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Supplementary Submission

in respect of

Economics Legislation Committee Inquiry into Tax Laws Amendment (2010 Measures No 1) Bill 2010

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Commercial interests

Superannuation Information Centre Pty Limited does not have any commercial interests, past or present, in a superannuation Clearing House or a related enterprise.

Our business interest centres on advocacy for the efficient operation of the superannuation system, and education support services for superannuation practitioners.

We have extensively researched and prepared several professional development papers on the function and efficient operation of superannuation contribution payment processes associated with the administration of Superannuation Guarantee obligations imposed on employers.

Supplementary Submission

This submission is in addition to our submission dated 2nd March, 2010, and relates to questions referring to unintended consequences, and anti-competitive considerations, of the proposed legislation.

The following comments are based on observations and interpretation of witness evidence presented at the:

Public Hearing
Tax Laws Amendment (2010 Measures No 1) Bill 2010
in Sydney N.S.W.
on Wednesday 3rd March, 2010.

Unintended consequences of legislation

The proposed legislation will enable Medicare Australia to offer an Approved Clearing House service from July, 2010, without an opportunity for the Senate, as the House of Review, to review relevant business operation documentation, or prescribed requirements, to the extent that the Senate can be reasonably satisfied, that an acceptable service can be delivered from the scheduled start date.

An absence of good business practice documentation, or prescribed requirements, for stakeholder scrutiny would seem to be a material omission, at a point in time of roughly three months before commencement.

An unintended consequence of the legislation is that Medicare Australia may not be able to accommodate a cleared funds and supportive data transfer service to all eligible Superannuation Choice nomination requests on 1st July, 2010. We note that there are over 400,000 APRA and ATO regulated superannuation funds that could be an employee nominated fund.

A major superannuation payments Clearing House failure to deliver a satisfactory service, even a free of charge service, would have an adverse impact on all market participants. This is a risk that needs to be responsibly managed in the national interest.

Good business practice documentation

In our view good business practice documentation for an Approved Clearing House should include:

- Vision Statement
- Policies
- Processes

- Procedures
- Risk Management Plan

Sample documents can be provided with the co-operation of the industry.

Anti-competitive considerations

Evidence tabled by Treasury (see attached) at the Inquiry that it would be inappropriate to consider a private sector Approved Clearing House due to regulatory constraints would seem to be based on flawed logic.

Banks are effectively regulated. This evidence would suggest that a bank owned Approved Clearing House, would in the opinion of the regulator (APRA) be incapable of effective supervision of prudential management. Verbal evidence was supplied that Treasury consulted APRA on the subject of regulatory issues. It would be interesting to establish whether APRA provided written confirmation of this regulatory deficiency that would apply in the context of a bank, or other APRA regulated entity. Surely this would not be the case as it would point to other more serious and immediate deficiencies.

If we extend the logic of a bank owned Approved Clearing House as acceptable (subject to effective regulation and satisfying other considerations), then equally any other private sector Approved Clearing House with the security of a Bank Guarantee would also be acceptable.

Treasury evidence on this point is not sufficiently compelling to eliminate the option of a private sector Approved Clearing House at this time. It is also relevant that the date of this advice is provided together with the authority of the advice, as it is important to appreciate the timing of the decision to switch from the previous Government decision to subsidise a private sector model to a Government agency solution. There has been little time for the superannuation industry to reflect on the Treasury evidence with only two days to respond. With sufficient time senior considered legal opinions could be a critical component of the Senate review process of this legislation. The availability of more time on this single issue would be appreciated.

In our view these associated legal issues should be further developed and considered by the Senate in the context of the proposed legislation that would appear to have been specifically drafted to singularly support the requirements of a public sector Approved Clearing House. References to the Approved Clearing House would support this interpretation. This would be a defect in the legislation if authoritative legal opinion was to challenge the Treasury evidence on reasonable capacity to regulate a private sector Approved Clearing House.

Degree of difficulty

Medicare Australia gave evidence that they have an abundance of technical resources and experience that can be effectively combined, with inputs from an industry working group, to

be up and running to service a potentially high volume, superannuation payments Clearing House service, by the end of June, 2010.

We believe that this is an illusionary perspective.

We have an intimate knowledge (through personal involvement) of a similar expectation from a Banking industry owned consortium (each of the major banks have an equity interest) which spent years probing the prospect of a bank owned superannuation payments Clearing House. This failed to eventuate, despite an enormous combination of resources, and a focus on best practice processes. This was a fairly openly negotiated enterprise, that simply serves to underscore the immense degree of difficulty to adequately prepare for a public service on the scale envisaged for an Approved Clearing house.

Individual banks have also had mixed success in developing an in-house solution. Again this demonstrates that the challenge of building a Clearing House is not an easy task. There is a history of imbedded difficulties that only tend to emerge through processing experience.

These observations would suggest that adequate system design and testing requirements need more development time, especially given that the take up rate for a free service could be consistent with Government sponsored energy saving initiatives. It is our expectation that accountants will be recommending small business clients to register for an Approved Clearing House service as soon as possible, to take expenses off the balance sheet, and to manage the risk of of an early closure for new registrations in the event of a surge in early registrations and active participation. Again, we can reflect on recent experiences where the availability of a free Government sponsored offering can rapidly change the culture of an existing support industry. In this case the accounting and financial services industry, where client involvement in providing a value added service, can lead to an engagement for other related services such as a review of existing superannuation arrangements. The point is that there are market place incentives to drive up Approved Clearing House registrations with the sign up encouragement and support of an intermediary. This fuels the credible expectation for high volume activity as soon as the free service doors are open for business in May, 2010. Presently the month after next. This could translate into too much too soon.

We note from Medicare Australia evidence at the Inquiry that their expectations in respect of registrations are at the low end of possibilities, and that to a significant extent, this assumptions supports an optimistic view that they will be able to cope. It also supports the view that if they are wrong, there is a reasonable expectation that the service may need to be temporarily suspended if too many people register too soon.

Recommendations

To ensure that Medicare Australia has a comfortable timeframe to work through the necessary business development requirements, including possible outsourcing negotiations, it is our view that the commencement of the Approved Clearing House service is deferred to July, 2011, or such earlier date that secure business practices can be independently audited and tested in a full service environment.

We also recommend that the Treasury suggested regulatory constraints be tested at law and that any available APRA advice that the supervision of an Approved Clearing House is beyond their capabilities be tabled. This should also include the authority of the advice, and the date provided.

End.