

Exploring Financial Disengagement of Indigenous Australians: Culture Matters

May Fong Cheong, Kunle Ola, Graeme Lyle La Macchia, and Ian Lam*

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*Financial disengagement of Indigenous Australians stems from external and internal sources. External factors include geographical location, unemployment, lower income, and lower financial literacy. Internal factors relate to Indigenous cultural norms of sharing which influence money management practices. The High Court of Australia's decision in *Australian Securities and Investments Commission v. Kobelt* highlights the cultural practice of 'demand sharing' and the use of the 'book-up' system within remote Indigenous communities. The majority 4:3 decision that Mr. Kobelt did not engage in unconscionable conduct with his practice of the book-up system with Indigenous customers indicates the relevance of cultural lenses in evaluating unconscionable conduct in Indigenous context.*

Applying an Indigenous Standpoint Theory and using a mixed methodology of statistical and reflective analytical approaches with Indigenous oral testimonies, this article demonstrates that culture matters and that connection to culture and community is key to Indigenous Peoples' identity and strength. It provides resilience and is foundational to well-being, including financial wellbeing. Thus, effective design and implementation of financial literacy and capabilities programs worked by, or in consultation and collaboration with, Indigenous Peoples will contribute to financial engagement of Indigenous Australians. The lessons learned could also apply broadly to promoting financial engagement of Indigenous Peoples in the CANZUS nations.

* May Fong Cheong, LL.B (Hons) (Malaya), LL.M (NUS), PhD (Sydney), Diploma in Shariah Law and Practice (IIUM), GCHE (ACU), FHEA; Associate Professor, School of Private and Commercial Law, Faculty of Law & Justice, UNSW Sydney; Adjunct Professor, Multimedia University. Mf.cheong@unsw.edu.au

Kunle Ola, LL. B (Benin), LL.M (South Africa), PhD (ACU), GDAML (ACU), GCHE (ACU), SFHEA, Senior Lecturer, Thomas More Law School, Australian Catholic University. kunle.ola@acu.edu.au

Graeme Lyle La Macchia, BA (Hons)(Melb), MA (Deakin), PhD (ACU); Sessional Lecturer (Global Law), Griffith Law School Gold Coast campus; Indigenous Engagement and Development Fellow, Griffith Film School Southbank. grlamacchia@acu.edu.au; binyup26@gmail.com

Ian Lam (a.k.a. Yi Bao), M Econ (Hons)(Sydney), LL.M (UTS), GDAML (ACU), GCHE (ACU); Associate Lecturer, Thomas More Law School, Australian Catholic University. Ian.Lam@acu.edu.au

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INTRODUCTION

Eddie Mabo's challenge of the Queensland Government on the precolonial land interest of Indigenous Australians¹ is a reminder that Indigenous Peoples consider community rather than the individual as the bedrock of society.² The High Court of Australia's seminal decision in *Australian Securities and Investments Commission v. Kobelt* ("ASIC v Kobelt")³ highlights the prevalence of Indigenous communal living evident in the cultural practices of sharing and 'demand-sharing' that has influenced their approach to money and money management practices. Indigenous cultural practices and communal living have an impact on the financial wellbeing of Indigenous Peoples. Financial commentators like Vinita Godinho have noted that "in regional and urban areas, 'Money' is inextricably linked to a wider ongoing challenge to re-conceptualize Indigenous cultural identity and roles in relation to mainstream or Non-Indigenous Australia".⁴

A study on how Indigenous People relate and talk about money found that Indigenous Australians are more likely to experience financial stress (49%) than the general Australian population (11%).⁵ More than three quarters of participants reported they give money to their families. Money has become a commodity in Indigenous sharing economy that both benefits and hurts financial resilience.⁶ Recognising the emphasis on 'sharing' or 'communal ownership' that prevails in Indigenous communities, families and even government-supported Indigenous-controlled organisations can help banks and the financial system understand how Indigenous Australians think and manage money, and provide solutions that promote better financial resilience.⁷ The retention and maintenance of traditional community relationships continues to cement cultural confidence and solidarity of many Indigenous Australians.⁸ On a broader level, many First Nations communities, families and individuals perceive the *community* – not the individual - as the fundamental unit of society.

¹ This article adopts the term "Indigenous" to refer to the two distinct cultural groups of Aboriginal and Torres Strait Islander peoples. It recognises that this will not fully reflect the diversity of the First Nations Peoples in Australia. The terms "Indigenous Peoples", "Indigenous Australians" and "First Nations Peoples" are used interchangeably. In recognizing Indigenous diversity, in this article unless otherwise stated, these references refer to Indigenous Peoples who reside in remote or regional areas as well as in urban centers.

² *Mabo & Other v Queensland (No.2)* (1992) 175 CLR 1.

³ (2019) 93 ALJR 743; (2019) 267 CLR 1, [2019] HCA 18. The 4:3 majority decision of the High Court that the 'book-up' system practiced by Mr. Kobelt in a remote Indigenous community did not amount to unconscionable conduct within section 12CB of the *ASIC Act 2001* raised important questions on the Court's (divided) views on the impact of cultural factors in evaluating unconscionable conduct. This article examines the views of the majority judges on the Indigenous cultural norm and practice of 'demand sharing' which influenced their decision that Mr. Kobelt's book-up system was not disadvantageous to his Indigenous customers, thus Mr. Kobelt's conduct was not unconscionable. The article also considers the views of the dissenting judges that decided otherwise.

⁴ Vinita Godinho, "Money, Financial Capability and Well-being in Indigenous Australia" (PhD Thesis, RMIT University, 2014) iii, iv. See also Vinita Godinho, Kathleen Eccles and Lauren Thomas, "Beyond Access: The role of microfinance in enabling financial empowerment and wellbeing of Indigenous clients: lessons from remote Australia" (2018) 24(2) *Third Sector Review* 57; Vinita Godinho et al, "When Exchange Logics Collide: Insights from Remote Indigenous Australia" (2017) 37(2) *Journal of Macromarketing* 153.

⁵ Megan Weier et al, "Money Stories: Financial Resilience among Aboriginal and Torres Strait Islander Australians (First Nations Foundations)" (May 2019) Centre for Social Impact and National Australia Bank, <https://www.csi.edu.au/media/NAB_IFR_FINAL_May_2019_web.pdf> at 16.

⁶ *Ibid.*, at 16.

⁷ *Ibid.*, at 16. See also Penny Taylor and Daphne Habibis, "Widening the Gap: White Ignorance, Race Relations and the Consequences for Aboriginal People in Australia" (2020) 55 *Aust.Jnl.of Social Issues* 354.

⁸ Nicolas Peterson, "On the Persistence of Sharing: Personhood, Asymmetrical Reciprocity, and Demand Sharing in the Indigenous Australian Domestic Moral Economy" (2013) 24(2) *The Australian Journal of Anthropology* 166.

When community is the bedrock of social and cultural existence, it is logical and necessary for *communal ownership* to prevail over any other version – including individual ownership and the rights of the individual citizen. For most Indigenous Australians - and for Indigenous Peoples more generally – Indigenous rights, as collective rights, are understood to be distinct from and are significantly more valuable than human rights.⁹ While Eurocentric philosophical and institutional tradition frame human rights through notions of the primacy of individualism, it has been argued that “[c]ollective rights are more aligned with Indigenous cultural realities. Since the late 20th Century, First Nations participants at the United Nations have repeatedly sought to move beyond human rights”.¹⁰ The cultural context of the First Nations’ *communal* and *collectivist* traditions provide an important lens to explore financial disengagement of Indigenous Australians in the economic and financial landscape of Australia.

This article positions and locates the discussion on financial disengagement of Indigenous Peoples within the cultural emphasis of sharing and argues that financial literacy programs for Indigenous Peoples must be tailored to take cognizance of Indigenous distinctive cultural norms and implemented with cultural contexts. Effective design and implementation of financial literacy and capabilities programs worked by, or in consultation and collaboration with, Indigenous Peoples will increase financial engagement of Indigenous Australians.

The article is presented in six parts. Part I analyses *ASIC v Kobelt* with emphases on the views of the majority (and dissenting) judges on the cultural norm of demand sharing contributing to the 4:3 decision that Mr. Kobelt did not engage in unconscionable conduct with his practice of the book up system with Indigenous customers. Part II provides the theoretical framework using an Indigenous Standpoint Theory. Part III explains the authors’ intentional choice to use the terminology “*financial disengagement*” instead of “financial exclusion” used in current literature. Part IV analyses the causes of financial disengagement using the latest available statistics. Part V discusses Indigenous Peoples’ cultural views on money and money management practices. Part VI highlights the importance of respecting Indigenous cultural norms and cultural competency in designing and implementing financial literacy programs by, or in consultation and collaboration with, Indigenous Peoples.

The article adopts a mixed methodology of statistical, theoretical, and reflective analytical approaches with oral testimonies from an Aboriginal elder and researcher who is a co-author of this article.¹¹ The inclusion of oral testimonies is important as it acknowledges the preferred mode

⁹ Irene Watson and Sharon Venne, “Talking up Indigenous People’s Original Intent in a Space Dominated by State Interventions” in Elvira Pulitano, eds, *Indigenous Rights in the Age of the UN Declaration* (Cambridge University Press, 2012) 93. See also Claire Charters ““Finding the Right Balance’ A Methodology to Balance Indigenous Peoples’ Rights and Human Rights in Decision-Making” (2017) NZ L Rev 553 on a methodology to achieve a normatively fair balance between Indigenous individual human rights, Indigenous peoples’ collective and evolved human rights, and Indigenous peoples’ rights to authority. For a historical account, see Catherine J Iorns Maggallanes, ‘International Human Rights and their Impact on Domestic Laws on Indigenous Peoples’ Rights in Australia, Canada and New Zealand’ in Paul Havemann, eds, *Indigenous Peoples’ Rights in Australia, Canada & New Zealand* (New Zealand: Oxford University Press, 1999) 235 and that beginning in the 1970s, “international human rights law recognised the rights of indigenous peoples to exist as distinct separate people with their own cultural identity”.

¹⁰ C Charters, *Ibid*, note 9, at 96. See also P.G. McHugh, “New Dawn to Cold Light: Courts and Common Law Aboriginal Rights” (2005) NZ L Rev 485 on the “legalization” of aboriginal rights in the common law jurisdiction of North America and Australasia.

¹¹ The oral testimonies are provided by Dr Graeme Lyle La Macchia, an Indigenous Australian man and a member of the Gumbaynggirr and Yuin communities of coastal NSW. See Part II and Part V below.

of communication (oral testimony) by Indigenous Peoples¹² and reflects the adoption of the Indigenous Standpoint Theory. While acknowledging the diversity of Indigenous experiences, this article explores financial disengagement of Indigenous Australians, particularly in remote or regional areas. The common themes of culture and communal living may also find resonance in other First Nation contexts in jurisdictions such as Canada and New Zealand.

I. *ASIC v Kobelt*: Demand sharing, the book-up system and unconscionable conduct

The landmark case, *ASIC v Kobelt*, presented the High Court of Australia with a unique opportunity¹³ to consider the issue of unconscionable conduct in the context of the “book-up” system that was practiced by storeowner Mr. Kobelt with his Indigenous customers. This case highlighted the Indigenous cultural norm and practice of “demand sharing” as well as vulnerabilities faced by some Indigenous Australians due to geographical remoteness, limitations of education, impoverishment, and limitations of financial literacy. These vulnerabilities were acknowledged by the High Court,¹⁴ which are indicative of the wider structural problems, including financial disengagement that must be addressed in Indigenous communities, particularly in Australia’s regional and rural areas.

