



ASIC
Australian Securities &
Investments Commission

Inquiry into economic self-determination and opportunities for First Nations Australians

Submission by the Australian Securities and Investments Commission

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Executive summary

- 1 The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to make a submission to the Parliamentary Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (Committee) on the [Inquiry into economic self-determination and opportunities for First Nations Australians](#) (inquiry).
- 2 We note the inquiry's terms of reference and have provided information in this submission to inform the Committee of:
 - (a) the role and priorities of our Indigenous Outreach Program (IOP);
 - (b) the Key Learnings from our Indigenous Financial Services Framework ([Framework](#));
 - (c) opportunities identified through engagement with the financial services sector to support the access to and interaction with the financial system that is necessary for the genuine self-determination of First Nations peoples;
 - (d) the challenges experienced by First Nations peoples when engaging with the financial system and the opportunities for achieving economic self-determination; and
 - (e) examples of egregious and predatory business practices exploiting existing challenges, and targeting and adversely impacting economic participation and self-determination by First Nations peoples and communities, including where ASIC has taken regulatory action to address such practices.
- 3 Our submission draws on various accounts that we have heard from First Nations peoples, communities and advocates, including action we have taken as a result of this information.

A ASIC's role and recognition of economic self-determination for First Nations peoples

Key points

ASIC's vision is for a fair, strong and efficient financial system for all Australians. We recognise the importance of equity in access and self-determination as part of economic participation in Australia's financial system.

Our IOP team works with industry, service providers and government agencies to influence systemic change and drive positive financial outcomes for First Nations peoples.

The Key Learnings in ASIC's Framework highlight several areas that relate to the economic self-determination and opportunities of First Nations peoples.

The role of ASIC

- 4 ASIC is Australia's corporate, markets, financial services and consumer credit regulator.
- 5 Our vision is for a fair, strong and efficient financial system for all Australians. We realise our vision through the use of our regulatory tools to:
 - (a) change behaviours to drive good consumer and investor outcomes;
 - (b) act against misconduct to maintain trust and integrity in the financial system; and
 - (c) help Australians be in control of their financial lives.
- 6 We recognise the importance of equity in access and self-determination as part of economic participation in Australia's financial system. Our vision for reconciliation, as outlined in our [Reconciliation Action Plan](#), is that Aboriginal and Torres Strait Islander peoples have the freedom to pursue and achieve the financial lives they value.
- 7 This extends to ASIC's commitment to engage with businesses—including First Nations businesses—to provide information, understand the issues, challenges and opportunities arising, and take action against harmful business conduct. We listen to First Nations businesses through direct engagement with business operators and First Nations business associations, and through collaborative initiatives with other government agencies.

- 8 Our [enforcement priorities](#) also highlight misconduct and harm impacting First Nations consumers as an enduring priority for our enforcement-focused activities.

ASIC’s Indigenous Outreach Program and the National Indigenous Consumer Strategy

- 9 As part of acknowledging the unique experiences of First Nations peoples’ access to and engagement with the financial system—including identifying and addressing harmful, predatory and egregious business practices adversely impacting First Nations peoples—we established a dedicated [Indigenous Outreach Program](#) in 2009.
- 10 The IOP team is a specialist team working across ASIC to provide advice, insights and guidance to the organisation to ensure the needs and requirements of First Nations investors and consumers are understood and addressed appropriately, effectively and in a way that is culturally sensitive and responsive.
- 11 The IOP team also works with stakeholders across a range of channels to understand challenges, consider innovative solutions and influence systemic change to provide positive financial outcomes for First Nations peoples and communities. These stakeholders include First Nations peoples and communities, consumer advocates supporting and servicing First Nations consumers, the financial services sector and broader service providers including government agencies.
- 12 Engagement with these stakeholders takes several forms, including outreach activities, formal and informal engagements, attendance and participation in relevant networks and forums and ASIC’s Indigenous Help Line.
- 13 ASIC has also been a member of the [National Indigenous Consumer Strategy](#) (NICS) since it was established in 2005. NICS includes representatives from consumer agencies from all Australian states and territories, ASIC, the Australian Competition and Consumer Commission and the Indigenous Consumer Assistance Network (ICAN).
- 14 NICS works collaboratively to develop, maintain and implement action plans outlining a range of strategic priorities aimed at improving consumer outcomes for First Nations peoples. First Nations consumers’ access to and engagement with the financial system—including any challenges experienced—is interconnected with their ability to exercise consumer rights, as well as rights to self-determination.

