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The Treasury

Consultation on the Objective of Superannuation

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Prepared by:

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Authorisation

This submission has been authorised by the NFAW Board

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Consultation into the Objective of Superannuation

This submission is being made by the National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations.

Recommendations

1. The National Foundation for Australian Women supports legislating the Objective of Superannuation.
2. The Objective should include the criteria of:
 - Preservation of savings
 - Generating income in retirement
 - Government support through the Age Pension and services including health and aged care
 - Ensuring a dignified retirement
 - Equity and sustainability
3. The concepts of a dignified retirement, equity and sustainability should be made less subjective by incorporating benchmarks that can be used to assess the effectiveness of the retirement income system.
4. The accountability mechanisms should include
 - Committee scrutiny of Bills and Regulations to ensure that they comply with the Objective
 - Proposals should be examined through a gendered lens to ensure that they met the needs of women and that they comply with the (proposed) National Strategy to Achieve Gender Equality
 - Superannuation measures must be subject to periodic review against the benchmarked objectives through the annual Parliamentary Budget Statements of the Treasury and the periodic Intergenerational Reports.
 - External review by the Productivity Commission or the Australian National Audit Office should also be included in superannuation legislation.

Discussion

1. What do you see as the practical benefits or risks associated with legislating an objective of Australia's superannuation system?

The National Foundation for Australian Women has previously endorsed proposals to legislate the objective of superannuation. That submission is attached as an appendix.

Although the *Superannuation (Objective) Bill 2016* lapsed without being enacted, we acknowledge that there have been a number of significant changes since the consultation on that Bill. Significantly the introduction of contribution caps in 2016 have limited the amount that can be sheltered in superannuation, although these caps still subsidise high wealth individuals to accumulate more superannuation than is needed for a dignified retirement.

We are of the view that legislating the objective of superannuation will provide a framework that will ensure that superannuation is recognised as a retirement income product with features that distinguish it from other forms of investment. This framework will provide guardrails to Government policy, limiting the propensity for a government to see superannuation as a form of savings that can be used for other purposes. We note that recent research¹ found that the COVID early release policy was accessed most commonly by “present-biased” individuals, who are the least likely to save for future consumption (Hamilton et al, 2023).

While we note that it is not intended to bind the trustees of superannuation funds, a clear statement of the objective coupled with the covenants in the *Superannuation Industry Supervision Act 1993*, is likely to shape the development of products within the superannuation sector.

We note that one of the findings of the Retirement Income Review (RIR) was that “there has been insufficient attention on assisting people to optimise their retirement income through the efficient use of their savings” (at p 19). The design of superannuation accumulation accounts, while necessary for portability, has led to the perception of superannuation as a repository of wealth rather than to generate an income stream. A legislated objective for superannuation that highlights that superannuation is for the purpose of generating an income stream will encourage retirees to drawdown on superannuation in the retirement phase.

Ensuring a secure income stream in retirement is of particular importance to women who retire with less superannuation and live longer in retirement.

The introduction of the retirement income covenant in 2022 has also served an important role in requiring superannuation trustees to develop appropriate strategies and products for members in the retirement phase. While it is too soon to measure any behavioural shift among retirees, it is hoped that this will reinforce the purpose of superannuation as a retirement income product, rather than an asset to be preserved as an inheritance to beneficiaries.

¹ Hamilton S, Liu G and T Sainsbury (2023) *Early Pension Withdrawal as Stimulus* Working Paper IIEP-WP-2023-02, Institute for International Economic Policy, <https://iiep.gwu.edu/2023/03/15/early-pension-withdrawal-as-stimulus/>

2. Does the proposed objective meet your understanding of the objective of the superannuation system in Australia?

The key issues in the definition are:

- **Preservation:** We prefer to have this concept, which is consistent with the preservation rules included in the Objective. The inclusion will provide a brake on proposals to use superannuation accounts as a tax preferred savings vehicle to support other policy incentives. We note that the Retirement Income Review has highlighted the importance of home ownership in retirement, however we do not support schemes that use mandatory superannuation savings to assist entry into the housing market as such schemes can further stimulate demand.

We note the alternative wording to “support savings”. We are of the view that this directs attention to the means by which the Government will deliver concessions to facilitate savings, rather than on the preservation of funds contributed by the member. This would not necessarily limit the development of policies that encourage early draw-down.

