March 5, 2010

Mr John Hawkins
Committee Secretary
Senate Economics Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Sent by Email: economics.sen@aph.gov.au
Original to follow by post

Inquiry into: Tax Laws Amendment (2010 Measures No 1) Bill 2010

Dear John,

We write to the Senate Economics Committee regarding proposed legislation to support the Superannuation Clearing House measure. Background information about SuperChoice is included in Attachment 1.

Terms of reference and Treasury Advice

The following summarises our responses to the terms of reference and to the Treasury advice on the risks to employees of failure of a private Clearing House. Attachment 1 contains a background to our company, Superchoice. Attachment 2,3 and 4, contain detail supporting our response to the terms of reference, and legal advice from Freehills is enclosed as a separate document

Treasury Advice

The pivotal nature of the Treasury advice on the Government's decision to move from a tender to the private sector for clearing house services to a solution to be built by Medicare led us to obtain advice from Freehills. The Freehills advice responds directly to the written submission Treasury presented at the Inquiry, and importantly disputes the claim Treasury did not have time to amend legislation, and also provides a range of options by which private sector clearing houses could have been accommodated with appropriate consumer protection and compensation, within the timelines

Treasury presented the view to the enquiry that the Government had no alternative other than to reverse its election promise to offer a private sector superannuation clearing house service for small business and instead offer it through the public sector. It would appear from our independent legal advice, that the Government may have been misinformed about other available options, including those available through APRA regulation, before making its decision to reverse government policy.

Further, the failure to produce the ASIC advice (and any applicable APRA advice) is material.

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We believe that this issue requires further examination and that the Enquiry cannot properly conclude until those pieces of evidence are tabled and available for appropriate public scrutiny. Without the benefit of the ASIC (and any available APRA) advice, the Senate should not proceed with this particular amendment.

Abuse of market power and anti competitive nature of the Medicare solution

It is our view that the Treasury advice may represent an attempt after the event to justify a policy decision that was really an attempt by Medicare and/or Treasury to compete with and in the longer term threaten the entire business of existing private sector clearing houses. In that respect, it has striking similarities to the Medicare Eclipse and THELMA health payment system initiatives that ultimately led to the demise of the private sector THELMA initiative, accusations of anti competitive behaviour and subsequent legal action taken by ICSGlobal (THELMA) against Medicare. This legal action was only recently settled by Medicare.

A key difference however, in the superannuation payments industry is the fact that over half of all contributions are already processed electronically by private sector providers. This contrasts with the relative start up nature of the THELMA system at the time Eclipse attempted to supercede it.

It appears to us that the Government has belatedly adopted a similar strategy in the superannuation industry which given the size of the existing payments market represents a significant anti-competitive threat to current private sector providers. We believe it will also distort the existing market by ultimately starving the industry of capital with which to further innovate offerings, achieve scale benefits and reduce costs for super members.

No legislative cap to 20 employees

Heightening our concern regarding abuse of market power is that according to the then Minister of Superannuation's original Press release dated 6 November 2009:

"Under these arrangements, the clearing house will not be available to larger businesses. This is in line with the Government's focus on assisting small business while also seeking to minimise the impacts of the measure on competition in the existing clearing house market".

In our response to the Exposure Draft on 23 December 2009, we drew attention to the fact there was no legislated cap of 20 members. It appears the legislation is asking the Senate to offer Treasury the flexibility to amend this limit through regulation and without the benefit of consideration given to legislation. This concern was also raised by ASFA, AIST and Mercer. Given our strong view about the anti-competitive nature of the Medicare offering, we recommend that the cap should be urgently addressed in legislation and not left to regulation.

Adequate service by 1 July 2010 by Medicare is impossible

It is our strong opinion as the largest and longest standing superannuation clearing house in the market that Medicare is very unlikely to ever match the current services being offered to small business by existing clearing houses, unless the budget and timelines to deliver the systems are very significantly increased. In the absence of being given much more money and time, Medicare will deliver more red tape to small business because of deficiencies of the service, and if successful in attracting transactions will have a high error rate, high cost to fix errors, and very unhappy employers and employees

In our outline of the remedial action necessary (Attachment 6), we have set out a list of pre-requisite delivery objectives that would probably have been imposed on a private sector supplier, and should be expected of Medicare to ensure that small business is offered a service that is at least equal to what they might have sourced from the private sector.

A failure to deliver an adequate superannuation clearing house service (even a free service) combined with a significant marketing campaign (backed by the ATO) will damage small business confidence in the superannuation clearing house services and underlying confidence in the broader superannuation industry.

Unsolicited offer from SuperChoice

Superchoice has always been a strong supporter of the idea that the small business sector needs a government sponsored superannuation clearing facility, and seeing the pitfalls of the Medicare approach offered a costed clearinghouse proposal to Medicare and Treasury that included the full functionality needed by small business, within the costs budgeted by the government and with to go live date of July 1, 2010. In particular

- Our proposal made it clear we would carry the high cost of takeup, the risk of error rates, high error rates from undisciplined small users, and effectively capped the cost if the initiative succeeded beyond expectations
- Our proposal was made in good faith and raised no objection to the government going to our competition to see if they could get a better service and cost.