ASIC's Indigenous Financial Services Framework

- 15 In February 2023, ASIC launched the [Framework](#). It outlines four Key Learnings—informed by Guiding Principles—that were developed through extensive consultations with a range of stakeholders on First Nations peoples' access to and engagement with the financial system. ASIC committed to a First Nations-led process and outcome in developing the Framework. This process placed First Nations peoples' voices and experiences at the heart of the Framework as an expression of the human right of self-determination.
- 16 There is incredible cultural diversity within and across First Nations communities. This includes unique governance structures, economies, trade relations, and knowledge and management systems. However, there are also commonalities across First Nations cultures in relation to how money and financial decisions are managed.
- 17 ASIC's Framework, including the Key Learnings and Guiding Principles, refers to the broader existence and operation of First Nations economies. Recognition of these economies, paired with the capacity to listen to First Nations communities on what economic prosperity looks like and how it can be achieved, is crucial for addressing the barriers to economic self-determination and opportunities discussed in [Section B](#).
- 18 The Key Learnings of the Framework are interconnected and overlap. They focus on the importance of truth-telling in building an understanding of economic self-determination and how this can be facilitated with First Nations communities into the future. The Key Learnings are as follows:
- (a) First Nations peoples had unique, established economies before colonisation. These economies continue today, and should be understood, respected and maintained.
 - (b) First Nations peoples have been prohibited and excluded from participating in the Australian financial system.
 - (c) Financial wellbeing affects all aspects of First Nations peoples' lives.
 - (d) First Nations peoples have many different versions of financial success. This needs to be accepted and encouraged. All First Nations peoples should be empowered to achieve their vision of success.
- 19 The Key Learnings are directly relevant to the current inquiry by the Committee—that is, First Nations peoples' experiences when engaging with the financial system as retail consumers are likely to significantly affect the pursuit of economic self-determination and opportunities presented.
- 20 The Guiding Principles acknowledge that the human rights of First Nations peoples must be recognised and respected. This includes the right to maintain and strengthen distinct economic, social and cultural institutions,

while retaining the right to participate fully in the economic life of Australia and its financial system. This is particularly relevant to the terms of reference of this inquiry and their focus on self-determination, given the economic paradigms that many First Nations peoples exist between.

- 21 These economic paradigms are described on page 5 of the Framework as a ‘meeting place’:
- This is where the intersection of First Nations peoples’ knowledge, protocols, practices and experience can be juxtaposed and interlinked with the complex financial services systems, including regulatory laws, policies and standards, as well as the legal system and policies of the government of the day.
- 22 While economic empowerment and development opportunities enable strong participation for some, many First Nations peoples’ attempts to access and engage with various financial services can be difficult. This is due to ongoing challenges with meeting systemic requirements that ignore lived experiences, even when those challenges are a result of historic prohibition and exclusionary policies. Some of these challenges are explored below, in ‘Challenges that create an environment for financial services misconduct’.
- 23 The concept of economic self-determination and opportunities for First Nations peoples has broader implications on the overarching self-determination and strength of individuals and communities. It gives rise to the opportunities to live in accordance with the systems, structures and protocols that have long sustained First Nations cultures, as detailed on page 15 of the Framework:
- We also had an economy long before the English came. Near the Kimberley, mob was trading with people from Indonesia as well. There was a trading economy that was vibrant and established. We have a position now of trying to figure out how we fit into the current economy or more importantly how the current economy fits in with us.
- 24 ASIC’s Framework also provides essential historical context on why First Nations peoples’ experiences as financial participants are different to those of other cohorts of the Australian population. This is essential context in discussions around the economic self-determination of First Nations peoples.

B Challenges and opportunities for economic participation by First Nations peoples

Key points

ASIC's IOP team engages with the financial services sector to highlight the challenges and experiences of First Nations consumers and to promote best practice and innovative solutions that industry can have a role in.

This section shares some of these insights and the challenges that First Nations peoples, small businesses and advocates have shared with ASIC, and those highlighted as part of ASIC's industry workshops.

At times, egregious and predatory businesses target First Nations consumers and communities, exploiting the existing challenges that they face. These business practices can create significant and detrimental outcomes for First Nations peoples' economic empowerment and inhibit economic self-determination. Where ASIC identifies serious harm and misconduct of this kind, we take appropriate regulatory actions.

