book up because they can give their card to a trader for safe keeping, make the purchases they need and pay at the end of each fortnight. This may also relieve problems associated with friends or family hassling them for money.

Some people think that it is convenient to leave their banking details and card with the trader in case they forget their PINs or passwords. This practice may or may not be linked to booking up debts for purchases.

Example: An elderly woman leaves her key card and PIN with a trader. Each fortnight she makes her major purchases and gets the trader to withdraw money for her to pay for the purchases and provide her with some cash. She doesn't actually require book up credit because the purchase is paid for straight away by the trader accessing her accounts.

From a trader's perspective, providing book up may be a service that customers expect or require in order to use the business. In some places, it's simply how business is done.

See consultation question 3 at the back of this discussion paper.

3. Possible problems with book up

Although book up has benefits, depending on how it is organised, it can also cause problems:

1. for consumers it can result in increased vulnerability and less choice;
2. for traders it can present a risk to the viability of the business;
3. for remote communities it can affect access to services (if businesses close down because of book up debts) and high levels of debt can increase the need for people to be assisted by families or welfare services.
4. for the wider community, increased financial difficulties and associated social problems such as poor nutrition/health, domestic crises, etc.

Problems associated with book up are usually raised by agencies that work on behalf of consumers, rather than through direct complaints from consumers themselves. There is generally a lack consumer complaints, making it difficult to quantify the full extent of book up problems. It has been suggested that a fear of losing the ability to book up and a general reluctance to make formal complaints are some of the things

that stop people from complaining. It may also be that some consumers are not aware that the conditions of their book up arrangement might be considered unfair or even unlawful. Difficulties around consumer complaints and book up are discussed further in section 4.7 of this paper.

The main problems that can arise with book up are outlined below.

3.1 Lack of choice

When a trader requires consumers to leave their key card as security for book up, consumers lose choice over where they can purchase goods or services. They become tied to the trader, which can result in price exploitation or poor consumer choices. Even if a consumer asks for their card back, some traders will not return the card until the debt is paid in full.

Example: A customer has given their key card to a service station, they are now tied to the trader for purchasing food, which may be less healthy and/or more expensive than choices provided by the local supermarket.

Example: A consumer has given their card to a supermarket in a regional town, but lives quite a way outside the town. To get food they must now bear the cost of travelling to the town, rather than using a more local store.

Consumers can also lose choice over when they can access their accounts and get money. If the business isn't open, or is far away from where they live, the consumer cannot use their card.

Example: A trader goes away on holidays and closes the business for a few weeks, safely locking up key cards. People are now stranded without access to their income.

Example: A regional airline allows people to book up for fares to a remote community, and holds the key cards. The people who booked up the fares cannot access any funds whilst living in the community. They cannot buy food.

Preventing people from exercising choice can have negative consequences for other traders, as well as the consumer, by reducing competition. For example, a

community store can lose potential income because a number of community members have their cards stored with businesses in regional towns. A reduction in competition may affect the viability of some businesses.

3.2 Risk of fraud and theft

When a trader holds key cards and/or PINs, or telephone or internet banking details, there is an increased risk of fraudulent access to the account by:

- the trader;
- an employee of the trader; or
- someone who gains access to the cards, PINs or passwords through theft.

Example: A trader keeps numerous key cards and PINs unsecured on the business premises. When there is a break in, the cards and PINs are stolen and the thief uses some of the cards and PINs to steal money.

Even if PINs are not held, consumers can be vulnerable when a trader is holding their cards.

Example: A trader holds key cards without PINs unsecured on the business premises. When there is a break in, the cards are stolen and consumers are not able to access their funds.

When a trader holds cards and PINs consumers can lose control over how their debt is repaid. Without agreement, traders may access a consumer's account, taking out more than the consumer can afford to pay.

Example: A second hand dealer agrees to sell goods on book up and takes the consumer's card and PIN. The consumer agrees to let the trader take out \$50 per fortnight, but the trader withdraws almost the full benefit each pay, leaving the consumer without money for food or living expenses.

Sometimes consumers resort to contacting their bank and cancelling the card to get a new card and PIN, in order to deny the trader access. When this happens, consumers incur a waiting period before they receive another card, which means they may not have access to cash during this period.

Although access to an account may have been unauthorised, where a consumer has given their PIN or passwords to the trader, the bank will probably hold them responsible for any loss (Electronic Funds Transfer Code s5.6). If it is found that the theft or fraud resulted from a trader not taking proper steps to store cards, PINs or passwords securely, the trader may be held responsible.

3.3 High or hidden costs and fees

Sometimes consumers may incur a number of costs when using book up, many of them hidden. Examples include:

- booked up goods charged at a higher prices than normal;
- poor book keeping can result in errors or disputes on the amount owed;
- fees or interest charged for book up by traders;
- if a trader frequently tries to access an account to 'test' its balance, the consumer could be charged higher account fees; and
- bank penalty fees if the account is overdrawn by the trader.