Recommendation

We see two fundamental choices,

1. Tender for a clearing house service to existing private sector operators, by asking the main operators to put forward comprehensive proof of capability, functionality definition and cost proposals that abbreviate an otherwise lengthy tender process. Require that tenders:

    a. Deliver by July 1
    b. Give Value for money in excess of current budgets
    c. Deliver an effective solution that will:
        i. Facilitate Choice
        ii. Eliminate red tape for small business
        iii. Lower overall Super system cost
    d. Identify and handle operational risks
    e. Include a solution to the risks identified by Treasury

2. Stick with Medicare and amend the Legislation to:

    a. Make Medicare accountable by agreeing a set of deliverables that guarantee success, much as the government might impose on a private sector supplier
    b. Extend the Medicare budget and timelines to give them an opportunity to succeed
    c. Level the competitive landscape. Enable entities other than Medicare to become 'Approved Clearinghouses' and, as IFSA, ASFA, ACCI and AIST all recommended, offer the same SG discharge as applies to Medicare to appropriately licensed private sector clearing houses.
    d. Insert the 20 member cap into legislation per the Minister's Press release to prevent unfair competition to existing providers.
    e. Reimburse private sector clearinghouses who offer services to the small business (under 20 employees).

Contacts

To discuss any aspects of the proposal please contact Peter Philip, CEO – SuperChoice (0416) 101265, or Michael Fielding (0403) 457 458.

Yours sincerely

Ian Campbell
Chairman
SuperChoice Services Pty Limited

Attachment 1: Background to Superchoice

Established in 1997, SuperChoice was the first to establish and is Australia's leading superannuation clearing house and specialist provider of e-commerce services for the superannuation industry. We pioneered this industry.

Size and Scope

SuperChoice provides white-labelled, web-based software for superannuation providers such as AMP, ANZ, ASGARD Wealth Solutions, AXA, Equity Trustees, IBM SuperLife, Russell Investments, ING, IOOF, Future Plus, MERCER, QSuper, Suncorp, Sunsuper, Tower and AAS-administered funds such as REST and CARE Super that allows employers to make online super contributions.

SuperChoice is the largest private sector superannuation clearing house provider in Australia projected to facilitate 20 million transactions representing $7.3 billion in payments for over 50,000 employers and nearly 2m people in the Australian workforce in 2010. We handle approximately 45% of all electronic choice contributions and nearly 20% of the estimated 100m superannuation contributions processed across the industry each year – that is 20% of the Australian workforce.

40,000 of the 50,000 plus employers are small businesses who use our services and are directly in the flight path of the government's proposed Medicare solution.

How we cut red-tape for small business and the superannuation industry

In addition to the online clearing infrastructure used by over 50,000 employers, SuperChoice offers the Super Data Exchange (SDX), developed to automate the receipting and allocation of fund contributions. The SDX interchanges data directly between business and the super funds (an exchange).

The SDX dramatically reduces red-tape for all parties by allowing business & the super industry to rectify online unidentified or mismatched data & contributions. This dramatically improves the certainty of contribution settlement for both funds and employers. SuperChoice's technology suite also includes a Rollover Service that handles fund-to-fund payments.

Don't launch a service on 1 July that doesn't meet best practice - Get it right first time

Getting to our market position has been a lengthy journey (12 years) with integrated & customised default software for half the superannuation industry and has required our shareholders to make a substantial investment over that period.

Our own customers have more than matched our own investment and the overall investment to date is well in the vicinity of $50M. We are highly dubious about the efficacy of the $16M budget when Medicare themselves disclosed 26 FTE (higher than ours) and we know our own running costs are in excess of the budgeted $5M per annum. The technology supporting such applications is substantive.

Any taxpayer funded initiative ought to have a Business case with compelling KPI's, especially one where the Regulation has not even been presented.

We ourselves have grown by 10,000 employers per annum without any government support. COSBOA suggested at the hearing that if Medicare achieved take-up of 10,000 employers, should be seen by the Senate Committee not as an outstanding success.

We would see that as abject government failure and waste. We already achieve that without any government support.

We support the Government focus on clearing but not the Medicare solution

SuperChoice has been an active supporter of Government policy focusing on the need for greater electronic commerce for small business dealing with the complexity of superannuation choice – cutting small business red-tape..

Given the Government's election promise to tender the Superannuation Clearing, we made a detailed response in December 2008 to the original Government Discussion paper.

We contributed actively to the debate through our sponsorship of the Ernst & Young (EY) white paper "The Choice Iceberg". Today, government sources quote:

- choice penetration levels (10% in June 2008, approaching 15% in June 2010).
- The red tape cost of not pre-validating data (5-10% average errors on super choice)

In 2008, the EY report said that best practice rates in the industry on superannuation choice were less than 1/3rd of 1% (0.003%) compared to average error rates of 5%.

SuperChoice error rates have now reduced to 1/6th of 1% (0.0015%) where average error rates on superannuation choice are probably marginally lower.

Industry participation

We actively participate in the ASFA e-commerce committee and IFSA discussion sessions about the clearing house measure and ran numerous industry workshops to improve awareness of issues and evaluate potential solution options.

Qualified to comment by experience (notwithstanding commercial interest)

Notwithstanding our commercial interest, we have long term experience.

Our parent corporation ran the Federal Immigration Department contract for twelve years dealing with sensitive electronic visa information.

Given our significant commercial interests and our active involvement in improving superannuation member outcomes, we have a material interest in how the Government's publicly funded clearinghouse is implemented.

We urge the Committee not to repeat the Government's Insulation disaster by failing to listen to the existing experienced private-sector operators.

None of the other major providers with 5 years of superannuation clearing house experience were actively invited to present evidence which is a gross oversight and should be rectified urgently before the Inquiry is concluded.

