31 March 2023

Director
Superannuation Insurance and Governance Unit
Member Outcomes and Governance Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Sent by email: superannuationobjective@treasury.gov.au

Dear Sir/Madam,

Legislating the objective of superannuation – consultation paper

Chartered Accountants Australia and New Zealand (CA ANZ), the Institute of Financial Professionals Australia and the Institute of Public Accountants welcome the opportunity to respond to the Legislating the objective of superannuation consultation (OoS Consultation) presently underway at Treasury.

We have examined the OoS Consultation proposals in detail and, on balance, do not support the government's proposed objective or the need to legislate it.

We have reached this conclusion because we believe the superannuation legislation already contains an excellent legislated purpose. We do not think legislating an objective for the superannuation system in isolation will assist anyone including the government. We have concluded that it would be better for the government to create an objective for the whole retirement system. Further details are explained in the appendix attached to this submission.

Our submission does not deal with the questions contained in the OoS consultation paper.

We would be happy to discuss any aspect of this submission. Please contact Tony Negline, Superannuation and Financial Advice Leader at CAANZ via email– tony.negline@charteredaccountantsanz.com or +612 8078 5404.

Yours Sincerely,

Tony Negline
Superannuation & Financial Services Leader
Chartered Accountants ANZ

Pippa McKee
Chief Executive Officer
Institute of Financial Professionals Australia

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General Manager – Technical Policy
Institute of Public Accountants

Appendix

Superannuation has a lengthy history in Australia – the first retirement scheme was established not long after Europeans first settled here.

From the early days of superannuation until now the purposes of superannuation have included at least one of the following:

- Provide retirement benefits to fund member
- Provide death benefits to fund member's beneficiaries
- Provide temporary or permanent disability benefits to fund members

In the vast majority of cases, superannuation has been provided via the use of trusts. As with all trusts, trustees have a range of common-law obligations such as acting in the best interests of members and to acting equitably between beneficiaries.

Superannuation fund trustees also have a number of statutory obligations found in State/Territory and Commonwealth laws.

We believe these purposes of superannuation are well understood by the community.

The sole purpose test

For more than 40 years, income tax concessions have only been available to superannuation funds that have satisfied permitted purposes. Initially those purposes were outlined by the Australian Taxation Office in various Taxation Rulings. In the late 1980s the then government decided to codify the "sole purpose test" (SPT) in legislation.

With effect from December 1993 this test was moved to the *Superannuation Industry (Supervision) Act 1993*[1] (SIS Act). The main substance of the SPT has remained unchanged for the last 30 years.

Even after this time it is common for this test to be misunderstood.

As already explained the SPT is a key compliance mechanism used to determine if a superannuation fund should be permitted to access the superannuation tax concessions. In effect it details the government's policy objective for superannuation.

A failure to satisfy the SPT – and therefore be deemed not to have met the public policy objectives for the superannuation system – has seen a number of superannuation fund trustees lose access to the superannuation tax concessions.

The SPT directly influences trustee conduct.

There are two distinct parts to the SPT – core purposes and ancillary purposes.

Core purposes can be summarised as follows:

- provide retirement benefits for members upon retirement or after age 65; and

[1] See Sec 62.

- provide death benefits, if death occurs before retirement, to a member's legal personal representative or dependants.

Ancillary purposes can be summarised as follows:

- provide benefits on termination of employment where a member's employer (or associate) has contributed to the fund;
- provide benefits where a member ceases gainful employment due to physical or mental ill health;
- provide death benefits to a member's legal personal representative or dependants if death occurs after retirement; and
- any other purpose that the Regulator (APRA or ATO) approves in writing.

Super funds must satisfy at least one core purpose for every member of the fund. Ancillary purposes are optional; however, funds can satisfy as many of these as they wish for each member.

A trustee does not have to provide the same types of core or ancillary purposes for, or in respect of, all members of the fund.

