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# BOOK UP: CURRENT REGULATION AND OPTIONS FOR REFORM

by Nathan Boyle

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## INTRODUCTION

Most people are familiar at least in general terms with the treatment of Aboriginal and Torres Strait Islander peoples during the ‘protectionist’ era of government policy in the late-nineteenth and early-twentieth centuries. During this era, various pieces of legislation were enacted across the country, ostensibly for the ‘protection’ of Indigenous people.<sup>1</sup> While the stated intention was to protect, in effect the legislation provided legitimisation of government control over almost every element of the lives of Indigenous people, including control over employment conditions and wages.<sup>2</sup> In return for their labour, most Indigenous people were provided with ‘rations’ of basic food, clothing and tobacco.<sup>3</sup> Even where Indigenous people were paid a cash wage, governments systemically withheld a proportion of that wage, most often placing it into a trust fund. Money was then meted out to the wage-earner upon request, providing that they had a ‘suitable’ reason for requesting access to this money. Where money was provided from these trust accounts, it was usually sent by cheque which the wage-earner could cash at their local store.<sup>4</sup>

The reliance on local stores to cash cheques, combined with the time it would take for a cheque to arrive, led to a widespread practice of local stores providing goods to Indigenous customers and allowing them to pay when their cheque arrived.<sup>5</sup> This type of informal credit provision is now known as ‘book up’.<sup>6</sup>

In October 2015, the Australian Securities and Investments Commission (‘ASIC’) released a report on book up which published the findings of research conducted by Dr Heron Loban. The research aimed to capture current book up arrangements nationally.<sup>7</sup> This article will begin by discussing the findings of that research and will then look at the way in which book up currently operates under the law, and propose opportunities for strengthening regulation of the practice to better protect vulnerable book up customers.

## DEFINING BOOK UP

Book up is defined by ASIC as a type of informal credit offered by stores or other traders.<sup>8</sup> It generally operates from a business, such as a store, where a person can ‘book up’ items like food and clothing on credit and pay the amount of credit back at a later date.<sup>9</sup> While most commonly offered through stores, book up operations are also provided by a range of other service providers including some taxis and airlines.

**A key factor behind Indigenous consumers accessing book up is a lack of access to banking services that would ordinarily offer financial products, either due to remoteness or a poor credit history.**

## BOOK UP SURVEY—A NATIONAL OVERVIEW

Dr Heron Loban was commissioned by ASIC in 2014 to conduct research and provide a report that explored the prevalence, impact and persistence of book up nationally; that identified key issues of concern with the practice; and that assessed how significant an issue book up is when compared to other financial services problems faced by Indigenous consumers.<sup>10</sup> Dr Loban conducted this research through a series of questionnaires which were sent to financial counsellors working with Indigenous consumers across Australia. Where necessary, respondents were contacted by telephone to elaborate on their responses. Responses were provided by financial counsellors from all states and territories except Tasmania and the Australian Capital Territory.

Responses highlighted that the nature of book up provision is complex. Book up services vary from provider to provider, and are prevalent across the country.<sup>11</sup> The extent to which book up services are used by Indigenous consumers varies, but in some communities book up is heavily relied on.<sup>12</sup> Financial counsellors

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expressed a range of views about book up and its impact on their clients. Most provided examples of situations where they considered book up to be beneficial to their clients, but many also highlighted concerns that unscrupulous book up providers were causing significant problems.<sup>13</sup>

In particular, the respondents highlighted that they were most concerned where a book up provider:

- retained debit cards and personal identification numbers (PINs) to withdraw money from a consumer's bank account at the book up provider's discretion;
- failed to agree on terms and provide documentation to the consumer;
- allowed unauthorised use of a consumer's book up account by family members; and
- booked up debts to such an extent that it created a level of dependency on the service thereby preventing those in that situation from developing budgeting skills and financial independence.<sup>14</sup>

Where the financial counsellors surveyed were aware of book up provision that was beneficial for their clients, they stated that the most positive elements of the service were that it:

- allowed a customer to access small amounts of credit to be used as a personal income smoothing mechanism;
- allowed a customer access to funds when they experienced an unexpected need, such as purchasing clothes to attend a funeral or where grandparents were asked to care for children unexpectedly and utilised book up to buy extra basics like food; and
- provided access to credit immediately without any complicated application process, which is particularly useful where no other sources of credit are available in the location.<sup>15</sup>

