
Book Up Discussion Paper

Submission to Northern Territory
Department of Justice

January 2006



INTRODUCTION

ANZ is pleased to provide its comments on the Northern Territory Department of Justice Discussion Paper on Book Up.

ANZ applauds the Northern Territory Government's action on this vital issue. Addressing the problems of the book up system is an important step toward improving the financial well being of Indigenous Australians, a objective that is central to ANZ's financial literacy and inclusion programs, which are discussed further in this submission.

ANZ supports the central recommendation in the Discussion Paper to introduce a mandatory code prohibiting conduct relating to book up. This submission will identify the sort of conduct ANZ believes should be prohibited by a mandatory code as well as outline the action ANZ will take to support the policy of a prohibition against book up, including amendment of merchant facility (or EFTPOS) agreements with merchants, education material for merchants and financial literacy training for consumers.

Mandatory Code

ANZ supports the proposal contained in the Discussion Paper to regulate book up through a mandatory code under the Consumer Affairs and Fair Trading Act (the Act). The system of book up poses an unsustainable risk to the consumer, especially when it involves the provision of the consumer's debit card and PIN to the merchant. The Discussion Paper notes the disadvantages associated with book up, including that a consumer can become tied to the trader with whom that consumer has a book up account and is exposed to the fraud of the merchant or a third party with access to the store.

In ANZ's view, the central problem with book up is that it runs contrary to the way bank accounts should operate in the interests of consumers. By disclosing their PIN to a merchant, consumers using book up lose the consumer protections that come with mainstream products. Book up is inconsistent with the policy of Part A of the Electronic Funds Transfer Code of Conduct, which protects consumers from the loss caused by unauthorised electronic transactions on an account except where the consumer contributes to the loss caused by those transactions, for example by knowingly disclosing their PIN or other 'access method' to a third party.

However, ANZ believes that any legislative strategy to address book up must recognise that some Indigenous communities have come to rely on the practice as a convenient source of credit in the absence of any alternative. A complete prohibition against informal 'in-store credit', with breaches subject to penalty under the Act and without any transitional arrangements, may expose consumers who utilise book up as a means to access essential goods and services such as food and other household items to substantial hardship. An immediate complete prohibition is also unlikely to be effective if the merchants engaged in the practice

are not given the benefit of a transition period within which they can change their processes and expectations of their customers.

Any mandatory code should therefore only prohibit a merchant from retaining a customer's PIN, password, code or other instrument that can be used to transact on, or otherwise access funds from, a customer's account. The code should not explicitly prohibit merchants from retaining a customer's bank debit card where the customer has voluntarily provided that card as security for a book up arrangement.

In ANZ's view, the prohibition should not be limited to the retention of a PIN, but should apply to the retention of any password, code or other instrument that enables the merchant to transact on the customer's account in the absence of the customer and/or without the customer's consent. This recognises that some merchants are known to offer credit secured by other account access methods like internet banking passwords and blank withdrawal slips. If focused solely on the retention of PINs, the mandatory code may create loopholes which may be exploited by unscrupulous merchants and may ultimately frustrate the policy of phasing out the conduct.

An approach which leaves scope for a merchant to offer credit secured by a debit card only eliminates the worst of the risk posed to consumers while retaining, at least in the short term, the convenience of book up when it is needed. Merchants will be able to extend credit and retain a card as a means to ensure, or at least increase the likelihood, that the consumer will have sufficient funds to pay down the credit on that consumer's next visit to the merchant. However, consumers will retain the protection provided by the EFT Code against unauthorised electronic transactions on their account and merchants will be effectively prohibited from transacting on a customer's account without their presence or approval. While cards retained by merchants are still subject to a security risk (eg. they could be stolen from the store by a fraudulent store employee or by an intruder), there is no risk to accounts (assuming access to funds requires a PIN). ANZ would also support a requirement that a merchant return a debit card to a customer on request, regardless of whether that customer has outstanding debt with that merchant,

ANZ believes this approach will be an important first step in transitioning merchants and communities to new behaviours. While enforcement, especially in remote areas, will be challenging, the mandatory code will provide an early signal to merchants that the practice of retaining PINs and transacting on a customer's account in the customer's absence is not acceptable. Likewise, the mandatory code will also provide legislative support for those merchants who would prefer to withdraw book up but currently feel obliged by customer (and/or community) demand to continue the service.

