

31 March 2023

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

By email: superannuationobjective@treasury.gov.au

Dear Director

Legislating the Objective of Superannuation

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the consultation paper on legislating the objective of superannuation (the **Consultation Paper**).

In the development of this submission, we have closely consulted with our National Superannuation Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

Superannuation plays an integral role in encouraging Australians to be self-sufficient and reducing the fiscal burden on future generations to support a large, ageing population. Australia's superannuation system is mature and it is uncertain how introducing a legislated objective of superannuation (**proposed objective**) will assist in reaching that goal at this stage. Superannuation has been subject to frequent change which has impacted the community's confidence in their ability to rely on their superannuation in the future.

There are notable shortcomings in Australia's superannuation system that prevent it from being efficient, simple and equitable. As highlighted in The Tax Institute's [Case for Change](#), holistic reform of the superannuation system needs to be seriously considered by Government. The introduction of a proposed objective without an accompanying plan for reform is unlikely to achieve the outcomes intended in the Consultation Paper.



For these reasons, we consider that a proposed objective, in isolation, should not be introduced at this stage. Alternatively, a proposed objective should be limited in scope such that it serves the purpose of only guiding, without restricting, the design of future superannuation policy.

Our detailed response which is contained in **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact The Tax Institute's Senior Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Scott Treatt

General Manager,
Tax Policy and Advocacy



Marg Marshall

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration. Our comments broadly follow the outline in the Consultation Paper.

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

Community trust in Superannuation

Page 4 of the Consultation paper states:

'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'.

Since the introduction of compulsory superannuation in 1992, there have been numerous instances of underlying superannuation policy being perceived to have been changed in a significant manner. Examples include:

- the introduction of contribution caps in 2007;
- the introduction of the transfer balance cap measures in 2017; and
- more recently, the proposed changes to the non-arm's length expenditure rules.

The Tax Institute considers that it is not only 'haphazard or inconsistent changes' in superannuation system policy that have challenged the community's trust, the continuous state of flux, regardless of the nature of the changes being made, is also a significant contributing factor. Feedback from our members indicates that there is a widespread perception of uncertainty regarding superannuation. A continued approach of frequent changes carries the risk of further eroding public confidence in the role of superannuation, with concerns that superannuation balances may be adversely affected as a result of such seemingly constant tweaking. We have some concerns about the effectiveness of enshrining a legislative objective of superannuation as a means to address this issue of community trust and provide comfort to the public. One alternative suggestion for restoring community trust could be for the Government to consider a moratorium on superannuation policy changes until it has adequately considered options and a plan for holistic reform.

Interaction with sole purpose test

The Tax Institute is also concerned with the impact of a proposed objective on the existing sole purpose test (**SPT**) under section 62 of the *Superannuation Industry (Supervision) Act 1993* (**SIS Act**). All regulated superannuation funds have been bound by the SPT since 1993. Feedback from our members indicates that most trust deeds and rules governing superannuation funds entrench the SPT, particularly the core purposes of providing for retirement and death benefits for dependants and/or legal personal representatives.

An inconsistency is noted in footnote 16 of the Consultation Paper. The SPT broadly requires trustees to ensure their fund provides benefits to members on their retirement, or to their beneficiaries in the event of death. However, the proposed objective appears to be solely focused on benefits in retirement and is silent on the provision of death benefits. As noted on page 10 of the Consultation Paper, the subsidiary objectives include not allowing retirees to leave tax-effective bequests. This is likely to result in a conflict with the SPT, a fundamental tenement that has been followed by industry since the conception of the superannuation system.

If a proposed objective might be seen as departing from the core purposes permitted by the SPT, issues are likely to arise about the extent to which an enshrined objective will give licence for future policy reform measures to alter what the industry and community have always been accepted as fundamental features of the superannuation system. In this regard, we consider that a proposed objective is unlikely to address concerns about community trust in the superannuation system and instead have the opposite effect, resulting in more uncertainty and apprehension for the community.

We consider the proposed objective should align with the SPT if implemented. In the event of any inconsistency between the proposed objective and the SPT, The Tax Institute is of the view that the latter should prevail.

Purpose of a legislated objective and manner of implementation

We consider that the role of the proposed objective and the way in which it will be implemented and given effect in practice has not been sufficiently explained in the Consultation Paper. Australia's superannuation framework is mature and we consider there to be limited benefits for industry or the community by enshrining an objective at this stage without an accompanying reform of the system. We consider that Government should better identify and articulate the issues a proposed objective will address, and how it will be implemented without disrupting long-standing tenets such as the SPT.

We understand that the proposed objective is intended to guide the future drafting of superannuation legislation. If the Government requires the proposed objective to be legislated in order to ensure that superannuation law is consistent with government policy, we consider that a standalone Act is the preferable mechanism to provide that framework. This is discussed in greater detail below.