As book up is usually a verbal agreement, fees and charges are often not written down and can change without notice. Extra charges for book up, increased bank fees, or inflated prices can severely affect the ability of consumers to live on a low income, especially in areas of Western Australia where distance and isolation means that prices are already high. Sometimes, traders charge a set fee for each book up transaction. When there are lots of little transactions, this can result in fees being higher than the value of the goods booked up.

Reduced cash flow and debt recovery can also result in higher business costs to the trader, which is why some stores choose not to offer book up.

3.4 Too much debt

If there is no limit on the amount that can be booked up, consumers can end up with more debt than they can afford. This can result in people needing to rely on others for essentials such as food or housing. The risk of excessive debt is increased if:

- consumers are not aware of how much debt they have booked up;
- other people are allowed to book up on the consumer's account;
- consumers are allowed to book up expensive items, such as airfares; or
- consumers are allowed to book up non-essential items, such as alcohol.

When consumers have more debt than they can afford to pay, there can also be problems for businesses in terms of cash flow and debt recovery.

3.5 Lack of transparency

Poor record keeping with book up arrangements, or records that are not provided to the consumer (even when requested) can mean that consumers find it hard to know how much their debt is or keep track of transactions. A lack of transparency can increase the risk that consumers end up with more debt than they can afford. It also affects the ability of consumers to check that they are not being over charged or whether unauthorised transactions have been put on their book up account or taken from their bank account.

Inadequate book up records also makes the regulation of book up difficult for agencies that have been set up to ensure fair trading practices. For example, to check whether there has been unfair conduct, to check whether transactions are subject to the Uniform Consumer Credit Code, to confirm whether unauthorised transactions have happened or to investigate complaints and resolve disputes.

Often a consumer books up lots of little transactions over a day or week, rather than one big transaction a week. This can be because the consumer does not have a fridge or food storage facilities or because they do not want to have a lot of food stored at home. Many little transactions mean that it can be harder to keep track of book up account records and the debt owing, unless good record keeping practices are in place.

According to *Good Bookup Bad Bookup*, a guide published by the Financial Counsellors' Resource Project of WA and the Department of Consumer and Employment Protection, and *FairStore*, a guide published by the Australian Competition and Consumer Commission, good book up practices:

- provide a clear statement of the terms and conditions of book up;
- ensure that charges, if any, for book up are reasonable;
- ensure clear authorisation of which people are allowed to book up items on an account;
- clearly display the prices of goods for sale;
- ensure that the price of goods that are booked up are the same as those paid for by cash;
- ensure clear authorisation of any EFTPOS transactions;

- provide a transaction record for all book up purchases;
- maintain records of customers' account histories, including transactions, trader fees or charges, payments and balance owing; and
- allow the customer or any person acting on behalf of the customer to see their account records.

The above list offers some examples of good management practice in regard to book up. Other examples are outlined further in section 5 of this paper.

3.6 Excessive alcohol consumption

Past reports indicate that some stores and hotels allow people to book up alcohol. A 'buy now, pay later' approach to alcohol may result in over consumption and lead to people spending more on alcohol than they can afford. Easy access to alcohol that is not tied to an ability to pay can lead to increased debt, health problems and social problems connected with over consumption.

3.7 Reduced financial skills

It has been argued that book up can reduce the financial knowledge and skills of consumers if they become dependent on one trader to supply goods, pay bills and access banking services.

Whilst book up can be a good budgeting tool, if over used it can also reduce the ability of people to budget and manage expenses themselves.

See consultation question 4 and 5 at the back of this discussion paper.

4. Current rules and laws affecting book up

There is no specific law on book up in Western Australia, but the practice may come under a number of other laws and industry based codes. The main types of the laws and rules that can apply to book up are outlined below.

4.1 Uniform Consumer Credit Code

The Uniform Consumer Credit Code is a law that applies in all states and territories. The Code applies to credit that is provided to individuals for personal or household

purposes and for which a charge is made for the provision of the credit. Book up is regulated by the Code if:

- more than \$50 is booked up at a time; and
- a fee is charged that exceeds 5% of the amount booked up or the annual interest rate charged is more than 24% of the amount booked up.

Under the Code, consumers:

- must be provided specific details of the credit arrangements in writing before a credit contract is entered into;
- must receive regular statements of account;
- can apply to have credit contracts varied on the basis of hardship (illness, unemployment etc.); and
- can apply to have credit contracts varied on the basis that the contract is considered unjust or that the fees imposed are unfair.

Traders who are in the business of providing Code-regulated credit must also be licensed as a credit provider in Western Australia under the *Credit (Administration) Act 1984*.

Most book up arrangements do not appear to be covered by the Code. It is possible that some arrangements may be regulated by the Code, however this can be difficult to establish for the purposes of any compliance, given that there is often very little, if any, documentary records. Enforcement of the Code can be costly and requires consumers who are willing to make formal complaints.

4.2 Unconscionable Conduct

Both Western Australian and Commonwealth legislation prohibit traders acting in an unfair or 'unconscionable' manner (*Fair Trading Act 1987 (WA)*, *Trade Practices Act 1974* and *Australian Securities and Investments Commission Act 2001*). Examples of unconscionable conduct by a trader can be:

- a) Where a transaction has unfairly taken advantage of a consumer's lack of knowledge or ability to fully understand the transaction. A person's ability to understand may be affected by disability, illness, literacy, intoxication, age or their level of English.
- b) Where a trader has withheld important information from a consumer, such as fees or charges.
- c) Where there has been unfair and unreasonable pressure tactics used.