To ensure widespread awareness of the mandatory code and to allow sufficient time for affected merchants to change processes and where relevant, inform customers of the removal of book up facilities, any mandatory code should be

subject to a transition period of at least 3 months after it is passed into law. This transition period will also provide more time for the effective of delivery of education programs described below.

Education programs

ANZ believes awareness education for both consumers and merchants is vital to changing behaviour, and therefore ensuring the long term success of any strategy to address book up. Banks, regulators, the NT Government, merchants and indigenous community organisations each have a role in informing and educating affected communities about how measures such as the mandatory code will restrict the availability of book up in the future and how those communities can best adapt to the change. This is particularly important if, as a result of the restriction, some merchants deny credit altogether and consumers are tempted by short-term loan ‘sharking’ as an alternative means of credit.

Merchants also require information in advance of any legislative change so they can:

- understand fully the implications for their business;
- make any required changes to their processes; and
- inform their customers of the withdrawal of, or any change to, the book up services previously provided by the merchant.

ANZ has agreed to assist ASIC in the distribution of its consumer resource *Dealing with book up: a guide*. ANZ is also intending to provide advance warning to its merchant customers about legal prohibition against book up, including the forthcoming amendment to the ANZ merchant facility terms and conditions which will prohibit the retention of PINs (see discussion below). ANZ will include in this information some key messages to be provided by ASIC.

ANZ’s Programs

Beyond education of customers and merchants, ANZ is taking several measures which it hopes will contribute to solving the issues associated with book up.

Merchant terms and conditions

ANZ will amend its merchant facility terms and conditions to reflect its position that the risks associated with book up practices should, as much as possible, be minimised for consumers. The terms and conditions will be amended to prohibit an ANZ merchant for whatever reason, from requesting **and/or** retaining a customer’s PIN or other information which enables the merchant to access the consumer’s account, except with the prior approval of ANZ. The prohibition will be expressed as a material obligation of the merchant’s agreement with ANZ. ANZ’s discretion to approve retention of PINs will be exercised only in exceptional cases and in circumstances permitted by law or any mandatory code. ANZ will

specifically reserve the right to attach certain conditions (which may, for example, include detailed limitations and/or an expiry date) to its approval and to revoke its approval at any time by written notice to the merchant.

ANZ is planning to complete the required amendments to its merchant facility terms and conditions by July 2005. However, we will be communicating to merchant customers about the nature of the amendments and what they mean well in advance of the amendment taking effect.

This amendment to the merchant terms and conditions will encourage improved book up practices by merchants. Breach of the terms and conditions can have several consequences for a merchant including, depending on the nature and consequences of the relevant breach (including whether the breach is isolated or persistent), a chargeback to the merchant of the relevant transaction(s) amount, suspension of the merchant facility and, in the most serious cases, termination of the merchant facility. Other options, such as written warnings and targeted merchant education, may be applied by ANZ in appropriate cases. However, the Northern Territory Government should be aware of the limitations of 'policing' book up practices through merchant facility terms and conditions. Banks will most likely only become aware of prohibited conduct through customer complaints. Further, the ability of a bank to investigate and prove an alleged breach of the prohibition (for example by inspecting the merchant's premises) may be limited without the support of government and regulators.

Notwithstanding these difficulties, amendment to standard merchant facility agreements across the industry is an important outcome to be pursued in conjunction with other measures, such as a mandatory code. It puts merchants on notice of what is acceptable behaviour under the facility, especially where breach of the condition can result in termination of the facility and in the event a mandatory code is introduced, reinforces the policy reflected in legislation.

Financial literacy and inclusion programs

Book up is a symptom of the wider issues of financial literacy and access to safe and appropriate credit in Indigenous communities. Any action to address book up should be in conjunction with measures to address these issues. For its part, ANZ has committed to:

- improving the financial literacy of Indigenous communities so they can make better money management decisions; and
- improving access to appropriate products and services for Indigenous communities, including loans to assist Indigenous people build business enterprises.

MoneyBusiness

ANZ launched MoneyBusiness in conjunction with the Federal Department of Family and Community Services in July 2005. MoneyBusiness is a money

management skills and savings program designed to assist Indigenous communities build financial literacy, budgeting, bill paying and savings skills. The program is currently operating in the remote Northern Territory sites of Katherine and Tennant Creek and will be expanded to Nguiu (Tiwi Islands), Galiwinku (Elcho Island) and Geraldton and Kununurra in Western Australia by March 2006.

