



Promoting Responsible Consumer Lending

Senator Andrew Bragg
Chair
Senate Economics References Committee
By email: economics.sen@aph.gov.au

Tuesday 22nd August 2023

Dear Senator Bragg

I write to bring to your attention our disappointment with the continued significant increases year on year of the ASIC Cost Recovery Levy to Australian credit licensees, including small and medium amount credit providers.

The NCPA supports, in principle, the cost recovery model applied by ASIC but not one where the costs continue to rise year on year to small and medium amount credit providers that have no capacity to increase their costs to customers where providers operate under a fixed fee regime.

This approach if continued will result in providers simply exiting the sector, as their capacity to continue to absorb these significant fee increases will ultimately render some providers unviable causing possible further financial exclusion and less options for Australians access to credit in a time when they need more options that are regulated, not less, which as we know can drive consumers to unregulated credit products in their time of need.

The following table highlights the CRL fee increases since FY17/18 compared with the corresponding ASICs actual cost of regulating the small and medium amount lending industry, including those companies which would appear to be most relevant to our sector along with a snapshot of actual impact to one of the sectors largest providers Cash Converters.

	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
Total Budgeted Costs	\$1.485M	\$1.261M	\$1.232M	\$2.22M	\$5.033M	\$7.025M
Cost Recovery Indicative Levy (CRIS)¹	Not Provided	Not Provided	\$7.53 per \$10,000 of credit provided	\$16.61 per \$10,000 of credit provided	\$38.49 per \$10,000 of credit provided	\$52.29 per \$10,000 of credit provided
ASIC Actual Cost of Regulating	NA	\$1.3M	\$2M	\$4.9M	\$4.63M	
ASIC Cost Recovery Levy (Actual)	\$8.49 per \$10,000 of credit provided	8.06 per \$10,000 of credit provided	\$15.14 per \$10,000 of credit provided	\$37.46 per \$10,000 of credit provided	\$34.47 per \$10,000 of credit provided	
Cash Converters Group Levy		\$203,971	\$296,821	\$672,724	\$710,397	Circa \$1M

¹ <https://asic.gov.au/about-asic/what-we-do/how-we-operate/asic-industry-funding/cost-recovery-implementation-statement/cost-recovery-implementation-statement-2022-23/>

The increase for all credit licensees represents a **515%** increase from \$8.49 per \$10,000 of credit provided in 2017/18 year, to an estimated \$52.29 per \$10,000 of credit provided in 2022/23 year. This level of fee increase is not sustainable for small and medium amount credit providers.

Additionally, we believe the levy applicable for the small and medium amount credit providers is grossly disproportionate compared to that of credit providers (*page 6, 2022–23 ASIC CRIS: Deposit taking and credit sector*). You will see here that the estimated cost recovery amount for small and medium amount credit providers is \$7.25 million compared with only \$31.806 million for all other credit providers. Further to this, all other credit providers are afforded the luxury of extending the first \$100 million of credit with no levy applied and for every \$1 million thereafter they are levied \$38.41.

This pales in comparison to the small and medium amount credit providers who are afforded no such “free kick” in regard to the applicable levy as it applies from the very first \$1 advanced and is levied at a rate some 36% higher at \$52.29 per \$10,000 of credit provided.

At the very heart of the unexpected nature of the increases is the fact that the FY 2019/20 and 2020/21 CRIS specified indicative levies for small and medium amount credit providers that were approx. 100% and 125% respectively understated by ASIC relative to the actual costs.

The NCPA is also confused as to the disclosures of ASICs summary of variances from their report “*ASIC, Industry Funding: Summary of Variances 2021-22*” where they claim on page 7 to have spent only \$4.630M which translated to be (\$0.402M) under budget compared with the corresponding CRIS which was for \$5.033M of expenditure. The confusion arises from their disclosures on page 10 in the 2022/23 CRIS which has an expense line item for “Adjustment for prior year (under or over recovery) with a charge to the sector for \$1.363M.

