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John Hawkins  
Committee Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

17/07/09

Dear Mr. Hawkins

Please find enclosed ICAN's submission to the *Inquiry into the National Consumer Credit Protection Bill and Related Bills*. If you have any queries, please contact me on 07 40311073.

Kind Regards

A handwritten signature in blue ink, appearing to read "Aaron Davis".

Aaron Davis  
Chief Executive Officer

## *Inquiry Into The National Consumer Credit Protection Bill and Related Bills*

### *Summary*

This submission is based on the experience of ICAN in providing advice and advocacy services to indigenous consumers in Far North Queensland. Over the last five years ICAN has identified three major systemic cases in which indigenous consumers have been exploited in the sale of motor vehicles. The cases have involved both fringe and mainstream lenders. The conduct has included:

- Provision of unsuitable finance because the borrowers could not afford the repayments.
- The sale of overpriced motor vehicles – that is, the price of the vehicle was inflated to match the amount of the loan.
- Intermediaries, including car dealers, preferring their own interests to that of the borrowers by packaging the loan with expensive and unnecessary insurance policies and vehicle warranties.

As a result of this extensive casework experience ICAN considers that:

- The National Consumer Credit Protection Bill (*the Credit Bill*) should be extended to car dealers as soon as possible.
- Car dealers should be under responsible lending obligations.
- Lenders should clearly be liable for the conduct of car dealers where they act on behalf of the lender.
- There should be clear and effective sanctions against car dealers who breach these obligations or otherwise act in a way that systematically disadvantages consumers.

### *Role of ICAN*

Located in Cairns, Queensland the Indigenous Consumer Assistance Network Ltd (ICAN) provides consumer education, advocacy and financial counselling services to Indigenous consumers across Australia.

### *ICAN's experience in relation to unfair conduct in the sale of motor vehicles on finance*

Over the last five years ICAN has identified three major systemic cases in which indigenous consumers have been exploited in the sale of motor vehicles. All three cases have been referred to ASIC and the first two have resulted in public outcomes, so that the parties involved are named in this submission.

The matters are:

1. Sale of motor vehicles between approximately 2002 to 2005 in Far North Queensland, the Torres Strait, and the Anangu Pitjantjatjarra Yunkatjatjarra Lands and Port Augusta region in South Australia Far North Queensland, the Torres Strait Islands, and the Northern Territory, with finance arranged by a broker, United Financial Services, and credit predominantly provided by the

Commonwealth Bank. ASIC has issued two press releases on this matter: *06-010 CBA agrees to change lending practices in remote Indigenous communities*, and *08-11 Finance broker pays \$98,000 to support Indigenous communities in Far North Queensland*.

2. Sale of motor vehicles between 2005 and 2006 in Queensland (principally around Cairns), with finance arranged by a broker, Capitalcorp Financial Services, and credit predominantly provided by the National Australia Bank. ASIC has also issued two press releases on this matter: *08-06 NAB responds to ASIC concerns about remote lending practices* and *AD09-49 Finance broker makes payment following ASIC inquiry*.
3. Sale of motor vehicles in 2008 in Cape York, and the Northern Territory (principally around Darwin), with finance arranged by a car dealer, and credit predominantly provided by a niche car finance company. It is understood this matter is still being investigated by ASIC.

The first two matters were similar in nature, although the Commonwealth Bank matter involved significantly more loans. They had the following features:

1. The brokers who arranged the loans handled all contact with the borrower, and controlled the information provided to the lenders. Typically, borrowers were provided with personal loans for around \$20,000 with repayments over a seven-year term.
2. There was no formal relationship between the brokers and the lenders, or payment of commissions by the lenders. It is estimated the broker could earn up to \$2,000 on each loan through upfront fees and commissions paid in relation to the sale of insurances and car warranties.
3. In many cases all contact with the borrowers during the application process was by phone or facsimile. Where the borrower had minimal English the brokers relied on contact with third parties. This affected the quality and accuracy of the information that was submitted with the application.
4. Many borrowers in remote communities experienced significant difficulties in meeting the repayments, often within a few months of the loan being taken out. A particular problem was that the level of living expenses was inaccurate. This had two causes, in ICAN's experience. First, the higher cost of living in remote communities was not taken into account; prices can be up to 20% or 30% higher, depending on the remoteness of the location. Secondly, the application forms could include figures for living expenses that were both understated, and not based on any rigorous assessment of the borrower's financial position. For example, the stated figure would suggest a capacity to save or meet repayments that was inconsistent with bank statements that showed an account that regularly went into debit between Centrelink payments.
5. Following ASIC's intervention, ICAN was able to develop effective and continuing working relationships with both the Commonwealth Bank and the

National Australia Bank. Both banks have acted responsibly both to address the past conduct (by reviewing affected loans) and the future (by appropriately tailoring their lending criteria).

6. The conduct of the brokers and, in some cases, the car dealers was characterised by the following practices:
  - a. Sale of overpriced vehicles – that is, the price of the car would be increased to match the amount of credit available rather than being sold for its market value.
  - b. Documentation would be provided to lenders in the application process that was misleading or internally inconsistent
  - c. Sale of inappropriate or unnecessary warranties and insurances. For example, in some cases borrowers were sold two policies providing the same type of cover, or sold warranties that required them to have their car serviced every three months, when, in some remote locations, this was not economically feasible.

