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14 September 2009

Mr David Bergman
Assistant Secretary
Bankruptcy Policy Branch
Attorney General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Mr Bergman

Reforms to the Personal Bankruptcy Laws

The Westpac Group (Westpac) appreciates the opportunity to respond to the Exposure Draft of the Bankruptcy Legislation Amendment Bill (2009) (the bill) released by the Attorney-General's Department on 25 August 2009 entitled *Reforms to the Personal Bankruptcy Laws*.

Westpac supports the bill and the reforms it aims to enact, subject to some qualifications in relation to specific details of the proposal. We outline our response to the bill in Part 1 of this submission.

This is also an opportunity to bring to your attention our concerns relating to the current operation of debt services available to consumers. Part 2 of this submission expands on the proposal we set out in our earlier submission of 12 June 2009 on the Department's *Proposed Amendments to the Bankruptcy Act* paper. We would welcome the opportunity to meet with you to discuss this further.

PART 1 - RESPONSE TO THE BILL

Introduce a 28 day moratorium on payment

Westpac recognises that petitioning for bankruptcy is a significant step for a debtor. It is therefore important that debtors contemplating this course of action can obtain professional advice which allows them to make an informed decision regarding their affairs.

While we accept that the 28 day moratorium on payment is designed to allow for such advice to be obtained, in our view this is too long a period. Weighing the interests of creditors against a debtor's need to understand the implications of bankruptcy, Westpac recommends that this review period is more appropriately 14 days.

Increase minimum amount for a creditor's petition to \$10,000

In accordance with our previous submission, Westpac Group supports an increase in the minimum amount for a creditor's petition. However, this is a significant increase on the current amount of \$2,000. In our view, an increase to \$5,000 would be a more appropriate amendment at the present time.

Increasing by 20% the debt agreement thresholds for debt, assets and income

Debt agreements often provide a better alternative to bankruptcy for consumers. On this basis, Westpac supports this amendment.

Strengthening of the penalties for some offences and align with the penalties for other similar offences

Westpac supports these amendments.

Introduce a more streamlined process for fixing trustee remuneration and setting a basic trustee remuneration amount of \$5000.

Westpac does not oppose this amendment and supports the streamlining of trustee remuneration. However, we are concerned that this change may create a *de facto* minimum cost of \$5,000 for trustee remuneration in every case of assistance, regardless of the extent of the assistance. In our view, the Government should proceed with caution when setting basic remuneration amounts for these services to avoid this outcome.

Removal of bankruptcy districts

Westpac Group supports the removal of bankruptcy districts and alignment of bankruptcy laws across all states. As a national organisation, we support single national regulatory regimes on the basis of efficiency and reduced red-tape for business.

PART 2 WESTPAC'S VIEWS

Current Consumer Debt Services

It is Westpac's view that current consumer debt services often do not operate in the best interests of the consumers or the creditors. This is primarily because the majority of consumer debt arrangement services are only available for a fee.

Such agreements are entered into at a time when a consumer is financially stressed and at a relatively weak position when entering into financial arrangements. There is a risk that consumers in such a vulnerable position, facing limited options to alleviate their problems, will enter into over-priced arrangements. This will have the effect of not only increasing debts but lengthening the debt repayment period.

A viable alternative is the establishment of a national 'not-for-profit' debt counselling and arrangement service which offers consumers a pre-bankruptcy alternative to resolving debt issues arising from 'misfortune'.

We envisage that this service would be funded jointly by industry and government, ensuring that there is no charge to consumers for utilising the service. The objective of the service would be to provide a detailed consultation to consumers to determine the best course of action given their personal circumstances. Often this outcome will involve arranging a mutually agreeable arrangement with multiple debtors without the need to enter a Part IX or Part IV Bankruptcy Agreement.

The service would be of particular relevance to consumers with debts across multiple institutions. The consumer would only need to deal with a single organisation (i.e. the service) rather than the current need to liaise with each individual creditor, which is often a frustrating and time-consuming process for consumers. The service also supports the enhanced education and literacy themes included in proposed amendments.

Based on overseas experience, similar schemes have proven to be successful. In particular, the Consumer Credit Counselling Service (CCCS) in the United Kingdom, which recently presented at an Australian Securities and Investments Commission industry function, illustrated the success of this type of scheme. Their statistics show year-on-year growth in the number of clients counselled by this service, together with data highlighting that over 50% of consumers are recommended to CCCS for credit counselling by their own creditors.

This service would constitute a significant improvement in the treatment of debtors in Australia and Westpac would welcome the opportunity to discuss this proposal further with the Government.

If you would like to discuss any of the matters in this submission, please contact me on 02 8253 4161 or abuttsworth@westpac.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Buttsworth', with a long horizontal stroke extending to the right.

Andrew Buttsworth
Head of Government and Industry Affairs