- **Delivering Income:** We recommend that the objective specifies the purpose of superannuation is to produce an income stream in retirement. As noted above this signals a shift away from accumulation phase to the drawdown phase, a matter of key importance to women. However it is also important to acknowledge that this should not preclude access to lump sums to retire debt as this also contributes to security in retirement.
- **Dignified Retirement:** We recognise the intent of this wording to encapsulate adequacy, but it is subjective, based on the perception of the retiree. We note the Retirement Income Review observed that modelling shows that low income earners may receive more income in retirement through a combination of Age Pension and mandated superannuation withdrawals. However we remain concerned for older single women with low superannuation balances who may fall outside the parameters of the RIR modelling. We would expect that all Australians, including those on income support payments pre-retirement, would receive enough income to maintain a dignified lifestyle.

We note that the International Labour Organisation was faced with an analogous problem when it sought to define what it meant by ‘decent work’ both as an objective and as a legal term, as embedded in its objectives and international human rights declarations. They addressed this by identifying the critical pillars and identifying a set of legal and social indicators that can be used to benchmark retirement standards. The work of the RIR would be foundational in developing these indicators.

- **Government Support:** We endorse the acknowledgement of Government Support in the proposed objective. As noted in our submission on the 2016 proposal, the age pension is an important pillar of the retirement income system; and government policy must clearly acknowledge this. Similarly, low income retirees fear health and aged care costs although they are highly subsidised (RIR p 127). Women are particularly concerned as they fear outliving their assets. It needs to be clear that Government support includes

- **Equitable and Sustainable:** Once again, these words are subjective. For example, we would argue that proposals designed to support women, who generally have lower superannuation balances are equitable while someone else may argue that the exclusion of the non-target group is inequitable; or the word sustainability may be read as system sustainability or environmental sustainability. We would recommend that the intention behind the words is set out in the legislation, for example through the use of guides or other non-operative material. In the context of the National Strategy to Achieve Gender Equality that is currently being developed, we would also recommend that there is clear visibility and accountability through Gender Budgeting processes.
3. Is the proposed approach to enshrining the objective in legislation appropriate? Are there any alternative ways the objective could be enshrined?

We agree that enshrining the objective in legislation makes a clear statement of the intent of the objective, and will provide a level of confidence to stakeholders. However the subjectivity of the language will need to be considered in formulating proposals. For example, the most recent proposal regarding the taxation of balances over \$3m could be endorsed as improving the equity of the system, however stakeholders would continue to argue that it unfairly changes the ground rules for those affected by the proposal.

Although enshrined in legislation, a future government making changes will still be able to make changes as long as it can show that the intent of the change is consistent with the objective. Given the subjectivity of the criteria we anticipate that a government would not find this particularly onerous. For this reason we endorse the requirement that Bills and regulations include a statement of compliance, including compliance with the National Strategy to Achieve Gender Equality, to be scrutinised by the relevant Parliamentary Committee.

While Parliamentary review is important to ensure that the intent of legislation complies with the Objective, other mechanisms that could be used to ensure accountability would focus on effectiveness. These would include the periodic Intergenerational Review, and the annual Parliamentary Budget Statements.

4. What are the practical costs and benefits of any alternative accountability mechanisms to the one proposed?

The accountability mechanisms proposed above can be managed within Treasury, and would thus impose minimal extra cost.

Other review mechanisms would include statutory reviews by the Australian National Audit Office and/or the Productivity Commission. This would have the benefit of enshrining a periodic assessment of how well the Retirement Income System is functioning, and ensuring that private saving, superannuation and government support remain in balance. There would be some additional cost in funding the relevant agency to undertake the review.



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Submission to Senate Economics Legislation Committee
Inquiry into the Superannuation (Objective) Bill 2016

Prepared by Associate Professor Helen Hodgson, Curtin Law School

By authority of the NFAW Social Policy Committee

Submission to Objective of Superannuation

This submission is being made by The National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations, including the National Women's Alliances Equality Rights Alliance and economic Security 4 Women. These organisations include those committed to increasing support for women in Australia as well as those with a special interest in women's history.

We strongly support the introduction of an objective that enshrines the primary purpose of superannuation as retirement income support as opposed to an estate planning or wealth creation vehicle.

We support the recent passage of the legislation that imposes a limit on concessional tax retirement savings, reduces the contributions caps and decreases the income level at which Division 293 applies. These changes are in accordance with the proposed Objective.

In our submission on this measure in the consultation phase¹ we expressed the view that the role of the Age Pension needs to be reinforced as one of the three pillars of the retirement income system, as there is a perception that the Age Pension is to be phased out and replaced by superannuation. The current wording of the Primary Objective that refers to superannuation as "substituting or supplementing the Age Pension" does not adequately incorporate the role of the Age Pension as the primary income support for many Australians.

We again recommend that the Reference to substitution of the age pension should be deleted.

Women are more likely than men to be reliant on the Age Pension as their main source of income in retirement; and they are less likely to have retirement savings in superannuation or other investments, as noted in our submission to the Senate enquiry on Women's Income Security in Retirement.² Accordingly the role of the Age Pension in the retirement income system should be entrenched in the objectives.

