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AUSTRAC
Guidance Consultation

Via email: Guidance_Consultation@austrac.gov.au

Dear Sir or Madam,

AUSTRAC DRAFT GUIDANCE: ASSISTING CUSTOMERS WHO DON'T HAVE CONVENTIONAL IDENTIFICATION

ABOUT US

Indigenous Consumer Assistance Network (ICAN)

The Indigenous Consumer Assistance Network Ltd (ICAN) provides consumer education, advocacy, and financial counselling services to Aboriginal and Torres Strait Islander consumers across North and Far North Queensland, with a vision of "Empowering Indigenous Consumers".

Indigenous peoples living in regional and remote communities often experience heightened consumer disadvantage. Structural barriers and an uncompetitive marketplace in remote and regional communities create conditions in which consumer and financial exploitation occur. In line with its vision to empower Indigenous consumers, ICAN provides Indigenous consumers with assistance to alleviate consumer detriment, education to make informed consumer choices and consumer advocacy services to highlight and tackle consumer disadvantage experienced by Indigenous peoples.

Consumer Action Law Centre

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

INTRODUCTION

Our organisations welcome the opportunity to provide feedback on the Draft Guidance on assisting customers who don't have conventional identification.

The feedback below provides general comments on the AUSTRAC guide, both current ("Current Guide") and draft ("Draft Guide") and our experience of how banks and financial institutions have applied the Current Guide. We also provide feedback and recommendations on specific sections of the Draft Guide. Finally, we provide case studies to highlight some of the challenges that customers and their advocates have faced when it comes to identifying people experiencing vulnerable circumstances.

GENERAL COMMENTS

Banks, and the products and services they provide, are critical conduits for facilitating access to peoples' essential needs and managing day to day life. For banking and financial services to be inclusive and allow for full participation in the economy by everyone in the community, it is necessary that people who don't have customary forms of identification documents to still have access to banking and financial services.

There are many reasons why people may not have access to customary forms of identification and face difficulties in accessing essential banking services as a result. We regularly witness the significant stress and financial exclusion that occurs when people without conventional forms of identification cannot access basic banking services because their alternative forms of identification are rejected. The AUSTRAC guidance on assisting customers who don't have conventional identification is therefore an important guide that banks and other financial services need to apply broadly and flexibly.

We acknowledge the work of AUSTRAC in providing specific examples of the barriers that exist for people who experience particular social, cultural or situational circumstances. The new section regarding customers affected by a natural disaster is a welcome addition to the specific examples provided. First Nations peoples; prisoners, and those transitioning out of prison; victim-survivors of family violence and people affected by a natural disaster are all at risk of financial exclusion when they are unable to provide conventional forms of identification. It is important, however, that the application of the guide by banks and financial institutions is not limited to just those customers who

fall within the above examples or in the list of customers who may be affected on page 1 of the Draft Guide.

We therefore welcome the explicit statement that the list provided on page 1:

> *"is not an exhaustive list and there may be other circumstances that make it difficult for a person to identify themselves or to access conventional identity documents."*

As the Draft Guide rightly highlights, there can be multiple intersecting circumstances that result in the person being unable to access customary forms of identification. The AUSTRAC Guide should not be used by banks and financial service providers to put people into simple categories with automated responses for each category. Rather, the breadth and flexibility of the Current and Draft guides mean that banks and financial service providers need to take a tailored approach which focuses on understanding and working with the person in front of them to find an option for verifying their identity that is going to work for the customer within time frames that are realistic for the customer to meet.

The Approach of Banks and Financial Institutions to the Application of the Guide

In our view, the Current Guide and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument* 2007 (AML/CTF Rules) upon which it is based, have always provided a broad and flexible approach to identifying people using alternative forms of identification. This is explicit in the Current Draft which states that:

> "*the AML/CTF Rules give guidance about what reliable and independent documentation can be, they do not provide a comprehensive list*."

This statement appears to have been dropped from the Draft Guide.