In *ASIC v Kobelt*, the Australian Securities and Investment Commission (“ASIC”) in their regulatory role commenced action against Mr. Kobelt for an alleged infringement of section 12CB of the *ASIC Act 2001* for unconscionable conduct in supplying financial services in trade or commerce using the book-up system. Mr. Kobelt operated a store known as “Nobbys Mintabie General Store (“Nobbys”)”, supplying food, groceries, fuel and second-hand cars in a remote community approximately 1,100 km from Adelaide, the capital city of South Australia. His customers were Indigenous Peoples residing in remote communities in the Anangu Pitjantjatjara Yankunytjatjara Lands.

The Full Court accepted that “Mr. Kobelt’s Anangu customers’ poverty and lack of financial literacy made them vulnerable in their dealings with Mr. Kobelt”.¹⁵ Under the book-up system, in order to obtain credit, the customers gave to Mr. Kobelt their debit cards (including key card and the personal identification number), which were linked to their bank accounts where wages or welfare payments (via Centrelink) were credited. Mr. Kobelt would withdraw the funds (at least 50%) to reduce the customers’ debt and leave the remaining 50% for them to purchase groceries (generally limited to purchasing milk, bread and meat).¹⁶ Most of the book-up credit was for the sale of second-hand motor vehicles; often vehicles that had been driven in excess of 200,000 km without statutory warranty and imposed with an expensive credit charge.¹⁷ Mr. Kobelt knew most of his customers and was aware of their financial circumstances but did not inquire about their capacity to repay their debts before entering the book-up arrangement.¹⁸ His record-keeping

¹² See Vinta Godinho et al, “Learning About the Money-Story through Stories, Art and Silences: Applying Indigenous Research Methodologies” (2015) 8(1) *Creative Approaches to Research* 132.

¹³ Commentators have described it as a missed opportunity; see Gabrielle Golding and Mark Giancaspro, “Steering Statutory Unconscionability Out of a Jam at Last: *Stubbings v Jams 2 Pty Ltd*” (2021) 43(8) *Bulletin (Law Society of South Australia)* 42, and notes 38 and 39 below.

¹⁴ *ASIC v Kobelt*, *supra* note 3, at paras 167 and 235 per Nettle and Gordon JJ; at para 312 per Edelman J.

¹⁵ *Ibid*, at para 11.

¹⁶ *Ibid*, at paras 23 and 24.

¹⁷ *Ibid*, at para 26.

¹⁸ *Ibid*, at paras 26, 27 and 29.

was “chaotic”, and customers were not given any record of withdrawals or account statements.¹⁹ There was, however, no suggestion that Mr. Kobelt was dishonest or that the withdrawals were not authorized. Further, the Anangu customers had a basic understanding of the system and could cancel their cards or arrange for their Centrelink payments to be credited to a different account.²⁰ By a 4:3 majority, the High Court held that Mr. Kobelt did not act unconscionably in using the book-up system with his customers.

The majority concurred with the Full Bench of the Federal Court findings that Mr. Kobelt’s conduct was not unconscionable, while the dissenting judges agreed with the primary judge’s findings of Mr. Kobelt’s unconscionable conduct. Both the primary judge and the Full Court accepted that Mr. Kobelt’s customers were vulnerable and that Mr. Kobelt knew of his customers’ special disadvantage.²¹ The focus of this article²² is the contrasting views of the majority judges and the dissenting judges concerning the impact of the Indigenous cultural norm and practice of “demand sharing” and “boom and bust” spending patterns²³ in assessing unconscionable conduct of Mr. Kobelt’s use of the book-up system.

Kiefel CJ considered that the book-up system allowed the Anangu customers to avoid “demand sharing” and “ameliorating the effects of the boom and bust cycle of expenditure”.²⁴ Gageler J stated that the Anangu customers using the book-up system “allowed them to manage customary obligations to share their resources with their relatives” and that the Anangu people’s continued participation in the book-up system suited “their own preferences and distinctive cultural practices”.²⁵ Keane J described Mr. Kobelt’s services as a banker and supplier which allowed his customers to avoid the practice of demand sharing or “humbugging” as a positive

¹⁹ *Ibid*, at para 31.

²⁰ *Ibid*, at paras 30 and 31.

²¹ *Ibid* at para 235.

²² It is not within the scope, nor is it the aim, of this article to analyse the Court’s views on the elements, and the threshold standard required, of unconscionable conduct under s 12 CB(1) of the *ASIC Act*. To set this out concisely, the difference is the higher threshold that the majority ascribed to statutory unconscionability. Noting that the term used is “unconscionable” (rather than less morally tainted terminologies such as “unjust”, “unfair” or “unreasonable”), the majority judges referred to the term “moral obloquy and considered that the assessment for the finding of unconscionability is a “heavy-one”. As Mr. Kobelt had not taken advantage of his customers’ disadvantaged situation and the customers had some understanding of the book-up system (thus an element of choice), the majority concluded that Mr. Kobelt’s conduct was not so offensive as to be unconscionable. The minority judges, on the other hand, took a less restrictive view relying on the legislative history of statutory unconscionability which supports an interpretation that the threshold of statutory unconscionability must be lower than that required of equitable unconscionability. Focussing on the book-up system and the way it was implemented, the minority held that the book-up system took advantage of the Indigenous customers’ vulnerabilities, and which offered them no real choice or alternative except to transact with Mr. Kobelt on his terms.

²³ “Demand sharing” refers to “an Anangu social obligation requiring sharing of resources with specific categories of kin, under which the giver has a responsibility to share and the recipient the right to share”. A “boom and bust” expenditure refers to spending as money becomes available without consideration of the medium to long-term consequences”, see *ASIC v Kobelt*, *supra* note 3, at para 171 per Nettle and Gordon JJ.

²⁴ *Ibid*, at para 69 referring to the Full Court’s acceptance of this view relying on the statements of Dr Martin, an anthropologist who gave evidence on Indigenous cultural values and practices, and the Renouf report (see *infra* note 44 discussed below).

²⁵ *Ibid*, at paras 109 - 110.

advantage.²⁶ Concluding that these distinctive cultural practices should be respected, the majority upheld the Full Court's decision²⁷ that Mr. Kobelt's conduct was not unconscionable.

Paradoxically, it is questionable whether the majority judges gave too much weight to cultural factors: in this respect, the over emphasis on Indigenous agency and the advantages of the book up system (to avoid demand sharing and manage finances in the bust stage of the boom and bust cycle) led the majority to conclude that Mr. Kobelt's conduct using the book up system was not unconscionable. The dissenting judges' views on this issue were more guarded. Nettle and Gordon JJ considered that demand sharing "can give rise to bullying or exploitation" and while participating in the book-up system may give "some customers a degree of control over boom and bust expenditure patterns and an excuse to avoid demand sharing requests ... none of that render Mr. Kobelt's conduct any the less conscionable".²⁸ Crucially, Edelman J noted that "there was little evidence to support the conclusion that any customer entered the Book-up arrangement in order to avoid demand sharing".²⁹

According to Australian anthropologist Nicolas Peterson, demand sharing is a complex phenomenon.³⁰ Economist and anthropologist Jon Altman explained that it can be perceived positively or negatively: it is a generosity mechanism to redistribute resources or conversely, an aggressive form of demanding commonly referred to in Aboriginal English as "humberging".³¹ From the authors' knowledge, this term is considered culturally offensive within the Indigenous communities. Altman has criticised the way the term 'demand sharing' has been used interchangeably with the negative extreme of "humberging".³² The discourse on this have also "conflated the broad notion of kin-based distribution with demand sharing".³³ A simplistic view of 'demand sharing' without considering other important contexts could risk the danger that demand sharing "ultimately became a gloss, however, for either the dominant mode of distribution, or all Aboriginal forms of sharing" and to justify related policy positions³⁴ and in the case of *ASIC v Kobelt*, it contributed to the majority's view that Mr. Kobelt's conduct was not unconscionable.

Solicitor Rachel Yates and legal scholar Sharmin Tania argue that the majority judges' application in *ASIC v Kobelt* of a unified concept of demand sharing (that Altman has criticised)³⁵ ignores the complexity of Indigenous values and practices.³⁶ The Anangu customers' voluntary entry into the book-up system should be considered in terms of relevant Indigenous cultural norms, lack of alternative financial services and vulnerabilities arising from low levels of financial

²⁶ *Ibid*, at para 126.

²⁷ For a critique of the decision, see Sharmin Tania and Rachel Yates, "Australian Securities and Investments Commission v. Kobelt: Evaluating Statutory Unconscionability in the Cultural Context of an Indigenous Community" (2018) 40 Syd L Rev 557, 566-569.

²⁸ *ASIC v Kobelt*, *supra* note 3, at paras 171 and 262.

²⁹ *Ibid*, at para 301.

³⁰ Nicolas Peterson, "Demand Sharing: Reciprocity and the Pressure for Generosity among Foragers" (1993) 93 American Anthropologist 860, 870.

³¹ Jon Altman, "A Genealogy of 'Demand Sharing': From Pure Anthropology to Public Policy" in Yasmine Musharbash and Marcus Barber (eds), *Ethnography & the Production of Anthropological Knowledge* (Canberra: ANU Press, 2011) 187, 188-191.

³² *Ibid*, at 193.

³³ *Ibid*, at 192.

³⁴ *Ibid*, at 187.

³⁵ See *supra* notes 32 - 34.

³⁶ Rachel Yates and Sharmin Tania, "The Place of Cultural Values, Norms and Practices: Assessing Unconscionability in Commercial Transactions" (2019) 45(1) Monash L. R. 232, 268.

literacy.³⁷ Similarly, other legal scholars draw attention to the Court's inadequate investigation of the cultural values that it attributed to justify the business model operating in remote Indigenous communities and argue that in terms of both legal doctrine and policy outcomes, the approach of the minority judges is to be strongly preferred.³⁸ As a result, the majority judges characterised the book-up system as advantageous to Anangu customers and had thus (incorrectly) equated that to voluntariness.³⁹

The dissenting judges disagreed that the Anangu customers voluntarily agreed to use Mr. Kobelt's book-up system. Notably, Edelman J described the choice if any, as "Hobson's choice – no matter how badly they need credit, they can either "choose" that system or "choose" no credit at all".⁴⁰ Gordon and Nettle JJ questioned whether the customers who were vulnerable due to the external factors above mentioned and having relatively little bargaining power would be in a position to negotiate before entering into the book-up system or possess the practical ability to frustrate the arrangements.⁴¹ Thus, it was the unreasonableness of Mr. Kobelt's book-up system (noting that there were other book-up systems in the vicinity of the customers' location) that should be considered, regardless of any effects on demand sharing.⁴² The focus on the unreasonableness of Mr. Kobelt's book-up system has raised questions on the provision to establish statutory unconscionability through "a system of conduct or pattern of behaviour".⁴³

The views of the dissenting judges and academic commentaries on *ASIC v Kobelt* should not come as a surprise. The lack of access to banking systems and to credit in remote parts of Australia which impacts Indigenous financial disengagement was acknowledged as early as 2002 in a report commissioned by the ASIC to investigate problems associated with the book-up credit system.⁴⁴ The report observed that 'book-up' is often "the only means for Aboriginal consumers to obtain access to credit".⁴⁵ While the use of book-up has decreased,⁴⁶ it is "still prevalent across

³⁷ See S Tania and R Yates, *supra* note 27 at 562 in a critique of the Full Court of the Federal Court decision, which was subsequently upheld by the High Court.