Laws about unconscionable conduct have limited effect in dealing with book up. It can be difficult to prove that a trader has acted in an unfair way and it can be an expensive exercise for disputes around relatively small amounts of money. Problems with a lack of formal complaints from consumers and poor book keeping add to the limitations of using these laws to presently regulate book up.

It can also be difficult to determine what is unfair conduct in regard to book up arrangements. For example, it is not clear whether or not requiring a key card and PIN to be given as security is, in itself, unconscionable conduct. Court proceedings have shown that unconscionable conduct can be very difficult to establish.

4.3 Alcohol sales

In Western Australia there is no law preventing the book up of alcohol, although a restriction on the sale of alcohol on credit can be made a condition of a liquor license, if seen to be in the public interest (*Liquor Control Act 1988* s64 3(cd)).

In some areas, there are local agreements, whereby traders agree not to let people book up alcohol. Local agreements do not have the status of law - they are voluntary. As discussed further in section 5.3 of this paper, it can be difficult to ensure compliance with voluntary agreements and there is often little consequence if an agreement is not abided by. It is also possible that local agreements may be contrary to competition policy, depending upon the nature of the agreement.

4.4 Merchant agreements

Banks have EFTPOS merchant agreements with traders that detail the conditions of using EFTPOS facilities. An increasing number of banks now prohibit traders from requesting or retaining customer PINs and restrict (but do not prohibit) the circumstances in which a card can be held by a trader. If a trader is found to have breached the agreement, they risk suspension or termination of their EFTPOS facilities.

Currently, five major banks have made such changes to their merchant agreements nationally.

An advantage in using merchant agreements as part of the regulation of book up is that it focuses on what is often seen to be the main problem with book up - traders

holding PINs. Another advantage is that there is a real consequence for the trader if they fail to abide by the agreement.

On the other hand, difficulties with using the provisions of merchant agreements to regulate book up are:

- a) it relies on receiving complaints from consumers;
- b) it can be difficult to investigate and prove allegations without the support of government agencies;
- c) it does not deal with all the problems associated with book up; and
- d) the suspension or termination of an EFTPOS facility is not always in the best interests of the community which may rely on the service to access money.

Whilst supportive of merchant agreements that prohibit the request or retention of PINs, the Australian Bankers' Association emphasises that these measures need to occur in conjunction with other forms of government regulation and community education.¹

4.5 Electronic Funds Transfer Code of Conduct

The Electronic Funds Transfer Code of Conduct are the rules which govern access to bank accounts through electronic means, such as EFTPOS. The Australian Securities and Investments Commission monitors the Code.

Under the Code, consumers are generally not liable for unauthorised transactions against their accounts, unless they are found to have contributed to the loss. This can include giving their PIN or banking code to a trader or other person (s5.6a). If a consumer does give their PIN or code to a trader, they may be liable for losses resulting from this action. The Code does not prohibit traders from holding key cards.

4.6 Contract laws

A book up arrangement is a form of contract between a consumer and trader. If a consumer believes that the trader has breached their contract, then they can take legal action. However, contract law does not really assist people who use book up. The cost of legal action generally outweighs the value of the disputed debt and most book up arrangements have no written contracts, making it difficult to prove that a contract has been breached.

¹ Australian Bankers' Association submission to the Northern Territory Government's discussion paper on book up, 20 March 2006.

4.7 Consumer complaints

Ensuring that traders have complied with existing regulations and laws usually relies on consumers complaining if they think that book up is being managed in an unfair way. Consumers can report unfair trading practices concerning book up to the Department of Consumer and Employment Protection or the Australian Securities and Investments Commission. If a consumer believes that theft or fraud is involved, they can report the matter to the police.

Currently, Consumer Protection does not receive a lot of formal complaints about book up directly from consumers, but rather informal complaints from agencies that assist consumers, such as financial counselling services. There are a number of possible reasons for this:

- Some consumers may be reluctant to complain because they fear losing the opportunity to book up.
- Some consumers are not comfortable with contacting government agencies.
- Some consumers may not complain because they are not aware that the treatment that they are receiving is unfair or illegal.
- Some consumers may not know who to complain to, or how to make a complaint.
- Some consumers may not complain because they do not believe that government agencies will respond eg 'why bother'.

4.8 Limitations in the current rules and laws

Even if consumers do complain about book up practices, in the absence of proof it can be hard to show that any current law or rule has been breached. An absence of transparency in the practice of book up, that is no or few written contracts or records, is one of the key problems in trying to use current laws and rules to ensure fair book up practices.

Requiring traders to keep records of book up, along with restricting the ability of traders to hold key cards and/or PINs are two key areas that have been highlighted by national studies as possibly requiring further regulation, along with better book up management practices in general. Options for what, if any, measures can be taken are outlined in the next section.

See consultation question 6 and 7 at the back of this discussion paper.

