

Chapter 2

Schedule 1 – the proposed measure

Introduction

2.1 The bill will amend various parts of the superannuation legislation to introduce a free clearing house service for small businesses.¹ This service will reduce the red tape associated with meeting superannuation obligations by removing the need for small businesses to deal with numerous superannuation funds where employees have exercised choice.² The Government has also attempted to limit the impact of the measure on existing clearing houses by limiting its availability to small businesses with less than 20 employees.³

2.2 The Government consulted widely during both the policy design and draft legislation stages of this measure's development: a consultation paper discussing the initiative and seeking the views of both the industry and public was released on 14 November 2008; the draft legislation was later exposed for public comment on 26 November 2009.⁴

2.3 Although the submissions received during both periods of consultation have not been publicly released a summary of the issues raised and how those issues have been addressed is available from the Treasury website - <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1675>.

The provisions

Superannuation contributions

2.4 Under the existing provisions of the *Superannuation Guarantee (Administration) Act 1992* (SGAA) an employer can discharge their superannuation guarantee obligations for a quarter by paying the contributions it owes in respect of each employee to a complying superannuation fund or retirement savings account (RSA) by the 28th day after the end of a quarter.⁵

1 The Hon Chris Bowen, Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services, Second Reading Speech, *House of Representatives Hansard*, 10 February 2010, p. 11.

2 Second Reading Speech, 10 February 2010, p. 11.

3 Second Reading Speech, 10 February 2010, p. 11.

4 The Hon. Chris Bowen MP, Minister for Financial Services, Superannuation and Corporate Law, Superannuation Clearing House – Release of draft legislation, Media release No. 40, 26 November 2009.

5 Tax Laws Amendment (2010 Measures No. 1) Bill 2010, Explanatory Memorandum, pp 13 – 14.

2.5 The introduction of section 23B in the SGAA will enable employers to meet their obligations in respect of paying superannuation contributions by a single payment as section 23B will operate to deem that where an employer pays an amount to an approved clearing house for the benefit of an employee, the payment will be treated as having been made to a complying superannuation fund or retirement savings account at that point in time.⁶

2.6 In effect, the superannuation guarantee liability is 'turned off' on receipt of the payment by the approved clearing house, providing an incentive for eligible small businesses to take up this free service.⁷ This is in contrast with the effect of paying these contributions through a payroll provider or a superannuation clearing house where the employer's obligations are only considered to have been satisfied when the money they have paid to the payroll provider or clearing house has finally reached the fund or RSA.⁸

Choice of fund requirements

2.7 Introduction of the choice of fund rules from 1 July 2005 now requires employers to provide employees with a standard choice of fund form to enable employees to choose the fund into which their compulsory employer contributions are paid.

2.8 Choice of fund was introduced to provide employees with greater freedom to decide who manages their superannuation. The measure was also expected to increase competition and efficiency in the superannuation industry 'leading to improved returns and placing downward pressure on fund administration charges.'⁹ At the time the changes were introduced it was noted that the nature of the choice of fund requirements would increase costs for some employers, particularly small businesses less able to absorb any such impacts,¹⁰ but that the benefits to employees and the community outweighed those costs.¹¹

2.9 The Government has sought to rectify this situation through the proposed bill and a subsequent amendment that it will make to the choice of fund provisions in section 32C. The amendment will operate to ensure that payment of an employer's

6 Explanatory Memorandum, pp 13 – 14.

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

8 Explanatory Memorandum, pp 13 – 14.

9 *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004*, Explanatory Memorandum, p. 5.

10 Explanatory Memorandum, p. 14.

11 *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2004*, Explanatory Memorandum, p. 34.

superannuation contributions for employees to the approved clearing house also discharges the employer's choice of fund obligations.¹²

The approved clearing house

2.10 The final substantive change involves the introduction of a definition of the term 'approved clearing house'.

2.11 When the measure was first announced the Government advised that the approved clearing house would be contracted to the private sector, the successful entity being appointed by tender.¹³ Following further development of the measure this was changed; the Government taking the view that as risk would be transferred back to the employee in the event of default (given the employer's liability on payment to the clearing house is extinguished) a private clearing house provider should not be engaged.¹⁴

2.12 As a result, Schedule 1 of the bill now provides that the definition of 'approved clearing house' will be determined by the making of regulations; the government announcing that following passage of the bill, regulations identifying Medicare Australia as the approved clearing house for the purposes of the measure will be made.¹⁵

Additional minor amendments

2.13 In addition to these main changes, additional minor amendments to facilitate the measure will be made.¹⁶ These include changes to proposed Division 355 (confidentiality of taxpayer information) of Schedule 1 to the TAA 1953 to allow the Tax Office to disclose information to Medicare for the purposes of administering the clearing house service. Division 355 has not yet been enacted; it is currently contained in the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 which is before the Parliament for consideration.¹⁷

12 Provided the employer has given details of the employee's chosen fund to the approved clearing house; the bill requires that notification of the employee's choice of fund details be given to the approved clearing house either within 21 days after the employer has received the information from the employee or before the contribution to the approved clearing house is made.

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

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

15 Tax Laws Amendment (2010 Measures No. 1) Bill 2010, lines 14 – 17 p. 5 and lines 4 – 5 p. 7.

16 Explanatory Memorandum, p. 18.

17 Senate Economics Legislation Committee, *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 [provisions]*, March 2010.

Commencement date

2.14 Provided the bill is passed, Schedule 1 will commence on 1 July 2010.¹⁸ Medicare will have facilities available to those employers who intend to use the service to register from May 2010.¹⁹

18 Explanatory Memorandum, p. 18.

19 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.