

SUBMISSION

Submission to Treasury — Legislating the objective of superannuation

29 September 2023

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Via email: SuperannuationObjective@treasury.gov.au

29 September 2023

Dear Sir/Madam

Legislating the objective of superannuation

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Legislating the objective of superannuation: *Exposure draft Bills – Superannuation (Objective) Bill 2023; and Superannuation (Objective) (Consequential and Transitional Provisions) Bill 2023.*

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.5 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Harvey Russell, Senior Policy Advisor, on (02) 8079 0803 or by email hrussell@superannuation.asn.au.

Yours sincerely



Julian Cabarrus

Director – Policy Operations, Member Engagement & External Relations

Executive Summary

ASFA welcomes the release of Treasury's Exposure Draft Bills on legislating the objective of superannuation: *Superannuation (Objective) Bill 2023*; and *Superannuation (Objective) (Consequential and Transitional Provisions) Bill 2023*.

ASFA is strongly committed to formalising an objective for superannuation in legislation that reflects the core purpose of the system in providing an adequate income to ensure all Australians achieve a comfortable or dignified standard of living in retirement. ASFA is pleased the proposed objective is closely aligned to the direction of ASFA's advocacy position on this issue in recent years and reflects feedback ASFA provided to the consultation on this topic earlier in the year.

ASFA broadly supports the objective as drafted, noting that the proposed wording is effectively unchanged from the consultation. The proposal places preservation, retirement income, equity, sustainability and a dignified retirement at its centre while recognising the ongoing role of the Age Pension. This formulation can underpin much needed policy stability and help anchor future policy debates in ensuring our age pension remains affordable, that superannuation savings are preserved to retirement, and that the system delivers in an equitable manner for women and low-income earners. ASFA proposes additional statements and clarifications to confirm beyond doubt that the objective of superannuation operates in a complementary fashion with, and does not limit, core trustee obligations such as the best financial interests duty and sole purpose test.

The proposal comes at an important time in the evolution of Australia's world class retirement savings system. Australia arguably has the leading Defined Contribution system in the world, currently boasting superior returns and a comparatively low cost to government on an international basis.¹

Indeed, the Government's most recent Intergenerational Report (IGR) highlighted the crucial role played by Australia's superannuation system in supporting the living standards of future generations of retirees and in easing the future cost burden of the Age Pension. In coming decades superannuation will be an important source of intergenerational fairness, ensuring younger generations do not face higher tax burdens to finance increasing expenditure on the Age Pension. Back in 2002 when the first IGR was published, expenditure on the Age Pension was projected to reach 4.6 per cent of GDP by 2041-42. That figure is now expected to drop to 2 per cent of GDP by 2062-63, a considerable contribution to the sustainability of the retirement income system.

The introduction of a legislated objective for superannuation has been considered by successive Governments over several years. Throughout this period ASFA has engaged positively and constructively with the proposals put forward. ASFA considers it is now time to confirm the objective in law, permitting it to deliver policy stability for the superannuation system and increased trust and confidence for consumers. Thirty years on from the introduction of the Superannuation Guarantee, and with the system maturing, the proposed objective has the potential to secure the success of the system.

General Discussion

ASFA has long advocated for the formalisation of an objective for super in legislation. ASFA's existing proposed definition includes the following elements: adequacy/comfortable standard of living; superannuation as one of the three pillars of the system; income provision; and all Australians:

¹ [ASFA research note](#) *The cost of pensions across advanced economies, February 2023*

“To provide an adequate income to ensure all Australians achieve a comfortable standard of living in retirement, supplementing or substituting the Age Pension.”

The form of words proposed in the exposure draft legislation is broadly consistent with ASFA’s formulation, although it explicitly incorporates other elements which were examined in the Retirement Income Review. This includes a specific focus on preservation, equity and sustainability. ASFA is comfortable with the addition of these elements as described and notes the system is performing strongly in these areas already.

With respect to the various elements of the proposed objective, ASFA provided substantial comments in its [submission](#) to the consultation paper early this year. Certain key points are reiterated within our response to the draft bills below.

Context on the broader benefits of the superannuation system and the proposed objective

ASFA is particularly pleased the draft Explanatory Memorandum (EM) reflects our feedback on insurance, highlighting the importance of the role group insurance plays in the system and that access to insurance through super is consistent with the objective. Further, confirmation that “the objective of superannuation does not change the legal or regulatory environment for these broader benefits of the superannuation system”² is an important clarification.

