

# Minority Report by Coalition Senators

## Introduction

The Coalition is broadly supportive of the Government's broad policy. The Coalition recognises red-tape is a concern for small business and supports Government measures to implement a superannuation clearing house for small business.

However, the Government has not explained why it broke its commitments to tender the service to the private sector that Medicare has not publicly made a business case for establishing the clearing house, and that many operators in the superannuation sector have expressed concerns about the anti-competitive. The Coalition is particularly concerned about this and will discuss a number of issues associated with this.

## Unintended Consequences for the Superannuation Market

The intentions of this legislation are welcomed by the superannuation industry and small business. The Australian Chamber of Commerce and Industry (ACCI) told the Hearing that:

We welcome the Government's decision to establish a clearing house facility to assist employers to manage their superannuation contribution obligations under choice and which would provide a free service for small employers...We are very supportive of reforms to simplify compliance and to expedite contributions processing.<sup>1</sup>

The Investment and Financial Services Association (IFSA) said:

We welcome the Government's initiative...this is a key area where the superannuation payment obligations have been a major problem for a number of small businesses, particularly with regard to their payroll responsibility.<sup>2</sup>

The support given by those in the industry is cautious and the legislation requires further consideration and development prior to implementation. The recommendation that the legislation be passed unamended is inappropriate and is indicative of the Government's refusal to consider outside industry concerns about the legislation. When Medicare was asked about responses to the discussion paper on this issue and what they had done to deal with those responses:

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<sup>1</sup> Mr Dick Grozier, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 March 2010, page 2

<sup>2</sup> Mr John O'Shaughnessy, Investment and Financial Services Association, *Proof Committee Hansard*, 3 March 2010, page 45

We have not asked for any of those documents.<sup>3</sup>

What we have done is set up two working groups so we are working directly with industry and employers so that any issues that they have can be raised...<sup>4</sup>

The Coalition believes that the inclusion of industry representatives on working groups and Medicare's refusal to consider Treasury submissions is not a justification for disregarding their concerns. For example, the Association of Superannuation Funds Australia (ASFA) and IFSA were both included on Medicare's working group, but made submissions to this inquiry detailing how the legislation can be improved.

Similarly Coalition Senators agree with the Chair Report's comments on the 20 employee threshold. ACCI told the Inquiry hearing:

...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 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.<sup>5</sup>

The Coalition supports recommendation 1 in the committee report but would add the following.

### **Recommendation 1**

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

### **Anti-Competitive Provisions in the Legislation**

The principal concern of the superannuation sector and clearing houses that are currently operating in the private sector is the anti-competitive nature of the legislation.

Private sector superannuation clearing houses have been operating in the sector for some time. The sector's largest clearing house, SuperChoice, told the inquiry that it is:

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<sup>3</sup> Ms Jacqueline Hughes, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 19

<sup>4</sup> Ms Jacqueline Hughes, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 19

<sup>5</sup> Mr Dick Grozier, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 March 2010, page 3

Processing this year around 20 million contributions on behalf of 50,000 employers, 40,000 of whom are employers with fewer than 20 employees. They account for two million-odd employees. Overall, we project about \$7.2 billion will be cleared through our service. We estimate that that is around 20 per cent of the entire clearing market.<sup>6</sup>

The superannuation fund contracts the clearing house transactions to companies like SuperChoice, who provide their services to employers free of charge through their chosen superannuation fund.

If the Government were to introduce its own clearing house operator and enforce preferential regulations on that operator when compared to currently operating clearing houses, the legislation has the potential to seriously impact upon the business of those privately operating clearing houses. One submission related the primary concerns of private clearing houses in their submission:

Under the proposed legislation, private sector 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.<sup>7</sup>

Westpac made the following comment on its submission focusing on the different SG requirements:

This important difference means that private sector clearing houses, such as Westpac's QuickSuper, will be forced to compete in a market distorted by the change and no longer uniform or equitable from public and private sector participants. This will have negative consequences for small businesses who choose to continue to use private sector clearing houses...We recommend the legislation is amended to ensure clearing house standards are the same across both private and public sectors.<sup>8</sup>

Whilst the intentions of Medicare may be to provide a superannuation clearing house to those employers who currently cannot access a free service, the legislation and regulations will allow absolutely any business with fewer than 20 employees access to the service. For instance, the 40,000 employees who use the SuperChoice clearing house will have overwhelming incentive to switch to the Medicare clearing house due to the far less stringent requirements for the discharge of SG payments.