The secondary objectives as stated are appropriate for inclusion in regulations.

The only comment that NFAW would make on the wording of the secondary objectives relates to the objective to "alleviate fiscal pressures on Government from the retirement income system". Our concern with this objective is the perception that superannuation is becoming seen as the primary retirement income policy, potentially supplanting the Age Pension.

Thank you for the opportunity to contribute to this Inquiry.

¹ Attachment 1

² Attachment 1; Appendix 3



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Submission to Treasury Consultation on the Objective of Superannuation

Prepared by Associate Professor Helen Hodgson, Curtin Law School

By authority of the NFAW Social Policy Committee

This submission is being made jointly by The National Foundation for Australian Women (NFAW) and Economic Security 4 Women.

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations, including the National Women's Alliances Equality Rights Alliance and economic Security 4 Women. These organisations include those committed to increasing support for women in Australia as well as those with a special interest in women's history.

Economic Security 4 Women is an alliance of women's organisations united in the belief that economic wellbeing and financial security are essential for women and will enable women of all ages to have an equal place in society.

NFAW and ES4W welcome the opportunity to comment on the objective of the superannuation system. In 2015 NFAW made submissions on retirement income to the 2015 Tax Discussion Paper and to the Senate Committee Inquiry into Economic Security for Women in Retirement. This document is based on work done by members of the NFAW Social Policy Committee in submissions to those inquiries and Gender Budget analysis of the 2014-15 and 2015-16 budgets. These submissions are attached as appendices. We restate here that two significant shortcomings in the superannuation system, from a gender equity perspective, are the absence of superannuation guarantee payments on paid parental leave and other carer payments, and the legislated removal of the Low Income Superannuation Contribution. These shortcomings contribute to the gender superannuation gap between male and female retirement savings.

In this discussion paper we have been asked to consider the proposed objective of the superannuation system, as recommended by the Murray Review. The form of words under consideration is:

To provide income in retirement to substitute or supplement the Age Pension.

1. Income Objective

NFAW and ES4W agree that the primary objective of the superannuation system is to provide income in retirement. The current structure of the superannuation scheme favours accumulation funds which are then drawn down annually. Productivity Commission research has shown that most retirees draw regular payments from their superannuation account, and only draw down lump sums for specific purposes including clearing pre-existing debt or purchasing durable goods. The ability to draw down lump sums should be retained. If necessary the social security "gifting" provisions should be applied where there is evidence that a lump sum is being drawn down to facilitate access to the age pension.

Many retirees are concerned about longevity risk, and their superannuation running out: most Australians below the top wealth quintile will draw on the Age Pension at some stage in their retirement. There is currently no viable market in annuity products to insure against this risk due in part to conditions in financial markets but largely due to tax and regulatory penalties on

such products. These hurdles need to be addressed through a review of the relevant legislation.

Recommendation: Retirement income streams should be the primary objective of the superannuation scheme and that legislative barriers in the taxation and superannuation laws that be reviewed to facilitate annuity products that guarantee a lifetime income stream.

2. Role of the Age Pension

We consider that the proposed form of words reduces the policy commitment to maintenance of the Age Pension at a level that will address poverty among the aged. As worded, the primary objective gives priority to superannuation over the age pension. The age pension is an important pillar of the retirement income system; and government policy must clearly support the retention of the age pension at a level that is adequate to support a modest standard of living.

There is a significant proportion of the population that will never accumulate sufficient superannuation to support themselves in retirement without access to the age pension, as they are engaged in insecure employment or because of breaks in workforce participation. The Actuaries Institute (2015) has estimated that only people in the top income quartile can expected to be self-sufficient in retirement, and that people in the lowest income quartile will need to rely on the age pension during retirement. Longevity risk remains a concern for those in between; and it is likely that this section of the community will need to supplement superannuation income with the age pension.

We support better integration of the superannuation system to ensure that superannuation is taken into account when determining an appropriate level of income support through the age pension.

Recommendation: Reference to substitution of the age pension should be deleted.

3. Standard of Retirement Income

Superannuation concessions should be structured to ensure that retirees have a comfortable lifestyle in retirement, taking into account housing needs. In our view superannuation accumulations in excess of the level required to meet this level of income should not be eligible for concessional tax treatment.

The benchmarks adopted by the Association of Superannuation Funds of Australia for a comfortable standard of living are \$59,236 for couples and \$43,184; and \$23,797 and \$34,266 for a modest standard of living (at December 2015). However this income level assumes home ownership. If a retiree is in the private rental market their living expenses will increase accordingly: the Commonwealth Rent Assistance requires a couple who are eligible tenants to contribute the first \$188 per fortnight, then the benefit increases to a maximum of \$123 on a fortnightly rent of \$352 per fortnight. If the couple is able to find suitable accommodation costing \$352 per fortnight, they would need \$65,000 to meet the comfortable standard, and \$40,000 to meet the modest standard of living.