- Westpac – an approved Authorised Deposit Institution (ADI)
- ADP – a multi-billion dollar global payroll provider
- SuperChoice – use ANZ's payment infrastructure to receive and distribute funds.
- MYOB – formerly publicly listed now under private equity - a small business technology company servicing 850,000 small business employers
- Bravura – an ASX listed financial services technology company that supplies many private sector, state and local government clients
- CUSCAL – approved ADI that services credit unions
- Link Market Services Group – owner of superannuation fund administrator AAS and Superannuation Clearing House

Attachment 2: Unintended Consequences

- Missed opportunity to advance an industry wide e-commerce solution (we would add this position was supported by ACCI, ASFA, IFSA, and AIST in their submissions – where all parties acknowledged the government is playing at the fringes)
- Medicare error rates will damage confidence in the overall superannuation clearing house and broader superannuation system
- Propagates significantly more small business red-tape rather than reducing it because due to lack of time and the high cost to do so, Medicare is planning to only offer a compromised service that will deliver a standardised service into a highly customised superannuation market (and without the benefits of binding contractual agreements with super funds)
- Increased administration costs for super funds – calling back Medicare/employers for missing information
- Higher costs to Government and taxpayer: Build costs are heavily under-estimated – existing $16M is manifestly inadequate (we and our clients have invested $50M).
- Ongoing Government operational costs are hugely understated - budget makes no allowance for promotion to employers and the significant administration costs to rectify the high level of processing error rates Medicare will have to deal with
- Employer experience will generate material complaints and red tape due to 5% average error rate
- Members may be uninsured or under-insured due to the standardised (limited data field) registration process
- Discriminates against employers who use other private sector clearing house facilities but do not receive benefit of the discharge.
- Lost member earnings due to excessively high error rates.
- Creates an extra, unnecessary and costly player in an industry whose current suppliers need scale to deliver further costs savings to the industry
- Best provider may not have been appointed at the lowest cost to taxpayer

The outcome will be dependent on the level of employer take-up of the Medicare solution and will range from:

- 10,000 employers: A complete waste of government resources (loss of $16M)
- 100,000 employers: Costing the government well in excess of $100M pa (if they do not validate employer information and experience error rates predicted by Ernst & Young)

1. Government missing a generational opportunity to advance industry wide e-Commerce solution

    - All submissions (AIST, ASFA, ACCI, ASFA) pointed to a bigger opportunity for a better outcome.
    - Over-riding Superannuation system public interest objective is to
        - Facilitate Choice,
        - Reduce Super system costs and
        - Reduce small business red-tape.

- Key to this is:
  - Improving Straight-through-processing (STP)
  - Employer on-line take up a pre-requisite.

2. Medicare error rates will damage confidence in the private sector superannuation clearing house system and broader confidence in the superannuation market:

   - Once bit, twice shy. Employers don't use twice (after the fact).
   - 5% errors (EY report) are unacceptable and not better than the employer fixing the problem themselves.
   - If Medicare fails to validate, it will propagate 5% errors.
   - While employers got the SG discharge, employee is "out of pocket" with questionable redress.
   - Small business won't "repeat use" clearing services and all private sector clearing house services will be tarnished.
   - Employers will see Medicare's failure as part of the broader superannuation system (superannuation funds were part of the validation failure).
   - Medicare is starting from zero validation with a significant marketing support (ATO) which could create take-up.

3. Propagates red-tape through standardized field set into highly customized market.

   - Small businesses have chosen their default fund (preference)
   - Default funds have unique requirements that employers know
   - The requirements are set out in the application form on each fund's Product Disclosure Statement.
   - Failing to provide unique requirements in full propagates red-tape.
   - Fund administrators will call back employers looking for missing information
   - Employers will be caught in a loop
   - This will exponentially drive up small business red-tape.

4. Increased administration costs of super funds

    - Standardised and limited information for both Default and Choice contributions will result in additional manual follow-ups
    - Call backs to Medicare or employer-sponsor for missing information
    - Challenge of contacting right person (do I have enough details)
    - Is the employer even registered with my fund?
    - Manual approach to employer ID (identification) replacing today's automated electronic exchange.
    - Many funds will revert to paper-based processing

5. Higher up front costs to Government & taxpayer - Build Costs under-estimated - Existing $16m budget is manifestly inadequate to build an effective clearinghouse system from scratch

    - SuperChoice has invested over $50m in its systems over 10 years (clients have invested at least a similar amount) to achieve a best in class capability that employers find valuable and cuts red-tape
    - High likelihood that the Medicare solution will be basic and that it will require a material additional allocation not currently budgeted for
    - Existing $16m budget is reasonable if government was to use an existing private sector provider because development costs not required

6. Recurring Cost to operate under-estimated by at least $10m per annum

    - High Error Rates - Medicare service (due to a lack of full data validation) will result in between 5% and 10% (Per Ernst&Young) of all contributions they distribute having to be returned to employers to correct data
        - Assuming Medicare handles 15 million contributions annually, rework could cost Medicare around $10m per annum which is unbudgeted
    - Additional costs from other government departments/agencies will stress budget
        - The Medicare solution will require support from both the ATO and Reserve Bank which will add to the total cost to operate
    - BPay only committed payment method for 1 July to cost around $2-$3 million per annum as opposed to much lower cost Direct Credit method.

7. Employer experience will generate material levels of complaint and red tape due to 5% error rate

    - In the absence of full validation, Medicare will unknowingly distribute inaccurate information that will give rise to on-going exception handling efforts between super funds and employers
        - Will not reduce the rework employers currently experience using manual paper contribution forms
    - Medicare solution requires employers to regularly re-key contribution information rather than automatically interfacing with payroll systems as currently offered by private sector
    - Will ultimately act as a disincentive to migrate SME's from paper to electronic processing methods

8. Members may be uninsured or under-insured due to registration process

    - Default and Choice Fund contributions are both to be remitted without the usual level of additional data being provided to enable funds to correctly register these members.
    - This will create email exchanges on outstanding details
    - Prospective members will remain uninsured during a critical period.
    - This will lead to an increase in Superannuation Complaints Tribunal (SCT) disputes when beneficiaries find that the level of insurance cover is less than expectation or that there is no cover.