Security in Retirement – June 1992

On 30 June 1992 the then Treasurer John Dawkins published *Security in Retirement*. This document made the following points:

> We need now to start saving more for our future retirement … saving for retirement will have to be compulsory. It means that these savings will increasingly have to be 'preserved' for retirement purposes. Lastly, the rate of saving will have to ensure retirement incomes which are higher than that provided today through the age pension system … by requiring those who can do so to save for their retirement, better retirement incomes can be provided for those who cannot save.
>
> Future Australians will benefit from this requirement. Increased financial flexibility will enable future governments to increase the age pension rate to meet contemporary community expectations.
>
> This Government sees the age pension not just as a security net for future retirees but as the key-stone of its superannuation policies. It expects that most future retirees will continue to be eligible for the age pension (for example, through a part pension) which, with self-provided and tax-assisted superannuation, will allow a higher retirement income than is now generally available.
>
> … implementation of the SGC implies that a privately provided retirement income of about 40 per cent of final income is a level to which the community might wish to aspire for the time being.

National Savings – June 1993

Almost one year later (in June 1993), Vince Fitzgerald prepared a report for Treasurer Dawkins titled, *National Savings*. In that document Fitzgerald said,

> The ultimate aims of that policy [that is, the Superannuation Guarantee] should be clarified. (Is one goal to make most Australians independent of the age pension…?)" – forward page xv
>
> … a very long transition period lies ahead before it [that is, compulsory superannuation] is fully in place, pointing to the importance of clarifying its ultimate goals and improving the interaction between superannuation and the age pension – page 49.

We agree with Fitzgerald's view even allowing for the fact that that Australia, her economy and her place in the world has altered significantly over the last 30 years.

Financial System Inquiry – December 2014

The Financial System Inquiry (FSI) which reported in December 2014 (the Murray Inquiry) stated that setting objectives for the superannuation system "is necessary to target policy settings better and make them more stable. Clearly articulated objectives that have broad community support would help to align policy settings, industry initiatives and community expectations." – page 90.

The FSI recommendation[2] in relation to setting objectives for superannuation states:

> Seek broad political agreement for, and enshrine in legislation, the objectives of the superannuation system and report publicly on how policy proposals are consistent with achieving these objectives over the long term.

In our view this recommendation can be broken down into three parts:

1. Seek broad political agreement
2. Enshrine the objectives into legislation
3. Report publicly how policy proposals are consistent with achieving these objectives over the long term

We discuss each of these in turn:

Broad political agreement

We accept that it would be difficult for all political parties to reach consensus about the objectives of the superannuation system.

The danger of reaching broad political consensus about setting objectives for the superannuation system is that by the time consensus is reached we might only be left with platitudes that serve little or no practical purpose.

However, without this consensus there is the risk the objectives will simply become a malleable tool to be adjusted based on the ability to pass legislation.

Enshrine the objectives into legislation

We discuss this matter later in this Appendix.

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[2] See recommendation 9

Report on how policy proposals are consistent with achieving superannuation objectives over the long term

We agree with this recommendation.

We believe the best way to achieve this is for each new proposed Bill and related documents (for example explanatory statements for regulations or legislative instruments) should contain a Statement of Compatibility with the stated superannuation objectives. In our view this would be similar to the Statement of Compatibility that details whether a Bill or legislative instrument is compatible with the rights and freedoms recognised in the seven core international human rights treaties to which Australia is a party.

FSI Objective of Superannuation

The FSI recommended that the objective of superannuation should be "to provide income in retirement to substitute or supplement the age pension".

The previous government sought to legislate this objective however the current government, in Opposition, did not to support this legislation. The proposed amending legislation lapsed when the Parliament was prorogued for the 2019 Federal election.

Retirement Income Review (RIR) – November 2020

The RIR stated that, an agreed objective of the retirement income system "is needed to anchor the direction of policy settings, help ensure the purpose of the system is understood, and provide a framework for assessing the performance of the system".

The RIR had a much larger objective in mind than just for the superannuation system on its own – as stated erroneously in the OoS consultation paper.

The RIR suggested that this retirement income system objective should be:

> "to deliver adequate standards of living in retirement in an equitable, sustainable and cohesive way"

It defined adequate to mean, "the [retirement income] system should ensure a minimum standard of living for retirees with limited financial means that is consistent with prevailing community standards" and that system "should facilitate people to reasonably maintain their standard of living in retirement".