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<sup>6</sup> Mr Stuart Korchinski, SuperChoice Services Pty Ltd, *Proof Committee Hansard*, 3 March 2010, page 36

<sup>7</sup> Craig Osborne, Sage MicrOpay, *Submission 4*, page 2

<sup>8</sup> The Westpac Group, *Submission 9*, page 1

The Government recently said that the way superannuation can be strengthened is to 'drive efficiencies, reduce administrative costs and thus increase returns'.<sup>9</sup> This is the exact opposite of what the superannuation sector will achieve by this Bill in its current form. As IFSA states in its submission:

If the Item 3 amendment is passed as drafted, we would be concerned about the erosion of the "level playing field" in the provision of clearing house services. IFSA has long maintained that competition is the key to an efficient and cost effective superannuation system, and that competition is the key to an efficient and cost effective superannuation system, and that competition occur on a level playing field.<sup>10</sup>

AFSA made similar comments in their submission. To improve the legislation, ASFA recommends the following:

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 obligations by contributing through a clearing house.<sup>11</sup>

Such a recommendation will encourage the use of clearing houses, and provide each clearing house with competitive incentives to create efficiencies and implement best practice.

The majority of submissions from the superannuation and business sectors made similar recommendations. IFSA submitted:

All references to 'the approved clearing house' be changed to 'an approved clearing house'. Further, IFSA recommend that the definition of 'an approved clearing house', which will be finalised in the forthcoming regulations, be expanded to include a range of licensed clearing houses.<sup>12</sup>

ACCI made the following statement with relation to how business would like the legislation improved:

We believe the capacity to become an approved clearing house should be open to clearing houses in general. This would mean that the full benefits of

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<sup>9</sup> The Hon Chris Bowen, Address to Self-Managed Super Fund Professional Association of Australia, Melbourne, 18 February 2010, <http://mfsscl.treasurer.gov.au/DisplayDocs.aspx?doc=speeches/2010/003.htm&pageID=005&min=ceba&Year=&DocType=>, accessed 11 March 2010

<sup>10</sup> Investment and Financial Services Association, *Submission 1*, page 4

<sup>11</sup> The Association of Superannuation Funds of Australia Limited, *Submission 2*, page 3

<sup>12</sup> Investment and Financial Services Association, *Submission 1*, page 4

an efficient clearing house system would be available to employers. Such a clearing house system could help drive reform of the superannuation system overall in such areas as how payments are made to funds, what sort of information is required by the fund and interfund transactions.<sup>13</sup>

Coalition Senators agree with these sentiments of the industry and recommend that similar amendments are made to the Bill to protect competition, encourage innovation, and improve the access and services available to all businesses.

## **Recommendation 2**

**The legislation be amended to allow the definition of an ‘approved clearing house’ to include privately operating clearing houses, subject to licensing and minimum standards stipulated in the regulations.**

### **Is Medicare an Appropriate Clearing House Operator?**

The Government has allocated \$16.1 million to this project over four years and must provide genuine reasons to taxpayers concerning why the Prime Minister failed to meet his election promise to implement the plan through a competitive tender process. Medicare must also demonstrate that it is the most efficient option and whether it can provide services comparable to what the private sector can provide.

Treasury gave evidence in the hearing to the effect that tender documents were not produced.<sup>14</sup>

This contradicts evidence given on notice by Treasury to Senate Estimates in February 2010, where Treasury responded that ‘no draft tender document suitable for public release was prepared.’<sup>15</sup> This indicates that tender documents were prepared but not released.

Medicare’s evidence to the Inquiry hearing demonstrates that the agency has not completed a business plan to a level that would have been required in a competitive tender process. Medicare made the following comments to the hearing:

We do not have any targets at this point in terms of the number of businesses which are going to use the system.<sup>16</sup>

We did not go and cost an alternative provider.<sup>17</sup>

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<sup>13</sup> Mr Dick Grozier, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, page 2

<sup>14</sup> Mr Michael Willcock, The Treasury, *Proof Committee Hansard*, 3 March 2010, page 31

<sup>15</sup> Treasury, Answers to Question on Notice AET39, *Senate Economics Committee*, 11 February 2010

<sup>16</sup> Mr Mark Jackson, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 17

<sup>17</sup> Mr Mark Jackson, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 21

We are considering options (to accept employer payments)... We have looked at the alternatives... We have not reached any firm decision on that and we are still talking with industry about that.<sup>18</sup>