9. Discriminates against employers not using Medicare
    - Ability to confirm compliance with SG obligation means that remaining 85,000 employers representing 7.7 million employees (excluding public sector) are not offered a similar benefit.

10. Lost member earnings associated with high error rates
    - The discharge means employers won't care (employee problem).
    - Medicare won't have validation on Day 1
    - Medicare will pay to ineligible funds
    - Members will lose earnings.
    - Employers will have the SG discharge (not a priority)
    - Members will have to take up cause with Medicare.

11. Unnecessary and costly layer
    - The SuperChoice Super Data Exchange creates an online interchange directly between the receiving fund and the employer
    - Medicare's processes are manual so it must intervene.
    - This creates an unnecessary and costly layer of interaction

12. Best provider for the service may not have been appointed

   - In the absence of a tender, government may not have obtained the best service or indeed a suitably functional service and value for money.

Attachment 3: Anti-competitive

1. Excessive and inappropriate market power

    - Medicare creates excessive and inappropriate market power.
    - COSBOA indicated that a major provider (MYOB) charges $3 per quarter whereas the Medicare service will be free-of-charge.
    - COSBOA also indicated that if the Government offered a free service, it would clearly be chosen by small business over existing offerings (such as MYOB).
    - Providers who service the small business market like MYOB and Quicken cannot compete effectively with a free service especially when an SG Discharge is offered through Medicare.
    - There is no current evidence of market failure because 84% of all employers are less than 5 persons and will continue using bank systems to pay directly to their super account or pay by cheque.
    - This leaves a market of approximately 150,000 employers between 5 -20 persons.
    - The COSBOA submission suggested that if Medicare could achieve 10,000 employers in it's 1st year, that would be "success".
    - COSBOA's suggestion of 10,000 employers arose from evidence it had from receivable providers (eg MYOB) found it difficult to generate interest amongst small business.
    - Advice provided by AustralianSuper indicated they received 20 enquiries per week clearly.
    - AustralianSuper is 14% of the "overall choice market" (SuperChoice research) which would indicate overall demand is around 142 employers per week.
    - AustralianSuper don't currently provide a clearing service at their own cost (as other providers do).
    - This advice from COSBOA and AustralianSuper would suggest employer demand is quite limited.
    - The taxpayer (Government) should not be paying for those costs.
    - Medicare was not able to provide any targets.
    - SuperChoice has achieved 40,000 small businesses since inception and over 50,000 businesses.
    - Advice provided by AustralianSuper at the Hearing indicated they received 20 enquiries per week.
    - This would suggest AustralianSuper should be providing a clearing service at its own technology cost (as other providers do).

2. Distorts the existing superannuation clearing house market

    - Overwhelming majority of employers are already offered a free service by their default superannuation fund (cross-subsidised by fund members)
    - Medicare solution is paid for using taxpayer funds
    - Over time the Medicare solution will deplete the funding base for private sector clearing houses.

3. Competitors will exit the superannuation clearing house market

    - Since the government announcement, SuperConnect has exited.
    - Since the government announcement, Link Market Services has wound back the nominee role of Pacific Custodians which also acts as the AFS License for Superannuation Clearing House.

4. No new Competitors to the superannuation clearing house market

    - Since the government announcement, there have been no new competitors to the superannuation clearing house market.
    - There is an increasing concentration in the superannuation clearing house arising from outsourcing.

5. Unfair advantage – under current only Medicare can access the SG discharge

    - SuperChoice has 40,000 employers.
    - Across the broader private sector clearing house market, there is probably 100,000 employers.
    - Severly limits our futire growth in this segment
    - Puts our existing SME clients at risk (transfer to get the discharge)

6. Stifles innovation and growth

    - Existing competitors will curtail services to the small businesses
    - New development to small businesses will be cut.

7. Anti-integration

    - COSBOA indicated integration was critical to Medicare's growth.
    - The very providers that Medicare needs to integrate with to capture transactions (SuperChoice, MYOB, Quicken and ADP) will not integrate with Medicare and will compete aggressively.

Attachment 4: Is Medicare an appropriate agency?

No, we believe Medicare is an entirely inappropriate public-sector agency to handle the superannuation clearing house with no clear links to business outside of the health community and private sector home insulators.

- No business case been presented to the Senate for their appointment
- Its offering will not meet market requirements
- Appointment of Medicare is high risk (lack of domain expertise and requires infinitely more than a few industry working groups) – "Medicare does not know what is does not know"
    - Agreeing to adopt a standardised data approach is demonstrable evidence of this
- It needs the ATO to support its marketing campaign
- Conflict of interest with the ATO and its active encourgagement of the service

Our binding contract document in Attachment 6 is the contract we recommend the Senate binds Medicare to guarantee its services compete on a level playing field with the private sector today before it goes live.

Adequate design needs more development time, especially with the marketing plans designed to drive take-up rates.

1. No Business Case

    - Though this is difficult to comment on in detail as there is no business case, due diligence or risk assessment material publicly available and upon which we might base further comments.

2. Medicare needs to meet private sector standard before go live

    - Medicare should not be allowed to operate until it can meet all of the functional requirements in our Binding Medicare contract. These are requirements that are widely available across the private sector clearing houses. The Mercer submission to Treasury confirmed clearing houses have vastly lower error rates.