³⁸ See Jeannie M Paterson, Elise Bant and Matthew Clare, "Doctrine, Policy, Culture and Choice in Assessing Unconscionable Conduct under Statute: *ASIC v Kobelt*" (2019) 13 J Eq 81.

³⁹ *Ibid*, at 99, the authors agreeing with the dissenting judgments that "notions of 'voluntariness' provided little justification for the book-up system operated by Mr. Kobelt".

⁴⁰ *ASIC v Kobelt*, *supra* note 3, at paras 266, 272 and 275, noting that the book-up system applied *only* to Mr. Kobelt's Indigenous customers (while Mr. Kobelt's non-Indigenous customers had other borrowing options and that as a result, the price of the sale of cars is three times the market rate for unsecured credit with an interest rate of more than 43% significantly more than commercial lending rates for unsecured personal loans of 14% -15.2%.

⁴¹ *Ibid*, at paras 241, 242 and 243.

⁴² *Ibid*, at para 240.

⁴³ J M Paterson and E Bant, "Should Australia Introduce a Prohibition on Unfair Trading? Responding to Exploitative Business Systems in Person and Online" (2021) 44 Journal of Consumer Policy 1-19, 7. Critiquing the majority decision in *ASIC v Kobelt*, the authors argue that merely improving understanding to establishing unconscionable conduct in a "system of conduct or pattern of behaviour" is insufficient to resolve the inadequacy of the prohibition of unconscionable conduct to address exploitative business systems, and propose introducing the prohibition of unfair trading in Australia. See also Nicholas Felstead, "Beyond Unconscionability: Exploring the Case for a New Prohibition on Unfair Conduct" (2022) 45 University of New South Wales Law Journal 285.

⁴⁴ ASIC, *Report 12, Book up: Some Common Problems* (REP 12), (Australia, ASIC, March 2002) (Renouf Report).

⁴⁵ *Ibid*, at 5.

⁴⁶ ASIC, *Report 451, Book up in Indigenous Communities in Australia: A National Overview* (Australia, ASIC, October 2015) (Loban Report) at 16, paras 42 - 44. This has been attributed to the success of the Outback Stores model whose business objectives are to ensure food security to communities focussing on sound governance and financial management of the stores and which do not provide book-up. Another factor is the Federal Government's introduction of income management programs that change the way Centrelink payments are received and

Australia” and “heavily relied on” by some Indigenous communities.⁴⁷ The opaque book-up system, without clear disclosures, proper record keeping and the supplier’s discretion to withdraw from the customers funds through their debit cards and personal identification numbers kept by the supplier, results in vulnerability to price exploitation and inability to control finances.⁴⁸

The book-up system exemplified in the practices of Mr. Kobelt which was brought to light in *ASIC v Kobelt* has reignited issues on the vulnerabilities of Indigenous Australians.⁴⁹ It evinces challenges that are external and internal to Indigenous contexts which contribute to the problems Indigenous Australians experience in their effort to engage with the financial system. Externally, it shines the light on the socio-economic differences between non-Indigenous and Indigenous Australians, discussed in Part IV below. Internally, it amplifies the vulnerabilities of Indigenous Australians in terms of their cultural views of money which is far more collective/kin oriented in nature.⁵⁰ This is discussed in Part V below which shows that Indigenous cultural disposition to money is also contributory to why Indigenous Australians are financially disengaged.

Drawing on reflections from *ASIC v Kobelt*, one might ask whether Mr. Kobelt was the problem, or whether internal and external factors obstructed access to the financial system that has undermined the financial well-being of Indigenous Australians. The next part sets the theoretical context to these factors and introduces the Indigenous standpoint theory that underlies the central focus of this article that culture matters in exploring the financial disengagement of Indigenous Australians.

II. The Indigenous Standpoint Theory

Indigenous Australians are the predominant group of people associated with financial disengagement in Australia.⁵¹ For too long the views and interests of Indigenous Peoples have been subjugated and considered inferior, thereby placing them in a state of vulnerability.⁵² Indigenous researchers often become exasperated by the singularized narrative which superimpose Eurocentric methodologies, a process often culturally remote and unacceptable to the Indigenous epistemological approach to knowledge.⁵³ As the central focus of this research is on Indigenous Australians, discussions have been framed from an Indigenous epistemological perspective namely, Indigenous Standpoint Theory (“IST”). This approach has been vigorously advocated by Indigenous experts including Lester-Irabinna Rigney, Dennis Foley, and Martin Nakata. Discussing the emergence of this theory, Rigney stated that “it is only during the last decade that research by Indigenous scholars have attempted to represent our perspectives in Western scientific

prioritising essential expenses. Both programs however exist in limited locations and does not impact on the prevalence of book-up nationally.

⁴⁷ *Ibid*, at 5, para 10.

⁴⁸ *Ibid*, at 19-20 paras 52-53. For proposals to reform the book-up system, see Nathan Boyle, “Book Up: Current Regulations and Options for Reform” (2016) 8 ILB 3, 7.

⁴⁹ Andrew Hutchison and Dominique Allen, “Unsecured Lending and the Indigenous Economy in Australia and South Africa” (2021) 48 Aust. J. of Law & Society 84.

⁵⁰ M Weier et al, *supra* note 5.

⁵¹ Australia and New Zealand Banking Group Limited (ANZ Report), *Home Ownership and Indigenous Australians: Final Report and Response* (ANZ, 2008) 2

<<http://www.anz.com/Documents/AU/Aboutanz/Community/AN5610-Home-Ownership-August-FINAL.pdf>>.

⁵² Martha Fineman, “Vulnerability and Social Justice” (2019) 53 Valparaiso Univ. L. Rev. 341.

⁵³ Dennis Foley “Indigenous Epistemology and Indigenous Standpoint Theory” (2003) (22) 1 Social Alternatives 1.

traditions”.⁵⁴ Foley, explaining the rationale for this approach noted that: “The British ‘system’ resulted in the elimination and extermination of Indigenous social systems, knowledge, traditions, and cultural sciences ... The European scientists determined whose knowledge is and what was legitimate. The result was that Indigenous knowledge was seen as inferior”.⁵⁵ To address this gap, Indigenous views need to be heard.⁵⁶

While this was acknowledged by ASIC in its submission to an inquiry into the corporate sector’s engagement with Indigenous consumers,⁵⁷ the challenge remains that the globally recognised medium for disseminating knowledge is Eurocentric based and if Indigenous views must be known they would have to come through the Eurocentric publication channel.⁵⁸ Nakata, therefore, emphasized the importance of the Indigenous voice in the academic and research spheres and applied it to the theory of “Cultural Interface” “so that the situatedness of Knowledge systems is highlighted”.⁵⁹ Nakata’s Cultural Interface – “the intersection of the Western and Indigenous domains” – recognizes that all knowledge systems are “culturally embedded, dynamic and respond to changing circumstances”.⁶⁰ In the Cultural Interface, we see adaptability, attempts to blend cultures, effort to co-exist and the indispensability of change. The oral testimony below by one of the co-authors of this article, Graeme Lyle La Macchia, about Uncle Albert Namatjira’s artworks enlivens the concept of cultural interface and encapsulates the living force of the IST.

In the late 1950s, reproductions of landscape paintings by Arrernte man, Albert Namatjira, began appearing on the walls of private homes and even in schools, government buildings and commercial premises throughout Australia. Namatjira’s work was distinct from what we now recognize as the ‘Traditional Art’ of Central Australia. Albert and other Aboriginal men were instructed by non-Indigenous teachers including Rex Battarbee and John A. Gardner - both originally from Victoria.⁶¹ Post-WWII, Australians seized on Namatjira’s artworks as tasteful representations of the distinctive landscapes of Australia’s vast but little-known interior. An increasing percentage also embraced the concept that Albert and his peers were demonstrating the ability of Aboriginal Australians to master western skills. Namatjira’s success in and around Alice Springs inspired the growth of an ‘Artists’ Colony’ that became a focus of press and government attention. Gradually a consensus emerged that the ‘Hermannsburg

⁵⁴ L Rigney, “A First Perspective of Indigenous Australian Participation in Science: Framing Indigenous Research Towards Indigenous Australian Intellectual Sovereignty” (2001) 7 *Kaurna Higher Education Journal* 1.

⁵⁵ Foley, *supra* note 53.

⁵⁶ Bethany Elliott et al. “We are not being heard: Aboriginal Perspectives on Traditional Foods Access and Food Security.” (2012) *J Environ Public Health*. 2012; 2012:130945. doi: 10.1155/2012/130945. Epub 2012 Dec 31. PMID: 23346118; PMCID: PMC3549364.

⁵⁷ Submission by ASIC, *Inquiry into Corporate Sector Engagement with Aboriginal and Torres Strait Islander Consumers* (December 2021) 8 [30] (It is important that the voices of Indigenous Peoples are heard and that “solutions are formed based on those insights, values and perspectives”).

⁵⁸ Raymond Lovett et al, “Knowledge and power: the tale of Aboriginal and Torres Strait Islander data” (2020) 2 *Australian Aboriginal Studies* 3, 4 (highlighting the impact of “settler-colonial power and control over our [Aboriginal and Torres Strait Islander] data and knowledge”). See also Kathryn L Braun et al, “Research on Indigenous Elders: From Positivist to Decolonizing Methodologies” (2014) 54(1) *The Gerontologist* 117.

⁵⁹ Martin Nakata, “Indigenous Knowledge and the Cultural Interface: Underlying Issues at the Intersection of Knowledge and Information Systems” (2002) 28 *IFLA Journal* 281.

⁶⁰ *Ibid*, at 285-286.

⁶¹ Martin Edmond, *Battarbee and Namatjira* (Giramondo, 2014).

painters' were providing the larger society with 'accessible' artworks that proclaimed Australia's arrival as a notable contributor to the art of the mid-twentieth century. The responses of members of urban and rural Aboriginal communities across Australia were mixed, covering the full spectrum from wholehearted support to uncompromising disdain as seen in the conversation below.

The 'Hermannsburg Boys' should not be criticized for accepting the conventions and techniques of European art. If they are, we would also need to condemn our Aboriginal footballers and other sport people for accepting the rules and traditions of their sports. We would need to reject the actions of our men and women who accepted the discipline and values of the armed forces by signing up and serving in the defence of this country . . . What about family members who have regular work in the city? Should they be criticized for supporting their children and (extended) families by taking regular 'whitefella' jobs in the cities and towns? No, of course not!

Respectful appreciation as in the above family conversation was the most common response. Similar responses and conversations continue to permeate Aboriginal family lives in different situations.

Attempts by Indigenous Australians to embrace the Cultural Interface are manifest in stories like that of Uncle Albert narrated in the oral testimony above. However, the singularised Eurocentric approach to issues surrounding Indigenous Australians continue to drown Indigenous voices and hence the need for a dedicated Indigenous approach.⁶² The IST approach has been affirmed in the United Nations Declaration on the Rights of Indigenous Peoples that "Indigenous peoples are equal to all other peoples", respecting their indigenous origin or identity.⁶³ Consistent with the position taken in the UN Declaration, this article recognises and acknowledges the need to respect the views and interest of Indigenous Peoples, and hence the adoption of the IST.