We also note that the ASFA retirement standard assumes that the retiree is in reasonable health. The ASFA retirement income standards include some health costs, however changes to the health system that increase the health costs for retirees would require adjustment to the retirement income standards.

There are two approaches to limiting tax concessions on excessively high balances: the balance can be restricted or the exempt income can be capped.

Exempt income could be capped through a limit on the amount of income that is exempt from income tax when received by the retiree. The cap would be based on the retirement income standards with a reasonable uplift, in the order of 20%, for contingencies including increased health costs, and a further amount allowed to retirees who rent in the private rental market. Amounts received in excess of this amount would be taxed at marginal tax rates less an offset to reflect tax paid by the fund. Capping the exemption at the individual level takes account of withdrawals but it does not address the revenue leakage through excessively high balances in pension phase in superannuation. Accordingly a corresponding cap would need to be introduced on the exemption for the income of the superannuation fund, with the surplus taxed at marginal tax rates.

However a cap based on income would not address over accumulation of income in the accumulation phase, when tax is paid at concessional rates, and it could encourage tax planning strategies to minimise income of the superannuation fund.

An alternative approach would be to limit the balance that is eligible for concessional tax rates on the basis of actuarial tables, determined on an annual basis and published by the superannuation regulators. This should be increased where the member is in the private rental market by an amount equal to the additional amount allowed under the social security means tests: currently \$146,500. The tables should be conservative, and a reasonable uplift, in the order of 20%, should be incorporated.

We are aware that this would be a more complex calculation, and resembles the former system of RBL's that was criticised for its complexity. However the improved data matching capability of the ATO that easily matches taxpayers with superannuation contributions will facilitate administration.

Recommendation: Tax concessions should be restricted to the income and/or accumulated balance sufficient to support a reasonable standard of living in retirement based on a comfortable standard of living, adjusted by a reasonable uplift factor and further adjusted where the member rents in the private rental market.

4. Wealth Accumulation and Estate Planning

One motivator to over accumulate in a superannuation account is the ability to accumulate wealth in superannuation, then to use estate planning strategies to pass that wealth to non-dependant beneficiaries without paying additional tax.

Since 2007 members have been able to make contributions of non-concessional contributions into a superannuation fund from amounts on which tax has already been paid. Accumulated

earnings are taxed at 15% or are tax exempt once the fund is in pension phase, which clearly incentivises over investment in superannuation accounts. In particular, retribution strategies exploit this to convert taxable components into tax free components.

Although a non-dependant is required to pay 16.5% tax on a death benefit from a superannuation fund, the tax payable on a “tax free” amount is 0%. All contributions are classified as “tax free” amounts when paid as benefits and are not subject to additional tax in the hands of the recipient. This allows a transfer of wealth that has been subject to concessional tax.

Recommendation: The amount that can be contributed as a non-concessional contribution should be significantly reduced. Alternatively the adoption of marginal rates of tax on excessive balances, as set out above, would discourage excessive contributions.

Recontribution strategies should be prohibited.

We further recommend that the treatment of a death benefit paid to a non-dependant be reviewed to ensure that tax is paid at marginal tax rates on contributions that are not exhausted during retirement.

Summary of Recommendations:

1. Retirement income streams should be the primary objective of the superannuation scheme and that legislative barriers in the taxation and superannuation laws that be reviewed to facilitate annuity products that guarantee a lifetime income stream.
2. Reference to substitution of the age pension should be deleted.
3. Tax concessions should be restricted to the income and/or accumulated balance sufficient to support a reasonable standard of living in retirement based on a comfortable standard of living, adjusted by a reasonable uplift factor and further adjusted where the member rents in the private rental market.
4. The amount that can be contributed as a non-concessional contribution should be significantly reduced. Alternatively the adoption of marginal rates of tax on excessive balances, as set out above, would discourage excessive contributions.
5. Recontribution strategies should be prohibited.
6. The treatment of a death benefit paid to a non-dependant should be reviewed to ensure that tax is paid at marginal tax rates on contributions that are not exhausted during retirement.

Attachments:

Appendix 1: Submission to Re:Think Discussion Paper; March 2015 and

Appendix 2: Supplementary Submission to Rethink Discussion Paper; July 2015

Appendix 3: Submission to the Senate Economics Committee Inquiry into Economic Security for Women in Retirement; October 2015

Not attached to 2023 submission - available on request