Equitable was defined to mean, the retirement income system "should target Government support to those in need" and the system "should provide similar outcomes for people in similar circumstances".

Sustainable was defined to mean, the retirement income system "should be cost-effective for taxpayers in achieving adequate outcomes" and the system "should be sustainable and robust to demographic, economic and social change".

Finally cohesive was defined to mean, the retirement income system "should have effective incentives to smooth consumption and support people in taking personal responsibility for their retirement outcomes" and "the retirement income system should interact effectively with other systems" and the system "should not be unnecessarily complex for consumers".

OoS Consultation Paper – February 2023

The OoS Consultation Paper suggests the following objective of superannuation:

> The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.

Two other versions of the objective are also suggested:

> The objective of superannuation is to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.
>
> The objective of superannuation is to support savings to deliver income for a dignified retirement, in an equitable and sustainable way.

The following terms in these statements have been further expanded as follows:

Preserve savings	restricts access to superannuation savings for a person's retirement
Deliver income	emphasises the principle of superannuation – to provide income in retirement
Dignified	denotes the importance of financial security and wellbeing in retirement
Government support	intends to encapsulate and highlight the superannuation system's interaction with the Age Pension pillar, as well as other government support
Equitable and sustainable	signifies that the system should provide similar outcomes for people in similar circumstances and government support should be targeted to those in need. Superannuation also needs to fit within the broader fiscal strategy

These terms are further explained as follows:

Preserve savings	contributions to superannuation should not be accessed unless for the purpose of income in retirement, apart from exceptional circumstances; recognises that superannuation is not a pool of individual's savings to fund other lifetime costs.
Deliver income	superannuation to provide universal savings that are drawn down in retirement to deliver income that supports retirees' standards of living; the focus on delivering income makes clear that superannuation's purpose is not for minimising tax on wealth accumulation or enabling retirees to leave tax-effective bequests.
Dignified	denotes that financial security and well-being in retirement but recognises this does not mean all Australians should receive the same retirement income. This is a qualitative measure and may change over time to reflect society's standards. This recognises individuals deserve a high-quality standard of living in retirement.

Equitable	captures the importance of a system that delivers similar outcomes to people in similar situations and targets support to those most in need.
Sustainable	signifies that the system should be robust to withstand demographic, economic and social change and should be cost-effective for taxpayers in achieving retirement outcomes.
Alongside government support	aims to capture the importance of government payments or policies that act as a substitute or complement to superannuation and is intended to encapsulate the broad range of supports available to retirees by the Commonwealth Government such as the age pension.

National economic priorities

The OoS consultation paper says that "there is significant opportunity for Australia to leverage greater superannuation investment in areas where there is alignment between the best financial interests of members and national economic priorities, particularly given the long-term investment horizon of superannuation funds".

Until the early 1980s life assurance companies and certain types of superannuation funds had to satisfy the "30/20 rule". This rule said that these entities would not qualify for special income tax concessions unless they held at least 30% of their assets in public securities, including at least 20% in Commonwealth securities.

This rule was removed in September 1984.

At law trustees have the responsibility to act in their beneficiaries best interests. Under the SIS Act trustees have an obligation to act in their beneficiaries best financial interests. We believe trustees should be left to do these tasks without direct or indirect political or bureaucratic influence on their specific investment decisions other than existing SIS Act restrictions.

We would be concerned if any OoS was used by government to begin effectively reintroducing a version of the old 30/20 rule.

Anchoring future policy changes

The OoS consultation paper says an OoS would "anchor any future superannuation policy settings to a meaningful base … [and] will enshrine the core goal of supporting delivery of retirement incomes in law. Haphazard or inconsistent changes in superannuation system policy undermine the community's trust in the system and increase costs to trustees, regulators, and ultimately members".

We would welcome anything that ensures that future superannuation policy changes will not continue to be made on a haphazard and inconsistent basis. We do not think an enshrined OoS will be the missing piece of this puzzle.

Exceptional circumstances

We note the wording used to explain some of the terms of the OoS state that superannuation savings are for retirement and should only be accessed before retirement in exceptional circumstances.