The IST emphasises culturally responsive and respectful research. It acknowledges Eurocentric or "Western" works but seeks to make a shift away from a monolithic approach dominated by Eurocentric methodologies to an approach respectful and inclusive of Indigenous perspectives and interests.⁶⁴ This monolithic worldview has subjected Indigenous Peoples into a state of vulnerability as Eurocentric concepts dominate many systems including the monetization and financial institutions as practised in contemporary Australia. Martha Fineman underscoring this subtle subjugation has noted that:

Western systems of law and justice have inherited a political liberalism that imagines a 'liberal legal subject' as the ideal citizen – this subject is an autonomous, independent and fully-functioning adult, who inhabits a world defined by individual, – not societal responsibility – where state

⁶² Ashley Quinn, "Bridging Indigenous and Western Methods in Social Science Research" (2022) Journal of Psychopharmacology, 21, 81–105. <<https://doi.org/10.1177/0269881104042632>>.

⁶³ *United Nations Declaration on The Rights of Indigenous Peoples*, 13 September 2007, A/RES/61/295, <<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>>. Article 2 states that "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity".

⁶⁴ S Choy and J Woodlock, "Implementing Indigenous Standpoint Theory: Challenges for a Tafe Trainer" (2007) 5 International Journal of Training Research 39.

intervention or regulation is perceived as a violation of his liberty. Social arrangements and institutions with significant effects on everyone lives, such as the family, are deemed ‘private’ and their operation and functioning relegated to ideologies of meritocracy and the free market. Vulnerability theory challenges the dominance of this static and individualized legal subject, and argues for the recognition of actual human lives as socially and materially dynamic.⁶⁵

Tanzanian scholar Hassan Iddy concurs with Fineman and is of the view that adopting an IST approach to Indigenous-related projects frees Indigenous Peoples from this state of vulnerability by ensuring that “the voices of Indigenous people may be heard, and the community has a greater degree of control and input in the planning and designing of the project, as well as the analysis and dissemination of the information”.⁶⁶ Adopting this approach is important because it enables the development of the Cultural Interface and at the same time underscores the key difference between the Eurocentric approach and that of Indigenous Australians who perceive the *community* – not the individual - as the fundamental unit of society.⁶⁷ The dichotomy between Eurocentric and Indigenous culture is not one that would vanish overnight.

III. “Financial disengagement”: moving beyond financial exclusion

Besides adopting IST as the theoretical framework and including oral testimonies of an Indigenous Australian, this article also provides original contribution to this field by making an intentional choice to use the concept of “financial *disengagement*” rather than the conventional approach of “financial *exclusion*”.⁶⁸ Applying the lens of financial disengagement provides a broader, positive and inclusive approach that allows a holistic analysis of why Indigenous Peoples are not engaged and have remained largely distant from the complex but powerful Australian financial sector. Our choice is also to resist adopting a (negative) narrative of cultural loss; instead adopting a narrative of survival to protect future interests and enrich traditional practices to produce better outcomes.⁶⁹ “*Engagement*” is about a “relatively sustained and systematic interaction”⁷⁰ — using this concept allows an ongoing process and conversation, a relationship between groups of peoples towards shared goals. “Financial exclusion” on the other hand, invites negative connotations indicating a lack of access to the financial system,⁷¹ lack of ownership or

⁶⁵ Martha A Fineman, “Understanding Vulnerability Theory” (26 August 2019) Scholarblogs <<https://scholarblogs.emory.edu/vulnerability/2019/08/26/understanding-vulnerability-theory/>>.

⁶⁶ Hassan Iddy, “Indigenous Standpoint Theory: Ethical Principles and Practices for Studying Sukuma People in Tanzania” (2020) *The Australian Journal of Indigenous Education* 1.

⁶⁷ M Weier et al, *supra* note 5.

⁶⁸ ANZ Report, *supra* note 51. This is the first report commissioned by ANZ, one of the four big banks in Australia “as a first step in a research program aimed at measuring and understanding financial exclusion in Australia, so that policies and programs to address it could be better informed”, Executive Summary at p 1.

⁶⁹ Martin Nakata, “Australian Indigenous Studies: A Question of Discipline” (2006) 17(3) *The Australian Journal of Anthropology* 265, 273.

⁷⁰ Brenton Holmes, “Citizen’s Engagement in Policymaking and the Design of Public Services” (Research Paper, Parliament of Australia, 22 July 2011) 13.

⁷¹ A Leyshon and N Thrift, “Geographies of Financial Exclusion: Financial Abandonment in Britain and the United States” (1995) 20 *Transactions of the British Institute of Geographers, New Series* 312. In the Australian context, see Chris Connolly and Khaldoun Hajaj, *Financial Services and Social Exclusion* (Australia: Financial Services Consumer Policy Centre, 2001) 64.

access to particular types of financial products and services⁷² and difficulties to use mainstream services such as bank accounts, home insurance⁷³ or credit card.⁷⁴ Financial exclusion could also contribute to, or result from, the broader notion of “*social exclusion*”,⁷⁵ which is the process of becoming detached from broad moral orders of society⁷⁶ and individuals do not participate in key activities in society.⁷⁷ Moving beyond income poverty,⁷⁸ it marks an ongoing process of being “shut out, fully or partially, from any of the social economic, political and cultural systems”⁷⁹ that enable individuals to integrate in society. Moving forward, concepts such as “*financial capability*”⁸⁰ beyond “*financial literacy*”, and “*financial resilience*”⁸¹ now dominate the discourse in this area.

The authors have made this deliberate choice of terminology accepting that there is generally (and frequently) an overlap, especially at the local level, in terms of exclusion/disengagement. While the two concepts are not mutually exclusive, choosing the term “disengagement” assists in responding to the related issues on both the Indigenous and Non-Indigenous sides of the equation. The word “*exclusion*” can be problematic. It denotes an intentional action of not allowing someone or an institution to participate. It represents an active intention from an external source to lock out, block and prevent someone from being a part of something. For some time, the word “*exclusion*” represented the status quo for Indigenous Peoples, and it may be argued that it is still the case. However, in the twenty-first century, Indigenous Peoples are not always directly excluded from the financial sector. Instead, at community level, versions of financial disengagement (or self-distancing) probably remain the dominant (but largely unrecognized) pattern of behaviour across rural and especially remote Indigenous Australia, although they form only a minority of the total Indigenous population. The concept of disengagement is an acknowledgement that Indigenous Australians are not participating as expected in the financial sector and creates the opportunity to explore the lack of participation from both external and particularly internal, points of view. The potential of looking inward which embodies the concept of community, family, individual agency, and simultaneously incorporates the powerful notion of ongoing cultural traditions within the community should be recognised rather than deliberately denied or misinterpreted. External factors are analysed at Part

⁷² Ben Rogaly, “Poverty and Social Exclusion in Britain: Where finance fits in” in Ben Rogaly, Thomas Fisher and Ed Mayo, *Poverty, Social Exclusion and Microfinance in Britain* (Oxfam GB: Oxford, 1999).

⁷³ Pamela Meadows et al, “Social Networks: Their Role in Access to Financial Services in Britain” (2004) 189 National Institute of Economic Review 99.

⁷⁴ See the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Background Paper 18, Aboriginal and Torres Strait Islander Consumers of Financial Products, 15 June 2018) <<https://financialservices.royalcommission.gov.au/publications/Documents/fsrc-paper-18.pdf>>.

⁷⁵ Peter Saunders, Yuvisthi Naidoo and Megan Griffiths, “Towards New Indicators of Disadvantage: Deprivation and Social Exclusion in Australia” (2008) 43(2) Aust. Jnl. of Social Issues 175.

⁷⁶ G Room, “Poverty and Social Exclusion: The New European Agenda for Policy and Research” in G Room, eds, *Beyond the Threshold* (The Policy Press, Bristol, 1995), 1-9, at 6.

⁷⁷ T Burchardt, J Le Grand and C Piachaud, “Degrees of Exclusion: Developing a Dynamic, Multidimensional Measure” in J Hills, J Le Grand and D Piachaud, eds, *Understanding Social Exclusion* (Oxford University Press, 2002) 30.

⁷⁸ Rogaly B, Office of the Deputy Prime Minister 2004, Social Exclusion Unit website: www.social-exclusion.gov.uk. See also Rogaly et al, *Poverty, Social Exclusion and Microfinance in Britain* (*supra* note 72).

⁷⁹ A Walker and C Walker, eds, *Britain Divided: The Growth of Social Exclusion in the 1980s and 1990s* (London, Child Poverty Action Group, 1997) 8.

⁸⁰ See Part VI.

⁸¹ M Weier et al, *supra* note 5.

IV below, while internal factors and culture are discussed at Part V, followed by Part VI which proposes financial literacy programs for Indigenous Peoples.

IV. Causes of financial disengagement

It has been recognised that a disproportionate population of Indigenous Australians find it difficult to participate in the financial sector. Adopting the terminology of “disengagement” as explained above allows an analysis that the reasons for non-participation could be externally structured and internally generated. In this part, statistical information from the last available census in Australia in 2021 (and earlier census) as well as information from relevant research reports are analysed to determine the causes of financial disengagement of Indigenous Australians. While using an IST lens, this article acknowledges that the statistics are drawn from Eurocentric based concepts; this however should not be unexpected as available statistical information is predominantly Eurocentric based.

Cumulatively, the statistical information provides an indication of the economic and social conditions of Indigenous Australians which contribute to the problem of financial disengagement, and if not addressed, may fall through the crevices of social exclusion. The findings narrow the causes of financial disengagement of Indigenous Australians to geographic location, lack of identification documents, unemployment, lower incomes and lower financial literacy.⁸² Besides these factors, cultural or language barriers to access financial services and products, lack of digital access and the challenges of navigating complex financial systems are issues that need to be addressed for Indigenous Peoples in the Australian financial system.⁸³ Some of these factors are common to First Peoples living in the CANZUS group (Canada, Australia, New Zealand, and the United States) of European-settler nations⁸⁴ and while there is no consistent measure for Indigenous financial exclusion across the CANZUS nations, financial disparities between Indigenous and Non-Indigenous Peoples continue to exist in each country.⁸⁵ The external barriers to financial disengagement of Indigenous Australians are discussed below.

(a) Geographic location

Aboriginal and Torres Strait Islander people are more likely than other Australians to live outside major cities. In 2021, almost 4 in 10 (37.1%) Aboriginal and Torres Strait Islander people

⁸² See *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, (Background Paper 19 Aboriginal and Torres Strait Islander Consumers of Financial Products, 21 June 2018) <<https://financialservices.royalcommission.gov.au/publications/Documents/aboriginal-and-torres-strait-islander-consumers-of-financial-products-background-paper-19.pdf>>.

⁸³ Submission by ASIC, *supra* note 57, at 5, para 11.