Respondents consistently identified that a key factor behind Indigenous consumers accessing book up is a lack of access to banking services that would ordinarily offer financial products, either due to remoteness or a poor credit history.<sup>16</sup> Respondents expressed a desire for book up services to be provided in a safe and ethical manner, and for action to be taken against unscrupulous operators. They also indicated that in order to reduce reliance on book up services, access to other safe and fair financial products would need to increase, and significant investment would need to be made in improving consumer levels of financial literacy.<sup>17</sup>

## LONGSTANDING CONCERNS ABOUT THE EFFECTIVENESS OF LEGISLATIVE PROVISIONS

The ASIC report released in October 2015 is not the first report where issues around unscrupulous book up practices have come

to light. In fact, ASIC released a similar report in March 2002, titled 'Book up: some consumer problems',<sup>18</sup> that highlighted almost identical concerns. Similar concerns were also raised by Northern Territory Consumer and Business Affairs in 2005,<sup>19</sup> the Western Australian Department of Commerce in 2008,<sup>20</sup> and all state and federal consumer protection agencies have identified book up as a key issue since the implementation of the first National Indigenous Consumer Strategy Action Plan in 2005.<sup>21</sup>

Book up reports and discussion papers released by government departments over the last decade or so, such as those mentioned above, have had two consistent themes. First, they have highlighted the benefits of book up for Indigenous consumers, primarily that book up provides access to an otherwise unavailable form of short-term credit which is relied on by many Indigenous consumers to manage their money between pay periods or at times of crisis. Second, the reports have highlighted the potential detriment to consumers from unscrupulous operators. These reports and discussion papers have also noted the difficulty posed to law enforcement agencies and regulators in addressing all but the most significant instances of consumer detriment under the existing legislative frameworks.

Prior to the commencement of the *National Consumer Credit Protection Act 2009* (Cth) ('the National Credit Act'), the regulation of credit was the responsibility of the states, save for the Uniform Consumer Credit Code ('UCCC') which was enacted as template legislation in Queensland,<sup>22</sup> and was replicated in Acts in each state and territory commencing operation on 1 November 1996 (apart from Western Australia which implemented a very similar framework, but did not enact the uniform code until later). The UCCC provides rules for the provision of most credit products and services, including conduct and disclosure obligations for credit providers and enforcement provisions for breaches of the code.

The UCCC is largely replicated as Schedule 1 of the National Credit Act, and the Act also implements a uniform national licensing regime for credit providers. The House of Representatives Standing Committee on Aboriginal Affairs noted in late 2009 that while book up remained a significant problem in most states and territories, ASIC was taking a lead role as the national regulator of consumer credit from November 2009, and this held greater promise for consistency in book up regulation.<sup>23</sup>

## CURRENT REGULATION OF BOOK UP

There is no specific legislation that prescribes the manner in which book up services in Australia must operate. Depending on the way a particular book up service operates, though, it may be captured by other legislation such as the *Australian Securities*

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and *Investments Commission Act 2001* ('the ASIC Act')<sup>24</sup> or the *National Credit Act*.<sup>25</sup>

Most forms of book up provision will meet the relatively broad definition of a financial product under the ASIC Act.<sup>26</sup> This means that the provision of a book up service is usually subject to the consumer protection provisions of that Act, which codify prohibitions on certain types of conduct including, among other things, a prohibition on engaging in unconscionable conduct<sup>27</sup> and a prohibition on harassment and coercion in connection with the supply of credit or financial services.<sup>28</sup>

In contrast, the types of credit activities subject to regulation under the *National Credit Act* are strictly defined.<sup>29</sup> For a book up service to be captured by the provisions of the *National Credit Act*, the debt must be deferred for a period of at least 62 days,<sup>30</sup> it must attract credit fees and charges that exceed 5 per cent of the amount of credit provided,<sup>31</sup> or have interest charges that exceed an amount equal to the amount payable if the annual percentage rate were 24 per cent per annum.<sup>32</sup>

### DO UNCONSCIONABLE CONDUCT PROVISIONS EFFECTIVELY ADDRESS POTENTIAL DETRIMENT FROM BOOK UP SERVICES?

Despite significant concerns about the potential for exploitation of vulnerable consumers by unscrupulous book up providers,<sup>33</sup> little jurisprudence has been undertaken to test the utility of unconscionable conduct provisions in addressing consumer harm. This is not necessarily due to lack of effort from law enforcement and regulatory agencies, but can probably be put down to three factors.