We have a wide range of KPIs right across (Medicare). I cannot imagine we would deviate from the normal Medicare ones. We have payment cycles of 14 days for some things as well as other time frames. They would be quite different, and we would need to look at the system and at what appropriate KPIs are.<sup>19</sup>

Upfront validation? We do not check with the fund at that point to ensure the member details match up when the employer sends us the payment. At this stage we are not planning to do that sort of validation.<sup>20</sup>

Our intention once the information is matched is for the money to be distributed to the super funds immediately. 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.<sup>21</sup>

Private clearing houses have raised expert concern on Medicare being awarded the contract. As SuperChoice noted:

...a significant underestimation of the costs to build and operate an effective clearing house, particularly in the time frame that Medicare has been given; likely poor employer experiences as a result of rushing into operation of a functionality based service offering, which will lead to growing employer complaints and an increase in red tape for employers; relatively low benefits for super funds, which will be off-set by the cost to access the clearing house; an inequitable landscape, where 85,000 employers who employ 7.7 million employees are not offered the same level of benefits that SME employers will access through Medicare; and ultimately a missed opportunity to support the industry to advance its e-commerce aspirations.<sup>22</sup>

The Superannuation Information Centre submitted that the decision to send the clearing house to Medicare means that 'there is the serious potential for large scale economic waste'.<sup>23</sup> It was additionally submitted:

Do (Medicare) really understand the complexity and nature of what they are trying to achieve? And the answer has to be 'no'.<sup>24</sup>

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<sup>18</sup> Mr Mark Jackson, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 23

<sup>19</sup> Mr Mark Jackson, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 24

<sup>20</sup> Mr Mark Jackson, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 24

<sup>21</sup> Ms Jacqueline Hughes, Medicare Australia, *Proof Committee Hansard*, 3 March 2010, page 23

<sup>22</sup> Mr Ian Campbell, SuperChoice Services Pty Ltd, *Proof Committee Hansard*, 3 March 2010, page 36

<sup>23</sup> Superannuation Information Centre Pty Limited, *Submission 3*, page 2

<sup>24</sup> Mark Fenton-Jones, 'Clearing house plan slammed', *Australian Financial Review*, 9 March 2010, page 50

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It has taken years for fund clearing service providers in the private sector to achieve and deliver service offerings that are viable and efficient. You cannot assemble a system like this in six months.<sup>25</sup>

It is also not clear if Medicare will be subject to the same professional indemnity insurance that private clearing houses are required to hold. SuperChoice told the hearing:

We believe that the risks of private sector failure or fraud are not well understood by Treasury, in part because existing clearing house providers such as us, Westpac and ADP are reputable, well capitalised and have extensive professional indemnity cover. They segregate duties by outsourcing payment distribution to banks, which is a key fraud control. They house employer funds in bank-controlled custody accounts and have not suffered any loss to date that we are aware of.<sup>26</sup>

Small Businesses are ambivalent on who operates the subsidised clearing house. The Council of Small Business Organisation was asked if they would have been concerned if the private tender process had been completed and commented that it would not have been a concern to them.<sup>27</sup>

Given the evidence available, Medicare and Treasury have not been able to prove that Medicare can handle the scheme at the budget provided and without risk to employee superannuation payments. Many in the industry have legitimate concerns about how Medicare will operate the scheme.

The Coalition has no issue with Medicare operating the system if it is the best option and if it does not disadvantage private industry. Medicare must be required to publicly release its business plan addressing these concerns and demonstrating that they can deliver the service more efficiently than the private sector. Furthermore, the Government must be held accountable for breaking its promises.

### **Recommendation 3**

**That Medicare be required to compete for the taxpayer-subsidised clearing house by publicly releasing its full costings and business model.**

### **Conclusion**

As already discussed, the Coalition is broadly supportive of the legislation, but is concerned about the lack of public tendering and the effectiveness of Medicare as a provider. The Coalition will be seeking to ensure that the private sector has the opportunity to compete for the superannuation clearing house contract.

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<sup>25</sup> Mark Fenton-Jones, 'Clearing house plan slammed', *Australian Financial Review*, 9 March 2010, page 50

<sup>26</sup> Mr Stuart Korchinski, SuperChoice Services Pty Ltd, *Proof Committee Hansard*, 3 March 2010, page 37

<sup>27</sup> Ms Jaye Radisich, Council of Small Business Organisations of Australia, *Proof Committee Hansard*, 3 March 2010, page 14

**Senator Alan Eggleston**

Deputy Chair

**Senator David Bushby**