3. Appointment of Medicare has high operational risk

    - The appointment of Medicare to build and operate the service is a very high risk primarily due to a lack of superannuation industry domain expertise and consequent heavy reliance on external advice from non-practitioners for guidance on matters of judgment. There are no existing superannuation clearing house technology or payroll or bank groups (for obvious reasons) on working group so all advice is being sought from second hand experts.

4. Learn from history – health payment systems don't work first time round

    - We would particularly like draw the attention of the Senate towards the entrance of Westpac into this market who used technology underpinned by a health payment solution (identical strategy as Medicare) in 2005.

    - That system had to be completely re-written 3 years later on a more appropriate system based on the critical superannuation domain learning of the previous three years (primarily the manual refund process).

    - Today, the service processes less than 1M superannuation transactions per year despite Westpac servicing 200,000 small businesses through its banking platform.

    - Westpac have had to make continuing and very significant domain based capital investments in the infrastructure to deal with the complex business rules in the superannuation industry.

    - To their credit, they have committed for the long haul and are regarded as a credible and very competent competitor in this difficult space.

5. Learn from history – default has to be customised per product/fund

    - Westpac had the good sense in 2005 to offer only good choice service and did not attempt to act as a default solution.

    - Westpac integrated with the super industry's default solutions and not to use superannuation choice to fracture the proprietary solutions.

    - Medicare on the other hand is forcing a highly standardized approach upon a highly customized industry.

    - Today, no active private sector superannuation clearing house attempts to "standardize default".

    - Westpac held back from imposing standardized default requirements because it had access to internal BT domain expertise in-house.

    - That expertise must have told it that the information requirements of the super funds (like BT) are very, very complex, particularly in relation to insurance.

- Westpac knew that many superannuation funds would resist Westpac's conflicted position in regards to acting as their default provider, aside from being one of Australia's largest Banks.

- Westpac realized that almost all super funds offer their own e-commerce default solution so integrate with them.

- Contrasting Westpac's approach, Medicare in 2010 aim to repeat the identical mistake in converting health payment system (history repeats), but further, are determined to impose (whose) standard requirements upon all default funds and are attempting to go live without any contractually binding agreements.

- Why would superannuation funds contractually bind themselves with Medicare when its solution is designed to overwrite the default requirements of own default solutions and instead, provide less information than they get today.

- Working group participation by funds and industry associations is not a substitute for binding agreements.

- Medicare is knowingly providing less data and information to the default funds to insure members – les s information that the funds themselves set out in the application forms of their own statutory documents (the Product Disclosure Statement).

- Given the proposed use of taxpayer funds to build and operate the service, we would expect that Medicare would need to compare favorably with private sector providers in the following areas.

6. Outsourced payment solution to super funds to reserve Bank

   - Medicare outsources payments to the funds to the Reserve bank.

7. ATO has stronger natural links to business

   - The ATO has stronger natural links to business (GST/BAS)
   - The ATO has an SG Regulation responsibility
   - The Inspector general report challenged the ATO's SG audit activities
   - The ATO is inherently conflict in supporting Medicare over any other private sector superannuation clearing house arrangement
   - Medicare should not be able to access ATO resources to market its services over any other private sector superannuation clearing house provider

8. Binding contract: Given the proposed use of taxpayer funds to build and operate the service, we would expect that Medicare would need to compare favorably with private sector providers per Attachment 6 and bind in writing to KPI's like

   - Total cost of ownership, including the cost of all parties involved
   - Expected employer take-up
   - Cost per transaction to Medicare
   - Projected error rates
   - Level of risk inherent in offering the service
   - Employer satisfaction

Comment on Medicare's evidence

Medicare itself gave evidence they have significant resources and working groups operating as confirmation the industry accepts its proposals. Senator Cameron on numerous occasions attested this as evidence the industry accepts standardisation. We ourselves run numerous forums for customers and broader groups of customers and non-customers. These are interest groups.

An interest group is not a binding commercial undertaking. No one should ever be misled by "participation" representing a binding agreement (contract) with its participants.

We are not aware of any Product Disclosure Statements changing application requirements as a consequence of Medicare.

The key element of the election commitment was to relieve employers of the administrative burden associated with their Superannuation Guarantee obligations arising from employees exercising choice of fund (not because they were having issues with the default fund). Employers aren't complaining about default funds but about the complexity of superannuation choice.

Medicare has extended its scope into default arrangements. Given the Senate has not been presented with Regulations, perhaps the intent of Regulation is to regulate (force) the superannuation industry to accept standardised (Medicare) data sets.

If so, the Regulations should be made available FIRST, then the senate should pass legislation.

Attachment 5: Medicare Binding contract
Delivery before go live currently anticipated in 1 July 2010

In summary, the proposed legislation will enable Medicare Australia to offer an Approved Clearing House service from July 2010, without an opportunity for the Senate to review relevant business documentation, to satisfy itself that an appropriate service can be delivered in the short time available. We recommend that in order to do so, the following information should be provided to the Senate Enquiry:

- Business Plan outlining the key Performance Indicators
    - Targeted employer take-up (eg 100,000 employers)
    - Targeted member transactions (eg 100,000 transactions per month)
    - Targeted error/refund levels (.0015%)
    - Targeted operational expenses (eg FTE at 100,000 transactions per month)
    - Expected revenue to be derived from the Float

- Operations Plan: Policies, processes and procedures such as Medicare's stated definition of "non-acceptances" and when employers would not receive the SG discharge.