The following extract has been taken from the “Australian Securities and Investments Commission Industry Funding Model Review Discussion Paper September 2022” under the heading Unlicensed Conduct

“ASIC takes action in relation to illegal unlicensed conduct within the financial system. Unlicensed operators are not registered with ASIC and generally have not paid registration fees, nor do they pay annual levies. Nevertheless, ASIC incurs costs in identifying, preventing and sanctioning unlicensed conduct. These costs are recovered from the most ‘relevant’ sub-sector via levies; for example, regulatory activity relating to an unlicensed financial adviser would be recovered from the financial advice sub-sector. ASIC action in relation to unlicensed conduct in a sub-sector is in the interests of the licensed participants in that sub-sector because it maintains integrity and trust in the licensed sub-sector and Industry Funding Levies | 21 deters competition from unlicensed and unregulated competitors. Where an enforcement matter relates to unlicensed conduct, costs of that enforcement matter are allocated to the relevant licensed population. This population benefits from ASIC’s action to ensure that only licensed participants are providing services. Industry stakeholders in previous consultation have been less convinced of the benefit received”.

The NCPA is concerned that until very recently, where ASIC has been successful against companies such as Cigno, the effect of which is forcing small and medium amount contract providers to foot the bill for these very costly enforcement actions. This is evidenced in the above-mentioned extract from ASICs own discussion paper on industry funding where they state these enforcement costs are being “*recovered from the most relevant sub sector*” which in this instance are small and medium amount credit providers as identified by ASIC.

If in fact the small and medium amount lenders sector is footing the bill for ASICs continued pursuit of Cigno, then can we expect an adjustment for the prior year (22/23) over recovery to be identified and deducted in the 23/24 Levy if ASIC is awarded costs by the court to be paid by Cigno. The NCPA would also like some clarity on which sub-sector ASIC has been and will continue to apply its levied fees to in regard to the Buy Now Pay Later industry.

Another cause of confusion and concern for industry is the number of entities that ASIC is disclosing as being small and medium amount credit providers in their CRIS statements. In the 2021-2022 CRIS it states there are 227 providers however in the 2022-2023 CRIS it states there are 419 providers. This data seems hard to believe that after new regulations are passed which makes it near impossible for credit providers to continue to operate profitably that the industry has somehow grown by 84.5% by way of new entities.

Given ASIC's desire for transparency of costs, the NCPA is finding it difficult to reconcile the large variances between indicative levies provided in previous years CRIS's, and the subsequent actual CRL charged to credit licensees. Industry participants will use figures within the CRIS (albeit indicative only) to guide their cashflow forecasting for future years in relation to ASIC levies and I'm sure you can appreciate the unintended damaged caused when there are material variances between the CRIS and the CRL.

As a result, the NCPA has requested from ASIC a detailed explanation of how fees are calculated, and how costs are allocated to the consumer credit sector. We note that as part of the CRIS each year there is an "estimated cost to regulate" table which has a breakdown by expenses, however we would also appreciate the same breakdown of expenses for when the actuals are released. Further and on behalf of members, the NCPA has also requested ASIC review the recent increase in the industry levy for small credit providers given the relatively high level of compliance in the sector.

In addition, the NCPA believes that current economic pressures plus the impact of recent legislative change are significant economic events that amount to exceptional circumstances. ASIC specifically notes that an example of exceptional circumstances are significant economic events outside the control of an entity which limit or prevent an ability to pay.

In the absence of ASIC taking any action which meaningfully reduces the amounts levied given its powers to waive levies in exceptional circumstances, NCPA members have indicated a willingness to consider applying for a levy waiver on the basis above; and in the event ASIC fails to properly consider the waiver applications, NCPA members have indicated that they reserve their rights to exercise their ability to seek judicial review of the decision noting that any late payment penalties are suspended during that process.

The Committee's attention to the matters raised would be appreciated. I can be contacted on [REDACTED] or email at [REDACTED] if you need any further information.

Yours sincerely



Michael Rudd
Chairman