⁸⁴ In Canada, barriers to financial capability and well-being include *inter alia*, limited financial and general literacy, geographic remoteness, lack of access to financial services and capital, and cultural language and value differences, see D Collin, *Aboriginal Financial Literacy in Canada: Issues and Directions*. (Task Force on Financial Literacy, Waterstone Strategies, 2011) <http://publications.gc.ca/collections/collection_2011/fin/F2-201-2011-eng.pdf>

⁸⁵ Carmen Daniels, Janya McCalman and Roxanne Bainbridge, “Meeting People Where They’re At: A Systematic Review of Financial Counseling for Indigenous Peoples” (2021) 32(3) *Journal of Financial Counseling and Planning* 417, at 419, Table 1.

lived in major cities in 2021⁸⁶ compared to 67.9% of the entire population in Australia.⁸⁷ This means that 62.9% of Indigenous Australians live outside major cities (compared to 32.1% of the entire population). The more remote the area, the greater the proportion of Aboriginal and Torres Strait Islander persons.⁸⁸ Although the 2016 census show that 81.4% of the Indigenous population live in urban or regional areas and the Indigenous population in remote regions has decreased,⁸⁹ geographic location however is only one factor in the equation to financial disengagement. Statistics confirm the absence or low availability of bank branches, agencies, or other access points to financial products and financial services outside of capital cities.⁹⁰ Further, recent closures of bank branches have reduced access points for Indigenous Australians to engage in the financial system.⁹¹ Replacements to online banking assumes internet connectivity and skills which may not be the case for Indigenous Peoples in remote areas.

Lack of access to banking services caused by bank branch closures has resulted in rural Indigenous communities using the ‘book-up’ system, an informal banking practice in remote areas.⁹² While providing otherwise unavailable short term credit, the informal finance providers have abused the system.⁹³ The High Court decision in *ASIC v Kobelt*⁹⁴ discussed in Part I above highlighted the book-up system practised by Mr. Kobelt which overpriced the products sold and the withdrawal of monies to pay for them from the customers’ bank accounts with their debit cards which were held by Mr. Kobelt. The lack of access to banking services in remote areas and the opportunity for abuse is exacerbated by geographic location and is a clear cause of financial disengagement.

⁸⁶ Australian Bureau of Statistics, Australia: *Aboriginal and Torres Strait Islander Population Summary* (1 July 2022) <<https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary>>

⁸⁷ Australian Bureau of Statistics, *Location: Census* (28 June 2022) <<https://www.abs.gov.au/statistics/people/people-and-communities/location-census/2021>>, <<https://www.abs.gov.au/statistics/people/population/regional-population/2021#capital-cities>>.

⁸⁸ Australian Bureau of Statistics, Australia: *Census of Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australians* (19 February 2018) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/census-population-and-housing-characteristics-aboriginal-and-torres-strait-islander-australians/latest-release>>.

⁸⁹ Francis Markham and Nicholas Biddle, “Recent changes to the Indigenous population geography of Australia: evidence from the 2016 census” (2018) 2(1) *Australian Population Studies* 1, 11.

⁹⁰ See *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Background Paper 21 *Aboriginal and Torres Strait Islander Consumers’ Interactions with Financial Services*, 22 June 2018) <<https://financialservices.royalcommission.gov.au/publications/Documents/ATSI-background-paper-21.pdf>>.

⁹¹ See *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Background Paper 18, *Aboriginal and Torres Strait Islander Consumers of Financial Products*, 15 June 2018) 16 <<https://financialservices.royalcommission.gov.au/publications/Documents/fsrc-paper-18.pdf>> showing a reduction in bank branches and other face-to-face points of presence in 2015 and 2016.

⁹² S McDonnell and N Westbury, “Banking on Indigenous communities: Issues, Options, and Australian and International Best Practice” (Working Paper No 18/2002, Centre for Aboriginal Economic Policy Research, Australian National University) 3-4. <https://www.researchgate.net/publication/237577051_Banking_on_Indigenous_Communities_Issues_Options_and_Australian_and_International_Best_Practice>. The problem of ‘book-up’ due to lack of financial literacy and informed access to appropriate banking and financial services have been acknowledged by the authorities, see p 5.

⁹³ See ASIC, *Report 12, Book-up Some Consumer Problems*, *supra* note 44; ASIC, *Report 451, Book-up in Indigenous Communities in Australia: A National Overview*, *supra* note 46.

⁹⁴ See *ASIC v Kobelt*, *supra* note 3, and discussions at Part I.

(b) Lack of identification documents

There is no available data as to the extent of the problem in relation to identification documents among different age groups, or locations of Indigenous Peoples. However, a survey conducted in 2011 revealed that among those who were severely excluded from access to mainstream financial services, 17.9% of Aboriginal and Torres Strait Islander people had difficulties in opening a bank account because they were unable to provide identity documents, compared with 8.7% of non-Indigenous people.⁹⁵

The lack of identity documents is related to the registration lag of birth being the interval between the occurrence and registration of a birth. For Aboriginal and Torres Strait Islander people, 7.1% of birth registration recorded in 2019 was for birth that occurred in 2012 or earlier, compared with 1.3% at a national average level.⁹⁶ In some remote areas, the problem of delay could be problematic.⁹⁷ For example, for birth of Aboriginal children in Western Australia, amongst 49,694 births between 1980 and 2010, 18% of those aged under 16 years had unregistered births, compared to 3% of those aged 16 to 32 years.⁹⁸

Another important form of identification document is the driver licence. Unlicensed driving is frequent in remote Aboriginal communities accompanied by a low level of licence participation among Aboriginal Peoples.⁹⁹ It is estimated that Aboriginal Peoples represents 2% of the adult population, but only comprise 0.5% of licensed drivers in New South Wales.¹⁰⁰

(c) Educational levels and lower financial literacy

Lower levels of literacy and numeracy have contributed to the financial disengagement of Indigenous Peoples. While the situation has improved in recent years, with 19% of Aboriginal and Torres Strait Islander people aged 25 to 64 years having left school at Year 9 or below, compared with 30% in 2006, the position is still unsatisfactory. Indigenous Australians aged 25 to 64 years were more likely than non-Indigenous of the same age to have left school at Year 9 or below (19% compared with 6.7%).¹⁰¹ The lower level of educational attainment has a direct impact on financial literacy which is a key barrier to effectively engaging with mainstream finance.¹⁰²

⁹⁵ Australian Government, The Treasury, *ATM Taskforce – Report on Indigenous ATM Issues* (28 February 2011) 6 <http://banking.treasury.gov.au/content/reports/atm_indigenous/downloads/atm_indigenous.pdf>.

⁹⁶ Australian Bureaus of Statistics, *Births, Australia Methodology, Aboriginal and Torres Strait Islander Peoples* (9 December 2020) <<https://www.abs.gov.au/methodologies/births-australia-methodology/2019#aboriginal-and-torres-strait-islander-peoples>>.

⁹⁷ Jewel Topsfield, “Aborigines Lack Proof of Identity” *The Sydney Morning Herald*, (Sydney, 23 January 2009) <<https://www.smh.com.au/national/aborigines-lack-proof-of-identity-20090122-7nx3.html>>.

⁹⁸ Alison J Gibberd, Judy M Simpson and Sandra J Eades, “No Official Identity: A Data Linkage Study of Birth Registration of Aboriginal Children in Western Australia” (2016) 40(4) *Australian and New Zealand Journal of Public Health* 388.

⁹⁹ Kathleen Clapham et al, “Understanding the Extent and Impact of Indigenous Road Trauma” (2008) 39 (Supplement 5) *Injury* 19.

¹⁰⁰ Patricia Cullen et al, “Challenges to Driver Licensing Participation for Aboriginal People in Australia: A Systematic Review of the Literature” (2016) 15 *International Journal for Equity in Health* 134.

¹⁰¹ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Population, 2016: 2016 Census Article: Education: Leaving school early* (31 October 2017). <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20Article~12>>.

¹⁰² See below at Part VI: Culture matters: financial literacy programs for Indigenous Peoples.

Statistics on young Indigenous Australians reveal a similar situation.¹⁰³ Between 2006 and 2013, young people, particularly adults aged 18 to 24 years were in the category of severely or fully financially disengaged segment compared to other age groups.¹⁰⁴ Further, their rate of financial disengagement was higher than the national average.¹⁰⁵ Financial disengagement is causally linked to lower financial literacy. The statistical information provided at Part VI relating to financial literacy show that Indigenous Australians have the lowest financial literacy levels in Australia. This reiterates the urgency and importance of implementing effective financial literacy programs for Indigenous Australians.

(d) Unemployment and lower income

In 2021, 56.7% of Aboriginal and Torres Strait Islander people aged 20 to 24 years completed Year 12 or equivalent as their highest year of school, compared with 37.1% in 2011. For persons aged 18-24 years, one in ten (10.2%) were attending university or other higher education institutions at the time of the 2021 Census. The lower educational level of Indigenous young people is a concerning factor as they form the majority of the Indigenous population, the median age being 24 years in 2021.¹⁰⁶

There is also a significant disparity between Indigenous and non-Indigenous participation in the labour force. In the 2018–19 National Aboriginal and Torres Strait Islander Health Survey, an estimated 60% (299,700) of Indigenous Australians of working age — those aged 15-64 years — were participating in the labour force, and 49% (243,780) were employed. Compared to this, for non-Indigenous Australians, 80% of the working-age population was in the labour force, and 76% were employed.¹⁰⁷ The employment rate for Indigenous Australians of working age was lowest in very remote areas at 35%. (See Figure 1 below).

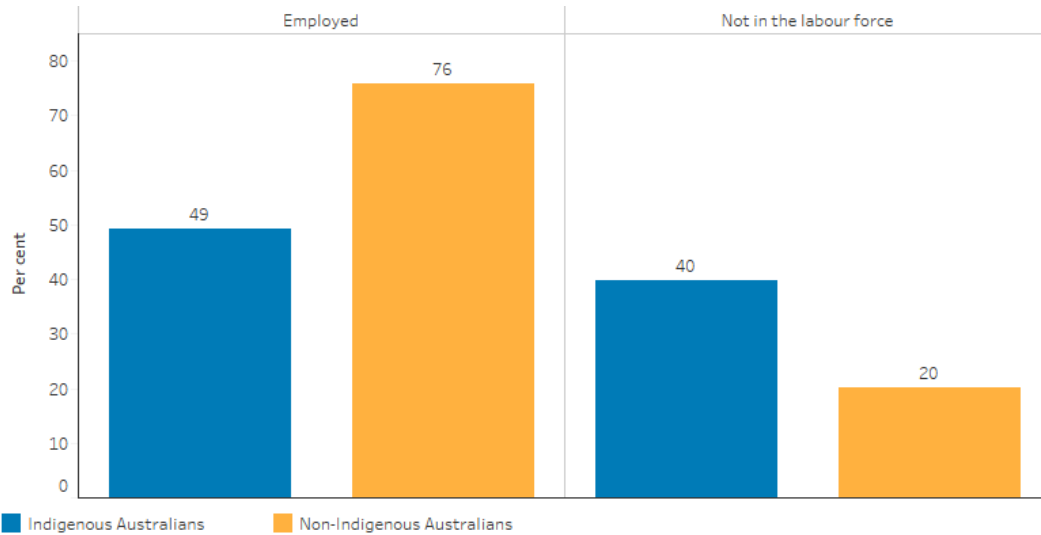
¹⁰³ First Nations Foundation, *The Financial Economy and Indigenous Young People in Australia* (March 2016) <https://www.csi.edu.au/media/uploads/Financial_Economy_and_Indigenous_Young_People_In_Australia_-_Summary_Report.pdf>.