5. Options for regulating book up

In assessing the benefits and risks involved in book up arrangements, and the current scope of regulation, this consultation paper seeks to explore what, if any, other forms of regulation should be supported.

At one end of the scale is the option to leave things as they are, and at the other end to ban book up all together. In between are options that aim to improve the management of book up by setting standards and encouraging compliance.

Many of these options can be used in conjunction with each other. For example, one possibility is to leave things as they are, but focus on improved education for consumers and traders. Another possibility is to ban the retention of PINs and/or cards through legislation or mandatory codes of conduct, whilst encouraging other forms of good book up management practice through voluntary codes of conduct.

5.1 Leave things as they are

One approach to book up is to take no further action and leave things as they are. This approach may be appropriate if there are not really any problems with current arrangements and the existing regulations and remedies work well.

Some people may be reluctant to change the current situation because they fear losing the opportunity to use book up.

5.2 Banning book up

Banning book up is one way to reduce the problems associated with the practice. The Anangu Pitjantjatjara Yankunytjatjara communities in South Australia have chosen to trial a ban on book up which includes a staged approach of clearing current book up debt. The Arnhemland Progress Association, which operates community stores in the Northern Territory and manages one store in Western Australia on a consultancy basis, has a policy of no book up. However, the Association established the Traditional Credit Union and, more recently, FOODcard as ways of helping people manage on low incomes and in isolated locations (see

6.4). Where communities have chosen to ban book up it is because book up is seen to create more problems for consumers and traders than it solves, as outlined in section 3.

The examples outlined above are ones where communities have voluntarily chosen to ban the practice of book up. A total ban on book up in Western Australia may not be welcomed by the people who rely on it or the traders that see book up as part of the way they do business. Banning book up could have a negative impact on some remote and rural communities and result in increased hardship. Another consequence of banning book up may be that the practice goes 'underground'. This could result in even less transparency and may increase rather than decrease those problems that do exist for both consumers and traders.

An option proposed by some people is to allow book up but ban the practice of holding PINs and key cards. Banning this practice could be done by way of legislation or a mandatory code of practice, as discussed in 5.4 and 5.5.

5.3 Voluntary codes and standards

One option is to develop and promote a voluntary code of conduct for book up, in consultation with consumers and traders. Voluntary codes are sets of standards that traders agree to abide by. The 'Alawa agreement' is an example of a voluntary code for book up used by some stores in the Northern Territory. The agreement requires:

- signage at the store detailing book up practices;
- formal agreements between the customer and the store regarding book up;
- itemised transaction records;
- transparent records for customers;
- secure storage of cards and PINs; and
- indemnity by store owners in favour of the customer, if there is an unauthorised transaction whilst the key card is in custody of the store.

The Financial Counsellors' Resource Project of WA and the Department of Consumer and Employment Protection has produced a publication called *Good Bookup Bad Bookup*, which is a consumer guide to good book up practices. The Australian Competition and Consumer Commission has developed a best practice guide, *FairStore*, for stores serving Indigenous communities in rural and remote areas of Australia. The guide sets out standards for the management of book up covering terms and conditions, authorisations, records and EFTPOS transactions.

An advantage of voluntary codes is that they are a form of self regulation and can provide guidance to businesses that want to implement good practice. Voluntary codes set industry standards. The adoption of a voluntary code can be linked to business incentives, such as accreditation, achievement awards or good publicity.

A disadvantage of a voluntary code is that there is usually little consequence if a trader chooses not to follow the code. For traders that do not wish to follow industry standards, there is not much that can be done. Traders who are likely to practice good book up management are more likely to support a voluntary code, whilst those that do not manage book up in a fair or transparent way will probably not choose to follow a voluntary code.

Another disadvantage with voluntary codes is that, in an effort to maximise voluntary participation, codes can sometimes set the bar lower than what is ideal best practice. For example, the Northern Territory voluntary code allows traders to hold cards *and* PINs - a practice that is not widely endorsed by consumer groups, regulators or the banking industry.

The benefits of voluntary codes are often seen where there is large group of traders who are similar in the service that they offer and where there is a reasonable amount competition, so that it is in the traders best interest to follow good industry standards. This is not generally the case in regional/remote communities, where people do not always have a lot of choice in the services that are available to them.

5.4 Mandatory code of conduct

As an alternative to voluntary codes of conduct, businesses can be regulated by *mandatory* codes of conduct, which require certain practices to be followed. The difference between a voluntary code and a mandatory one is that a mandatory code must be complied with and is enforceable.

Sections 42-47 of the *Fair Trading Act 1987* (WA) allow for the creation and enforcement of mandatory codes of practice for fair trading:

- (a) between a particular class of suppliers and consumers; or
- (b) by a particular class of persons in relation to consumers (s42).

Mandatory codes are authorised by the Minister for Consumer Protection for a maximum of three years before being reviewed. A mandatory code must be developed in consultation with consumers and traders.

5.4.1 What could be covered by a mandatory code

A mandatory code for book up would set standards that must be legally met. Below is a list of some of the areas that could be covered by such a code. These areas could also be covered by a voluntary code.