ASFA considers there is an opportunity to articulate in the EM how insurance in superannuation can support the specific elements of ‘equitable’ and ‘sustainable’, in a manner consistent with ‘preserve savings’ (EM paragraph 1.32) and ‘deliver income’ (EM paragraph 1.34). Our suggestions in this regard are outlined in the relevant sections below.

‘Preserve savings’ – ASFA supports the inclusion of a reference to preservation in the drafting of the objective. Preservation is an important principle attached to the bargain superannuation members make when engaging with the system through contributing. The existing preservation rules have generally operated to maintain the integrity of the system over time and are appropriately linked to the sole purpose and ancillary purposes of superannuation outlined in section 62 of SIS.

ASFA is supportive of the statements made in the EM which confirms that the objective does not change the existing principle behind early release of super for exceptional circumstances. It is appropriate that members maintain recourse for early access for genuine and exceptional hardship only. Given the need to ensure alignment of the sole purpose test with the objective, it would be helpful for the EM to explicitly state that the objective does not limit the payment of benefits to beneficiaries upon the death of the member prior to retirement. This is a core purpose of superannuation under the sole purpose test.

‘Dignified’ – in the context of delivering income for a dignified retirement, this should be both aspirational and capable of recognising different needs and circumstances of retirees given it refers to adequacy of retirement incomes. This concept addresses living standards in retirement and the extent to which these align with community expectations. On living standards, ASFA has developed a range of income benchmarks for retirees including the flagship *ASFA Comfortable Retirement Standard*. While not all people will have an income throughout retirement that is at, or above, the comfortable level, ‘ASFA Comfortable’ is a widely used benchmark for income adequacy derived from detailed analysis of retirees’ spending patterns (see the Appendix for more on the Comfortable Standard).

ASFA acknowledges the exposure draft EM defines ‘dignified’ as “a standard of financial security and well being in retirement which allows the person to participate economically and socially in their community.” ASFA does not disagree with this characterisation however, it considers the description used in the consultation paper, which referred to ‘a high standard of living in retirement’, is more attuned to the

² EM para 1.29

aspirational nature of Australia's retirement system. ASFA would encourage government to consider adjusting the description in the EM to reflect this.

'Deliver income'- ASFA has consistently argued the focus on delivering income in retirement is an important element of an objective for superannuation. The sole purpose test states, amongst other things, that 'benefits' are to be provided in retirement. It is therefore important that the form in which income is provided to individuals (or how they receive a source of income following qualifying to access benefits), and how income is to be applied once it is received, is not prescribed by the objective. ASFA is pleased the EM clarifies that "some (individuals) may elect to receive their superannuation as a lump sum" and "superannuation savings belong to the member, and the objective is not prescriptive on what must happen with this income."³ There is a necessary economy of language used in the drafting of the objective which means it is important the EM reflects the ability to receive a lump sum. This will also ensure there is no confusion about the ability to pay death benefits prior to retirement. ASFA would be amenable to Treasury offering even greater clarity on this matter in the EM.

'Equitable' – distributional equity is central to the stability and integrity of the retirement system. From an international perspective government support via Australia's retirement income system appears fairer across different income levels than in many other comparable countries. Based on OECD data on estimated tax benefits as the present value of taxes saved over a lifetime, as a percentage of the present value of contributions, the tax benefits are similar for average, low and high income-earners.⁴

ASFA has consistently argued for the importance of pursuing equity in the superannuation system, suggesting equity measures at the top end (including with respect to very large balances) should be accompanied by measures to address equity for low/lower income earners, especially women.⁵

In its recent pre-Budget submission(s),⁶ ASFA argued for: the introduction of SG on paid parental leave in order to reduce the retirement savings gap between females and males; the introduction of a Super Baby Bonus payment of \$5,000 for every child a woman gives birth to or is the primary carer for; increasing the upper threshold for the Low Income Super Tax Offset (LISTO) to \$45,000; reducing the threshold for the additional Division 293 on concessional contributions to \$200,000; and the removal of concessional tax treatment for super balances in excess of \$5 million.

Importantly, equity measures should be reinvested in the system rather than diminishing its total value over time.

ASFA considers that the provision of insurance benefits for those whose working life is impacted by serious disablement is an important means of delivering equitable outcomes to those most in need and that this should be noted for clarity in the EM.