We believe these sentiments potentially conflict with a range of current policy settings. For example:

- Transition to retirement income streams[3] – such pensions are permitted to be paid before a person is fully retired; we believe this policy helps many people move from being in full-time work to being fully retired; the government would need to explain why such a policy setting was not considered to be an exceptional circumstance to the proposed objective.
- Compassionate and financial hardship grounds – we believe that the current policy settings need to be reviewed based on the exceptional circumstances comment.
- Making superannuation contributions after retirement – the government would need to explain how the current policy settings permitting new superannuation contributions after retirement align with its preferred objective wording and explanatory wording.

If the current wording of the Objective of Superannuation is adopted then the government will need to announce which current policy settings will be adjusted including how and the timeframes for these modifications.

Superannuation is not for minimising tax on wealth accumulation or enabling retirees to leave tax-effective bequests.

A person joining the workforce who has an average life expectancy can expect to be involved in the superannuation system for 70 to 80 years and in some cases a longer period of time.

The tax concessions are vital to ensure superannuants are able to build sufficient wealth for their retirement. These concessions also act as an important incentive for individuals to choose to defer immediate consumption so as to save for their long-term retirement needs.

The current superannuation laws do not demand that accumulated wealth must be taken as one or more pensions and/or one or more lump sums at any point in time. In other words, benefits can remain in the accumulation phase of superannuation system after a person retires and until that person dies, at which point their account balance must be paid as lumps sums or pensions to dependants or lump sums to non-dependants.

On death, all benefits are paid tax-free when received by a fund member's dependants such as their surviving spouse and children under 18. If paid to non-dependants, such as adult children, they must be paid as a lump sum and the Taxable Component is taxed at 15% plus the Medicare Levy (Unfunded Components are taxed at higher rates). These policy settings ensure that the tax-effective nature of any bequests to non-dependants are removed. The government will need to indicate if it intends to change any of these important policy settings based on the proposed wording.

In any event a core purpose of the superannuation SPT allows for death benefits.

If the current wording of the Objective of Superannuation is adopted then the government will need to announce which current policy settings in this area will be adjusted including how and the timeframes for these modifications.

Superannuation is an asset to be drawn down on

The OoS consultation paper contains the sentiment that "an objective can support a greater focus for funds on how income is provided in retirement and encourage individuals to think about their superannuation as an asset to be drawn down on".

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[3] For example, refer to Regulation 6.01of the *Superannuation Industry Supervision Regulations* for a relevant definition

However elsewhere in the OoS consultation paper it is said that a legislated objective is "not intended to guide the regulation of trustee's conduct, it would not change trustee obligations".

Encouraging members to think about drawing down their superannuation accounts during retirement is a key requirement of trustees via the Retirement Income Covenant contained in the SIS Act.

We are concerned about potential inconsistencies with these concepts.

Enshrining a superannuation objective in legislation

In our view legislation's primary purpose is to influence behaviour. It does this primarily by imposing penalties for non-compliance with a particular rule. For example, any superannuation fund trustee that breaches a superannuation law risks being reprimanded.

It seems highly doubtful to us that a government would impose any penalty on itself if it passed laws or put in place regulations that were inconsistent with any legislated objectives for the superannuation system.

We believe that the superannuation objectives should be made prominently and publicly available on relevant Government websites and it should be clear that the leaders of all major political parties agree with the stated objectives. For example:

- pm.gov.au
- treasurer.gov.au
- treasury.gov.au
- asic.gov.au
- apra.gov.au
- ato.gov.au
- moneysmart.gov.au

If the Government is insistent that this objective be legislated then it should sit in a stand-alone Act of Parliament and be referred to in all other relevant Acts.

Retirement system objective

We believe the government would be better to draft an objective for the whole retirement system. A good place for the government to start is the wording developed by the Retirement Income Review as detailed above. However, we suggest that the objective should be expanded to include aged care and old-age health care.

Inconsistency with trustee common law and statutory obligations

We believe there is a real risk a legislated objective for the superannuation as currently proposed would clash with existing trustee common law and statutory obligations. For example, we believe the SPT is a useful tool. If the government believes the objectives of the superannuation should be altered then a better approach would be to amend SPT which influences trustee behaviour, and therefore the overall superannuation system, at all times.