Minimum record keeping, including:

- written contracts on the terms and conditions of book up in simple language;
- written authorities on who can use someone's book up account;
- clearly displaying the price of goods on or near the items for sale;
- providing itemised transaction records for all book up purchases; and/or
- keeping proper records of book up transactions and accounts.

Restrictions or prohibitions on holding a consumer's key card and/or PIN, banking codes, passports or withdraw slips. For example, the code could:

- prohibit the holding of PINs and cards; or
- prohibit the holding of PINs and restrict the holding of cards to particular circumstances eg people asking the trader to hold the card for security reasons.

If traders are permitted to retain cards, then they can be required to:

- return cards to consumers upon request, regardless of any outstanding debt;
- keep cards in a secure manner; and/or
- indemnify the consumer against any misuse of the card whilst held by the trader.

Restrictions on the use of book up. For example:

- limitations on the types of goods and services that can be booked up, such as limiting book up to food and essential household items only and preventing the book up of alcohol, fares or household appliances;
- restrictions on who can have authority to book up against a consumer's account eg must be over 18 years, must have identification, or the consumer can only authorise one or two other people to use their book up account;
- restrictions on the types of trader fees and charges that can apply to book up, if any;
- prohibiting the trader from charging higher prices for booked up goods; and/or
- limitations on the amount that can be booked up in any period of time eg per day, per week etc.

Dispute resolution processes that allow both the consumer and trader to know what to do before a complaint is made to the Department of Consumer and Employment Protection.

Provisions for the Commissioner for Fair Trading to exempt some traders from compliance with the code in certain circumstances.

5.4.2 Enforcing a mandatory code

In Western Australia, the Commissioner for Consumer Protection is the person responsible for ensuring compliance with state based mandatory codes. The Department of Consumer and Employment Protection is the agency that assists the Commissioner in developing codes, educating consumers and traders, and monitoring compliance.

If a trader is found to have breached a mandatory code, the Commissioner may request that the trader give an undertaking that they will rectify the breach or the Commissioner may apply to the State Administrative Tribunal for an order. Undertakings to rectify a breach are lodged with the State Administrative Tribunal. A trader can be fined \$10 000 by the Tribunal for not abiding by an undertaking or face more serious penalties for not abiding by an order of the Tribunal.

5.4.3 Mandatory or voluntary?

Two key questions arise in the development of either mandatory or voluntary codes of conduct:

1. What should be the standards set for good practice?
2. Which standards should be mandatory and which should be left as voluntary?

For example, some may argue that traders should not be able to hold key cards and PINs, whilst others may argue that only the retention of PINs should be prohibited. Some people are concerned that prohibiting the holding of cards as security will result in book up not being available, which could cause hardship for some consumers. Others believe that traders should not be allowed to hold cards because it reduces consumer choice or could lead to the cards being used unlawfully eg to establish false identification.

The main advantages of a mandatory code are:

- a) It creates clarity on what is expected of consumers and traders in regard to book up.
- b) Traders can be held accountable for breaches of the code.

- c) Mandatory codes have the status of regulations, not legislation, i.e. they are approved by the Minister, not Parliament. This means that they can be created without the need to change laws. They can be quicker and easier to develop, and to modify if they need to be adjusted.
- d) If a mandatory code requires proper record keeping, then it is easier for other forms of regulation to be checked for compliance, such as bank merchant agreements and the Uniform Consumer Credit Code.
- e) The enforcement of the code does not rely upon consumers willing or able to initiate court proceedings themselves.

A disadvantage of a mandatory code is that it may cause some traders to stop offering book up, which in turn may have adverse effects on consumers and communities. For people on low incomes, an inability to use book up, without any alternative means of accessing credit or assistance, could increase people's disadvantage and financial stress. It may also reduce trade for certain businesses.

Some consumers and traders may resent the imposition of rules and a lot of care must be taken to work with traders and communities in the development and implementation of any code. Mandatory codes also require sufficient resources at regional and state levels to ensure that people are aware of the code and know where and how to complain. Resources are also required to ensure compliance is monitored and breaches investigated.

5.5 Amend existing laws

Changing existing fair trading laws to specifically regulate book up, or creating new laws, is an option. Amendments prohibiting the book up of alcohol or transport fares could also be made to existing Western Australian laws.

However, changing legislation can be difficult and time consuming, especially for issues that are not seen to be a priority for the majority of the population. It can also be difficult to 'fine tune' legislation once it has been introduced if it is found not to be working in the way it was expected to.

5.6 Increased community education

Whether new rules about book up are introduced or not, it would appear that more could be done to educate both consumers and traders. For consumers, education can include better understanding of what is fair and unfair practices, skills in

negotiating book up arrangements and information on where and how to complain. For traders, education can include information on current legal obligations, recommended book up practices and how to manage disputes.

Good community education is designed to meet the needs of the group being targeted and to reach people in a way that is meaningful and accessible to them. It often requires different methods for different segments of the community.

5.7 The best way forward

Consumer Protection is keen to hear from people about whether book up should be regulated and if so, the best way of doing this. The Department wants to better understand the extent of problems with the use of book up and adopt an approach that minimises any unfair practices. Any response to improve protection needs to acknowledge the needs of both consumers and traders.

