



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

Email: superannuationobjective@treasury.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – LEGISLATING THE OBJECTIVE OF SUPERANNUATION

The SMSF Association welcomes the opportunity to provide this submission in response to the Government's consultation paper on the proposal to legislate the objective of superannuation. We support in principle the concept of a legislated objective of superannuation. Given the importance of such a measure, the consultation process should not be rushed. We would encourage further formal consultation and extensive stakeholder engagement before proceeding to exposure draft.

The core purpose of superannuation is already addressed in the existing sole purpose test¹ and is an essential core component of the superannuation architecture. The sole purpose test is not a new concept, and its presence and operation substantially pre-dates the *Superannuation Industry (Supervision) Act 1993*. We acknowledge the important role that the sole purpose test plays in the application of superannuation compliance measures and taxation concessions.

The role of the sole purpose test, whilst of vital importance, must be clearly distinguished from an objective of superannuation. The latter is needed to provide a clear policy framework and guidance.

However, to avoid a stricter interpretation on the objective of superannuation, a nexus to the sole purpose test will be needed.

The current legislative framework is highly complex and a product of a proliferation of changes over time. Superannuation would benefit from simplification and the removal of red tape, rather than persistent changes.

¹ *Superannuation Industry (Supervision) 1993*, s 62.

Superannuation needs stability, consistency, and certainty. Continual changes to the superannuation system adds complexity to what is an already complex system. This erodes confidence and trust in the system. The Financial System Inquiry noted:

The lack of clarity around the ultimate objective of superannuation policy contributes to ad hoc short-term policy making, which imposes unnecessary costs on superannuation funds and members, reduces long-term confidence in the system and impedes efficiency.²

The right framing of the objective of superannuation is therefore vital. It is essential in ensuring that it provides appropriate and necessary guiderails and a fit for purpose anchor for Government policy. It should not operate as a mechanism to allow continued changes or act as a means to justify any Government's short-term policies without proper consideration of the medium and long-term effects and consequences.

Superannuation is just one component of a broader retirement income system. The framing of the Retirement Income Review and the final report highlights the importance of considering the broader policy impacts across the retirement system. Indeed, the review recommended the introduction of an objective for the broader retirement income system.

What is proposed in the consultation paper is an objective which focuses on a single element of the retirement income system. An objective that considers superannuation in isolation of the other retirement pillars risks distorted outcomes and negative impacts over the medium and long term. All future superannuation policies and their impacts must be assessed with proper consideration, and clear analysis of the outcomes and effects within the broader retirement income remit. It must extend beyond a single element such as taxation.

We refer to the consultation questions included in the consultation paper. Our responses can be found in Appendix A to this submission.

A summary of our recommendations is set out below. We would welcome an objective to superannuation that:

1. Is legislated in standalone legislation, is clear and self-contained with clear definitions, operative and interpretive provisions.
2. Makes clear that the objective is to apply solely in the context of policy design and implementation only. It should not extend beyond this remit to other stakeholders such as regulators or superannuation trustees.
3. Considers superannuation in the broader retirement income framework.
4. Recognises that superannuation is already a highly complex system. Focus should be placed on simplicity and the removal of red tape.
5. Depoliticises superannuation and removes persistent, ad hoc, and haphazard changes.

² *Financial System Inquiry* (Final Report, November 2014) 25.



6. Requires the impacts of any proposed changes to be properly considered within the context of the retirement income framework.
7. Requires an assessment and clear statement on how proposed measures comply with the objective.
8. Is considered in all consultation processes and Bills tabled in the Parliament. Minor and technical amendments may be excluded from the latter.
9. Provides for a post implementation review of the operation of the objective of superannuation.
10. Requires the Australian National Audit Office to regularly review, audit and report on compliance with the legislative objective.

We welcome the opportunity to further discuss our submission. Please do not hesitate to contact us.

Thank you again for the opportunity to provide this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Peter Burgess', written over a light blue grid background.

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.13 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



Appendix A

Consultation Questions

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

The language and framing of the objective will be crucial in ensuring that the objective is appropriate, not only in the current environment but also into the future. The language should not be so restrictive as to prevent amendments necessary for the efficient operation of relevant legislation and the superannuation system itself. Conversely it should not be so free as to allow for continual change and to be driven by other policy agendas. Superannuation and the retirement income system needs to be de-politicised. The existing superannuation system is one that is already laden with significant complexity.

As noted in the *Retirement Income Review*, there is a need for an objective that considers Australia's broader retirement system. Superannuation is just one component of the broader policy considerations which include aged care, healthcare, the National Disability Insurance Scheme (NDIS), secure housing and accommodation as well as the age pension and social security.

A standalone objective that contemplates the function, purpose, and intent of superannuation in isolation risks policy distortions. This can result in misrepresentation of fact, misinformation, and in return risks poor outcomes and loss of confidence in the system through poor policy design or persistent changes.

Context of the objective will be important to deliver just and appropriate outcomes. It is essential that the framework requires reflection upon the impacts and outcomes within the broader retirement system. Similarly, the careful and considered examination of existing policy settings are essential to ensure that any targeted policies do not overheat the resulting outcomes. An assessment of the objective in isolation is incomplete, risks damage to the superannuation system, loss of consumer confidence and ultimately poor outcomes for individuals, the economy and Federal Budget.

