Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investments Commission
Question: BET 76
Topic: Banks charge on credit cards
Reference: Hansard page no. 17 - 03 June 2015
Senator: Lambie, Jacqui

Question:

Senator LAMBIE: I want to know whether ASIC has received any complaints about the rates banks charge on credit cards, at 17 per cent, given that base interest rates are at historic lows of two per cent—which, as a 700 per cent mark-up, makes payday lenders look like charities—and whether it has also received complaints that, when you withdraw $20 from an ATM, you are charged $2.80. I find that disgusting. Is it legal to charge this sort of money, really?
Mr Medcraft: I will pass to Peter Kell, who oversees the credit area.
Mr Kell: On your first question—have we received complaints about the actual interest rate?—we can check whether we have had any particular complaints. But generally, as our jurisdiction does not extend to the level of interest but more to things like whether people have been misled about the terms and conditions, whether the credit has been provided irresponsibly—
Senator LAMBIE: Is it legal?
Mr Kell: Are they allowed to charge interest rates at that level? Yes, that is legal. I know it has been discussed in the last few days. Is it something that we think is worth looking at? Certainly.
Senator LAMBIE: It is certainly not morally right, is it?
Mr Kell: We have seen what Treasury and others have said, and we would be very much prepared to work with Treasury to look at this issue, because it is obviously something of community concern. I can understand exactly where your question is coming from, but they remain very sticky, despite interest rates coming down in other sectors. So, as to the reasons why that is occurring, I think that would be worth a close examination.
Mr Medcraft: Senator, you mentioned payday lending. First of all, from our point of view, we are being proactive with consumers, actually advising them on alternatives to payday lending. Also, the message to people is: if you are having trouble paying your electricity bill or your mortgage, basically approach the utility or the bank, who generally have programs where they can assist you, rather than going through payday lending. I see ads from payday lenders about getting assistance to pay your electricity. You can actually go to your utility and they will generally give you time. So really the message to everybody is: if that is where your problem is, you do not necessarily need to go to a payday lender.
The other issue is that, as I said, we are looking also at surveillance, enforcement and significant action against payday lenders, both in their advertising and in their conduct. My point at the start of this meeting was about conduct and culture, and it is a very significant message to that industry about conduct and culture.
Senator LAMBIE: And what is morally right.
Mr Medcraft: Well, having the right culture to make sure that you are not breaking the law. Can I just say it is a hint or a nudge.

Mr Day: Senator, on your second question, about the fees charged for withdrawing money from ATMs, we will take it on notice as to whether or not we have received any complaints about that, but obviously those things are a commercial matter for the banks about what they may charge for people to make withdrawals. I guess you are referring to taking it out of ATMs from other banks rather than their own.

Answer:

BET 76

ASIC's records indicate that ASIC has not received any reports of alleged misconduct from consumers in the last two financial years (between 1 June 2013 and 30 June 2015) that raise concerns about the level of interest rates applicable to credit cards, for example in comparison with the official cash rate (OCR) set by the Board of the Reserve Bank of Australia (RBA).

ASIC has received 29 reports of alleged misconduct during this time from consumers raising concerns that involve credit card costs. These matters generally relate to credit card fees, fees incurred for late repayments, and insufficient disclosure of fees and charges.

ASIC has generally provided assistance to these consumers to pursue their concerns through the relevant credit provider's internal dispute resolution (IDR) process or external dispute resolution (EDR) scheme.

There are no express regulatory requirements under the legislation that ASIC administers for credit providers to charge any particular interest rate on credit cards, nor to increase or decrease credit card interest rates in line with decisions made by the RBA Board on the OCR. It is generally a commercial decision for a credit provider as to what interest rate they charge on credit contracts, including credit cards.

Although disputes between credit providers and their customers about the applicable interest rate charged on credit cards do not amount to a breach of regulatory obligations, the *National Consumer Credit Protection Act 2009* (NCCP Act) and the *National Credit Code* (Schedule 1 of the NCCP Act) (NCC) have in place mechanisms for the protection of consumers.

Under the NCC, consumers who are unable to meet their credit repayment obligations, including credit card interest payments, due to a change in circumstances, for example due to illness or unemployment, are able to apply to their credit provider for a change to their repayment arrangements on grounds of hardship.

In addition, Australian Credit Licensees are required under the NCCP Act to hold membership with an ASIC-approved EDR scheme – currently the Financial Ombudsman Service, or Credit and Investments Ombudsman.

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Action ASIC has taken in relation to credit card issuers

ASIC has taken public action against three credit card issuers in recent years. This has included action in relation to how credit card issuers obtain customers' consent before sending credit card limit increase invitations.

New laws commenced on 1 July 2012 that prohibit credit card issuers from sending unsolicited credit limit increase invitations to customers unless the customer has provided consent. ASIC was concerned that some of the messages provided to customers about providing consent may have created a misleading impression about customer rights and the consequences of customers not providing consent. ASIC was therefore concerned that customers may have been misled into providing their consent thereby allowing credit card issuers to send more customers invitations to increase their credit card limits.

ASIC's action was in relation to:

- GE Capital Finance Australia;
- Commonwealth Bank of Australia; and
- Westpac Banking Corporation.

Media Releases for each of these matters are attached.

<u>GE Capital Finance Australia</u> (GE Money) (14-149MR) 3 July 2014

The Federal Court made declarations and ordered GE Money pay a penalty of $1.5 million for making false or misleading representations to more than 700,000 of its credit card customers. The Court found that between 5 January and 27 May 2012 GE Money told some credit card customers that to activate their credit card, or apply for or obtain an increased credit limit, the customer also had to consent to receiving invitations to apply for credit limit increases.

<u>Commonwealth Bank of Australia</u> (CBA) (12-40MR) 7 March 2012

ASIC accepted an enforceable undertaking from the CBA following concerns that a message sent to CBA internet banking customers was misleading. The message sought customers' consent to receive credit card limit increase invitations. ASIC formed the view that the messages were misleading as they:

- suggested that if CBA's customers did not complete the electronic consent in response to the message they would lose the chance to receive credit limit increase offers
- suggested that if they did not consent, customers would miss out on opportunities to access extra funds should they need them, and
- created the impression that customers needed to act urgently, which may have led customers to respond without properly considering their options.

The messages were sent to CBA customers via its internet banking platform on 12 and 13 December 2011. In total, 96,000 customers provided their consent in response to the messages.

CBA agreed not to rely on the consents obtained and to contact each customer who provided consent over this period to correct the misleading impression and inform them of their rights.

<u>Westpac Banking Corporation</u> (Westpac) (12-79MR) 24 April 2012

Westpac withdrew and modified messages sent to customers about credit card limit increases following ASIC concerns they were misleading. These messages were sent to customers between February 2012 and March 2012 via email, credit card statements and its website. Approximately 3,700 customers provided their consent as a result of these messages. ASIC formed the view that the messages were misleading as they:

- suggested that if they did not consent, customers could miss out on accessing additional funds, and
- created the impression that customers needed to act urgently, which may have led customers to respond without properly considering their options.

Westpac agreed not to rely on the consents and contact each customer who consented to correct any misleading impression.

<u>Further work</u>

In addition to these public outcomes, ASIC also reviewed practices by other major credit card issuers.