¹⁰⁴ Kristy Muir, Axelle Marjolin and Sarah Adams, *Eight Years on the Fringe: What Has it Meant to Be Severely or Fully Financially Excluded in Australia* (Centre of Social Impact for the National Australia Bank, 2015) 15 <https://www.csi.edu.au/media/uploads/Eight_Years_on_the_Fringe_FINAL_FINAL.pdf>.

¹⁰⁵ Chris Conolly, *Measuring Financial Exclusion in Australia* (Centre of Social Impact for the National Australia Bank, 2014) <https://www.csi.edu.au/media/uploads/Measuring_Financial_Exclusion_in_Australia_-_May_2012.pdf>.

¹⁰⁶ Australian Bureau of Statistics, *Australia: Aboriginal and Torres Strait Islander population summary* (1 July 2022) <<https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary#aboriginal-and-torres-strait-islander-people-by-age>>.

¹⁰⁷ Australian Institute of Health and Welfare, “National Aboriginal and Torres Strait Islander Health Survey” (20 September 2021) Aboriginal and Torres Strait Islander Health Performance Framework <<https://www.indigenoushpf.gov.au/measures/2-07-employment>> 2.07.

Figure 1: Employment outcomes, people aged 15–64, by Indigenous status, 2018–19

Source: Figure 2.08.6 National Aboriginal and Torres Strait Islander Health Survey 2018–19

The latest *Overcoming Indigenous Disadvantage Report 2020* notes an employment rate for Indigenous 15 to 64 years old at 54% in 2008 which decreased to 49% in 2018–2019.¹⁰⁸ This translates to half the Indigenous population being unemployed. The figure generally tallies with statistics of Indigenous Peoples aged 50 and above; in 2014–15, 59% of this group were not in the labour force, 2 in 5 lived in households with incomes at the bottom of 20% of all households, and as at 30 June 2017, 51% were receiving some form of income support.¹⁰⁹ The social costs of unemployment impacts not only the unemployed person but spills over onto other family members and the community. The social exclusion of unemployed Indigenous Peoples from mainstream society and the economy perpetuates the circle of welfare dependency and unemployment.¹¹⁰

Mean household income varied by remoteness. The 2016 mean gross weekly equivalised household income for Indigenous adults was highest in *Major cities* (\$931) and lowest in *Very remote* areas (\$520). The mean income for non-Indigenous adults in *Major cities* was \$1,140, \$209 higher than that for Indigenous adults. However, the largest gap between Indigenous and non-Indigenous Australians was in *Very remote* areas (this further underscores the geographical location as one of the causes), a difference of \$690 per week. (See Figure 2 below).

¹⁰⁸ Productivity Commission, “Key Indicators 2020 Overview” (3 December 2020).

<<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2020/report-documents/oid-2020-overview.pdf>>, 15. With a notation that the data is difficult to interpret due to changes in the Community Development Employment Projects program, now the Community Development Program.

¹⁰⁹ Australian Institute of Health and Welfare, “Insights into Vulnerabilities of Aboriginal and Torres Strait Islander People Aged 50 and over-in-brief” (2019) <<https://www.aihw.gov.au/getmedia/a87628df-a3ea-4e9c-8453-892d6f3c6fdc/aihw-ihw-207.pdf.aspx?inline=true>> 42.

¹¹⁰ Boyd H Hunter, “Social Exclusion, Social Capital, and Indigenous Australians: Measuring the Social Costs of Unemployment” (Discussion Paper No 204, Centre for Aboriginal Economic Policy Research, ANU, 2000).

Figure 2: Mean gross weekly equivalised household income of persons aged 18 and over, by Indigenous status and remoteness, 2016.¹¹¹



Over one third (36.7%) of Aboriginal and Torres Strait Islander households reported an equivalised total household weekly income of \$1,000 or more in 2021. The median equivalised total household weekly income for Aboriginal and Torres Strait Islander households was \$830,¹¹² which is less than half of the median weekly household income in each state in Australia other than Tasmania.¹¹³

The 2018–19 Health Survey found that 40% (153,700) of Indigenous adults were living in households that had experienced days without money for basic living expenses, such as for food, clothing and bills, in the previous 12 months.¹¹⁴ Additionally, 54% (164,170) of Indigenous Australians were living in households that reported they would not be able to raise \$2,000 within a week for an emergency (an indicator of financial stress). This was more likely for households in *Remote* areas (75%) than for those in *non-remote* areas (49%).¹¹⁵

The above statistical information confirms that Indigenous Peoples are the most marginalized group in Australian society. Indigenous poverty and economic marginality have been explained in terms of the historical legacy of colonization and exclusion of Indigenous Peoples from the mainstream economy. In addition, the structural factors of a largely rural population and a high youth dependency ratio impacting employment opportunities, and cultural factors constrain

¹¹¹ Figure 2.08.6: Mean gross weekly equivalised household income of persons aged 18 and over, by Indigenous status and remoteness, 2016 (2020), online: Australian Institute of Health and Welfare <<https://www.indigenoushpf.gov.au/measures/2-08-income>>.

¹¹² Australian Bureau of Statistics, *supra* note 106.

¹¹³ Australian Bureau of Statistics, *Income and Work Census* (28 June 2022) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/income-and-work-census/latest-release>>.

¹¹⁴ Australian Institute of Health and Welfare, “National Aboriginal and Torres Strait Islander Health Survey, 2.08 Income” (03 December 2020) Aboriginal and Torres Strait Islander Health Performance Framework <<https://www.indigenoushpf.gov.au/measures/2-08-income>> refers to Table D2.08.7 of AIHW and ABS analysis of Census of Population and Housing 2016.

¹¹⁵ *Ibid.*, refers to Table D2.08.6 of AIHW and ABS analysis of Census of Population and Housing 2016.

Indigenous Peoples from participating in the mainstream labour market.¹¹⁶ The government has responded to address Indigenous socioeconomic disadvantage broadly in health, housing, employment and education including special measures to transfer land back to Indigenous Peoples and providing enterprise grants and loans to promote Indigenous businesses. Consistent with a 2000 report indicating little improvement in the relative and absolute economic status of Indigenous Peoples in Australia for the past four decades,¹¹⁷ the improved figures from more recent statistics show only marginal improvements.

An example could be seen in the community in Mimili, South Australia where Mr. Kobelt operated the book up system examined in *ASIC v Kobelt*. The 2011 census recorded 281 people including 246 Indigenous Peoples.¹¹⁸ The primary judge referred to data published by the Australian Bureau of Statistics in 2012 which suggests that a little less than 40% of the Anangu community had either never attended school at all or had attended only to year 8 or below. Only about 7% of the Anangu people had completed Year 12. Only 14.8% of Anangu people had incomes of over \$400 per week, and 61.5% had incomes between \$200 and \$399 per week. His Honour said that this was consistent with a number of Anangu people being unemployed and/or in receipt of social security benefits.¹¹⁹ Ten years later, the 2021 census reported 277 people including 239 Indigenous Peoples. Educational literacy improved; compared to previous figures, 15% of the Anangu people had either never attended school at all or had attended only to year 8 or below and about 25% of the Anangu people had completed Year 12. While income figures also improved, again the increase is nominal. Only 28% of Anangu people had incomes of over \$400 per week, and 43% had incomes between \$150 and \$399 per week.¹²⁰ These figures when compared to the Australian national median personal income of \$805 per week in 2021,¹²¹ and national Year 12 certification rate of 76% in 2020,¹²² indicates a wide gulf in the socio-economic position between Indigenous and non-Indigenous Australians.¹²³

Overall, the external factors of geographic location, lack of identification documents, educational levels and lower financial literacy as well as unemployment and lower income result in structural imbalances between Indigenous and non-Indigenous Australians. Cumulatively, they significantly aggravate the problem of financial disengagement when account is given to internal and cultural factors discussed in the next Part below.

¹¹⁶ Jon C Altman, "The Economic Status of Indigenous Australians" (Discussion Paper No 193, Centre for Aboriginal Economic Policy Research, ANU, 2000).

¹¹⁷ *Ibid.*

¹¹⁸ Australian Bureau of Statistics, *Mimili 2011 Census*, <<https://www.abs.gov.au/census/find-census-data/quickstats/2011/UCL422030>>.

¹¹⁹ *Kobelt v Australian Securities and Investments Commission* [2018] FCAFC 18, at [94] – [96]

¹²⁰ Australian Bureau of Statistics, *Mimili 2021 Census Community Profiles* (2021)

<<https://www.abs.gov.au/census/find-census-data/community-profiles/2021/SAL40881>>.

¹²¹ This includes the adult population from 15 years to over 85 years, including those who are unemployed or retired. Source: Australian Bureau of Statistics, *Income and work: Census 2021*,

<<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/income-and-work-census/2021>>.

¹²² Australian Curriculum Assessment and Reporting Authority, "Year 12 Certification Rates" (2020)

<<https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/national-report-on-schooling-in-australia-data-portal/year-12-certification-rates>>.

¹²³ See generally Jon C Altman, Nicolas Biddle and Boyd H Hunter, "Prospects for 'Closing the Gap' in Socioeconomic Outcomes for Indigenous Australians?" (2009) 49(3) *Australian Economic History Review* 225.

V. Indigenous cultural norms to money and money management

A distinctive Indigenous cultural framework and orientation shapes the views of Indigenous Peoples when it comes to money and money management.¹²⁴ Caring and sharing are perhaps the first two principles of Aboriginality.¹²⁵ Indigenous Peoples have a strong obligation to family and community, placing a high value on family ties and responsibilities within the extended family.¹²⁶ The bonds of community inculcate an obligation to share and/or to pool resources. The cultural practice of sharing has given rise to ‘demand sharing’ — the expectation to share resources if demanded which was acknowledged by the High Court in *ASIC v Kobelt* discussed in Part I. Anthropologist David Martin expresses the shared identity with kin and others as ‘relatedness’ in tangible forms of distribution of material goods, food and particularly cash; and demand-sharing as ‘egalitarianism’ — insistence of equality between individuals through social transactions.¹²⁷ The tension between connectedness and personal autonomy makes deflecting or avoiding of demands a delicate issue, as a direct refusal is tantamount to breaking off relations.¹²⁸ The validation of social relations through sharing of material resources, termed “performative sociality” is central to Indigenous use of money.¹²⁹ Thus, the institution of demand sharing and Indigenous use of money can be seen from the perspective of ‘social capital’.¹³⁰ Public policy advisor Patrick McClure has defined ‘social capital’ as “the reciprocal relationships, shared values and trust which binds societies together and enable collective action”.¹³¹ Godinho describes ‘Indigenous money’ as a medium of relationship — it is a medium of relationship where family is the store of long term value and ‘caring’ is the preferred behaviour.¹³² This contrast sharply with standard economic (Eurocentric) views of money as a medium of exchange, a store for long-term value and a unit of account.¹³³

While sharing behaviour is valued as a major aspect of Indigenous obligations, the reduced ability to save comes into tension with cultural beliefs about helping others. In Aboriginal communities, generosity is viewed as a cultural norm, while saving for oneself is viewed as selfish.¹³⁴ Indigenous Peoples have experienced challenges “reconciling kinship, reciprocity and

¹²⁴ Catherine Demosthenous et al, “Identity and Financial Literacy: Australian Aboriginal Experiences of Money and Money Management” (Conference Paper, Financial Literacy, Banking and Identity Conference 2006) 2.