First, statutory unconscionable conduct provisions (in both the ASIC Act and the *Australian Consumer Law*)<sup>34</sup> are subjective provisions that ultimately require a court to determine whether actions taken by a financial services provider—including book up proprietors—are 'unconscionable in all the circumstances'.<sup>35</sup> The legislation provides an extensive, but not exhaustive, list of factors that the court may have regard to in coming to a decision.<sup>36</sup> The subjective nature of these provisions, along with the extensive list of factors available for the court to consider, has meant that various state and federal courts have arrived at different interpretations.<sup>37</sup>

This difficulty in interpretation was recently highlighted by the Consumer Action Law Centre ('CALC'), who identified that two different lines of authority are developing in the realm of statutory unconscionable conduct. CALC's view is that without legislative change, these two lines of authority are likely to continue to water down the effectiveness of the statutory prohibition against

unconscionable conduct.<sup>38</sup> The uncertainty in the way courts may interpret unconscionable conduct provisions makes it 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 or enforceable undertakings) that may provide a quicker and more certain result.

### There is no specific legislation that prescribes the manner in which book up services in Australia must operate.

Second, where regulators have identified suspected unconscionable conduct in book up provision, and instituted proceedings, these have not proceeded to a final judgment in the courts. The most notable example of this was the *Tomarchio* litigation run by the Commissioner for Consumer Protection of Western Australia in 2010,<sup>39</sup> a matter involving a hotelier in Western Australia, Salvatore Tomarchio, who was providing cash loans to Indigenous people. Mr Tomarchio required those who obtained a loan from him to provide him with their bank card and personal identification number (PIN). Mr Tomarchio then used this information to withdraw all or nearly all of the funds from the consumers' bank accounts until the loan (including additional charges of 50 per cent of the funds advanced) was repaid. The Commissioner applied to the Supreme Court of Western Australia for an interlocutory injunction preventing Mr Tomarchio from continuing to engage in this conduct pending the conclusion of their investigation. In his judgment granting the interlocutory injunction, Chief Justice Martin indicated that it was his view that from the evidence available, there was a strong case that Mr Tomarchio had been engaging in unconscionable conduct in the provision of credit to Indigenous consumers. He listed factors including the unequal bargaining position of the affected consumers, the onerous terms on which the credit was provided and the fact that these terms were so far removed from those contained in normal commercial agreements as justification for his preliminary conclusion.<sup>40</sup> Ultimately, however, the matter was settled in mediation, and no final judgment was issued in the proceedings.

Third, in order to prove the requisite elements of unconscionable conduct, it is often desirable, if not essential, to lead evidence from those whom were affected by the alleged conduct. The research report discussed above identified that Indigenous consumers on low incomes residing in regional or remote locations were the most prevalent users of book up services. Leading evidence from

vulnerable witnesses presents a number of challenges. Given the nature of remote communities, affected consumers are likely to have some relationship with the proprietor—whether that be a relationship of friendship or intimidation. The complications of these relationships can make people reluctant to give evidence. Consumers, even where they feel that they have been wronged, may also be reluctant to give evidence because by doing so they realise it may result in them losing access to what they consider an essential service. Providing evidence in court is stressful for even the most commercially and legally savvy witnesses, and regulators must determine whether the benefit of leading evidence in the matter outweighs the level of stress that this may place on vulnerable witnesses, and also must consider whether witnesses' evidence will be strong enough to show the unconscionability of the arrangements.

### DOES THE NATIONAL CREDIT ACT EFFECTIVELY ADDRESS POTENTIAL DETRIMENT FROM BOOK UP SERVICES?

As outlined above, the National Credit Act prescriptively identifies the types of credit arrangements that will, and will not, be captured. In order to prove that a particular book up operation is captured by the National Credit Act, a law enforcement agency must present evidence to the court that any book up debt is deferred for a period of at least 62 days, and either a fee of more than 5 per cent of the total amount booked up is charged, or interest charges equivalent to an annualised rate of at least 24 per cent apply. ASIC provides guidance on best practice book up provision, which includes guidance about best practice record keeping for store managers;<sup>41</sup> however, because there is no formal regulation mandating the way book up should be conducted, the record keeping arrangements vary from store to store. Some stores will follow best practice guidance and keep an itemised account (either written or electronic) of goods booked up by each customer, but as identified by the research, some providers keep no records at all.<sup>42</sup>

Where a book up provider keeps no records at all, or does not properly itemise the goods provided on book up, including the price charged, it seems impossible for ASIC to determine whether or not a fee or interest was charged for the provision of the book up service or to provide evidence of any fee or charge to the satisfaction of the courts. This leaves a gap in book up regulation that could be taken advantage of by unethical operators. Presumably, if an unethical operator wanted to add in a large fee for providing book up services, and avoid potential unlicensed credit proceedings, they could keep no, or limited, book up records, thereby making the conduct almost impossible to prove.

