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## SUPERANNUATION CLEARING HOUSE – POINTS FOR OPENING STATEMENT TO SENATE COMMITTEE

The subject of the Committee's inquiry is the legislative provisions supporting the implementation of the Government's 2008-09 Budget measure to provide an optional free superannuation clearing house service for small businesses. That measure in turn meets one of the Government's election commitments.

Key elements of the election commitment are as follows:

- the purpose of the clearing house is to relieve employers of the administrative burden associated with compliance with their Superannuation Guarantee obligations arising from employees exercising choice of fund. That is, the commitment is aimed at relieving small businesses of administrative and compliance burdens;
- use of the clearing house service is optional but would be free of charge to eligible employers. Thus if an eligible employer does not find the service an attractive proposition for whatever reason, they can use alternative services or continue with their existing arrangements;
- eligible employers who may access the free service are those employing fewer than 20 employees;
- the clearing house service to be offered free to eligible employers would be contracted to the private sector; and
- an employer's SG obligations (namely to pay SG amounts to each employee's relevant superannuation fund) would be discharged once the employer pays over SG contributions to the new clearing house service rather than, as is currently the case, only when the contributions are received by the relevant super fund.

We can respond to questions from the Committee on a range of implementation issues relevant to this commitment and about the consultation process that took place on those issues. But I want to highlight the critical policy considerations and trade-offs that we took into account, and expose to the Committee some of our thinking, as we worked on translating the election commitment into the proposed arrangements that the Bill's provisions would underpin.

- The commitment to extinguish an employer's SG obligations once the employer delivers its SG payments to the clearing house (rather than to a super fund as currently) introduces an entirely new type of entity to superannuation arrangements – not an agent like current payroll service providers but a conduit. With the current structure of the SG law, this would give rise to a risk, the consequences of which would be borne by the relevant employees (rather than the employer as currently).
  - The turning off of the SG liability concentrates the financial risk associated with non-payment of superannuation entitlements 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. Currently, a failure to pay employee entitlements only affects the employees of the employer who fails to discharge their SG obligations.
  - Good policy design required attention to what happens in the event things go wrong. This proved to be quite complex and it is the reason why considerable time was taken to develop the policy. And it is a key reason why the government chose to implement the clearing house through Medicare.

- The design of a mechanism to implement the commitment and manage the resulting risk warrants some elaboration.
  - The risk could have been managed by developing a regulatory framework to apply to a private clearing house operator, for example, through the development of modifications to strengthen the existing ASIC Financial Services Licence regime and the application of this modified licensing regime to the clearing house operators. But such arrangements would not have been ‘foolproof’ and the risk would not have been entirely removed.
- Another way of managing that risk is for the relevant function to be undertaken in the public sector.
  - The risk concerns arising under a private sector provider model are not relevant if the clearing house is provided by an arm of the Commonwealth because the Commonwealth is then effectively standing behind the clearing house and underwriting any risk for employee superannuation entitlements once they reach the clearing house.

My comments highlight what we saw as a trade-off between two elements of the election commitment – the discharge of an employer’s SG obligation once payments are made to the clearing house and the contracting of the clearing house service to the private sector.

Given that the Government’s decision, and the legislation being considered by the Committee, reflects that trade-off, let me comment on the implications for private sector clearing house operators of the policy underpinned by the legislation before the Committee.

- A public clearing house provider would essentially be offering the eligible part of the community a free government service. This is not an uncommon arrangement – the ATO offers various services for free to people to assist them in meeting their tax obligations, and there are other government service providers who provide services targeted at particular segments of the community.

A concern reflected in the Committee’s inquiry is the effect of this measure on competition in the existing commercial clearing house market.

The measure may have some impact on the existing market to the extent that the availability of a free government-provided service diverts business away from existing market players.

- But it has to be said that the target audience for the measure – employers with fewer than 20 employees – is not one that has to date been well-served, or at least not extensively serviced, by existing commercial operators.
- Indeed, that presumably is why the Government made its election commitment and is pursuing this measure.
- The service provided by the clearing house relates only to superannuation and hence is not as broad as a full payroll service.