- Risk Management Statement: It is imperative this RMS is specific to Small Business Superannuation Clearing House (SBBSCH), not broader to Medicare Australia

- Independent Expert Report as to the suitability of the Medicare technology to the domain expertise of operating a superannuation clearing house and the diversion of resources from other critical health activities.

- A Medicare Binding Commitment Contract (Appendix A) to ensure Medicare delivers at a standard that matches private sector providers today.

- Regulations that define critical terms such as "Acceptance" and Non-Acceptance" so employers will clearly know when they are and aren't discharged from their SG obligations.

A failure to deliver a satisfactory superannuation clearing house service (even a free service) combined with a significant marketing campaign (backed by the ATO) will damage small business confidence in the superannuation clearing house services and underlying confidence in the broader superannuation industry.

1. **Default Data Field customisation**: For all participating employer-sponsored funds (220) across the Australian superannuation market, Medicare must customise the delivery of the new member data for the default fund in exact accordance with the default fund's stated and outlined data field requirements as set out in the super fund's own application form within the Product Disclosure Statement. For clarification, if AMP Custom Super application form requires 25 fields of information to establish and insure the member, 25 fields must be provided. If Australian Super require five, five data fields must be provided.

Explanation: This requires Medicare to contract to provide customised data field sets for every one of the 220 employer-sponsored default funds covering the entire market by 1 July 2010. Every single fund will have to have different (non-standard) requirements. Otherwise, Medicare should not operate default provision.

2. **Automated Employer Identification (ID)** Before a default employer registration is proposed to be entered on the live Medicare system from May, Medicare must automatically authenticate (online) that participating employer's registration number with the default superannuation fund. For absolute clarity, this Employer ID is not an employer's ABN or some Medicare generated Employer ID but the employer ID generated by the default super fund for its ID purposes. To achieve this, Medicare must have received integrated (not email) online confirmation of the default super fund's Employer ID from that fund. Manual (human) employer registration is unacceptable (eg default super fund emails confirmation of the Employer ID) because that would generate significant red-tape to both the operations of the superannuation fund, Medicare and ultimately small business. Medicare must provide all of the employer registration fields to the super provider as identically set out in the super provider's employer application in the Product Disclosure Statement. Please note that this requirement cannot be applied for employer registration to the choice fund because an employer can legally reject any choice an employee makes for a choice fund which imposes employer registration. If Medicare propose such a system that invoked such requirements on small business it would be imposing red-tape, not cutting red-tape.

Explanation: This requires Medicare to operate an automated employer registration process where the Employer ID is automatically confirmed online prior to the employer being able to proceed to the next stage (to avert red tape associated with errors). Under normal models, the default fund assigns this Employer ID. Under the proposed Medicare model, Medicare will not know if the employer really is or isn't a registered employer of the default superannuation fund.

3. **Signed contractual agreements with authorised officers of default funds:** Before they can generate any contributions to default funds, Medicare guarantees that it will have signed contractual agreements in place with the appropriate authorised officers of all default super funds including detailed specifications of the agreed data fields and formats (that either exactly match the application form setting out these requirements in their standard Product Disclosure Statement or are otherwise contractually varied and agreed by the fund).

Explanation: This requires Medicare to hold binding contracts with the authorised officers of the 220 plus participating funds.

4. **Real-time generation of the default super fund's member (account) number:** To reduce default superannuation transaction error rates to private sector best practice (1 error in 100,000 transactions) and reduce employer red tape, whenever a new employee is being established into the selected default fund, Medicare guarantees to operate an automated member number interchange with the default superannuation fund which is automatically available online to the employer – that is, the member's newly generated account number in AMP, ING, QSuper, REST and so on is automatically and immediately populated on the Medicare employer website so the employer can make immediate payment to that member's established account number?

Explanation: This contractually binds Medicare into an automated STP exchange with the default fund. It cost all of our members well over $50M to build their systems to exchange that member or account number with us and is at the heart ofreducing fund and business red-tape.

5. **Integrated TFN status exchange with default funds**: To reduce default superannuation transaction error rates to private sector best practice (1 error in 100,000 transactions) and eliminate employer red tape, in line with private sector providers, the Medicare service must specify online to the employer in real-time the updated TFN status of the member held at the default superannuation fund. This TFN status (fund confirms member has a TFN or fund doesn't have a member's TFN) is based on a daily pass-back or daily automated confirmation of the fund's TFN status for that member. It significantly cuts small business red-tape because they are legally obliged to provide the TFN for the vast majority of employees.

Explanation: This contractually binds Medicare to match a TFN exchange on all default funds and to report TFN status.

6. **Fund Blocking/Fund Alert Messages:** To guarantee matching private sector best practice error rates (0.00166% or 1/6th of 1%), on all choice transactions, Medicare must guarantee that on the day it goes live for payment, that 600 of the 900 APRA products which are unable to accept contributions (eg allocated pensions, eligible rollover funds) will be automatically blocked to contribution submissions on the employer website and appropriate warnings published online and available to all employers so that the employer is unable to submit the data online and would logically not send the money (eg QantasSuper cannot accept contributions because it is a closed end corporate fund that cannot accept money from other third-party employers).

Explanation: This requirement forces Medicare into having both fund alert messaging and automated blocking live by May or at latest 1 July (so it won't won't submit contributions to an ineligible fund).