The next series of consultation questions are aimed at getting a sense of what, if anything, people think should happen. They build upon the previous questions, which aimed to assess the extent to which book up does or doesn't cause difficulties for consumers and traders. Question 8 asks which of the options outlined in this section you support. Question 9 asks, if we were to go down the path of a mandatory or voluntary code of conduct, what should such a code cover? This question is quite detailed as it tries to break down all the different parts that comprise book up practices. Question 10 looks at the effect of any change and Question 11 focuses on community education.

See consultation question 8 to 11 at the back of this discussion paper.

6. Other issues and alternatives to book up

People use book up because it serves a need. Where problems exist with book up, a multi-level approach to addressing the problems can include developing alternatives to book up, as well as regulation and education. Addressing the range of issues that sit along side book up and developing alternatives, requires government and non-government agencies and industry and community representatives to work in collaboration. Such an approach goes beyond traditional 'consumer protection' to respond to the underlying factors that require people to use book up and the factors that lead to difficulties in the use of book up.

6.1 Improving access to financial services

People on low incomes and/or in remote locations often have less access to financial products and services that suit their needs than people on higher incomes or those that live in urban areas. Some of the reasons that people use book up are:

- a) they do not have access to other forms of credit;
- b) they have no savings to assist in times of unexpected costs; or
- c) their banking services are linked with their purchasing services.

Increasing people's access to financial services can help address some of the reasons that people rely on book up. A number of initiatives around Australia have been set up to encourage savings, help people budget with limited incomes and provide low cost credit for times when it is needed.

Example: The WA No Interest Loan Scheme (WANILS) provides credit to people to buy large essential items, such as white goods. Such schemes reduce the need for people to book up fridges and washing machines with second hand dealers.

Example: The Arnhemland Progress Association established the Traditional Credit Union (TCU) in 1994 to offer services to Indigenous Australians living in remote communities in the Northern Territory. The TCU offers products such as saving clubs, family accounts and small personal and business loans.

For some communities, increasing access to internet banking or phone banking by locating facilities in places other than the local store may help people maintain control over their finances and reduce the temptation to link banking transactions with purchasing behaviour. For example, internet and phone banking services could be located with local community councils or neighbourhood houses. Encouraging

people to use internet or phone banking rather than EFTPOS services may also have the benefit of reducing bank fees, depending upon the type of account that a consumer has.

Example: A woman with three children uses EFTPOS at the local store to access money and uses the store's internet facilities to pay bills. She has to buy something every time she wants to get cash because of the minimum purchase requirements to use EFTPOS. Also, each time she goes to the store to do banking, the children hassle her for toys and junk food. Often she gives in and ends up purchasing goods she otherwise would not have purchased if she was able to do her banking elsewhere.

Having an ATM in a local community can prevent the reliance of some people on using their store to access cash. Another advantage of ATMs over shop based EFTPOS facilities is that ATMs allow people to check the balance of their account, which makes budgeting easier. However, whilst some accounts offer a limited number of free transactions, using ATMs a lot can result in significant fees being charged, especially if using an ATM from a bank other than the one holding the consumer's account. The current cost of installing and maintaining an ATM means that many rural and remote communities do not have access to this service.

6.2 Direct debit and Centrepay

For large purchases that need to be paid off or other ongoing debt repayments, consumers can arrange a direct debit from their bank account to a creditor on a regular basis. Similarly, Centrepay is a system that allows bills to be paid directly from someone's Centrelink payments. It is often used for payments such as rent, but can now also be used to pay store accounts, if the trader registers with Centrepay.

An advantage of direct debits and Centrepay is that it reduces the need for a trader to keep a key card and/or PIN for security and may help reduce the amount of debt that is being accumulated on book up by ensuring regular payments. Direct debits or Centrepay deductions may also make it easier for some people to budget and manage the remaining funds over a fortnight, reducing a need to use book up.

A disadvantage is that people may overcommit, have too many different payments coming out, and end up with more debt than they can afford. Regular commitments to one store also limits choice and may mean better prices somewhere else are

difficult to take advantage of. If people find themselves overcommitted with direct debit or Centrepay deductions, the resulting lack of funds may mean that their need for book up increases, rather than decreases.

6.3 Increasing financial knowledge and skills

The more that people understand money matters, the more they are likely to have control over their financial commitments. In recent years, there has been increasing awareness that many consumers do not have the necessary knowledge and skills to manage budgeting, financial contracts, banking services and market choices - especially as products become more and more complex. The term *financial literacy* is often used to refer to financial knowledge and skills.

Increasing financial literacy can help people manage book up in a number of ways:

- better budgeting and greater confidence in using ATMs and internet banking may reduce the need to rely on book up;
- consumers may have greater knowledge of fair and unfair contract terms and more confidence in knowing where to take their complaints;
- consumers may have more confidence in negotiating directly with the trader; and
- consumers may become aware of alternatives, such as pay ahead options and no interest loans.

Example: *MoneyBusiness* is a programme funded by the Australian Department of Families, Community Services and Indigenous Affairs in partnership with the ANZ Bank that aims to provide training on financial management, budgeting assistance and savings support. In Western Australia, the programme is currently running in Geraldton and Kununurra.

