

30 October 2017

Australian Securities and Investments Commission
By email: policy.submissions@asic.gov.au

Dear Sir/Madam

ASIC Supervisory Cost Recovery Levy Cost Recovery Implementation Statement (CRIS)

We appreciate the opportunity to provide feedback on the CRIS released by ASIC on 8 October 2017.

Our comments are solely focussed on the information in the CRIS relevant to registered liquidators.

As is pointed out in the CRIS, there has been significant consultation in relation to the ASIC industry funding proposal. ARITA has participated extensively in this process both by way of submissions and by attendance at various round table discussions. Throughout this process they raised substantive concerns which remain unaddressed. These concerns principally related to unintended consequences of the cost of the recovery model on what is a small regulated population.

The information provided in the CRIS has further consolidated concerns with a significant (approximately 20%) increase in the costs to be recovered from registered liquidators since the consultation period. This means that the average recovery from a registered liquidator has increased from \$12,000 to \$14,350 in just one year. This is a significant increase over what we were told during the consultation process.

Specific concerns regarding the CRIS

We have the following specific issues in relation to the CRIS:

1. While registered liquidators have experienced a \$1.7 million (20%) increase in their levy, the companies levy (listed, unlisted public, large proprietary and small proprietary companies) has decreased by \$10.6 million (16%). This seems contradictory considering the significant number of offences reported by liquidators in relation to director misconduct and the government focus on illegal phoenix activity, which, when it occurs, is a breach of director's duties. The CRIS provides no commentary on the reasons for these changes.
2. The levy applied to registered liquidators is disproportionate when compared to any other fees levied on individuals under the model. Comparisons to Registered Auditors and Financial Planners evidence how out of sync the expenditure in this area is with what is normal and necessary. Each registered liquidator bears an average cost of \$14,350 which is well in excess of any other levy on an individual. All other large levies are imposed on businesses. Globally there is no other jurisdiction with regulatory costs this high for our profession.
3. The Model for calculation of the levy unfairly prejudices small insolvency practices who perform higher numbers of small appointments compared to larger firms who receive substantial remuneration in a smaller number of appointments. (eg. Why should an appointee who earns multi million fees on one job pay same as an appointee who earns \$10K fee). A model where cost recovery is calculated based on a percentage of job fees is much fairer and simpler to administer. Alternatively a model based on a percentage of asset recovery based calculation (equivalent to AFSA cost recovery model) could be another method.

4. There is no logic to exclude Receivership appointments and lodgements from the Model. These External Administration Types are equally as applicable to the usage of ASIC resources through lodgements, monitoring and offence reporting. By utilising a fee based model as discussed at point 3 above, then Receivership appointments (where regularly you see in the media incredibly large fees being charged) could also be included
5. ASIC's expenditure on IT support, operations support and property and corporate services appears high in light of the size of the department. As regulated populations are unable to directly influence ASIC's overhead expenditure and thus the amount levied (for example, by reducing the need for regulatory oversight), regulated populations would expect that overhead expenditure be maintained at reasonable levels.
6. The reporting provided in the CRIS provides insufficient information for the regulated population to understand what activities have been included in the budgeted costs to regulate registered liquidators. This makes it difficult for regulated populations to provide accurate feedback during the consultation process. We recommend that ASIC's levy each year is subject to an independent audit and report to stakeholders to verify that the levy charged to each regulated population is appropriate and complies with the statutory requirements.
7. The ASIC sourced revenue amount does not appear high enough to include an offset for revenue from registered liquidator notices included on the Public Notices Website (PNW).
8. Will the increase in the levy by 20% (\$1.7 million) mean that there needs to be an update to the estimated cost per notifiable event? This has been currently set at \$110 per event for registered liquidators. A 20% increase would mean this cost may now need to be \$132. What controls are in place to limit further similar cost blow out?
9. No other known profession faces a levy that is unknown in quantum at the time of incurring, and has the potential to vary substantially. Practically, how can an insolvency practice adequately budget and complete its financials reporting obligations (such as Income Tax Returns) promptly at each financial year end, when the levy remains unknown for another 9 months after?
10. If the Model based on lodgements is to be the applicable model, the intention to calculate and recover current year costs exactly, by forcing the practitioner to wait some 9 months after FY end to learn the actual final bill is completely unnecessary and a waste of resources dealing with it in this way. Why not simply base it on last years actual ASIC costs in order to make the amount certain. ASIC would still recover the vast amount of their actual costs, yet be only 12 months in arrears on any increases. The extra administration burden and uncertainty in this calculation is unreasonable and unwarranted.

Yours sincerely
Robson Cotter Insolvency Group Pty Ltd



Bill Cotter
Director