Opportunities to facilitate economic self-determination by First Nations peoples

- 25 The long-term outcomes identified in ASIC's Framework require stakeholders to consider their respective roles in First Nations peoples' economic self-determination. ASIC's role in progressing these long-term outcomes has involved encouraging industry to consider and respond by providing accessible and appropriate financial products and services, and facilitating positive and culturally appropriate experiences for First Nations consumers.
- 26 During and since the development of the Framework, we have hosted [workshops for financial services representatives and associations](#) on challenges experienced, barriers to access and issues of importance to First Nations peoples. The summary documents of these workshops are made public on ASIC's website as a resource. The workshops included:
- (a) industry-specific workshops with the credit and banking (October 2021), superannuation (May 2022) and general insurance (June 2022) industries outlining a range of opportunities to support positive financial outcomes for First Nations peoples;
 - (b) a combined financial services sector workshop (May 2023) covering First Nations data and impact measurement insights, effective communications and a place-based, community-led showcase initiative;

- (c) the Indigenous Super Summit (June 2023) for superannuation associations and fund representatives;
 - (d) a combined financial services sector workshop (November 2023) focusing on understanding and responding to identification challenges for First Nations consumers; and
 - (e) a combined financial services sector workshop (March 2024) focused on identifying and supporting First Nations consumers experiencing financial abuse.
- 27 These workshops explored a range of challenges, many of which are long-standing and complex barriers to economic participation by First Nations peoples. The primary aim of the workshops has been to build a stronger understanding across industry of what the challenges are, how they may present and how industry can effectively assist their First Nations customers.
- 28 Opportunities for improvement and collaboration to support the positive economic engagement of First Nations peoples continue to be identified through these workshops. Of most significance is the need for industry collaboration and best practice engagement with First Nations communities. Specific examples include:
- (a) building a stronger understanding of what best practice engagement with First Nations communities looks like and in turn what this cohort of consumers needs;
 - (b) embedding a [flexible approach to identification](#) when a customer does not have standard identification or their identification documentation has inconsistencies;
 - (c) providing well-resourced First Nations engagement channels staffed by culturally capable and sensitive team members and promoting these channels through tailored and effective communications;
 - (d) developing a clear purpose for the collection of data on consumers identifying as First Nations persons to add value and provide the ability to measure the impact of specific activities and initiatives; and
 - (e) considering product design and disclosure that meets the needs of First Nations peoples.

Experiences of First Nations businesses

- 29 ASIC values engagement with First Nations businesses. This includes through regular stakeholder engagement, such as First Nations business and federal agency networks.
- 30 We are aware that First Nations businesses often engage with ASIC for our registry function and to access regulatory information. We expect this

engagement to increase with the recent machinery of government change returning business registers and related services from the Australian Taxation Office to ASIC.

- 31 We understand that some of the challenges experienced by First Nations businesses are similar in nature to non-Indigenous businesses (e.g. tight labour markets, supply chain challenges, the current high interest rate and inflation environment, cyber resilience and cash flow management).
- 32 However, First Nations businesses also have unique experiences—for example:
- (a) similar to the ‘meeting place’ described in paragraph 21, corporate governance structures that do not accommodate existing concerns about a lack of legislative protections for First Nations cultural knowledge and intellectual property, allowing non-Indigenous businesses to gain commercial advantage without cultural authority or compliance with cultural protocols;
 - (b) non-Indigenous businesses misrepresenting or intentionally structuring business ownership to gain commercial advantage and priority procurement status through the Australian Government’s [Indigenous Procurement Policy](#);
 - (c) government funding arrangements requiring inconsistent corporate structures, which in turn requires First Nations peoples to have the knowledge and capacity to move from one corporate regime to another in order to be eligible; and
 - (d) concerns with a lack of legislative protections for First Nations cultural knowledge and intellectual property, allowing non-Indigenous businesses to gain commercial advantage without cultural authority or compliance with cultural protocols.
- 33 ASIC has a registry function that services over 3.3 million companies and 2.8 million business names (as at April 2024). There is a lack of accurate and comprehensive data on how many of these are First Nations businesses. This makes it difficult to measure the growth and achievements of First Nations businesses.

Challenges that create an environment for financial services misconduct

- 34 ASIC is aware—through the work of the IOP team and a range of engagement channels—that there are persistent and long-standing challenges experienced by First Nations peoples when accessing and engaging with the financial system. Many of these challenges contribute to an environment where First Nations peoples can be preyed on by unscrupulous operators seeking to exploit vulnerabilities. Some examples of these challenges are discussed below.