### JUDGMENT PENDING ON BOOK UP PROCEEDINGS TAKEN BY THE CORPORATE REGULATOR

While the application of unconscionable conduct provisions of the ASIC Act in relation to book up provision is still unclear, ASIC has recently concluded civil penalty proceedings in the Federal Court of Australia, the judgment for which is pending but when handed down may go some way to providing clarification.<sup>43</sup> The proceedings were taken against Mr Lindsay Gordon Kobelt, the proprietor of Nobby's Mintabie General Store. ASIC's action alleges that Mr Kobelt sells a range of goods to the public including groceries, fuel and second-hand motor vehicles and that the majority of his customers are Indigenous residents of the APY Lands, some of whom obtain goods from Mr Kobelt's store through book up.<sup>44</sup> ASIC's investigations indicate that when Nobby's book up customers purchase goods, they are required to provide Mr Kobelt with their debit cards and PINs, as well as details about their income. ASIC alleges that Mr Kobelt then uses customers' cards to withdraw all or nearly all of the money in their bank accounts on or around the day they are paid. ASIC says this forces customers to ask Mr Kobelt for more credit and creates a relationship of dependency between the customer and Mr Kobelt. ASIC has taken action against Mr Kobelt because it says that this amounts to unconscionable conduct.<sup>45</sup> ASIC Deputy Chair Mr Peter Kell said

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that: '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.'<sup>46</sup>

As the proceedings by the regulator concluded in July 2015, those interested in the application of unconscionable conduct provisions to book up operations may not need to wait too much longer before the first detailed judgment examining this is handed down.

## ALTERNATE REGULATION

Given that numerous government reports have indicated significant concerns in relation to the provision of book up operations for many years,<sup>47</sup> it seems surprising that the *Mintabie* litigation is the first time proceedings brought by a law enforcement agency against a book up provider have proceeded to trial. It's equally surprising that the *Tomarchio* matter outlined above was the first, and only, time that a public settlement was reached with someone engaged in book up-type misconduct.

The lack of public enforcement action in this space is perhaps an indication of the difficulty regulators face in using current legislative provisions to take action where serious misconduct is alleged. The judgment in the *Mintabie* litigation may clarify the application of the unconscionable conduct provisions of the ASIC Act (and vis-à-vis the Australian Consumer Law) to book up practices by highlighting the elements of book up practice that the courts are likely to view as unconscionable. If this is the case, law enforcement agencies may be more inclined to institute proceedings to address public concerns. However, the proceedings in the *Mintabie* matter were instituted in May 2014, and judgment is yet to be handed down. Even if the court ultimately finds that the way Mr Kobelt operates his book up services is unconscionable in all the circumstances, it seems a terribly long time between the alleged misconduct being identified, and an outcome that would serve to protect vulnerable consumers from ongoing detriment.

ASIC's research report shows that book up continues to be viewed as a valuable service by Indigenous consumers, and fills a market gap in the availability of access to short-term credit, particularly in regional and remote areas.<sup>48</sup> Given these findings, an outright ban on the operation of book up services seems unwarranted, unless access to another form of short-term credit becomes more readily available. However, there seems to be significant opportunity to mandate the way in which book up services operate, and to increase the ability of law enforcement agencies to take action quickly where misconduct is alleged.

**The lack of public enforcement action in this space is perhaps an indication of the difficulty regulators face in using current legislative provisions to take action where serious misconduct is alleged.**

Various pieces of legislation already mandate requirements for financial service providers, and failure to comply can be a strict liability offence. For example, the National Credit Act requires a consumer lease provider to take reasonable steps to verify the financial situation of a consumer.<sup>49</sup> Failure to do so is a strict liability offence and attracts an Infringement Notice penalty of \$8500 for an individual, or \$42,500 for a body corporate. The National Credit Act, however, specifically excludes a range of informal credit provisions (including most book up operations) from its application and does so for good reason. This is because the Act imposes relatively onerous obligations on credit providers—including the requirement to be licensed and undertake responsible lending assessments—which would be impracticable and unnecessary for most types of credit that are not captured by the Act, for example the loan of \$20 to a friend.