The program is partly a response to ANZ research into financial literacy and financial exclusion in 2003 and 2004, which reinforced the position of Indigenous people as among the most disadvantaged groups in Australia with lower levels of financial literacy and poor access to appropriate, fair and safe financial products.

The financial literacy training includes a number of workshops including planning and saving, managing debt and understanding paperwork. ANZ has funded the development of the training so it has particular relevance to the financial literacy issues facing Indigenous consumers. While there is specific education material to guide the financial literacy training, MoneyBusiness is also designed to adapt to local issues. The program is facilitated in each site by trained local Indigenous people who will work with the local community to develop Community Action Plans. These Community Action Plans focus on financial literacy issues which are identified as particularly problematic in the community.

Book up is addressed in the standard training material and is also expected to feature in many Community Action Plans created under the MoneyBusiness program, along with information on alternative money management strategies. ANZ is ready to assist the Northern Territory Government and ASIC in their efforts to distribute education and information to consumers on book up, including for instance, through the MoneyBusiness program.

Saver Plus

Saver Plus is a financial literacy and matched savings program. Its objective is to help those on low incomes increase their knowledge, skills and confidence around the use of money, to develop a long term savings habit and improve their overall well-being. The 'hook' for participants is the matched savings aspect. For every \$1 saved by the participant, ANZ contributes \$1 capped at a total matched amount of \$1000. Participants are required to undergo financial literacy training and work with a Relationship Manager, who facilitates the training, oversees the progress of the saving effort and acts as a mentor and personal savings coach.

An independent study of the program in 2005 showed that while participants were initially attracted by the matched savings aspect, they gained the most benefit from the education and personal support provided.

ANZ has committed to rolling out Saver Plus to Indigenous families involved in MoneyBusiness in early 2006.

Financial literacy partnership with Traditional Credit Union

ANZ has joined with the Traditional Credit Union (TCU) to increase the availability of financial literacy training to Indigenous communities in the Northern Territory. ANZ will fund a Financial Literacy Project Manager to work within TCU to deliver financial literacy training using materials ANZ has specifically tailored for Indigenous communities. The objective of the partnership is to:

- assist TCU and its members access MoneyBusiness; and
- increase TCU members' awareness of the full range of TCU's financial products, including those which are more appropriate alternatives to book up.

Improving access to credit

The reliance on book up in some communities is indicative of the high levels of financial exclusion among Indigenous Australians. By financial exclusion, we mean a lack of access to appropriate, low-cost, fair and safe financial products and services from mainstream providers, where that lack of access causes a level of harm to the consumer.

Research commissioned by ANZ in 2004 showed that Indigenous Australians are among the most financial excluded segments of the community. Further, ANZ's latest research into adult financial literacy in Australia suggests that 97% of Australians hold an ordinary or everyday account with a bank, building society or credit union and the group with the lowest level of holding was Aboriginal and Torres Strait Islanders (90%).

To address this, ANZ has committed to spending \$3 million to expand its current programs to improve financial inclusion, including through microfinance programs (funding, education, mentoring and support) to facilitate the development of Indigenous businesses.

Concluding Comments

ANZ believes book up exposes one of the most disadvantaged segments of the Australian community to an unacceptable risk of fraud, theft, 'unsafe' debt and liability for unauthorised transactions. It compounds the high level of financial exclusion among Indigenous Australians and while providing a convenient line of credit for some consumers, also prevents consumers from investigating safer, more appropriate forms of mainstream credit and in so doing, taking more control over their financial management and well-being.

While ANZ supports a mandatory code prohibiting merchants from retaining their customers' PINs or other access methods, it cannot be the sole solution. To be

successful, the legislative ‘stick’ in the form of the mandatory code must be complemented by:

- a consistent prohibition in merchant facility agreements of banks and other merchant facility providers against the retention by merchants of PINs or other codes or passwords which allow access to a consumer’s account(s);
- awareness and education programs for both consumers and merchants to allow all parties to the current system an opportunity to change behaviour, understand what the mandatory code means for them, and investigate alternatives; and
- financial literacy training, money management support and investment in improving access to mainstream credit products for Indigenous Australians.

ANZ would be pleased to provide any further information about this submission as required, and can be contacted as follows:

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