Remoteness and limited access to services

- 35 As examined through the inquiry into bank branch closures in regional Australia and covered in the [subsequent report](#), the distance between some communities and basic services (such as banking) can be vast. This can be exacerbated by extreme weather events, rendering some areas inaccessible by land for parts of the year. There are also few services, including physically present banking services, in most remote areas, requiring residents to travel hundreds of kilometres to access services.
- 36 This leaves remote communities with fewer choices in meeting their day-to-day needs. The remaining choices may not present a safe or appropriate avenue to meeting these needs, leaving consumers vulnerable to exploitative and targeted practices such as those detailed in the following examples.

Example 1: Consumer lease provider overcharging vulnerable consumers

After receiving reports of misconduct from financial counsellors operating primarily in Broome and Alice Springs and a subsequent investigation, ASIC raised concerns with Local Appliance Rentals (LAR)—a national consumer lease provider operating through a franchise model—regarding its compliance with responsible lending obligations and supervision of its franchisees: see Media Release ([18-337MR](#)) *Local Appliance Rentals to remediate customers and pays \$257,500* (8 November 2018).

LAR franchisees were operating in regional and remote parts of Australia, including areas with high First Nations populations (e.g. Broome, Katherine, Tiwi Islands and Thursday Island). ASIC's investigation examined franchisees' practices and consumer leases entered into between April 2011 and August 2018. We were concerned that LAR was failing to make reasonable inquiries about consumers' financial situations, receiving excess payments from consumers and not adequately supervising its franchisees.

LAR subsequently entered into a court enforceable undertaking to, among other things, remediate consumers who had been overcharged. LAR was also required to appoint an independent compliance consultant and pay a community benefit of \$100,000 towards consumer advocacy and financial counselling services delivered by The Smith Family.

Example 2: Queensland car yard lender dealing unjustly with vulnerable consumers

Following concerns raised by ICAN, ASIC commenced an investigation into Mr Colin Hulbert and his lending and brokerage companies—Channic Pty Ltd (Channic) and Cash Brokers Pty Ltd (Cash Brokers)—regarding loans entered into for vehicles purchased at a car yard that was also owned and operated by Mr Hulbert: see Media Release ([17-108MR](#)) *Queensland car yard lender ordered to pay over \$1.2 million after breaching consumer credit laws* (7 April 2017).

Many of the consumers that Channic entered into loan agreements with were vulnerable First Nations community members from the remote community of Yarrabah. These loans had a 48% interest rate, and Channic did not assess whether the loans were suited to the consumers' requirements.

In court proceedings, Channic and Cash Brokers were found to have breached responsible lending obligations, with Channic also being found to have engaged in unconscionable conduct and unjust transactions. A combined penalty of over \$1.2 million was applied to the parties, including a \$220,000 penalty for Mr Hulbert. The court also ordered a total of \$47,699 in compensation to affected consumers.

Example 3: Outback retailer accessing Centrelink income of vulnerable consumers

A retail provider selling household goods was operating 10 Urban Rampage stores across regional and remote locations in Western Australia, Northern Territory and Queensland. The business provided a deferred deduction arrangement, which allowed goods purchased at its stores to be repaid through Centrepay deductions: see Media Release ([24-084MR](#)) *ASIC orders end to Centrepay credit arrangements in Urban Rampage stores* (26 April 2024).

The store was required to comply with design and distribution obligations and defined its target market as low-income consumers residing in remote communities without access to other forms of retail credit.

ASIC received complaints through consumer networks and engagement with customers of the store entering financial hardship and presenting for emergency relief after entering deduction arrangements.

We issued a final stop order against the business, stopping it from signing up consumers to Centrepay credit arrangements. We found that those arrangements were unsuitable for consumers in the target market, because the arrangements were unlikely to be consistent with their financial situation and placed them at risk of financial hardship.

Note: This stop order is now subject to review before the Administrative Appeals Tribunal.

Difference in language and cultural values

- 37 Many remote First Nations communities speak their own traditional languages as a first language. Often, English may be a second, third or even fourth language that a person speaks. In some instances, individuals may be speaking a form of Aboriginal English rather than Australian English.
- 38 There can also be differences in cultural values that influence interactions, including the tendency towards gratuitous concurrence by First Nations peoples: see Example 4.

