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Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Secretary

Inquiry into the Bankruptcy Legislation Amendment Bill 2009

The Westpac Group (Westpac) appreciates the opportunity to contribute to the Senate Inquiry into the Bankruptcy Legislation Amendment Bill 2009.

Westpac is committed to sustainable customer outcomes through responsible lending and credit management. Supporting measured and appropriate changes to the law, like these proposed amendments, underscores this commitment to our customers.

We acknowledge that the current economic environment presents significant challenges for customers confronted with over-indebtedness. The role of bankruptcy in these circumstances is important and can assist in providing short- and long-term financial solutions for customers.

In our view, a properly functioning bankruptcy system should incorporate financial literacy programs which facilitate rehabilitation and allow bankrupts to re-enter the credit market and make a productive contribution to the economy. It is important this is done in a controlled manner.

In addition to supporting the proposed amendments, Westpac believes there is scope for further cooperation by both Government and industry to improve bankruptcy outcomes for customers and financial institutions.

Key issues

Westpac has already made clear its position regarding the proposed amendments in correspondence with the Government earlier this year. This submission focuses on three key aspects of bankruptcy reform:

- The extension of the moratorium period following a declaration of intent to file a debtors petition;
- The need for improved financial literacy; and
- Westpac believes continued improvement in disclosing 'workout' options to customers through a national not-for-profit service is required to ensure better customer outcomes.

Extension of moratorium

Westpac supports an extension of the moratorium to 14 days, from the current 7 days, including the requirement to file a statement of affairs with the declaration of insolvency.

The current 7 day period limits customers' opportunities to adequately assess available options. This is problematic where multiple creditors are involved, especially in an environment of increasing multiple creditor scenarios.

The proposed 28 day moratorium is too long and likely to create an excessive delay in agreeing a customer solution.

A 14 day moratorium strikes the right balance between the debtor and creditor(s), assisting in retaining a sense of urgency while providing a more reasonable timeframe for both parties to reach an appropriate outcome.

It is important that the moratorium should not preclude ongoing customer assistance contact, provided this is non arrears collection activity. Increasingly creditors offer broader hardship solutions internally and it is appropriate that creditors are able to make customers aware of these options during the moratorium.

To use an example to demonstrate why ongoing customer contact should be permitted, during financial year 2008-2009, over 25% of customer bankruptcies on the Westpac credit card portfolio originated from a 'current' (non-arrears position) or 'past due' (1-15 days overdue) in the month prior to bankruptcy.

For such bankruptcies, it is extremely unlikely that pro-active hardship management discussions occurred between institution and affected customers prior to bankruptcy. By permitting customer assistance contact during the moratorium period, more transparent workout options are likely to be generated.

Improved Financial Literacy

Westpac actively supports the objective of improving financial literacy.

We believe this is particularly important for customers experiencing financial stress and facing bankruptcy.

We commend ITSA on the improvements in financial literacy in the bankruptcy and debt agreement processes as a result of recent amendments. Government, industry and consumer groups have a collective responsibility to continue promoting literacy through better access to information, options and providing direct hardship assistance.

Bankruptcy and debt agreements are reasonable options for both customers dealing with financial stress and for institutions as a credit management rehabilitation tool. However, not all customers see bankruptcy as their primary solution to their hardship position; there needs to be suitable alternative options for these people.

National debt counselling service

Westpac proposes the establishment of national, not-for-profit debt counselling and debt arrangement service to complementary current bankruptcy processes. This service would offer customers a pre-bankruptcy alternative for resolving debts resulting from misfortune.

In our view this service should be funded jointly by industry and government, requiring a nil or nominal charge for customers utilising the service. The objective of the service would be to provide a detailed consultation to customers to determine the best course of action given their personal circumstances. While this outcome may often result in reaching a mutually agreed arrangement with multiple debtors without the need to enter a Part IX or Part X bankruptcy, it may also be that these options are ultimately the most appropriate solution for the customer.

The proposed service is modelled on the Consumer Credit Counselling Service (CCCS), currently operating successfully in the United Kingdom. The CCCS has a proven record of delivering

sound customer outcomes, including budgeting guidance and debt management plans to financially stressed customers with debts across multiple institutions.

The not-for-profit service would be particularly useful for customers with debts across multiple institutions, providing a central point of contact for customers who currently often face a frustrating and time-intensive process of conducting negotiations with multiple creditors. The service also supports the enhanced education and literacy themes included in proposed amendments.

Westpac believes the establishment of his service would constitute a significant improvement in the treatment of debtors in Australia.

If you would like to discuss any of the matters raised in this submission, please contact me

Yours sincerely

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