

March 5, 2010

John Hawkins
The Secretary
Senate Economics Legislation Committee

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

Dear Mr Hawkins,

Further to the Committee's request for submissions from interested parties as part of the Senate Inquiry into Tax Laws Amendment (2010 Measures No 1) Bill 2010, Sage MicrOpay has developed the following response for your consideration.

Sage MicrOpay has a number of concerns regarding the government's proposed legislation supporting the superannuation clearing house, including:

The negative consequences the legislation will have on the superannuation market;

Aspects of the legislation that are anti-competitive in relation to privately operating superannuation clearing houses; and

Whether Medicare is the appropriate agency to operate the clearing house under the legislation.

About Sage MicrOpay:

Founded in 1985, Sage MicrOpay is a leading developer and supplier of payroll and people management solutions. Sage MicrOpay's products are designed specifically to meet 's complex tax and statutory requirements - including Choice of Superannuation Fund payments.

Sage MicrOpay services approximately 9,000 companies in Australian and overseas. More than 30 per cent of Australian businesses with between 50 to 1,000 employees use Sage MicrOpay payroll software.

Sage MicrOpay, in partnership with leading supplier of online superannuation contribution systems SuperChoice, provides its payroll solution customers with a superannuation clearing house service called Express Super. Meridian customers are organisations with 20+ employees.

Sage MicrOpay has extensive experience in developing solutions specifically for Australian businesses that streamline complex payroll and superannuation administration processes.

Drawing on this specialist knowledge, we have developed the following list of recommendations on how the proposed legislation should be amended to ensure the government's Superannuation Clearing House service is viable and a level playing field for both government and private sector clearing house providers.

Recommendations:

The government's Approved Clearing House (Medicare) is restricted to employers with less than 20 persons by legislation, rather than as a regulation.

The current proposed legislation transfers critical future market and competition decisions as to how the Approved Clearing House (Medicare) competes with the private sector to "the Regulation".

The transfer of important detail to regulation (such as the size and the nature of timing penalties), is understandable. However, fundamental market competition issues such as

how the Approved Clearing House competes with the private sector should be clearly set out in the legislation and accordingly voted on in the Parliament.

In particular, the Minister's statement that the Approved clearing house cannot provide services to employer with more than 20 persons should be part of the legislation, not deferred to Regulation.

As an example of how the Parliament is transferring critical powers to regulation, under the proposed legislation, the Government could easily extend the Approved clearing house service to the entire employer market - that is to offer an Approved clearing house service free-of-charge for the first 19 employees and then extend its services to employers with 20 or more persons (eg on a charged basis). Such a decision could bring Medicare into direct competition with the private sector.

Legislation is amended to allow private sector clearinghouse providers to be appointed and to equally operate as Approved Clearing Houses (not just Medicare)

The failure to make stated provision gives a Government facility an unfair advantage over the private sector.

The proposed legislation constrains both the current and any future government of either persuasion to nominate or move to a private sector Approved Clearing House model now or in the future.

The proposed Section 32C(2B)(c)(i) and (ii) of the Superannuation Guarantee Administration Act is amended to more clearly define "passing written notice" and appropriate contemplation that electronic storage of choice form details and passing of requisite details electronically is also appropriate.

The idea that the Government might be trying to cut across existing payroll processes (for one transaction type) is at odds with recommendations from businesses in almost every sector. The potential "paper-based passing" of such detail only serves to slow down existing payroll processing processes where employers hold the original documents (choice form), enter the salient details in their payroll software, then download to the private sector Approved Clearing House.

Before legislation is passed, detailed specifications are outlined on how the Approved Clearing House will provide superannuation and data to the funds, ensuring the funds are not worse off.

The current proposed legislation does not address how superannuation funds should be compensated due to the fact they will no longer receive data and payment in an automated (electronic) form. They will be forced to adopt a process that disrupts existing electronic operations and involves a costly human process.

Legislation is amended so employers are able to satisfy their Superannuation Guarantee (SG) payment obligations in the same way (timing) irrespective of whether they are making payments to private sector Approved Clearing Houses or the government's Approved Clearing House (Medicare).

Under the proposed legislation, private sector Approved Clearing Houses are subject to SG deadlines that are applied quarterly. They require employers to make payments well prior to the 28th of the month after the corresponding SG quarter, to ensure they get the money to the superannuation fund by the 28th. The Medicare solution means employers only need to pay Medicare by the 28th to meet their SG obligation and Medicare can hold onto that money for a month.

Legislation is amended to include clearly defined operating service standards, particularly

for money transfer, and resultant penalties administered by an appropriate regulator

Operating standards that should be included:

Service levels for sending contributions

Penalties for failure to meet service levels

Penalties for sending money to ineligible funds or member accounts

Service levels for handling refunds and returned contributions.

Legislation is amended to facilitate the role of ASIC in regulating licensing and disclosure. The Approved Clearing House (Medicare) and private sector Approved Clearing Houses should to be subject to the same licensing and disclosure requirements.

The Approved Clearing House is not subject to the Corporations Act requirements under the current proposed legislation, yet private sector Approved Clearing Houses are subject to ASIC IR 06-35.

We have significant concerns over the viability of the government's Superannuation Clearing House under the current proposed legislation and believe it will cost Australian taxpayers significantly more than the \$16 million currently earmarked for the establishment of the service.

We strongly encourage the government to amend the legislation.

Yours sincerely

(...)