¹²⁵ Kevin Gilbert, *Living Black: Blacks Talk to Kevin Gilbert* (London, Penguin, 1978) 304.

¹²⁶ Diana Eades, “They Don’t Speak an Aboriginal Language, or Do They?” in Ian Keen (ed), *Being Black: Aboriginal Cultures in Settled Australia* (Aboriginal Studies Press, 1994).

¹²⁷ D F Martin, “Money, Business and Culture: Issues for Aboriginal Economic Policy” (Discussion Paper No 101, Centre for Aboriginal Economic Policy Research, The Australian National University, 1995) 6-8.

¹²⁸ Nicholas Peterson and John Taylor, “The Modernising of the Indigenous Domestic Moral Economy” (2003) 4 (1 & 2) *The Asia Pacific Journal of Anthropology* 105, 109-110.

¹²⁹ See Martin, *supra* note 127 at 7.

¹³⁰ Yasmine Musharbash, “The Yuendumu Community Case Study” in D E Smith (ed) *Indigenous Families and the Welfare System* (Canberra: Centre for Aboriginal Economic Research, ANU, 2000) 53, 59.

¹³¹ P McClure, *Participation Support for a More Equitable Society: Final Report of the Reference Group on Welfare Reform* (Canberra: Family and Community Services, 2000) 32.

¹³² See Godinho, *supra* note 4 at 178-9.

¹³³ Jens Mattke, Christian Maier and Lea Reis, “Is Cryptocurrency Money? Three Empirical Studies Analyzing Medium of Exchange, Store of Value and Unit of Account” (Conference Paper, Computers and People Research Conference, 2020).

¹³⁴ S M Danes, J Garbow & B H Jokela, “Financial Management and Culture: The American Indian Case” (2016) 27(10) *Journal of Financial Counselling and Planning* 61.

concepts of shared resources with mainstream notions of the financial economy”.¹³⁵ Despite the challenges, cultural norms of sharing and communal living continue to be a source of strength and resilience among Indigenous Australians as reflected in the oral testimony below by one of the co-authors of this article, Graeme Lyle La Macchia.

In the 1970s, when I was a first-year student at the University of New England in Armidale NSW, I departed my all-male residential college to ‘move into town’. One estate agent suggested a ‘self-contained bedsit’ just off the highway at the bottom end of town. The rent was low and the place was small, but quiet and clean. There was a larger unit at the front which had been the ‘main house’ in earlier times. There were signs that small children, adults and elderly persons lived together in the main house. For the moment, there was no one else around. Late on the Sunday of the first weekend the residents returned home. Suddenly the place was jumping. I was informed by one of the younger children that there were six children and four adults – two of them elderly. Soon I was asked to assist my neighbors in their dealings with ‘those people at the bank’ and with ‘people at the real estate’. Without fully realizing what was happening, I slowly came to understand that I had become an ‘in house financial advisor’ to an extended Aboriginal family and associated Indigenous community members. In this environment, financial engagement arose within a community created through connectedness and solidarity. When my football team was playing nearby, there were wild cheers when I ran onto the field, touched the ball, or tackled a member of the opposing team. Towards the end of the year when I departed for Melbourne, local community members whose names I never knew wished me well, sometimes on an almost daily basis.

The personal reflection from the oral testimony above provides an example of the strong communal spirit amongst Indigenous Australians. It emphasizes their preference for community, family, household and kin-based groups. It is a reminder of the open disposition to sharing and the strong family-like support mechanism. At the same time, it points to a marked difference between the Eurocentric market-based financial system and the First Nations system that prioritises relationality and community. This reflection also identifies the known challenge of the lack of financial literacy where it notes, “*I was asked to assist my neighbours in their dealings with ‘those people at the bank’*”. The communal lifestyle where everyone’s life is intertwined is a daily reality in Indigenous settings. These cultural norms should be viewed as a solution or ameliorator to Indigenous disadvantage and not as part of the problem.¹³⁶

The majority judges in *ASIC v Kobelt* recognised the practice of demand sharing in Aboriginal communities and that these distinctive cultural practices should be respected.¹³⁷ It is evident that culture matters in money and money management practices of Indigenous Peoples. Financial literacy plans would be imperative in bridging the gap between Eurocentric and Indigenous cultural orientation to money and money management practices, and as “important parts of the solution to addressing Indigenous consumer problems with book up”.¹³⁸ In designing

¹³⁵ First Nations Foundation, “The Financial Economy and Indigenous Young People in Australia” (March 2016) <https://www.csi.edu.au/media/uploads/Financial_Economy_and_Indigenous_Young_People_In_Australia_-_Summary_Report.pdf> 8.

¹³⁶ Alfred M Dockery, “Culture and Wellbeing: The Case of Indigenous Australians” (2010) 99 Social Indicators Research 315.

¹³⁷ *ASIC v Kobelt*, *supra* note 3, paras 77-79 per Kiefel CJ.

¹³⁸ Submission by ASIC, *supra* note 57, 31 [78].

financial literacy plans by Indigenous Peoples for Indigenous Peoples, or in consultation and collaboration with Indigenous Peoples, these distinctive Aboriginal cultural norms, values, orientations, practices and views towards money and money management must be recognised, respected and included. This is addressed in the next part below.

VI. Culture matters: financial literacy programs for Indigenous Peoples

In Part IV, statistical evidence highlighted four causes of financial disengagement of Indigenous Australians. Low financial literacy was identified as one of the causes. Financial literacy is a key step towards financial engagement. The Closing the Gap report identifies that genuine and successful engagement with Indigenous Peoples requires “cultural competency (including awareness of Indigenous history, culture and values)”.¹³⁹ Thus, a critical step towards improving financial engagement of Indigenous Australians is to promote financial literacy programs that are designed with an understanding of the cultural context of Indigenous Peoples’ approach to money and money management practices.

The OECD defines ‘financial literacy’ as “... the knowledge and understanding of financial concepts and risks, and the skills, motivation and confidence to apply such knowledge and understanding in order to make effective decisions across a range of financial contexts, to improve the financial well-being of individuals and society, and to enable participation in economic life”.¹⁴⁰ The expansive OECD definition of financial literacy embraces both the Eurocentric and Indigenous cultural orientation to money and money management practice in that it notes that the focus is to improve the financial well-being of individuals (Eurocentric disposition) and society (Indigenous disposition).

The ANZ Survey of Adult Financial Literacy¹⁴¹ shows that Indigenous peoples have lower scores within the population on three of the five behavioural indicators of a person’s financial literacy.¹⁴² Similar results are shown for the younger Indigenous population. The OECD survey 2015 shows that the mean financial literacy score for Indigenous students was 411 points, resulting in a 97-points performance disparity with non-Indigenous students having a mean score of 508 points.¹⁴³ It is also lower than the OECD average (489 points), and almost half (48%) of Indigenous students (compared to 18% of non-Indigenous students) did not reach the OECD’s

¹³⁹ Australian Institute of Health and Welfare and Australian Institute of Family Studies, “Engaging with Indigenous Australia – Exploring the Conditions for Effective Relationships with Aboriginal and Torres Strait Islander Communities” (Issue Paper No. 5 produced for Closing the Gap Clearinghouse, October 2013) 7

<<https://www.aihw.gov.au/getmedia/7d54eac8-4c95-4de1-91bb-0d6b1cf348e2/ctgc-ip05.pdf.aspx?inline=true>>..

¹⁴⁰ OECD, *Program for International Student Assessment (PISA) 2012 Results: Students and Money (Volume VI): Financial Literacy Skills for the 21st Century* (OECD Publishing, 2014) 33.

¹⁴¹ Australia and New Zealand Bank (ANZ), *The ANZ Survey of Adult Financial Literacy in Australia*, (Full Report, ANZ, 2014) <<https://www.anz.com/resources/3/1/31cbc1fd-9491-4a22-91dc-4c803e4c34ab/adult-financial-literacy-survey-full-results.pdf>>, 11. The ANZ survey is the foremost survey on adult financial literacy in Australia; this 2014 report presents the fifth report in this series.

¹⁴² *Ibid.* The report notes that the results should be treated with caution given their small number in the survey. In New Zealand, similar results are seen with New Zealand’s Maori people who have lower levels of financial literacy than the non-Maori population, see David Crossnan, David Feslier and Roger Hurnard “Financial Literacy and Retirement Planning in New Zealand” (2011) 10(4) *Journal of Pension Economics & Finance* 619, 626.

¹⁴³ OECD, *Program for International Student Assessment (PISA) 2015: Financial Literacy in Australia* (Australian Council for Educational Research, 2015) Sue Thompson and Lisa De Bortoli. <<https://www.oecd.org/pisa/PISA-2105-Financial-Literacy-Australia.pdf>>. First conducted in 2000, PISA is an international assessment that measures the financial literacy of 15-year old students every three years.

international baseline proficiency level. Specifically, the detailed difference in scores was attributed to the lower socioeconomic levels of Indigenous students, and their weaker performance in mathematical literacy and reading literacy.¹⁴⁴

The National Financial Literacy Strategy 2014-2017 identified Indigenous Peoples as having the lowest financial literacy levels in Australia and recognized the importance of education programs for all Australians, including Indigenous Peoples.¹⁴⁵ The National Capability Strategy 2018 made the transition from ‘financial literacy’ to ‘financial *capability*’ to reflect the ongoing dynamic process.¹⁴⁶ The National Financial Capability Strategy 2022 recognised that enhancing the financial capability of Aboriginal and Torres Strait Islander peoples within their cultural context was fundamental.¹⁴⁷ This key responsibility is placed on the government which is delivered through agencies within the Treasury portfolio, particularly ASIC. Improving financial literacy skills of Indigenous Australians has also been shown to contribute to their overall financial well-being.¹⁴⁸

The national approach by ASIC, in promoting financial well-being, has been compared with the position in Canada.¹⁴⁹ ASIC oversees two important activities contributing to financial well-being. Through the concept of responsible lending, ASIC supervises credit-providing organisations, besides its role in promoting financial literacy. Unlike the ASIC, the Canadian regulator, the Financial Consumer Agency of Canada operates at more localized levels and is not responsible for the fringe bank/sub-prime lending sector; however, in recent years it has taken a more strategic approach with banks.¹⁵⁰

The active involvement of the ASIC in promoting the Indigenous Outreach program¹⁵¹ and specific financial literacy programs¹⁵² supports the Indigenous “local communities to identify what they want their future to look like, in order to feel safe, to feel connected and to have a sense of

¹⁴⁴ *Ibid.*, Ch 4 “Financial literacy results for students within Australia”, 52-54

¹⁴⁵ Australian Securities and Investments Commission, *National Financial Literacy Strategy 2014-17* (1 August 2014) <<https://download.asic.gov.au/media/1344650/rep403-published-1-August-2014.pdf>> at p 26. In New Zealand, while the gap in financial knowledge between the Maori and Pacific peoples with the New Zealand European population has closed substantially, it remains wide in 2013. The importance of financial education is reflected in the National Strategy for Financial Literacy and the activities led and coordinated by the Commission for Financial Literacy and Retirement Income, see Michael P Cameron and Pushpa Wood, “The Policy Context for Financial Education in New Zealand” in Carmela Aprea et al (eds) in *International Handbook of Financial Literacy* (Springer, 2016) 190.

¹⁴⁶ See Financial Capability - Australian Government, *National Financial Capability Strategy 2018*, <<https://www.financialcapability.gov.au/strategy/download/national-financial-capability-strategy-2018.pdf>>.

