

The Association of Superannuation Funds of Australia Limited
ABN 29 002 786 290
ASFA Secretariat
PO Box 1485, Sydney NSW 2001
p: 02 9264 9300 (1800 812 798 outside Sydney)
f: 02 9264 8824
w: www.superannuation.asn.au



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Senate Economics Committee
Department of the senate
PO Box 6100
Canberra ACT 2600

Economics.sen@aph.gov.au

Dear Committee Members

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

The Association of Superannuation Funds of Australia Ltd (ASFA) seeks to have the following submission considered by the Committee's inquiry into Schedule 1 of the Tax Laws Amendment (2010 Measures No 1) Bill 2009.

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, accounts for more than 5.7 million member accounts and over 80% of superannuation savings.

ASFA has previously stated that it is supportive of the government proposal to deliver the superannuation clearing house for small employers and in that regard made submissions to both Senator Sherry and Bowen with the aim of achieving a cost effective solution for all employers and the industry. Enabling employers to contribute to multiple funds on behalf of its employees in a cost effective manner where contributions are allocated in to the members account on a straight though processes basis is vital to the delivery of fund choice. Ernst & Young Research shows that up to 30% of employees exercise choice by choosing to stay in their current fund when they change employers and that the inefficiencies in legislation are costing the industry (and therefore members) millions of dollar each year.

The Government's decision to deliver this initiative through Medicare was welcomed by ASFA as it saw it as a step in the right direction to deliver minimum data standards for employers and greater electronic commerce for the industry to address the inefficiencies noted above. It is worth noting however, that options such as minimum clearing house requirements, mandatory connectivity between clearing houses together with mandatory minimum employer data standards would largely provide a timely and effective solution.

ASFA notes that the Committee's particular interest in this matter is the investigation of the following issues:

- whether the legislation will have unintended consequences for the superannuation market;
- whether the legislation is anti-competitive in relation to privately operating superannuation clearing houses; and
- whether Medicare is an appropriate agency to operate the clearing house under the legislation.

Each of these matters is addressed separately below.

Unintended consequences

ASFA has previously stated that it is generally supportive of the government's proposal to deliver the superannuation clearing house for small employers through Medicare Australia. However, we are aware of some unintended consequences that may flow from the measure.

Under the 'choice of fund' arrangements contained in part 3A of the Superannuation Guarantee (Administration) Act 1994 (SG act), most employers find that they are required to make superannuation contributions to more than one fund. Unless an employer is currently using a commercial superannuation contributions clearing house, or is dealing with a default superannuation fund that provides such a service, the choice of fund obligations impose an additional administration burden in that it requires the employer to deal with multiple entities in order to meet its superannuation guarantee obligations.

The Government desires Medicare Australia to provide a 'one stop shop' for small employers making compulsory superannuation contributions to multiple funds on behalf of their employees.

Due to the comprehensive nature of the Medicare Australia service, ASFA can foresee two situations where there may be unintended consequences:

1. An employer who has fewer than 20 employees and is currently using a 'fee for service' clearing house may, for commercial reasons, choose to move their business to the free service provided by Medicare Australia. Such a move may impact negatively on the business of the commercial operator. However, ASFA cannot comment on the likelihood of this occurring as we are not aware of:
 - The number of small employers who are charged a fee for using a clearing house; or
 - The fees currently paid by such employers.

ASFA has been advised that despite significant efforts by industry, only limited numbers of employers with less than 20 employees use clearing house services and that this segment of the employer market is both costly for clearing house service providers to engage and offers a low revenue stream. ASFA would welcome Government legalisation to aid this process.

ASFA has also been advised that in many instances the cost of the clearing house is not met by the employer, but rather by superannuation funds.

2. Where employers are currently using multiple electronic processes, or a mixture of electronic and manual processes, for making superannuation contributions in respect of their employees, they may choose to move to the Medicare Australia service as it will provide a single service for all superannuation contributions.

Where this occurs, those superannuation funds which currently are receiving the employer's contributions and data electronically may incur additional costs as there may be different, more costly, processes involved in receiving the contributions from Medicare Australia than under the existing arrangements.

ASFA is unaware of the potential number of employers that may be involved in such arrangements or what the additional processing costs may be.