A limitation to the strategy of increasing financial literacy is that it does not address many of the reasons why people rely on book up. Low incomes, high prices in remote areas, a lack of financial services and few alternatives all contribute to the reasons why some communities rely heavily on book up schemes.

6.4 Community based initiatives

The reasons why people use book up or give their cards, PINs or codes to traders is complex and varies from community to community. One approach to book up is to

encourage local solutions to local problems. People are often the best expert on what their local community needs.

Good community based initiatives should be based upon a sound assessment of needs and how the proposed idea will realistically benefit the community. Proposals require proper planning, consultation and collaboration. The types of initiatives outlined below go beyond simply consumer protection to look at proactive ways to address the issues that surround book up.

6.4.1 Store based saving schemes

These schemes allow people to get in credit with their local store and then book down against the credit they already have. For example, each pay day, the consumer may purchase \$100 credit with the local supermarket and then gradually make purchases against this credit over the fortnight. The system is similar to book up in that the consumer does not have to worry about carrying money or cards with them but the key difference is that the goods are paid for ahead of time so that the consumer does not accumulate debt, which is also good for traders. Examples of store based saving schemes occur in the Fitzroy Crossing and Bayulu communities. Another type of 'pay ahead' initiative is voucher systems. Some community agencies provide services whereby people purchase vouchers when they have money, which they can then use to buy food over the fortnight.

To ensure transparency and fairness, schemes such as these still need to practice good record keeping, give itemised receipts and have clear authorisations on who can use the account.

6.4.2 Improving access to financial counselling services

Financial counselling services, usually located in not for profit community organisations, can help people budget, manage debt and understand financial contracts. Financial counsellors can advocate on behalf of people who believe that they have been treated unfairly or help them to self-advocate.

Increasing people's access to professional financial counsellors can have positive effects on people's ability to manage. Financial counsellors can also assist in the regulation of fair trading practices by identifying local problems, supporting consumers to complain, negotiating with traders and collecting evidence of unconscionable behaviour.

6.4.3 Community storage and security facilities

Some people choose to leave their cards and/or PINs with a trader for safe keeping because they do not have security at home or because they fear that they will forget their PIN or passwords. Alternative storage facilities may assist in these cases. Community lockers or storage boxes could provide people with security that is not dependent upon traders.

6.4.4 Addressing disadvantage

Book up is largely used by people on low incomes who are often economically and socially disadvantaged. At a very broad level, initiatives that aim to address disadvantage, especially in remote locations of Western Australia, will address the reasons why people rely upon book up and their vulnerability to possible exploitation.

6.5 Other policies that can influence book up

Consumer Protection is aware that other policies can impact on people's need to use book up services. For example, Government policies can result in some people's Centrelink payments being suspended, if they have been found to breach their mutual obligation requirements. This could increase people's reliance on book up. On the other hand, new Commonwealth policies that aim to quarantine parts of certain Centrelink payments for essential expenses, such as food, may reduce (or increase) people's need for informal credit. This policy is yet to be finalised and the effect that it may have on communities still needs to be assessed.

See consultation question 12 and 13 at the back of this discussion paper.

7. *Where to next?*

This paper has been developed because the Department of Consumer and Employment Protection wishes to learn more and hear what the public think about book up, before moving to any recommended position. At the end of this paper is a list of the consultation questions the Department is keen to hear your views about. Any submission, no matter how large or small is welcomed.

The submissions received will be considered by Consumer Protection's Book up Steering Committee and a final report will be written for the Minister of Consumer Protection, along with any recommendations.

References

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- Australian Competition and Consumer Commission 2006 *Fairstore A best practice guide for stores serving remote and Indigenous communities*.
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- Banking and Financial Services Ombudsman 2006 *Submission in response to the Northern Territory Discussion Paper* accessed 23/08/07 www.bfso.org.au/abioweb/ABIOWebSite.nsf/3f51d54074f36f08ca256bce00094be3/abafe4a25a918ca2ca257298001c7323?OpenDocument
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- Ministerial Council for Consumer Affairs 2005 *National Indigenous Consumer Strategy Taking Action Gaining Trust*.
- Northern Territory Department of Justice, November 2005, *Book Up Discussion Paper*.
- Northern Territory Government Liquor Act Book up Amendment summary. Accessed 20/8/07 at www.nt.gov.au/ntt/licensing/liquor/Book_Up_Amendment.pdf

Appendix 1 Steering Committee Members

Agencies represented on the Consumer Protection Book up Steering Committee are:

Australian Competition and Consumer Commission

Australian Securities and Investments Commission

Consumer Credit Legal Service Western Australia

Financial Counsellors' Resource Project

Department of Consumer and Employment Protection

Book up submission cover sheet

Please include this sheet with your submission

Your family name: _____

Given name(s): _____

Name of Organisation (if any): _____

Your contact address: _____

_____ Postcode: _____

Contact phone number: _____

Do you agree to this submission being made public? Yes No

Can we use quotes or examples from your submission?

Yes No Only if you do not identify me or my organisation.