In our experience, banks and financial institutions have failed to apply the Current Guide broadly and flexibly and have instead interpreted it narrowly, thereby creating significant barriers to banking and financial services for people already experiencing vulnerable circumstances. For this reason, we believe that the Draft Guide needs to be as explicit as possible about the flexibility provided by the AML/CTF Rules.

We therefore recommend that the above statement is not dropped from the Draft Guide and is included after the sentence:

"*The [AML/CTF] provides you with the flexibility to use alternative identification that is reliable and independent*." Or immediately before the sentence: "*There may also be other sources that you can use to independently verify the customer's identity*."

Another significant challenge faced by customers and consumer advocates when seeking to rely on the Current Guide is the lack of transparency in how and when different financial institutions apply it. Policies and procedures relating to the application of the guide are not clear to either customers, advocates or the representatives within the bank tasked with interpreting and applying the guide. This creates significant confusion, time delays, miscommunication about what is required and stress for all involved and importantly it further disadvantages the very people it is meant to benefit.
We strongly urge banks and financial institutions to apply the Draft Guide and the AML / CTF Rules in a transparent, broad and flexible way as intended.

In addition to the above, we have been advised by representatives within banks that the online platforms to which identification forms are uploaded as part of application and online processes have not been designed to accept alternative forms of identification. This means that even if the bank will accept an alternative form of identification, a person cannot take advantage of online application processes to identify themselves and obtain the service. This poses particular challenges for people in regional and remote areas who then have to go to the nearest bank branch which can be hundreds of kilometres away.

We strongly urge banks and financial institutions to review their online platforms and ensure that they will allow a broad range of alternative forms of identification to be uploaded.

SPECIFIC RECOMMENDATIONS

Below are our views and recommendations on specific parts of the draft guide.

Applying a Risk-Based Approach

Throughout the Draft Guide there is reference to banks and financial services applying "risk-based assessments" to determine the suitability of the documentation provided as required by the AML/CTF Rules. In our experience, these assessments take a narrow, standardised approach that fails to consider the individual circumstances of the person seeking to rely on alternative forms of identification. Furthermore, the assessments all too often fall on the side of rejecting the alternative

identification. No explanation for how the assessment was undertaken, the basis for the rejection or how it might be appealed is provided when this occurs.

This is clearly demonstrated in the work that ICAN is doing in Lotus Glen Correctional Centre, where Queensland government Corrective Services identification which includes a photo of the person has generally been rejected by banks and financial institutions for all people in prison and, in most cases, those transitioning out.[1] In our view, the AML & CTF Rules and the Current Guide are broad enough to allow for this form of identification. However, there appears to be a blanket approach to all people in prison under which they are assessed as posing an AML/CTF risk regardless of their circumstances. In fact, very few people in prison pose such a risk. We do not have data regarding the number of people serving prison sentences for money laundering or counter terrorism financing. However, we note that the most recent ABS data about prisoners does not list money laundering, counter terrorism financing or any money related offences in its 'Most Series Offence or Charge' data.[2]

Through denying alternative forms of identification to people in prison, banks and financial services are excluding basic banking services to a group of people in the community who already experience significant financial exclusion.

We strongly urge banks and financial institutions to take a tailored and transparent approach to risk management that genuinely takes the circumstances of the individual into account. It should go without saying that most customers, and particularly those experiencing vulnerable circumstances, are not engaged in money laundering or counter terrorism financing, which is what the identification rules within the AML/CTF Rules are directed at protecting against. The risk management approach of banks should reflect this reality.

Finally, we have seen instances where banks and financial institutions have assessed a person as low risk and opened accounts based on alternative forms of identification but on the condition that the person later provides customary forms of identification. We have then seen that when they have

[1] Anecdotally, ICAN has been advised by some support workers that post-release from prison, Corrective Services identification may *sometimes* be accepted in *some* branches. However, this appears to be contingent on the individual being escorted by a support worker and dependant on the branch. A universal approach is required.

[2] See ABS Prisoners in Australia data https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release

failed to provide further identification the account is suspended. Where a person has been assessed as low risk and their account history (once established) provides no indication that their risk profile is high, there should be no reason for their account to be suspended. The alternative identification initially provided should be regarded as reliable and independent.