7. **Guarantee all Insurance Claims arising from failure to provide customised data:** Medicare guarantees that where it fails to provide all the data fields and formats as agreed in the contractual agreement with the super fund and set out in the super funds application form in the Product Disclosure Statement, it will cover all insurance claims that may otherwise arise from that member not having been automatically established by the default superannuation fund. For clarification, if the super fund required 15 fields and Medicare provided 12, and the missing 3 fields (eg salary, at work verification, occupation) meant the employee remained uninsured, that liability would fall on Medicare.

Explanation: This contractually binds Medicare (Government) into guaranteeing all insurance claims for any individual for which it failed to provide the contractually agreed data.

8. **Daily online contribution reports for funds/SDX:** To guarantee matching private sector best practice error rates (0.00166% or 1/6th of 1%) on all choice transactions, Medicare must provide on the day it goes live for payment, that it can provide any super fund to which it pays electronically, a daily online (website) access that sets out all of the contributions for that day for all of the members and applicable employers with contributions to that fund.

Explanation: This contracts Medicare to guarantee providing the availability of a matching SDX solution before they go live with the service.

9. **Daily Online Fund details report/SDX:** To guarantee matching private sector best practice error rates (0.00166% or 1/6th of 1%) on all choice transactions, Medicare must provide on the day it goes live for payment, a login access so the super fund maintain and validate, update and most important sign-off their essential bank details and other business rules (eg bank a/c number, BSB, Bank). This contractually protects Australian employees where Medicare transfer money to the wrong bank account and minimises employer red tape (being caught up in the confusion of what went wrong and questions from employees about where is their money). It transfers liability for failing to notify Medicare about changing or incorrect bank accounts to the super fund. This agreement must be signed in writing by the authorised officer of the super fund.

Explanation: This requires Medicare to provide an SDX facility where they can vouch to the employer that the superannuation fund's bank details are true and correct.

10. **Online (SDX) reply facility to employer:** To guarantee matching private sector best practice error rates (0.00166% or 1/6th of 1%) on all choice transactions, Medicare must provide on the day it goes live for payment, that this same electronic service provided in 6 above, offers a reply facility for the super fund which allows the fund to send notices about critical edits to critical fields (member number being advised is incorrect or has changed, employer number being allocated by the fund, DOB mismatch, surname changed because married, notification of address mismatch)

Explanation: This binds Medicare to guaranteed the delivery of an SDX reply service before they go live with the service. The reply service is an automated interchange between the choice fund and the employer.

11. **Online (SDX) contribution preview facility:** To guarantee matching private sector best practice error rates (0.00166% or 1/6th of 1%) on all choice transactions, Medicare must guarantee that on the day it goes live for payment, it can provide any fund to which it pays electronically, a view of the data before it makes payment to the super fund, so that the super fund can reject any contributions for which a member has exited (ERF'd). As an example, if there were 100 member contributions for SunSuper, as 1 of the 300 eligible super funds, then on a given day, Medicare would be able to provide an online preview for SunSuper that allows them to reject 1 or more of those 100 member contributions and Medicare (or the RBA) would refrain from sending it and send SunSuper the balancing amount of the member contribution (eg the amount for 99 out of 100).

Explanation: As the next extension of the SDX service, we will go live with this functionality in May 2010. This functionality prevents payments being made to the super fund for members who have exited and will eventually eliminate the current 0.00166% error rate.

12. **Product Disclosure Statement:** At least 30 days before a single employer is first registered in May, (or any time afterwards), Medicare will provide the Coalition with a FINAL copy of an external and legally signed off Product Disclosure Statement (PDS) which adopts the identical approach set out by ASIC in Regulation Guideline 06-34 and so matches the current disclosure standards that apply in the private sector. If the Product Disclosure Statement is to be "online acceptance", Medicare must furnish a copy of a legal advice that authenticates such an approach.

Explanation: An externally signed off Product Disclosure Statement would normally take a private sector institution about 3 months to sign-off, let alone the Government.

13. **Medicare go through a full ASIC Licensing process:** Medicare must demonstrate the equivalent of the current ASIC Licensing process by going through the identical License registration process with ASIC that all private sector superannuation clearing houses have had to adopt. Whether Medicare can constitutionally "report" to ASIC or not is not at issue. Medicare must be able to demonstrate it matched an identical registration process to all other participants and has all the required documentation to demonstrate comparable licensing quality to any other player.

Explanation: An ASIC License application normally takes a private sector institution in the region of 3-6 months to complete and receive approval.

14. **Binding commitment to 24 hour money delivery to employer in PDS:** Medicare must commit in writing in the Product Disclosure Statement to the 24 hour speed of payment standard it stated in Hansard. There ought to be specified penalties as to what fines and penalties apply on Medicare where it fails to meet those standards and full liability accepted in regards to the member's investment return foregone. For example, if Medicare accepted the money and held the float for 5 days, Medicare's should be fully liable should any employee claim foregone returns (eg the market might have moved up or down 5%).

Explanation: Bind Medicare to the 24 hour commitment made in Hansard on acceptances and commit Medicare to forgone investment return liability.

15. **Definition of non-acceptances (no discharge) must be in writing explicitly agreed by Coalition and committed in writing in PDS:** The definition of "acceptance" of the money (which discharges the employers SG obligation) was referred to by Medicare in Hansard as was a reference to "non-acceptance". Medicare must specifically define all of the non-acceptances that would result in an employer not discharging their SG obligation. This list of non acceptances must match or better the private sector exceptions and set out in writing all of the instances where Medicare was not able to discharge the employer from their liability. That non-acceptance criteria must be accepted and approved by the Senate prior to Medicare going live (to ensure it meet market best practice).

Explanation: This binds Medicare to set out a detailed description of all the instances where they are not liable to the employee's foregone investment revenue and to have those exceptions pre-agreed by the Coalition.