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The inclusion of book up as a type of credit captured by the Act may have a whole host of unintended consequences by lowering the threshold of the types of lending captured.

**Book up continues to be viewed as a valuable service by Indigenous consumers, and fills a market gap in the availability of access to short-term credit, particularly in regional and remote areas.**

An alternative would be for an amendment to be made to the ASIC Act mandating unambiguous obligations for book up providers, such as:

- that book up providers must keep accurate itemised records of goods provided on book up;
- stipulating the maximum amount of indebtedness allowable—for example, that book up debts can only be a maximum of \$500 per consumer;
- stipulating the maximum amount that can be taken from a consumer’s income each fortnight to reduce the debt (this could be a dollar figure, or a percentage of the consumers income);<sup>50</sup> and
- requiring book up providers to enter into a plain English agreement with each book up customer that details the terms and conditions on which the service is offered.

It could be legislated that failure to comply with any of these obligations would constitute a strict liability offence and would attract an Infringement Notice penalty. In this way, such a legislative change would first serve as a significant deterrent to poor book up conduct, and second, it would provide law enforcement agencies with the weaponry required to take action to address consumer

detriment quickly. A strengthening of the regulatory framework that applies to book up operations would allow the continuation of this service, which many consumers rely on, while enabling law enforcement agencies to stamp out misconduct. Unless alternative forms of safe and easily accessible credit provision become available, book up will continue to operate—and this isn’t necessarily a bad thing, provided that regulators have the tools they need to ensure that the most vulnerable consumers are adequately protected.

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- 1 See, for example, *Aborigines Protection Act 1869* (Vic), *Aboriginal Protection and Restriction of the Sale of Opium Act 1897* (Qld), *Aborigines Protection Act 1909* (NSW), *Aborigines Act 1905* (WA), *Aborigines Act 1911* (SA) and *Northern Territory Aborigines Ordinance 1911* (Cth).
- 2 The Senate Standing Committee on Legal and Constitutional Affairs, ‘Unfinished Business: Indigenous Stolen Wages’ (Commonwealth of Australia, 2006), 8.
- 3 JT Martinez, ‘When wages were clothes: dressing down Aboriginal workers in the Northern Territory’, in N Balnave, G Patmore and J Shields (eds), *The Past is Before Us: Proceedings of the Ninth National Labour History Conference* (Australian Society for the Study of Labour History and the Business and Labour History Group, University of Sydney, 2005), 175–82.
- 4 Commonwealth of Australia, ‘Report of the National Inquiry Into The Separation Of Aboriginal And Torres Strait Islander Children From Their Families’ (1997), 45–58.
- 5 Gordon Renouf, ‘ASIC Report 12: Book up: some consumer problems’ (2002) 16–18 <[http://download.asic.gov.au/media/1322509/Book\\_Up.pdf](http://download.asic.gov.au/media/1322509/Book_Up.pdf)>.
- 6 The practice of informal credit provision by a store or service