Referee Statements

In the section headed "Assessing whether a referee statement is 'reliable and independent", we hold concerns about the reference to reliance on a template form. While template forms can assist in clarifying the information required by the institution, they can also create barriers if they become the exclusive means by which relevant information is accepted and if there are different templates used across different institutions. Not all referees will know about the template; where to find it; or be able to download / access it.

We strongly recommend that the Draft Guide make clear that a flexible approach must be taken to templates which allows the institution to also accept non-template referee statements if the required information needed is included in them. It should be possible for advocates and customers to access information about what is required within a referee statement through transparent policies that can be accessed online or via a phone call to the institution.

If a template is to be required, it ought to be standardised across all financial institutions and readily accessible to advocates and customers.

We note that we are unable to comment on the example templates provided by AUSTRAC as these have not been provided as part of the consultation.

Government Correspondence

We particularly welcome the explicit reference on page 5 of the Draft Guide to the acceptance of identification documentation issued by relevant state and territory governments and in particular corrective service agencies. However, we strongly recommend that this reference be broadened to include people in prison as well as those recently released.

People in prison face significant barriers to accessing the most basic of banking services because they do not have access to any customary forms of identification while inside. This results in them being unable to pay bills and debts which then grow during their time in prison and are unmanageable

upon their release. For banks to remain inclusive and accessible, it is critical that they provide tailored support to people during their incarceration and as they transition out into the community. Such support aligns with community expectations that the human rights of people in prison are upheld, they are treated with dignity and that they have access to services that reduce re-offending. Both prisoners and Corrective Services staff assisting them have advised us of the need for Corrective services identification documents to be accepted by banks and financial institutions. To date this has not occurred. The Review of the Code of Banking Practice recommended that this be included in guidance and the Banking Code Compliance Committee has recommended that banks accept corrective service identification as 100 points of identification for people in prison. It is therefore important that the Draft Guide be amended to also reflect the ability of prisoners (and not just those transitioning out) to provide this government form of identification.

People in prison are unable to access any other forms of identification. Therefore, the Draft Guide must also make clear that government documentation from Corrective Service agencies is sufficiently reliable and independent to satisfy the required 100 points of ID needed to engage in banking services. If this form of identification is reliable enough to identify people locked up in our prisons, then it is surely reliable enough in allowing people to access basic banking services.

We hold concerns that under the Draft Guide banks and financial institutions are to determine what is considered a reasonable timeframe for the date of government correspondence. In our experience the timeframes set by institutions are unrealistic and unreasonable. For example, government documents such as Centrelink statements have had to be current with the last 24 to 48 hours in circumstances where the person cannot easily access their local Centrelink office. We suggest that a defined minimum timeframe of 90 days within which government correspondence may be dated be provided.

Similarly, we have seen many cases where a recently expired licence has been rejected by the relevant institution when a licence is the only accepted form of identification the person has. We welcome the reference in the Draft Guide to people who don't hold a current licence and suggest that it be strengthened by reference to a recently expired licence being an alternative form of identification at least until such time as the person can provide a current licence. This would assist in avoiding a common 'chicken and egg' scenario where a person cannot get one document without the other but can't get the other document without the former one.

Aboriginal and Torres Strait Islander Customers

In our experience, many Aboriginal and Torres Strait Islander peoples continue to experience significant barriers by banks and financial institutions when it comes to identifying themselves. These barriers particularly exist for Aboriginal and Torres Strait Islander peoples living in regional and remote communities because of branch closures. Banks and financial institutions continue to insist that people present in branch to identify themselves in circumstances where the nearest branch can be 100kms away. As stated above, where an online option is available, the online platform may not accept or allow alternative forms of identification to be uploaded, restricting the options for uploading identification to customary forms of identification.

We have also had an example of someone who identifies as Aboriginal and Torres Strait Islander who had customary sources of identification available, only for her bank to deny her the use of these identification forms and instead insist on an Indigenous specific form of identification which she did not have and did not need.