¹⁴⁷ The National Financial Capability Strategy (February 2022) <https://www.financialcapability.gov.au/sites/www.financialcapability.gov.au/files/2022-02/Financial-Capability-Strategy-2022_0.pdf> at p 23.

¹⁴⁸ Productivity Commission, *Overcoming Indigenous Disadvantage* (2020). <<https://www.pc.gov.au/ongoing/overcoming-indigenous-disadvantage>>.

¹⁴⁹ Jerry Buckland, Carmen Daniels and Vinita Godinho, “Does Australia Have an Advantage in Promoting Financial Well-being and What Might Canada and Other Countries Learn?” (2020) 29(1) *Canadian Journal of Urban Research* 39, 43-44.

¹⁵⁰ *Ibid.*

¹⁵¹ ASIC’s Stretch Reconciliation Action Plan 2017-2020 identifies “Engaging with Indigenous Financial Consumers, Investors and Regulated Population” as a focus area through the work of the Indigenous Outreach Program <<https://download.asic.gov.au/media/5228489/asic-rap-2017-20.pdf>> at p 11.

¹⁵² The ASIC MoneySmart website provides specific Indigenous Peoples financial literacy resources including an outreach program directed towards Indigenous Peoples, see <<https://moneysmart.gov.au/indigenous>>.

ownership and control over their own destiny”.¹⁵³ Successful financial literacy and capabilities programs must involve consultations with local Indigenous bodies, especially Indigenous Elders, to design programs that seek to achieve the communities’ life aspirations with an understanding of the cultural context and socioeconomic factors that constrain their participation in mainstream financial services.¹⁵⁴ Elders in Indigenous communities perform a central role and contribute to individual and community wellness.¹⁵⁵ Elders contribute to financial literacy programs by transmitting financial knowledge and application in a cultural context. This enables leaders and communities the opportunity to participate in analysing problems and seeking agreed solutions.¹⁵⁶ Consultation is a way of life with Indigenous Peoples – this accord with the principle of Free, Prior and Informed Consent encouraging their participation,¹⁵⁷ and supports the IST approach adopted in this article.

Financial literacy programs which respond to Indigenous needs and works *with* Indigenous communities, instead of *for* a community are available in Australia,¹⁵⁸ New Zealand¹⁵⁹ and Canada.¹⁶⁰ New programs should address distinctive Indigenous cultural understandings highlighted in Part V above. The Closing the Gap report recognises that engagement with Indigenous Australians must take into account Indigenous cultural forms and practices for policies and programs to succeed.¹⁶¹ Thus, financial literacy and capability programs for Indigenous Peoples need to be designed to embed an understanding of cultural influences and socioeconomic factors that would enable Indigenous Peoples to engage with the financial system while retaining their underlying cultural values.¹⁶² The strong focus on sharing resources (including money) among Indigenous Peoples remains important. Traditional financial literacy education focusing on individual wealth accumulation challenges Indigenous norms and practices of sharing.¹⁶³ Thus, the conventional one-size-fits-all approach to financial literacy must be realigned and tailored with

¹⁵³ Heather Saunders and Martha Piper, *Enhancing Indigenous Financial Capability Programs* (December 2011) First Nations Foundation <<https://www.reconciliation.org.au/wp-content/uploads/2017/11/2011-Enhancing-Indigenous-Financial-Capability-Programs.pdf>> 6.

¹⁵⁴ *Ibid.*, Recommendations 3, 4, 5 and 8 of nine recommendations.

¹⁵⁵ Chantal Viscogliosi et al, “Importance of Indigenous Elders’ Contributions to Individual and Community Wellness: Results from a Scoping Review on Social Participation and Intergenerational Solidarity” (2020) 111 *Canadian Journal of Public Health* 667.

¹⁵⁶ *Ibid.*

¹⁵⁷ Johannes Rohr and Jose Aylwin, *Business and Human Rights, Interpreting the UN Guiding Principles for Indigenous Peoples*, (Report 16, IWGIA, European Network on Indigenous Peoples, 2014) 44.

¹⁵⁸ See Mark Brimbe and Levon Blue, “Tailored financial literacy education: An Indigenous perspective” (2013) 18(3) *Journal of Financial Services Marketing* 207. <<https://doi.org/10.1037/fsm.2013.16>. See also S Wagland and S Taylor, “The conflict between financial decision making and indigenous Australian culture” (2015) 1(1) *Financial Planning Research Journal* 33.

¹⁵⁹ See J Couchman, K Baker, T Upokorehe and T Whakatōhea, “One step at a time: Supporting families and whanau in financial hardship”. A Families Commission Research Report. Families Commission. <<https://thehub.swa.govt.nz/assets/documents/one-step-at-a-time.pdf>>

¹⁶⁰ Levon Blue, “Financial Literacy Education with Aboriginal People, the Importance of Culture and Context” (2016) *Financial Planning Research Journal* 91, 94-95.

¹⁶¹ Closing the Gap report, note 139, at 8 citing MC Dillon and ND Westbury *Beyond Humbug: Transforming Government Engagement with Indigenous Australia* (South Australia: Seaview Press, 2007).

¹⁶² See Recommendations 5 and 8 in Saunders and Piper, *supra* note 153 at 5.

¹⁶³ Levon E Blue & Laura E Pinto, “Other Ways of Being; Challenging Dominant Financial Literacy Discourses in Aboriginal Context” (2017) 44 *Australian Education Research* 55, 57.

approaches that assist Indigenous Australians to meet their individual needs within community obligations.¹⁶⁴

With appropriate design, change must be implemented with cultural competency and in a culturally safe environment. Cultural competency is “the ability to understand, communicate and effectively interact across cultures”.¹⁶⁵ Cultural safety refers to an environment which is secure for people allowing “shared respect, shared meaning, shared knowledge and experience, of learning together with dignity and truly listening”.¹⁶⁶ Translating cultural competency and awareness to praxis, financial counselling training entails the skills to understand how an Indigenous client relates to money within his or her cultural value system.¹⁶⁷ One financial counsellor expressed it as follows:

... So I say to them ‘how much do you feel you must send your parents? And we just put it in the budget and see how everything else fits. That’s just the way things have got to be ... it’s part of their culture, so you just deal with it.’¹⁶⁸

Some financial literacy programs have infused Indigenous cultural norms in their programs to meet individual client needs. For example, the “My Moola” was developed in 2007 through a partnership between the First Nations Foundation and ANZ, under a collective commitment to improve financial inclusion of Indigenous Australians. A participant of My Moola said:

In our way of life, our kinship system, saying ‘no’ to others is very hard to do, especially to older family members. Sometimes you can’t say ‘no’. Respect from your family is more important than money. But you do get a new perspective about money, and about managing your money, and it [My Moola] teaches you new skills like how to do a budget with the money you’ve got left over.¹⁶⁹

¹⁶⁴ Levon E Blue, “Financial Literacy Education with an Aboriginal Community: Identifying Critical Moments for Enabling Praxis” (2019) 9(1) *Education Sciences* 1; M Brimble and L Blue “Tailored Financial Literacy Education: An Indigenous Perspective”, *supra* note 158 at 209.

¹⁶⁵ Federation of Ethnic Communities’ Councils of Australia, *Cultural Competency in Australia, A Guide*, (FECCA, 2019) 3, citing the definition by Terry L Cross et al *Towards a Culturally Competent System of Care* (Georgetown University Development Centre, 2019) as follows: “... a set of congruent behaviours, attitudes and policies that come together in a system, agency or professionals and enable that system, agency or those professionals to work effectively in cross cultural situations”.

<<https://spu.edu/~media/academics/school-of-education/Cultural%20Diversity/Towards%20a%20Culturally%20Competent%20System%20of%20Care%20Abridged.ashx>>.

¹⁶⁶ Robyn Williams, “Cultural Safety – What Does It Mean for Our Work Practice?” (1999) 23(2) *Australian and New Zealand Journal of Public Health* 213, citing A Eckermann et al *Binang Goonj: Bridging Cultures in Aboriginal Health* (Armidale: University of New England Press, 1992).

¹⁶⁷ Blendie P Hawkins and Virginia S Zuiker, “Financial Counsellors’ Experiences Working with Clients of Color: Lessons of Cultural Awareness” (2019) 30(1) *Journal of Financial Counselling and Planning* 6, 6.

¹⁶⁸ *Ibid* 15.

¹⁶⁹ Nikki Moodie, Fatoumata D Roost and Eric Dommers, *My Moola, Report from the Evaluation of an Indigenous Financial Literacy Program* (First Nations Foundation, September 2014) <https://minerva-access.unimelb.edu.au/bitstream/handle/11343/129803/2014%20Moodie%20_%20My%20Moola%20-%20report.pdf?sequence=1&isAllowed=y>.

Exemplifying the IST approach, Aboriginal literacy campaigns have been effective in empowering individuals to gain self-control and confidence.¹⁷⁰ Similarly, financial literacy and capabilities programs which are tailored to immerse Indigenous cultural norms and implemented with cultural competence and awareness will contribute to the efforts to increase financial engagement of Australia's Indigenous Peoples. Innovative programs such as "My Money Dreams" which have been developed by Indigenous People for Indigenous People with the support of Indigenous Business Australia and Australian Unity Foundation, has provided unique financial literacy programs which are made more accessible to more Indigenous Peoples through digitalisation.¹⁷¹ The concept of 'train the trainer' which works with Aboriginal organisations to train financial counsellors on how to deliver financial literacy training to Indigenous communities has taken root.¹⁷²

CONCLUSION

The High Court of Australia's decision in *ASIC v Kobelt* has drawn attention to the vulnerabilities impacting the financial well-being of Indigenous Australians in rural and remote parts of Australia. This article discussed external and internal factors exacerbating financial disengagement of Indigenous Peoples within Australia's mainstream financial system. External factors include geographical location, lack of identification documents, unemployment, lower income, and lower financial literacy. Internal factors centre around Indigenous cultural norms of sharing and "demand sharing", which were acknowledged in *ASIC v Kobelt*.

Analysing these issues from the lens of Indigenous standpoint theory, the article highlights the indispensability of the Cultural Interface which shows that connection to culture and community is key to Indigenous Peoples' identity and strength. Culture matters in establishing resilience and inculcate wellbeing, including financial wellbeing. An effective design and implementation of financial literacy and capability programs that respect and embeds distinctive Aboriginal cultural norms, values, and practices on money management will increase financial engagement of Indigenous Australians. The cross-cultural discourses brought by *ASIC v Kobelt*, and the lessons learned in Australia more broadly, can have broader applications in promoting financial engagement of Indigenous Peoples in the CANZUS nations.

¹⁷⁰ Frances Williamson & Bob Boughton, "I Can Speak on This: Empowerment within an Aboriginal Adult Literacy Campaign" (2021) 50 *The Australian Journal of Indigenous Education* 168.

¹⁷¹ First Nations Foundations, *First Nations Foundation Launches World-first Indigenous Digital Financial Literacy Program*, (2019) online <<https://firstnationsfoundation.org.au/first-nations-foundation-launches-world-first-indigenous-digital-financial-literacy-program/>>.

¹⁷² See for eg., the support and resources from various partnerships with First Nations Foundation to build financial well-being and inclusion of Indigenous Australians, <<https://www.ecstra.org.au/indigenous-australians>>.

