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20 May 2011

Mr Craig Thomson MP
Chairman
House of Representatives
Standing Committee on Economics
Parliament House
Canberra ACT 2600

Dear Mr Thomson,

Inquiry – National Consumer Credit Protection Amendment (Credit Cars and Home Loans) Bill 2011

The Westpac Group appreciates the opportunity to provide a submission to the Committee with respect to the exposure draft National Consumer Credit Protection Amendment (Credit Cards and Home Loans) Bill 2011. The Westpac Group (Westpac) comprises the consumer credit businesses Westpac, St George, Bank of Melbourne, BankSA and RAMS.

As a member of the Australian Bankers' Association, Westpac endorses the submission provided by the ABA to the Economics Committee in relation to this bill.

OVERVIEW

Westpac has been an active and constructive participant in the Government's consumer credit reform consultation process for the past two-and-a-half years. We remain committed to working with the Government to achieve an outcome of mutual benefit to consumers and financial services providers.

Notwithstanding our previous concerns about the consultation process leading to these reforms, we remain concerned that not 'getting the detail right' on these reforms will risk perverse consequences that will ultimately flow through to consumers. Our key areas of concern relate to the timing of commencement for Key Fact Sheets for Home Loans, the operation of the 'default buffer' and restrictions regarding credit limit increase offers.

COMMENCEMENT TIMETABLE

The Government's announcement of a commencement date of 1 September 2011 for Key Fact Sheets for Home Loans was made without any prior consultation with industry. The proposed date for commencement does not provide sufficient time to meet the obligations required by law.

We have consistently advised Treasury that the earliest date for commencement should be 1 July 2012, which is in line with other components of the Government's Fairer, Simpler Banking policy. We reiterate our preference for this date.

There is now just over three months until 1 September. Given compliance planning cannot begin until legislation is finalised, on current timing it would seem we would have approximately one month in which to

make appropriate changes to achieve compliance. This is patently insufficient, particularly for a national organisation with over ten million customers and large, complex information technology systems.

The strict and harsh nature of the penalty provisions for non-compliance with the law adds a further imperative to postpone commencement. This would allow a period to methodically achieve compliance.

RECOMMENDATION: *Key Fact Sheets for Home Loans should commence 1 July 2012*

THE 'DEFAULT BUFFER'

The origins of the default buffer arise from industry efforts to devise a workable outcome after the Government's original proposal to ban overlimit transactions in the absence of customer consent was conceded to be unworkable.

Claims that allowing overlimit transactions was contributing to over-indebtedness have been shown to be incorrect, given credit card providers require overlimit amounts to be repaid in full (in addition to the normal minimum payment) in the next statement period. Further, the decision to allow overlimit transactions was at the discretion of credit card providers and is not offered to a significant minority of customers, which generally ensured that customers who could afford to repay overlimit transactions were granted them.

Credit providers generally charged a fee for this service, with customers having an option to not be allowed to exceed their limit, should they wish.

Industry had worked to devise an alternative that would allow for the maintenance of the overlimit system, which provided flexibility for consumers, often at the time it was most needed, while improving disclosure regarding the operation of overlimit transactions. This would be achieved through the following:

- credit providers could only charge an overlimit fee where a customer had agreed to pay for the service (which would only be offered at the discretion of credit providers);
- where customers had not agreed to pay for the overlimit service, it would subsequently be at a credit provider's discretion as to whether a customer could go over their limit. If a credit provider allowed this to occur without the customer's consent, it could not charge the customer a fee for that service and the 'buffer' that would be put in place would be somewhere in the range of 5-15 per cent of a customer's credit limit;
- To operate effectively, the buffer would not be enshrined in legislation but remain at the discretion of a bank, based on credit assessments at the time of a transaction.

For reasons of transparency, as explained by Treasury, the Government has chosen to include the concept of a 'default buffer' in legislation. Further, it has enshrined a percentage limit that must be adhered to by all credit providers, regardless of the circumstances of a customer.

Section 133BI of the proposed legislation entrenches a 'default buffer' of 10 per cent for credit card customers who exceed their credit limit. Within this default buffer, credit card providers are prohibited from charging a fee. Providers may charge a fee where customers agree to an additional buffer (above the 10 per cent buffer) of 5 per cent. Treasury states that the decision to offer a buffer remains with the provider.

Recalling the policy intention of the election commitment, the Government's announcement with respect to credit limits stated:

"Credit card accounts will not be able to be drawn over their maximum limit unless the customer specifically agrees to opt-in to the service

The drafting of this section is in stark contrast with the Government's election commitment.

It is likely to create an expectation amongst customers that they are entitled to an extra 10 per cent on their credit limit. Treasury has also conceded that this is effectively a form of price control.

The inclusion of a 'default buffer' in legislation is unnecessarily complicated. Credit providers will need to attempt to explain the operation of the 'default buffer' (that is, it may not apply to a customer but even so, a customer can opt out of having it apply to them, if a credit provider was to use its discretion to apply it. Further, because customer behaviour over time can change, use of the buffer on one occasion won't guarantee its use in the future) and the supplementary buffer, which is an additional 5 per cent above the default buffer (which is also at the discretion of a credit provider although here, unlike the default buffer, a customer must opt-in). A credit provider can charge a fee in situations where the supplementary buffer is in operation.

Given, that many customers are not permitted to exceed their credit limit, credit providers will now be placed in situations where customers will expect an automatic default buffer of 10 per cent. When this is not granted, we expect to see a rise in customer complaints and dissatisfaction that will be beyond credit providers' control to mitigate efficiently.

We consider that the effective banning of fees for allowing overlimit transactions will likely lead to more credit providers withdrawing the overlimit option. This will ultimately reduce flexibility for customers, which is not a beneficial outcome.

RECOMMENDATION: The 'default buffer' should be removed from legislation, and the existing, discretionary system be allowed to continue, within the boundaries provided by responsible lending.

Disclosure relating to the existence of the 'buffer', if it is offered, should be improved.

Customers should be given the choice of not using an overlimit fee if they wish.

CREDIT LIMIT INCREASE OFFERS

Westpac remains disappointed by the Government's last-minute announcement that restrictions on credit limit increase (CLI) offers would be extended to existing customers.

The new requirement to have all existing customers specifically agree to receive credit limit increase offers will add significant costs as credit providers will be forced to contact all customers to seek their express permission to continue doing something they are already doing.

There are existing protocols for customers who do not wish to receive CLI offers which today prevent these customers from receiving these offers.

A simpler proposal to achieve the Government's aims would be to use existing protocols to deem existing customers as having consented to receiving these offers.

RECOMMENDATION: Customers who currently receive CLI offers should be deemed to have consented to receiving such offers without the requirement to obtain express consent.

CONCLUSION

Westpac remains committed to working with the Government and industry to achieve an optimal outcome in relation to the bill. We affirm our view that the earliest commencement date for Key Fact Sheets for Home Loans should be 1 July 2012.

We reiterate our preference for changes to the current 'default buffer' arrangements that in their current format, are unnecessarily complex, create confusion for customers and will lead to misleading expectations of additional credit for customers.

Finally, we remain disappointed about the 'last-minute' change to the application of CLI offer restrictions, which will require us to contact millions of our customers to seek consent from them to continue an activity we are already doing in a responsible manner.

Should you require further information on this matter, please contact Ryan Bloxsom, Senior Manager Group Government & Industry Affairs on (02) 8254 2994.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett Gale', written in a cursive style.

Brett Gale

Head of Group Government & Industry Affairs
Corporate Affairs & Sustainability