We welcome the reference to alternative forms of identification not being needed where conventional forms of identification are available.

We are concerned that this section of the Current and Draft Guides and the specific sections of the guide may be read narrowly with the effect that the options provided in them are the only options considered by banks and financial institutions when identifying people who fall within the relevant examples. We acknowledge that the following statement tries to address this:

> "*There may also be other sources that you can use to independently verify the customer's identity.*"

However, given how narrowly the Current Guide has been interpreted to date, we recommend the addition of a more explicit statement after the above:

> "*It is important that all of the options provided throughout this guide be considered*."

Finally, it appears that some referees referred to in the general section of the Draft Guide are not referred to in the list of referees in the section regarding Aboriginal and Torres Strait Islander customers. For instance, there is no reference to:

- a manager or warden of a refuge or shelter accommodation or homeless shelter; and

- the reference to medical services only refers to Aboriginal health service when it should also include general medical services as per the list in the general section.

We strongly recommend that the list in the general section be replicated in the section regarding Aboriginal and Torres Strait Islander customers **with the addition of**:

- Services Australia (Centrelink) staff
- a recognised Elder; and
- An official from an Aboriginal or Torres Strait Islander organisation, or a board member of a local Aboriginal Land Council.

Family Violence

On page 4 of the Draft Guide under the section on referee statements, there is reference to the referee providing details about the person's personal circumstances. An example relating to family violence is included as follows:

> *"For example, for people experiencing family and domestic violence, the referee may include relevant details of any family violence or intervention orders, family violence related charges, findings of guilt or convictions against a current or former partner.*"

While the guide does state that referee's '*may include*' these details, we are very concerned that banks and financial institutions will apply this narrowly and require details and evidence of the violence.

Advocates for victim survivors have done significant work in highlighting the need to minimise the level of detail and evidence about the violence that a victim survivor has to provide to financial institutions. For this reason, we recommend that the above line be deleted and in the section on family violence, the following be included:

> "*It is important that victim-survivors of family violence and their relevant advocates, referees and support persons are not asked to detail or provide evidence of the violence they have experienced. A statemen by the referee to the effect that they have experienced family violence and why this has impacted on their ability to access identification documents should be considered sufficient."*

Requirement for transparent processes

As stated above, it is important that banks and financial institutions provide accessible and transparent information about their policies and procedures for assisting customers who don't have conventional identification. As well as requiring banks and financial institutions to "keep a record of [their] decisions and outcomes" we recommend that the Draft Guide include a requirement to publish their approach to alternative identification options and/or make this available to customers and their advocates on request. In our experience, there is often confusion and inconsistent approaches by representatives of banks and financial institutions who are themselves uncertain of the approach taken by their institution. This results in significant delays, miscommunication and stress for the person trying to access the banking services.

Monitoring and enforcing compliance with the guide

In our experience, banks and financial institutions do not always have effective approaches to assisting customers who don't have conventional forms of identification. Their approach may be ad hoc, inconsistent, or inaccessible. This means that people experiencing the most vulnerable circumstances in the community continue to face barriers to accessing banking services despite the existence of the guide. We believe that there needs to be greater oversight, monitoring and enforcement of the processes used by banks and financial institutions when applying the AUSTRAC guideline. A coordinated approach led by either ASIC, AUSTRAC, the Australian Banker's Association, the Banking Code Compliance Committee or the Australian Financial Complaints Authority is needed to ensure banks are providing accessible, efficient and fair banking services to people experiencing vulnerable circumstances. A regular annual review of banks' compliance with the AUSTRAC guide is also needed to achieve consistency, accountability and transparency across institutions.

The Code of Banking Practice only refers to the AUSTRAC guide in the context of assisting Aboriginal and Torres Strait Islander customers. We believe this should be broadened to include all customers who need to use alternative forms of identification. In our view, a breach of the AUSTRAC guide is a breach of contract between the bank and its customer and it should be treated as such by the bank and the Australian Financial Complaints Authority.