Note: Your right to privacy and confidentiality will be respected by Consumer Protection. However, the requirements of the Freedom of Information Act 1992 will apply.

Are you making this submission on your own behalf or has an organisation authorised

you to make this submission?

On my own behalf On my organisation's behalf

Name of organisation (if any) in relation to which you are making this submission:

If you are making this submission on an organisation's behalf, please complete the following details:

I certify that I am authorised by the organisation to make this submission:

Signature

Position in association

Your submission must be received by Friday, 18 April 2008

_____ A

Consultation questions

All the questions raised in this paper are listed below. It is set out in such a way that, if you wish, you can write your responses to the questions directly into the pages, cut them out and send them in as your submission, with or without additional information or comment.

Consultation question 1

What knowledge do you have of the practice of book up arrangements, such as:

the types and numbers of consumers that use book up?

the types and numbers of traders that offer book up?

the types of goods or services that are booked up?

Consultation question 2

Have you:

used book up as a consumer?
offered book up as a trader?

Yes
 Yes

No
 No

Consultation question 8

8.1 Which, if any, of the following options do you support? *You may choose a number of options.*

<i>Options</i>	I support this option	I don't support this option	I'm not sure
Leave things as they are. <i>Comment</i>			
Ban book up all together. <i>Comment</i>			
Ban some aspects of book up. <i>If so, which aspects should be banned?</i>			
Focus on developing and promoting voluntary codes of conduct. <i>Comment</i>			
Develop, promote and enforce a mandatory code of conduct. <i>Comment</i>			
Improve education to consumers and traders about good book up practices and how to resolve disputes. <i>Comment</i>			

8.2 What additional comments do you wish to make here?

Consultation question 9

9.1 If you support the development of a mandatory or voluntary code of conduct for book up, what should be covered by such a code?

<i>Areas to be included in a mandatory or voluntary code of conduct</i>	Should be included in a mandatory code	Should not be included in a mandatory code	Should be included in a voluntary code	I'm not sure
Record keeping				
a) Written contracts on the terms and conditions of book up in simple language. <i>Comments</i>				
b) Written agreements on who can use someone's book up account. <i>Comments</i>				
c) Clearly displaying the price of goods on or near the items for sale. <i>Comments</i>				
d) Itemised transaction records for all book up purchases. <i>Comments</i>				
e) Records of all book up transactions and accounts. <i>Comments</i>				

<i>Areas to be included in a mandatory or voluntary code of conduct</i>	Should be included in a mandatory code	Should not be included in a mandatory code	Should be included in a voluntary code	I'm not sure
Restrictions on holding cards and/or PINs				
f) Prohibition on the retention of PINs or banking codes. <i>Comments</i>				
g) Restriction, but not prohibition on the retention of PINs and banking codes. <i>Comments</i>				
h) Prohibition on the retention of key cards or bank passports. <i>Comments</i>				
i) Restriction, but not prohibition on the retention of key cards or bank passports. <i>If so, what should the restriction be?</i>				
j) If key cards are held, a requirement that they be returned to consumers upon request, regardless of any debt owed. <i>Comments</i>				
k) If key cards are held, a requirement that they are held in a secure manner. <i>Comments</i>				
l) If key cards are held, a requirement that the trader indemnifies the consumer against any loss as a result of misuse whilst held by the trader. <i>Comments</i>				

<i>Areas to be included in a mandatory or voluntary code of conduct</i>	Should be included in a mandatory code	Should not be included in a mandatory code	Should be included in a voluntary code	I'm not sure
Restrictions on the use of book up				
m) Limitations on the types of goods and services that can be booked up. <i>If so, what goods and services should not be allowed to be booked up eg alcohol, transport fares, household goods?</i>				
n) Limitations on who can have authority to book up against a consumer's account. <i>If so, what should those restrictions be?</i>				
o) Limitations on amount that can be booked up. <i>If so, what should the limitation be?</i>				
p) A prohibition on selling booked up goods and services at higher prices than those that are not booked up. <i>Comments</i>				
Other areas				
q) Dispute resolution processes. <i>Comments</i>				
r) Provisions for some traders to be exempted from the Code. <i>If so, under what circumstances?</i>				
s) Other provisions that should be included.				

introducing a voluntary code of conduct?

introducing a mandatory code of conduct?

Consultation question 11

What book up community education strategies would you recommend:
for consumers?

for traders?

Thank you for your time and effort - it is appreciated.

Lodging your submission

Please be sure to lodge the cover sheet with your submission

You can post your submission to:
Strategic Development Branch
Consumer Protection
Locked Back 14 Cloisters Square
PERTH WA 6850

Or hand-deliver it to:
Strategic Development Branch
Consumer Protection
Level 7 Forrest Centre
219 St George's Terrace
PERTH WA 6000

You can fax your submission to (08) 9282 0855 or email your submission as a word document to consumer@docep.wa.gov.au.

If you have an enquiry about making a submission, please contact the Consumer Protection Advice Line on **1300 30 40 54** and ask for the Book up Project Officer, or email: consumer@docep.wa.gov.au.

Your submission must be received by **Friday, 18 April 2008**