Anti-competitive legislation

In its December 2009 submission on the exposure draft legislation, ASFA stated that:

Lack of a level playing field among providers of clearing house services

The draft legislation, as it stands, creates an uneven playing field between the approved clearing house and other providers of clearing house services. It does this in the following ways:

1. It provides a free service to employers who contribute to the approved clearing house (Medicare Australia),
2. It provides an employer who has contributed to an approved clearing house an assurance that their contribution will be treated, for superannuation guarantee (SG) purposes, as if the money had been paid to a complying superannuation fund.
3. It does not provide a mechanism whereby existing providers of clearing house services can gain approved clearing house status and thus give an SG assurance to employers.
4. Unlike other providers of a non-cash payment facility, the approved clearing house (Medicare Australia) is not subject to the Corporations Act's licensing and disclosure regime.

To address the above issues, ASFA recommended:

- That the legislation be amended so as to provide a path forward whereby private sector organisations could achieve approved clearing house status. This would achieve a level playing field. The path forward could include the establishment of operating standards combined with regulatory oversight, as envisioned by the government's original statement. Importantly, this would ensure clearing houses meet certain minimum requirements and provide a wider range of employers with the opportunity to meet their SG obligation by contributing through a clearing house.
- That the legislation be amended, or administrative arrangements be put in place, so as to prevent an employer using the Medicare Australia clearing house service without charge where, on the last day of the contribution period, the employer had more than 20 employees. (Contribution period for this purpose could be defined as the most recent employment period to which an SG contribution related.)

Since lodging that submission, ASFA has had extensive discussions with Medicare Australia about the design of its administrative processes in relation to this measure. ASFA's particular concern is to ensure that, as an employer payment to Medicare Australia is treated as though it has been made to a superannuation fund, Medicare Australia will have processes in place that address the following key concerns:

- Ensuring that the quality of information provided to superannuation funds is sufficient to enable funds to promptly apply the contribution to the member's account or otherwise process the contribution;
- Ensuring that a contribution payment and the related information about the contribution is linked and is available electronically;
- Ensuring that where an employee has made an invalid chosen fund nomination the contribution can be redirected by Medicare Australia to the employer default fund for the benefit of the employee;
- Ensuring that Medicare Australia promptly passes contributions to the nominated superannuation fund; and
- Ensuring that the service is only used by the target group (i.e. employers with fewer than 20 employees).

ASFA notes that in respect of chosen fund contributions, the legislation (at subsection 32C(2B)(c)), provides a capacity for Medicare Australia to require an employer to provide additional information before a contribution is treated as satisfying the employer's SG obligation. Thus, to access the SG contribution concession provided by Medicare Australia, an employer may be required to collect and provide information in addition to that otherwise required by the SG Act

Notwithstanding the above, ASFA considers that it is a desirable objective that every employer should be able to meet their SG obligation by paying money and providing contribution information to any clearing house service provider that is able to meet minimum processing standards. ASFA considers that the development of such a level playing field will require, as a minimum, legislative change with respect to:

- Specifying the minimum level of information that must be provided with an SG contribution; and
- Mandating that to be an eligible chosen fund or employer default fund, a fund must have the capacity to receive contributions and contribution data electronically.

Is Medicare the appropriate agency?

ASFA is unable to Comment on whether any Commonwealth agency is better able to deliver the clearing house service than Medicare.

However, ASFA and the industry have provided Medicare Australia with extensive input as they have developed their approach to providing a solution. ASFA is a participant on Medicare Australia's Superannuation Clearing House Working Group and Superannuation Clearing House Industry Working Group. We have no reason to believe that Medicare Australia will not be able to deliver the processes as set out below ¹ by 1 July 2010.

ASFA expects however, that for Medicare to deliver an appropriate solution there will be a need for continuation of the high level of support they are receiving from the superannuation industry.

Yours faithfully



Pauline Vamos
Chief Executive Officer

¹ ASFA's understanding of the Medicare Australia processes is that:

- Medicare will implement administrative processes to deal with inappropriate use of the facility by employers with more than 20 employees.
- For an employer to use the Medicare Australia service they must:
 - Register on-line with Medicare Australia
 - Pay their superannuation contributions to Medicare Australia by electronic banking processes
 - Provide sufficient information about the employer and its default fund and the employee and their chosen fund (where applicable) to enable Medicare to place the contributions with a fund for the benefit of the employee.
- Medicare will reconcile employer contributions and remit them to superannuation funds on a daily basis.
- Medicare will provide the contributions data to superannuation funds in an electronic format.
- Medicare will have processes in place such that, as required by the SG act, rejected 'chosen fund' contributions can be redirected to the employer' default fund.