CONCLUSION

For banks to remain inclusive and accessible, it is critical that they provide tailored support and alternative identification documentation options to people who cannot access customary forms of identification. We welcome the updated Draft Guide for assisting customers who don't have

customary forms of identification. It re-affirms the broad and flexible approach of the Current Guide and also clarifies sections of the guide.

Yours Sincerely,

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Operations Manager

Indigenous Consumer Assistance Network

Gerard Brody

CEO

Consumer Action Law Centre

CASE STUDIES

Sarah's Story

Our financial counsellor who is based on Palm Island has been assisting a young mother with two children whose account and key card were suspended by her bank which means she cannot access any money. Sarah (not her real name), can't see her accounts on her Bank app or when she signs into the bank online. Our financial counsellor contacted the relevant bank and Sarah was able to identify herself using her telephone banking password. The bank advised that it had attempted to contact her a couple of months ago as she had to update her personal details. However, as the bank didn't get through to her, it suspended her account. Sarah has her driver's license/Medicare card and photo ID on her. Our financial counsellor is an accredited financial counsellor and member of the Financial Counsellor Association of Australia. However, Sarah and our financial counsellor were advised that the documents Sarah had are not sufficient for the bank to lift the suspension. They wanted her to complete the Aboriginal ID form and get this certified by a JP/Police or other. Our financial counsellor queried why this was when Sarah had sufficient verification to satisfy 100 points of ID as well as a financial counsellor available to witness these – why does she need to be inconvenienced further by going and finding someone to verify her ID. The bank representative answered: "Because that's just the form we need to be completed."

Ernest's Story

Our financial counsellor sent her authority advising that we were seeking information about the status of Ernest's account to a major bank. She received the following response:

> "Please note we will require a copy of the members signature bearing photo ID to be able to proceed with applying the authority. If the signature on the authority does not match our records we will require a posted copy of the member's certified photo ID to be able to proceed with applying the authority".

After our financial counsellor contacted the bank to explain that Ernest is in prison and has no usual ID, the Financial Counsellor was advised that he would need to complete a stat dec (JP'd) as to why he has no ID and then also provide the Corrections Form 7 confirming incarceration. Once received they would see if this could be accepted in conjunction with the financial counselling authority. When we raised concerns about this approach, the bank have advised that Ernest can provide a copy of his medicare card and Corrections ID to get the information he needs.

Sam's Story

Following his release from prison, Sam was supported by a local mental health support worker to attend his local CBA Branch in person to reopen his bank account which had been closed while he was in prison.

While the local Branch Manager could confirm that his Correctional ID documentation met the bank's 100-point requirement, as his existing profile within the bank included his middle name and the Correctional ID did not (despite all other ID indictors corresponding), she was unable to open an account for his Centrelink money to be deposited.

Feedback provided to Correctional Staff Member by Community based Mental Health Worker.

John's Story

John was recently released from prison and was without any identification other than his Corrective Services release paperwork. Prior to his release John had been encouraged to apply for his Qld Transport Proof of Age Card ***whilst in prison****. This is because Qld Corrective Services had negotiated a streamlined process with Qld Transport whereby Corrections ID would be an accepted form of ID to meet the 100-point requirements for Qld Transport. John however did not have the $73.00 to pay for the Proof of Age card.*

Having been released and now able to pay the Qld Transport fee, John was unfortunately unable to take advantage of the streamlined process established by Corrections and Qld Transport because he was no longer in prison, which was a requirement of the streamlined process. He therefore had to meet the standard 100-point requirements. John applied for his Medicare Card and a new ATM Card, both of which can take weeks to arrive in the mail. Having reapplied for Centrelink, he was also issued a Health Care Card. To meet the 100-point requirements however, John would need his birth certificate or Passport. To apply for his birth certificate, he would need a Proof of Age Card, Drivers Licence or Passport. In short John faces a predicament in which he is unable to get a birth certificate without a proof of age card or licence and is unable to get a proof of age card or licence without a birth certificate. Without photo ID John is unable to prove his identity for banks, prospective employers, and real estate agents.