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

The proposed objective and possible alternatives posited partially achieve the desired outcome. While it is more specific than the previous Bill, the language and terms used need careful examination.

The proposed objective of superannuation does not consider the retirement needs of individuals and needs to be outcomes focused. Further, superannuation should support savings and needs in retirement.



The SMSF Association would support the following:

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

The objective on its own is not sufficient and risks poor policy design and outcomes. The objective needs to be underpinned by clearly legislated definitions, legislative design and operative provisions and guidelines.

The proposed definition of 'preserve' is more restrictive than that of the existing, legislated sole purpose test³. Whilst we agree that certain limitations should be applied to the purpose and use of superannuation and the concept of preservation, there is a need for a clear nexus to the essential components of the sole purpose test.

A more restrictive definition of preservation could lead to policies that fundamentally change superannuation policy in a manner that is incongruent with the sole purpose test. Such extreme changes would be detrimental when we consider the important role that access to superannuation and insurance benefits within superannuation play around total and permanent disability (TPD) and critical illness. Other measures such as transition to retirement pensions play an essential role, assisting individuals in the pre-retirement phase as they transition from full-time work into retirement.

Receiving benefits only on retirement or death of a member does not help a family when a parent or spouse is diagnosed with a critical illness. Limiting access to superannuation and any insurance benefits until after that person passes would not align with original policy intent. The loss of the family home due to bank foreclosure is a very real issue as is the risk of bankruptcy of a surviving spouse. Families would be displaced from their family home which is destabilising for families. This in turn adds to the trauma experienced by children and the surviving spouse.

We would be happy to provide real case study examples upon request.

The definitions should not be so restrictive as to limit or prescribe how superannuation funds choose to invest members funds. The operation of the best financial interests applies to all trustees across the sector and functions as the essential test when making investment decisions for the fund. Choice is an important element of the superannuation system.

Concerns have already been raised that the chosen terms of 'equitable' and 'sustainable' reflect a broader agenda to drive environmental, social, and corporate governance (ESG) investing. Whilst this would not appear to be the policy intent, it highlights the need for functional definitions that clearly articulate the target position.

³ *Superannuation Industry (Supervision) Act 1993* (Cth), s 62.

A sustainable system should also be one that seeks to avoid adding complexity. The current system is already highly complex and has its own language as the system is littered with its own unique terminology and concepts. Most Australian's are unable to navigate, understand and engage with superannuation without professional advice and guidance. Red tape and complexity should be actively discouraged and avoided. The objective legislation needs to provide clear guiderails to prevent the addition of further complexity.

3. Is the proposed approach to enshrining the objective in legislation appropriate? Are there any alternative ways the objective could be enshrined?

A legislated objective should be set out in standalone legislation. Legislation impacting superannuation is spread across a number of different statutes. Whilst the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Income Tax Assessment Act (1997)* (Cth) and their regulations have a dominant role, there a number of other statutes that form part of the overall superannuation legislative framework.

New, standalone legislation would ensure that the objective is clear, visible, and distinct from other legislative measures. It would allow the structuring of the statute to address the objective itself, its operation and other relevant operative provisions.

All necessary context and guidance should be included within the legislation itself. Where further context or explanation is required, these should be included through clear definitions, operative provisions, schedules and in the notes to the legislation. All necessary information should be clearly presented and available in the one location.

Reliance upon the explanatory memorandum to provide further guidance on the intent of the objective may be limited. Certain materials can be used to ascertain the meaning of a provision, confirming its ordinary meaning but only where a provision is ambiguous or obscure.⁴

The legislation must contain a dictionary of terms that are clearly identified and purposefully defined. Context should be given to terms that are subjective in their interpretation. The principle of a 'dignified' retirement is a crucial component of the objective. It is however a term that could be interpreted quite differently, depending on the lens used, resulting in vastly different outcomes.

Any essential information and guidance should be included within the main body of the act or in schedules to the act. It should stand on its own weight. All necessary information should be available to aid the reader, encapsulating these essential statements and guidance into the statute.⁵

It will be important that the explanatory memorandum does make very clear the operative intent of the objective of superannuation. A clear statement that its application is expressly limited to Government policy and that it is not to apply to stakeholders such as regulators or superannuation trustees is essential.

⁴ *Acts Interpretation Act 1901* (Cth) 1901, s 15AB.

⁵ *Ibid* s 13.

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

Costs or negative impacts can arise where the objective has not been fairly or properly considered.

Consultation processes including consultation and discussions papers, and exposure draft legislation or regulations, should include feedback on alignment with the objective of superannuation. This feedback must be considered as part of the consultation process, and be publicly reported alongside published submissions, before proceeding with proposed measures.

There have been numerous examples of Bills tabled where the required regulatory impact statement is absent. The justification has, for example, been that the measures contained in the Bill relate to Royal Commission recommendations. The application and operation of the objective should not become a simple tick and flick exercise. It should be accompanied by a clear statement on how any proposed legislation complies with the objective of superannuation.

Provision should be made for a post implementation review of the operation of the objective of superannuation. Such a review should be conducted no later than two years post the implementation of the objective and be conducted by the Productivity Commission.

Ongoing compliance with the objective of superannuation must be assessed. The Australian National Audit Office should, on a regular basis, be required to review, audit and report on compliance with the objective legislation to ensure it is being properly administered.