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15 June 2012

Tim Bryant
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir

Inquiry into the post-GFC banking sector
Westpac Banking Corporation Loan to Buranda Properties Pty Ltd (Receivers and Managers Appointed)

Thank you for your letter dated 5 June 2012 and the opportunity to provide a response to the submission dated 29 May 2012 from Mr Cunningham in respect to the above loan.

At the outset, it is important to note that the relationship between Westpac and its customers is the subject of strict obligations of confidentiality. Further, the allegations made by Mr Cunningham are presently the subject of proceedings pending in the Federal Court of Australia. Those proceedings are currently set down for a 3 day trial commencing on 9 July 2012 subject to the outcome of a further directions hearing on 21 June 2012.

You will appreciate that Westpac is not in a position to waive any confidentiality obligations or pre-empt any determination by the Federal Court of Australia. For those reasons, Westpac does not propose to respond in detail to Mr Cunningham's selective recollections or to each one of his unsubstantiated allegations. All allegations of misconduct against Westpac and its officers are strenuously denied.

Subject to the above reservations, Westpac is able to generally comment on the submission as follows:

1 At all material times, Mr Cunningham has been advised by qualified and independent solicitors as well as senior and junior counsel.

2 It is a matter of public record that at all material times, there were numerous subsisting defaults under Westpac's facilities and securities including, without limitation, the non payment of land tax in respect of the secured properties.

3 In April 2011, Mr Cunningham obtained advice from a second independent solicitor and counsel to the effect that the claims against Westpac were "futile" and had "poor" prospects of being successful with there being no arguable basis for seeking an order removing the receivers and managers appointed by Westpac. This advice was disclosed on behalf of Mr Cunningham to support a negligence claim against his former solicitors.

4 At no time has Westpac been directly in control of the sale of any of the secured property. Up until the appointment of the receivers and managers on 7 May 2010, Mr and Mrs Cunningham were in control of the secured property with control vesting in the receivers and managers from that time.

5 The fact that the previous sale by Westpac's receivers and managers was subject to "the significant risk that the sale won't proceed past due diligence" has been expressly acknowledged by Mr Cunningham's previous senior counsel.

6 Despite having ample opportunity to do so, Mr Cunningham has not made any repayments to Westpac or submitted any viable proposal for the repayment of the outstanding debt for several years.

7 At all material times, Westpac has acted in accordance with the advice of its duly appointed receivers and managers, valuers and other qualified advisors.

I trust that this letter clarifies the Bank's position.

If you have any further queries please do not hesitate to contact me.

Yours sincerely,

Brett Gale
Head of Group Government & Industry Affairs
Corporate Affairs & Sustainability