*The third matter* had the following features:

1. The conduct was similar in some respects in that it involved the sale of overpriced motor vehicles to borrowers who could not afford the repayments.
2. A car dealer was responsible for arranging the finance. The car dealer rented a hotel room in a casino in Darwin and sold motor vehicles to Northern Territory without holding an NT motor dealer's licence.
3. The car dealer was in financial difficulties and went into liquidation a few months after sales to consumers in the NT and Cape York. It would appear that the car dealer was urgently seeking upfront funds through the sale of the vehicles and commissions from the finance to try and stave off liquidation, and that this may have contributed to the unfair practices engaged in, in relation to the credit. In particular the car dealer would complete the loan application on a computer where the consumer was either not shown the details or they could be changed before being forwarded to the finance company. The finance was also provided at a rate significantly higher than other lenders such as Esanda Finance would charge, possibly because of the commissions earned by the car dealer.
4. The finance company's general view was that it refused to release consumers from any liability for the conduct of the car dealer, even in one case where the car dealer had not supplied the car to the consumer, and the consumer was entitled to treat both the car sale contract and the finance contract as rescinded.

*ICAN's submissions in relation to car dealers and the National Consumer Credit Protection Bill*

As a result of its experience ICAN considers that:

1. The National Consumer Credit Protection Bill should be extended to car dealers as soon as possible.

2. Car dealers should be under responsible lending obligations.
3. Lenders should clearly be liable for the conduct of car dealers where they act on behalf of the lender.
4. There should be clear and effective sanctions against car dealers who breach these obligations or otherwise act in a way that systematically disadvantages consumers.

#### *Extension of the National Consumer Credit Protection Bill to car dealers*

ICAN understands that car dealers were covered as intermediaries by the draft Finance Brokers Bill prepared by NSW and released by the Ministerial Council of Consumer Affairs in November 2007.

ICAN also notes that car dealers are appointed to act as authorised representatives by the holders of Australian Financial Services Licences (AFSL), as the sale of insurances and car warranties is a regular feature of car sales. Given the similarity between the Australian Credit Licence (ACL) and this licensing scheme it would appear that there is no significant impediment to lenders appointing car dealers as credit representatives. Lenders would presumably only be reluctant to do so where they do not want to take responsibility for the conduct of the car dealer. Where they have concerns about the nature of the car dealer's business it is desirable that the car dealer should then meet the standards for obtaining a licence in their own right.

ICAN's experience shows that the sale of motor vehicles can be a significant financial commitment and that there is significant potential for car dealers to cause detriment to consumers. Given the above matters ICAN therefore is of the strong view that the Credit Bill should be extended to car dealers as soon as possible.

#### *Car dealers should be under responsible lending obligations*

Car dealers and intermediaries arranging car finance can have significant financial incentives to ensure loans are approved. These incentives can include:

- Profit on the sale of the motor vehicle.
- Commissions from the lender.
- Commissions from the sale of financial products, such as insurances and car warranties.

ICAN's experience is that these incentives have resulted in the systematic provision of finance that is irresponsible, or that may be unsuitable under the Credit Bill. ICAN therefore considers that the responsible lending obligations should apply to car dealers when the Credit Bill is applied to car dealers.

ICAN supports the obligation on holders of an ACL to ensure that their clients are not disadvantaged by any conflict of interest in Section 47(1) of the Credit Bill, as a complementary measure to address this type of conduct.

#### *Lenders should clearly be liable for the conduct of car dealers where they act on behalf of the lender*

ICAN's experience is that there is more likely to be better lending decisions where there is an ongoing relationship between the lender and the car dealer. Where this is the case the lender, through its commercial relationship with the car dealer, can exert a greater degree of control over the operation in relation to the provision of credit.

However, this arrangement is most effective where the lender is ultimately accountable to the consumer and liable for poor lending decisions. In this respect ICAN notes that Section 130(3) enables a lender to avoid responsibility for verifying information provided by intermediaries. The failure to verify information was one of the key factors in the poor lending practices observed by ICAN, even where verification was patently warranted; for example, because a family of four was said to have living expenses of only \$100/month.

*Clear and effective sanctions against car dealers who breach these obligations or otherwise act in a way that systematically disadvantages consumers*

The Credit Bill's ultimate sanction for systemic misconduct is exclusion from the credit industry, with ASIC having power to suspend or cancel an ACL, or impose conditions on it, or, in the case of individuals, being able to ban them from engaging in credit activities.

For these sanctions to operate most effectively ICAN considers that:

- The exclusion of car dealers during the transition period should operate in a way that conduct of the car dealers in this period is relevant to whether or not they should be granted an ACL, and that still allows individuals to be banned.
- The legislation specifically identifies systemic misconduct as a matter relevant to whether or not an ACL should be granted or cancelled, and as a ground relevant to banning.
- The legislation specifically identifies a failure to hold a licence as required by a State or Territory law as a matter relevant to whether or not an ACL should be granted or cancelled, and as a ground relevant to banning. ICAN's experience with the car dealer in the third matter shows that a preparedness to flout the law in this respect by not being licensed can be an indicator of a more general reluctance to comply with legislative responsibility, and it should therefore be expressly identified as a relevant consideration in the Credit Bill.