

Chapter 3

Views on the measure

3.1 This chapter examines the views and issues raised by various stakeholders during the committee's inquiry into the proposed superannuation clearing house for small business and examines those issues in light of the areas which the Senate requested the committee investigate.

General support for a clearing house service

3.2 As detailed in Chapter 2, the free service to be introduced by this legislative amendment will relieve employers of the administrative burdens associated with their superannuation guarantee obligations.¹ Submitters to this inquiry have been in favour of the benefits that will result from its implementation and the measure has therefore enjoyed general support.

[The Association of Superannuation Funds of Australia]...is supportive of the government proposal to deliver the superannuation clearing house for small employers...²

The Council of Small Business Organisations of Australia welcomes the Federal Government initiative to provide free superannuation clearing house services to small businesses in Australia, and acknowledges this fulfilment of an election commitment.³

[Investment and Financial Services Association Limited] welcomes the Government's initiative to deliver its election promise by legislating for a free clearing house service for small business. We support the creation of approved clearing houses for the management of superannuation contributions on behalf of small business.⁴

We are supportive of the idea behind the notion of an approved clearing house...we can certainly see advantages for many employers in a system which assists them to minimise the administrative problems of superannuation.⁵

3.3 In giving their support however, submitters to the inquiry have identified particular aspects of the proposal that they consider require further consideration and

1 Treasury, Additional Information, 3 March 2010, p. 1.

2 ASFA, *Submission 2*, March 2010, p. 1.

3 COSBOA, *Submission 7*, March 2010, p. 1.

4 IFSA, *Submission 1*, March 2010, p. 2.

5 Mr Dick Grozier, NSW Business Chamber, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 March 2010, pp 3 and 5.

development prior to implementation. It is these matters that will be examined in this chapter.

The use of a single approved clearing house

3.4 In 2009 the Government announced that Medicare Australia would perform the role of the 'approved clearing house' departing from its election commitment to outsource the clearing house service through a tender process.⁶ The Government noted that Medicare was 'well placed as one of the Commonwealth Government's key service delivery agencies – with significant electronic and payment processing capacity whilst ensuring the privacy of information and the security of funds'.⁷ During the inquiry this shift in Government policy was the subject of criticism, submitters expressing concern that it would adversely affect competition in the market:

IFSA are concerned about equity in competition...competition is key to an efficient and cost-effective superannuation system and that competition must be in an environment that is equitable...our concern is that there is not a level playing field...it is good that Medicare is coming in to fill a role that is an issue in the marketplace, but it should not limit others from competing equally with Medicare.⁸

...the capacity to become an approved clearing house should be open to clearing houses in general.⁹

...the introduction of Medicare is anticompetitive as it will progressively distort the commercial underpinnings of the clearing house market and offer a competitor an unfair advantage...if the government still wishes to proceed with the initiative, the legislation [should be] amended to appoint the government clearing house provider by tender or, alternatively, level the playing field by enabling private sector providers to become approved and reimburse them for offering the service...¹⁰

3.5 When questioned as to why the Government decided against a tender process to identify and appoint a suitable clearing house provider Treasury gave the following explanation:

The turning off of the SG liability concentrates the financial risk associated with non-payment of superannuation entitlement in one place – namely a clearing house. A failure at the clearing house level would potentially affect the employee entitlements of all employers using the clearing house.

6 Treasury, Additional Information, March 2010, p. 1.

7 Hon. Chris Bowen, Press Release, 6 November 2009.

8 Mr John O'Shaughnessy, IFSA, *Proof Committee Hansard*, Wednesday 3 March 2010, pp 45-7.

9 Mr Dick Grozier, NSW Business Chamber and Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 March 2010, p. 2

10 Mr Stuart Korchinski, Director, SuperChoice, *Proof Committee Hansard*, Wednesday 3 March 2010, p. 37.

Currently, a failure to pay employee entitlements only affects the employees of the employer who fails to discharge their SG obligations.¹¹

...[this] is one of the key reasons that the Government ultimately chose to do the clearing house within the public sector and through Medicare.¹²

3.6 Treasury's explanation as to why the Government ultimately decided to preserve the element of extinguishing an employer's SG obligation as soon as payment is made to the approved clearing house rather than the commitment to implement the measure through a private sector provider demonstrates the critical policy considerations and trade-offs that were taken into account.¹³

3.7 Submitters have however continued to express the view that this element of the measure could be extended to private sector clearing houses provided those entities are appropriately licensed and regulated.¹⁴ The NSW Business Chamber and Australian Chamber of Commerce and Industry suggested that greater benefits would be available to employers if the capacity to become an approved clearing house were open to private providers.¹⁵ They called for the definition of 'the' approved clearing house to be changed to 'an' approved clearing house to enable their participation in this new market.¹⁶

3.8 Treasury noted that the costs associated with going down the private sector route would have included both the private sector bid as well as the internal regulatory costs of government which they noted 'may have been substantial'.¹⁷

3.9 Australian Super also did not agree that allowing existing clearance houses to participate would be a more efficient way of processing superannuation for small business:

If the government were to offer subsidies to existing clearing house providers to focus a service on this segment of the market, they probably could have done it, but it would have to have been in conjunction with legislation introduced as we have seen Medicare looking at—mandatory electronic data, mandatory data standards, licensing, a guarantee on floats, and service standards on how long a clearing house can hold onto the money and send it to the funds. If your question is, 'Could private clearing

11 Treasury, Additional Information, March 2010, p. 1.

12 Mr David Parker, Treasury, *Proof Committee Hansard*, Wednesday 3 March 2010, p. 26.

13 Treasury, Additional Information, March 2010, p. 1.

14 Mr John O'Shaughnessy and Mr Andrew Bragg, IFSA, *Proof Committee Hansard*, 3 March 2010, pp 46 – 47.

15 Mr Dick Grozier, NSW Business Chamber and Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 March 2010, p. 2.

16 Mr Dick Grozier, *Proof Committee Hansard*, 3 March 2010, p. 2.

17 Mr David Parker, Executive Director, Treasury, *Proof Committee Hansard*, 3 March 2010, p. 32.

houses provide this service with the subsidy going to them?’ the answer is: yes, they could have, but it would not have been as effective as the model that we are looking at now, unless it were in conjunction with a whole list of additional criteria.¹⁸

Committee comment

3.10 The committee acknowledges the complex policy considerations that were balanced by the Treasury in giving effect to this measure, particularly the degree of risk that would be involved if ‘turning off’ the SG liability were extended to payments of superannuation contributions to private clearing houses.

3.11 Although the committee acknowledges industry concerns that this gives the Medicare clearing house facility a competitive advantage, potentially eroding their client base, the committee takes the view that this is one particular instance where it is both suitable and beneficial that the Government provide a free service to this specifically targeted sector of the community and although government involvement in these circumstances may lead to some minor distortion, the benefits that will be delivered to small business justify that impact.¹⁹ The committee is also satisfied, based on evidence it heard, that although there are some private providers of clearing house services currently operating in the small business market, their market penetration is small and there is room for a government provider to operate.²⁰ In fact, drawing on the information provided to the committee, of the two million small businesses in Australia only around two per cent are currently being provided with a clearing house service by SuperChoice.²¹ The committee considers that this further confirms the appropriateness that the free service is only made available to employers with less than 20 employees.

3.12 On the issue of enabling private clearing houses to operate as approved clearing houses for the purposes of this measure on the proviso that they be appropriately licensed and regulated the committee contends that the costs of implementing a framework and body to regulate those entities would be prohibitive, would not guarantee against systemic failure and could result in the creation of an implicit contingent liability for the government.

18 Mr Shawn Blackmore, Head of Operations, AustralianSuper, *Proof Committee Hansard*, 3 March 2010, p. 55.

19 *Proof Committee Hansard*, 3 March 2010, pp 32 – 33.

20 Mr David Parker, Executive Director, Revenue Group, Treasury, *Proof Committee Hansard*, 3 March 2010, p. 34; Mr Shawn Blackmore, Head of Operations, AustralianSuper, *Proof Committee Hansard*, 3 March 2010, p. 52.

21 Mr Stuart Korchinski, Director, SuperChoice, *Proof Committee Hansard*, 3 March 2010, p. 36.

The definition of a 'small business'

3.13 Treasury note this targeting of government assistance; once an employer gets 20 employees or more it will not be possible for that employer to continue to access the free service, even if they were willing to pay.²² The committee also draws attention to the Government's announcement that limiting access to the free clearing house service to employers with fewer than 20 employees also minimises the impact of the measure on competition in the existing clearing house market.²³

3.14 While the Government has stated publicly that the facility will only be available to small businesses that have fewer than 20 employees, this eligibility criteria has not been explicitly stated in the bill.²⁴

3.15 Throughout consultation, on both the exposure draft and the current bill, specifying these size limits by instruction has been criticised and submitters have called for the Government to define 'small business' for the purposes of the measure.²⁵ The Government has however taken the view that 'restricting eligibility for the service through the legislation is...not necessary [as it] would create additional complexity.'²⁶

3.16 Rather, the approach that has been taken to ensure that only small businesses with fewer than 20 employees access the service is the inclusion in the bill of a provision that requires the approved clearing house to accept a payment that is made in satisfaction of the employer's superannuation obligations.²⁷

3.17 Although it is clearly the intent of the Government to restrict access to the clearing house service to small businesses with fewer than 20 employees, the committee heard that the lack of legislative guidance may result in administrative difficulties:

...this requirement to refuse seems to suggest that, if a small employer increases in size to 20 or more employees, payments will be refused...Apart from the complexity of administering this gate and the technical administrative burden imposed on an employer which is growing his or her

22 Mr Michael Willcock, General Manager, Personal and Retirement Income Division, Treasury, *Proof Committee Hansard*, 3 March 2010, p. 33.