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- provider is known by a variety of names including 'book up', 'book down', 'tiki', 'on the slate' and 'running a tab'. Policymakers and authors have most commonly adopted the name 'book up'.
- 7 Australian Securities and Investments Commission, 'Book up in Indigenous communities in Australia: A national overview' (2015) <[http://download.asic.gov.au/media/3374112/rep451-published-13-october-2015.pdf?\\_ga=1.157342906.1699174567.1453101335](http://download.asic.gov.au/media/3374112/rep451-published-13-october-2015.pdf?_ga=1.157342906.1699174567.1453101335)>.
- 8 Australian Securities and Investments Commission, 'Dealing with book up: Key facts' (October 2012), 8.
- 9 Ibid.
- 10 Above n 7, 4.
- 11 Financial counsellors surveyed as part of the research were asked to provide an estimate of how many of their clients were regular book up customers. Most respondents provided estimates of between 40 and 60 per cent, but two respondents provided estimates of 90 to 100 per cent. See above n 7, 16.
- 12 Above n 7, 5.
- 13 Ibid.
- 14 Above n 7, 7.
- 15 Above n 7, 19.
- 16 Above n 7, 23.
- 17 Above n 7, 30–2.
- 18 Above n 5.
- 19 Northern Territory Consumer and Business Affairs, 'Book Up Discussion Paper' (Northern Territory Department of Justice, 2005) <[http://www.nt.gov.au/justice/docs/cba/community\\_consultation/2005/bookup\\_dispaper\\_1105.pdf](http://www.nt.gov.au/justice/docs/cba/community_consultation/2005/bookup_dispaper_1105.pdf)>.
- 20 Sheilla McHale, 'Book Up comes under the consumer spotlight' (2008) <<https://www.mediastatements.wa.gov.au/Pages/Carpenter/2008/02/Book-up-comes-under-the-consumer-spotlight.aspx>>.
- 21 Ministerial Council on Consumer Affairs, 'Taking Action, Gaining Trust: Action Plan' (2005–2009; 2010–2013; and 2014–2016).
- 22 *Consumer Credit (Queensland) Act 1994*.
- 23 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 'Everybody's Business: Remote Aboriginal And Torres Strait Community Stores' (Commonwealth of Australia, 2009), 95.
- 24 *Australian Securities and Investments Commission Act 2001* (Cth).
- 25 *National Consumer Credit Protection Act 2009* (Cth).
- 26 Ibid: s 12BAA(7)(k) provides that a credit facility (within the meaning of the regulations) is a financial product for the purposes of the legislation. Regulation 2B of the ASIC Act (Cth) defines a credit facility as:
- '(1) For paragraph 12BAA(7)(k) of the Act, each of the following is a **credit facility**:
- (a) the provision of credit:
- (i) for any period; and
- (ii) with or without prior agreement between the credit provider and the debtor; and
- (iii) whether or not both credit and debit facilities are available;'
- and defines **credit** as:
- 'A contract, arrangement or understanding:
- (a) under which:
- (i) payment of a debt owed by one person (a **debtor**) to another person (a **credit provider**) is deferred; or
- (ii) one person (a **debtor**) incurs a deferred debt to another person (a **credit provider**); and
- (b) including any of the following:
- . . .
- (iii) credit provided for the purchase of goods or services.'
- 27 Ibid ss 12CA and 12CB.
- 28 Ibid s 12DJ.
- 29 Above, n 25. Section 6(1)(1b) stipulates that a person engages in a *credit activity* if: 'the person carries on a business of providing credit, being credit the provision of which the National Credit Code applies to . . .' Sections 5 and 6 of the National Credit Code prescribe the types of activity to which the code does and does not apply.
- 30 Ibid Sch 1 s 6(a).
- 31 Ibid Sch 1 s 6(b).
- 32 Ibid Sch 1 s 6(c).
- 33 Above n 7, 5.
- 34 The Australian Consumer Law is Sch 1 of the *Competition and Consumer Act 2010*, and sets out consumer rights that are called consumer guarantees.
- 35 Above n 25, s 12CB.
- 36 Ibid s 12CC.
- 37 Compare, for example, Justice Spigelman's conclusion that unconscionable conduct requires an element of moral obloquy in *Attorney-General (NSW) v World Best Holdings Ltd* [2005] 63 NSWLR 557 with the Full Court's decision in *Australian Competition and Consumer Commission v Lux Distributors Pty Ltd* [2013] FCAFC 90, which concluded that moral obloquy was not a factor the court needed to determine.
- 38 Consumer Action Law Centre, Discussion Paper: 'Unfair trading and Australia's consumer laws' (2015), 10 <<http://consumeraction.org.au/wp-content/uploads/2015/07/Unfair-Trading-Consumer-Action-2015-Online.pdf>>.
- 39 *Driscoll v Tomarchio* [2010] WASC 157.
- 40 Ibid [15]–[16].
- 41 Above n 8.
- 42 Above n 7, 15.
- 43 Australian Securities and Investments Commission, '14–119MR ASIC seeks orders against book up provider for unconscionable conduct and Credit Act breaches' (2014) <<http://asic.gov.au/about-asic/media-centre/find-a-media-release/2014-releases/14-119mr-asic-seeks-orders-against-book-up-provider-for-unconscionable-conduct-and-credit-act-breaches/>>; *ASIC v Kobelt* (SAD100/2014).
- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
- 47 See, for example, Sheilla McHale—Minister for Disability Services; Tourism; Culture and the Arts; Consumer Protection, 'Book up comes under the consumer spotlight' (2008); Northern Territory Consumer and Business Affairs, 'Book up discussion paper' (Northern Territory Department of Justice, 2005); Australian Securities and Investments Commission, 'Book up: Some consumer problems' (2002).
- 48 Above n 7, 9.
- 49 Above n 25, s 153(1)(c).
- 50 There is precedent for limiting the amount that can be taken to reduce a debt to a percentage of a person's income under the protected earnings amount for Centrelink recipients in the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* s 133CC.