16. **Fund Payment Transparency** : The current status of all payments made by Medicare on behalf on an Employer for an Employee need to be available online by a minimum of daily upload in order to provide the members with piece of mind that Payments have been made within the allocated time frame. This also allows for any enquires on allocation issues to be addressed directly with the fund. We would note that cheque payments take longer but have far greater payment transparency in regards to a cheque issue and presentment date whereas EFT carries a lodgement reference but no "EFT receipt". This is why item 9 above is so important (contractually bound so payments are always being made to the right bank account for audit trail purposes)

Explanation: This binds Medicare to provide full online transparency of payments to employers

17. **Notification of Returns**: Any rejections that do need to be returned to employers need to be done so electronically, in an expedient manner. This is especially important as under current legislation, superannuation funds have a turnaround period of up to 30 days to return the money so clearing houses invariably have received money after a long lag. By advising refunds to the employer electronically, the impact to the Member is reduced by allowing for payments to be corrected and resubmitted in a timely manner. The returns audit trail must be displayed online to the employer. An email reply trail is not an acceptable audit trail for small business.

Explanation: Medicare will have to provide electronic (online) notification to employers in an expedient manner before they go live.

18. **Remittance Archiving:** Funds currently deal with excessive numbers of contributions from a large number of different sources, of which Medicare is one. Funds also deal with the processing of contributions in a number of different ways, it is therefore an important requirement that Funds can retrieve archived remittances online in order to correct any issues or provide accurate information back Members.

Explanation: This binds Medicare to guaranteed the delivery of an SDX archival service before they go live with the service

19. **Eliminating Re-keying (Payroll Upload):** COSBOA indicated 95% of their 250,000 small businesses used MYOB, Quicken and ADP. It is imperative that the Superannuation Clearing Service be able to upload data directly from those packages on the day it goes live. Requiring employers to re-key is propagating red-tape by forcing employers to double-entry. Medicare will need to provide a flexible streamlined service that reduces the need for Double Data entry by accepting data via an upload of a Payroll file from any current or future Payroll System, thereby not imposing strict rules on data format/re-formatting.

Explanation: This binds Medicare to create a streamlined, customised payroll solution, where the Employer can stipulate the format. These facilities are standard across all providers in the market (Westpac, ADP, SuperChoice, MYOB).

20. **Taking Liability over APRA payments:** Medicare must take full liability for the accuracy of all contributions employers made to APRA funds (eg paying to a wrong bank account). 95% of all payments made by private sector superannuation clearing houses are made to APRA (commercial funds). In order to protect employers, SuperChoice takes full liability for all APRA payments (by cheque/EFT). If SuperChoice is locking (determining) the Bank details of the APRA fund or street/postal address for cheque, it must take liability (not the employer). This is why Item 9 is so important to contractually bind receiving superannuation funds for EFT when they change bank details (but forget to tell you). In regards to non APRA (SMSF), without governing legislation, it is impossible (at present) for any clearing house (Medicare included) to give the same liability undertaking in relation to Self Managed Super Funds (SMSF) because privacy rules prevent the banking system from releasing details which would allow us to validate the veracity of those accounts (banking system governs control those accounts).

Explanation: This requirement binds Medicare to match SuperChoice liability on 95% of transactions Day 1. We understand medicare has no electronic agreements in place with any super fund receiver (any of whom were to change account) which may lead to thousands of members contributions going to a wrong account and delays in allocated or indeed total failure (and repatriation and redress).

Attachment 6

Sample of Superannuation Clearing House solutions offered by major superannuation funds

Fund/Administrator	Clearing House (Legal Entity)	Underlying Software (facilitate clearing)
AustralianSuper (SuperPartners)	ADP	ADP
AustralianSuper (Mercer)	Mercer	SuperChoice
AMP	AMP	SuperChoice
REST (AAS)	SuperChoice	SuperChoice
SunSuper	SunSuper	Westpac
ANZ/ING	ANZ/ING	SuperChoice
Colonial First State	Colonial First State	Colonial First State
MLC/PLUM	ADP	ADP
BT	Westpac	Westpac
ASGARD	ASGARD	SuperChoice
HESTA (SuperPartners)	ADP	ADP
Host Plus (SuperPartners)	ADP	ADP
AXA	AXA	SuperChoice
Mercer	Mercer	SuperChoice
CBUS (SuperPartners)	ADP	ADP
Russell Investments (IBM SuperLife)	Russell Investments	SuperChoice
IOOF	IOOF	SuperChoice
QSuper	SuperChoice	SuperChoice
Vision Super	Westpac	Westpac
Suncorp/Asteron	Suncorp	SuperChoice
Aviva	Westpac	Westpac
CARE Super (AAS)	SuperChoice	SuperChoice
MTAA (SuperPartners)	ADP	ADP
TASLAN (AAS)	SuperChoice	SuperChoice
Westscheme (SuperPartners)	ADP	ADP
ASSET Super (AAS)	SuperChoice	SuperChoice

 # the table above outlines a small sample of the private sector Approved clearing house solutions offered by most of the larger funds for whom Australians affect choice. We can provide a much larger sample if requested. So widespread is the availability of private sector Approved clearing houses that SuperChoice itself has nearly one hundred products offered by well over fifty different superannuation funds and administrators on its services.

 # We would also note the significant investments of direct private sector services offered by many payroll providers and accounting software providers (e.g. MYOB, Quicken), authorised deposit taking institutions (CUSCAL/Payment Adviser) and other fund intermediated clearing house services such as Superannuation Clearing House and Bravura (generally operated in conjunction with Westpac).