23 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services and Dr Craig Emerson MP, Minister for Small Business, Independent Contractors and the Service Economy, *Cutting Red Tape for Small Business – Superannuation Clearing House Service*, Joint Media Release No 035, 6 November 2009.

24 The Hon. Chris Bowen MP, *Second Reading Speech*, Wednesday 10 February 2010, p. 11.

25 Australian Government, Treasury, *Superannuation Clearing House, Summary of Consultation Process*, February 2010, p. 2; SuperChoice, *Submission 8*, p. 4.

26 Australian Government, Treasury, *Superannuation Clearing House, Summary of Consultation Process*, February 2010, p. 2.

27 Tax Laws Amendment (2010 Measures No. 1) Bill 2010, Schedule 1, item 1 line 12, item 3 line 26 – 27, item 6 line 14.

workforce, or even one who is contemplating a request for a job-share arrangement, it seems to directly and negatively impact employers who might best benefit from the facility. Employers who have seasonal workforces, which means that their workforce fluctuates from its usual small number to 20 or more for a seasonal period, would, depending on how the requirement to refuse is given effect, seem well advised either to not register in the first place or to not use the facility at seasonal peak times...These seasonal employees are the ones who would impose the greatest superannuation guarantee administrative burden on the employer and where the greatest benefit of the approved clearing house facility would seem to fall.²⁸

3.18 These concerns were not shared by all submitters. COSBOA is of the opinion that the definition of fewer than 20 employees on a head count basis rather than a full-time equivalent basis was appropriate:

We understand that 84 per cent of small businesses are micro-businesses, which have five staff or fewer. On balance, we considered that the issues of the thresholds are issues that deal with small businesses at the margins. The definition that was offered by Medicare, which was a definition of fewer than 20 employees on a headcount basis rather than a full-time equivalent basis, was appropriate given the issues and the challenges in implementing such a threshold.²⁹

Committee comment

3.19 The committee considers that the absence of a definition within the legislation may result in ambiguity, particularly for small business employers who employ a predominantly casual workforce and/or seasonal employees.

Recommendation 1

3.20 The committee recommends that the threshold value be monitored over the initial three year period to assess whether the threshold is appropriate.

Medicare as the approved clearing house provider

3.21 The Senate also requested that the committee consider Medicare Australia's suitability for the role of provider of the Government's clearing house service.

3.22 In making its announcement that Medicare would take on this role the Government explained that it had chosen the agency given that in its current roles it had developed significant capacity in payment processing and would be able to use its

28 Mr Dick Grozier, NSW Business Chamber and Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 March 2010, p. 3.

29 Mr Michael Pruscino, Director, COSBOA, *Proof Committee Hansard*, 3 March 2010, p. 11.

existing infrastructure capabilities while ensuring information privacy and fund security.³⁰ Medicare themselves commented that:

We have well-established systems that have been in operation and tried and tested over a long period of time; appropriate audit controls and the like; and a skilled workforce who are very comfortable with and used to doing this kind of work. We have no concerns about our capacity to deliver on this program...it is obviously a very important program and we are determined to get it right.³¹

3.23 Although Medicare has also established working groups with industry to ensure their needs are met and the service is a success, there remains concern that the service to be delivered will not be efficient. This concern has arisen as no processing, transfer or missed payment response time requirements have been cited for introduction.³²

3.24 A number of submitters³³ have suggested that as the payments to be made to Medicare will be deemed to be payments to the relevant superannuation funds there is an argument for introducing transaction time and other processing requirements.

...our intention once the information is matched is for the money to be distributed to the super funds immediately, so we would be looking at doing that within 24 hours. The only one where we could not commit to that would be those where there were issues with matching and some requirement for us to do some follow-up work.³⁴

Committee comments

3.25 The committee is of the view that Medicare will be an efficient and effective provider of the optional superannuation clearing house service for small business although it recognises that the benefits associated with introduction of the service may not be realised as early as hoped if take-up amongst small business is slow.

30 The Hon Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services and Dr Craig Emerson MP, Minister for Small Business, Independent Contractors and the Service Economy, Cutting Red Tape for Small Business – Superannuation Clearing House Service, Joint Media Release No 035, 6 November 2009.

31 Mr Mark Jackson, General Manager, Business Framework, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, p. 25.

32 Mr Dick Grozier, *Proof Committee Hansard*, 3 March 2010, p. 2.

33 The NSW Business Chamber, Australian Chamber of Commerce and Industry, AustralianSuper, ASFA, SuperChoice all mentioned a need to introduce data and processing standards in their submissions.

34 Ms Jacqueline Hughes, Medicare Australia, 3 March 2010, pp 23-24.

3.26 The committee is satisfied that as Medicare has been fully funded to deliver this measure its implementation will not adversely affect delivery of its other services.³⁵

3.27 The committee is satisfied that Medicare will set adequate service standards in terms of payment and other processing times as part of their normal departmental performance indicators.

Recommendation 2

3.28 The committee recommends that the Senate pass the bill.

Senator Annette Hurley
Chair

35 Mr Mark Jackson, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, p. 20.