We also recommend that Government consider alternate approaches that may achieve some of the desired outcomes set out in the Consultation Paper without legislating the proposed objective. Sub-paragraph 62(1)(b)(v) of the SIS Act includes a broad authority for the Regulator to approve a form of benefits in addition to the listed core and ancillary purposes. The use of this power may allow for directives that are consistent with the SPT and achieve the desired outcomes noted in the Consultation Paper without giving rise to the concerns noted throughout our submission.

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

Page 9 of the Consultation paper states that:

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

[emphasis added]

Deliver income

Page 10 of the Consultation Paper notes that the rationale for the use of the words ‘deliver income’ is to capture the purpose of the superannuation system. That is, being able to provide savings that are then drawn down in retirement rather than minimising tax on wealth accumulation or tax-effective bequests. We understand that the use of phrase ‘superannuation system’ in this context refers to:¹

- Pillar 2 of the superannuation system – compulsory superannuation; and
- Pillar 3 of the superannuation system – voluntary savings.

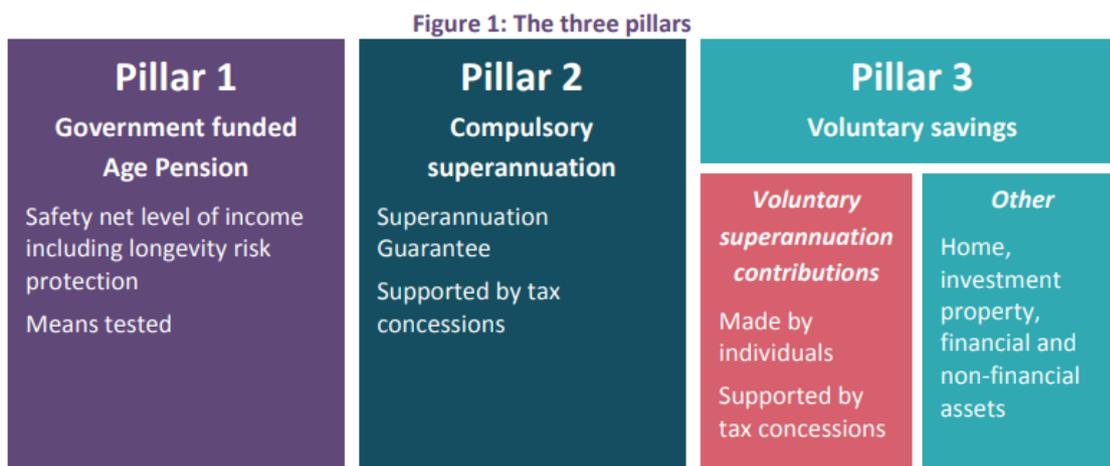
However, the use of the word ‘income’ suggests restrictions on the way benefits could be cashed during a member's lifetime. That is, through income streams only and not lump sum withdrawals. If the proposed definition is adopted, we consider that the use of the words ‘deliver income’ should be explained as meaning cashflow support from either income or capital drawings.

Dignified retirement

We consider that the phrase ‘deliver income for a dignified retirement’ should be replaced with a different phrase such as ‘deliver greater/better retirement benefits’, or be deleted altogether. We are of the view that a ‘dignified retirement’ is not fit for use in this context. The phrase includes subjective language and tests, is not capable of being accurately measured through existing surveys and checks,² and is not benchmarked to reflect the changing nature of what is required to achieve a ‘dignified retirement’ in the future.

Proposed legislative objective

For consistency with existing principles in superannuation, we consider that the proposed objective should be framed with reference to the three pillars of superannuation, extracted below:³



¹ Treasury, Retirement Income Review (2020), available at <https://treasury.gov.au/sites/default/files/2021-02/p2020-100554-udcomplete-report.pdf>.

² For example, see the Household Income and Labour Dynamics in Australia Survey.

³ Treasury, Retirement Income Review Consultation Paper (2019), Figure 1, available at <https://treasury.gov.au/sites/default/files/2019-11/c2019-36292-v2.pdf>.

It is currently unclear to which pillars the legislated objective refers. The proposed objective may be seen as referring to only Pillar 3. If Government's the intention is to limit the effect of the proposed objective to only Pillar 3, we consider that it should be limited to voluntary superannuation contributions.

Alternatively, if the proposed objective is intended to cover all three Pillars, we consider that the current wording should be re-framed. Alternative wording is suggested below:

'As one of the three pillars of the retirement income system, the broad objective of superannuation is to preserve savings to deliver income to support better retirement benefits. The employer and taxpayer funded retirement income pillars are supported by a robust level of voluntary savings.'

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

We consider that a stand-alone Act, similar to *Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2014*, is preferable if legislation of an objective is to be pursued. This would require all new Bills and disallowable legislative instruments relating to superannuation to be accompanied by a 'Statement of Compatibility' that assesses the compatibility of the proposed legislation with the underlying objective of superannuation.

Alternatively, the proposed objective could be included in the form of internal Policy and Guidance Notes to be used by Treasury when designing policy proposals and instructing the drafting of legislation concerning superannuation. The proposed objective would be more beneficial at the policy design stage of the legislative process and should guide the responsible parties at that time.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government, and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge, and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships, and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic, and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.