Example 4: Insurer unconscionably selling policies over the phone

Select AFSL Pty Ltd (Select) and related entities' business practices were the subject of a case study in the final report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission). Select was ultimately found to have engaged in high pressure sales tactics to 'overbear the free will of consumers' in their sales of insurance policies over the phone: see Media Release ([23-182MR](#)) *Select AFSL, related companies and managing director penalised a combined \$13.6 million* (4 July 2023).

A number of the consumers were First Nations consumers from remote communities, whose first language was not English. Many did not understand the products they were sold—in some cases, they did not understand that they had been sold a policy at all. The court found that several of the First Nations consumers had a socio-cultural tendency towards gratuitous concurrence. Other consumers were clear that they did not wish to purchase anything. When a consumer tried to cancel a policy, Select's retention agents instead 'ignored the express wishes of the consumers ... and acted so as to wear them down'.

Select and related entities were found to have engaged in conduct that was unconscionable, coercive and amounted to undue harassment, as well as making false or misleading representations. The parties subject to the proceedings were penalised a combined \$13.6 million.

Importance of supporting community ventures

- 39 First Nations peoples also place a high importance on supporting initiatives that are operated for the benefit of their communities, particularly where they are operated by First Nations peoples. There is no singular legal definition for what constitutes a First Nations business, but companies captured by the Australian Consumer Law are prohibited from misrepresenting themselves and their products to consumers.

Example 5: Funeral expenses provider misrepresents itself as an Aboriginal business

Over many years until it entered external administration in 2022, the Youpla Group Pty Ltd (Youpla) and its related entities sold and administered funeral-related products to First Nations communities around Australia. It was also a case study in the Financial Services Royal Commission.

ASIC took some of the entities to court over false representations in marketing and point of sale documentation. The court found (on appeal) that Youpla and a related entity had engaged in such conduct, including misrepresenting that the business was owned or managed by Aboriginal people and that the product—the Aboriginal Community Funeral Plan—provided for a lump-sum payment, rather than operating on a reimbursement basis up to the nominated benefit amount: see the [Youpla Group page](#) on the ASIC website.

ASIC has heard and continues to hear of the ongoing trauma left in the wake of Youpla and the misconduct it was found to have engaged in.

Digital exclusion and navigating personal identification challenges

- 40 As covered in-depth in our [workshop on identification challenges](#) in November 2023, many First Nations peoples have limited or no formal or conventional identification documents. This is a national experience, but it generally increases with remoteness. Example 6 outlines the impact this has on First Nations consumers.
- 41 This is important because often the threshold for any Australian to experience meaningful economic engagement is to satisfy conventional identification verification processes.

Example 6: Prohibitive identification verification practices

A First Nations customer residing in a remote location was attempting to reactivate a bank account through the bank's Indigenous help line. The customer did not speak English as a first language and was prohibited from having their financial capability worker assist in verifying their identification. The customer was advised to visit a bank branch in person, which they were unable to do, and was sent verification forms to an email address that they were unable to access. It took multiple attempts to contact the bank over three weeks before the customer could access their bank account.

Outcomes from supporting First Nations consumers through these challenges

- 42 It is important to note that many of the challenges outlined in this submission occur at key points at which First Nations consumers and businesses seek to engage in opportunities to advance their economic self-determination. However, limited access to the support, capacity and service provision needed to navigate these challenges may directly hinder First Nations peoples from pursuing economic self-determination and opportunities within the existing economic infrastructures.
- 43 In the same vein, the benefits of supporting and advancing First Nations peoples' economic self-determination and opportunities—whether through employment, training or business development—have significant positive flow-on effects for First Nations cultures and communities.
- 44 Evidence suggests that First Nations owned businesses are more likely to hire First Nations workers, which has particular positive outcomes in remote areas where there are higher unemployment rates. First Nations employment can also accelerate wealth generation within a historically excluded and dispossessed population, lead to more culturally supportive working environments, and create financial autonomy and wellbeing in ways that create broader community benefits.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Cash Brokers	Cash Brokers Pty Ltd
Channic	Channic Pty Ltd
Committee	Parliamentary Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
Framework	ASIC's Indigenous Financial Services Framework
ICAN	Indigenous Consumer Assistance Network
inquiry	Inquiry into economic self-determination and opportunities for First Nations Australians
IOP	ASIC's Indigenous Outreach Program
LAR	Local Appliance Rentals
NICS	National Indigenous Consumer Strategy
Select	Select AFSL Pty Ltd
Youpla	Youpla Group Pty Ltd