'Sustainable' – superannuation should be, and is, robust to demographic and economic change and it should be cost effective in meeting its objective. As mentioned above the 2023 Intergenerational Report (IGR) highlighted the crucial role played by Australia's superannuation system in supporting the living standards of future generations of retirees and in easing the future cost burden of the Age Pension. Importantly, superannuation will be a critical source of intergenerational fairness, ensuring younger generations do not face higher tax burdens to finance increasing expenditure on the Age Pension. In 2002 when the first IGR was published, expenditure on the Age Pension was projected to reach 4.6 per cent of GDP by 2041-42. That figure is now expected to drop to 2 per cent of GDP by 2062-63, a considerable contribution to the sustainability of the retirement income system. The cost of the superannuation tax

³ Exposure draft EM paras 1.34 and 1.35

⁴ OECD 2018, OECD Pensions Outlook 2018

⁵ ASFA, Media release "ASFA calls on Government to close retirement savings gender gap," 7 March 2023

⁶ ASFA, Pre-Budget submissions 2022, 2023

concessions is set to rise but only modestly by 2062-63, largely reflecting the maturing of the system as the SG increases to 12% by 1 July 2025.

From a fiscal perspective, insurance through superannuation reduces the social security costs of supporting underinsured individuals.⁷ ASFA considers it should be noted in the EM that the capacity of insurance in superannuation to alleviate costs to the Government arising from underinsurance is a relevant consideration in assessing sustainability.

Statement of compatibility

ASFA believes the introduction of the objective provides an important opportunity to achieve policy and regulatory stability for the superannuation system. We have been supportive of a robust accountability mechanism to ensure the demonstration of positive alignment of future legislation with the objective. In response to the consultation paper ASFA proposed the introduction of a statement of alignment in the Explanatory Materials to an amending Bill or regulation on superannuation.

The exposure draft legislation proposes a statement of compatibility with the objective of superannuation must be prepared for a Bill or regulation that relates to superannuation (unless an exception applies). ASFA considers this is an appropriate mechanism to ensure the objective contributes to achieving long-term stability in policy settings as well as promoting trust and confidence in the system. Given the complexity of considerations relating to policy making in this area, it is appropriate that the process of formulating the statement (and the information to be included) is not prescribed. Some judgement on the part of the member of Parliament or rule-maker introducing the legislation is assumed to be required.

It is expected however, given the importance of distributional equity in the system, that an evidentiary lens would be applied to substantiate the policy effectiveness of changes that may impact equity across different member groups. Where appropriate, the compatibility statement could incorporate the option of commissioning modelling to assess the impact of proposed policy changes on members' superannuation savings, particularly for vulnerable, low-income members and women.

It is appropriate that the key concepts of the objective are considered under the statement of compatibility, but that "there may be times when there are trade-offs between the key concepts within the objective."⁸ This is important given policy proposals may naturally give greater weight to certain key concepts over others. However, given the objective will not operate in isolation but will (and must) operate alongside the core trustee obligations under superannuation legislation, it is appropriate the statement of compatibility also requires the drafter to acknowledge that the "objective complements core trustee obligations under superannuation legislation such as the best financial interests duty, the sole purpose test and the retirement income covenant."⁹

As an additional accountability measure, ASFA has previously recommended the periodic review of policy decisions by considering their alignment (or compatibility) to the objective following their implementation. Periodic reviews of this nature could be incorporated into the IGR process produced by the government every five years. The IGR assesses the long-term sustainability of current government policies and how changes to Australia's demographics may impact on economic growth, the workforce and public finances over the next 40 years. This falls within broad remit of the IGR and would add value to its conclusions. Alternatively, the Government could perform a separate review in tandem with the IGR process.

⁷ Deloitte and ASFA Report, *The Future of Insurance Through Superannuation*, 2022

⁸ Exposure draft EM; Para 1.61

⁹ From para 1.37 of the EM

Appendix - The ASFA Retirement Standard

ASFA publishes annual budgets for various categories of Australians to fund their needs in their post-work years. The Retirement Standard provides budgets for both a modest and comfortable standard of living for singles and couples. Although no two individuals have identical expenditure patterns, many stakeholders benefit from having standardised benchmarks in this area. As a result, the standard can be used to inform judgments about what is an adequate level of income in retirement and what level of savings is required to fund adequate retirement incomes.

The composition of expenditure in the Retirement Standard budgets reflects actual retiree spending patterns. Data comes from a range of sources including ABS data, data from the HILDA Survey and focus group feedback. The Standard is regularly updated and reviewed with budgets updated quarterly to reflect changes to CPI and the methodology for deriving the budgets is subject to rigorous periodic review.

The Modest budget benchmark is considered a better retirement lifestyle than could be attained on the Age Pension alone, however, a modest retirement lifestyle will still only be able to allow a retiree relatively basic activities.

At present, the ASFA Comfortable benchmark (which assumes home ownership) is \$50,207 for singles per year and \$70,806 for a couple. The most recent update of the ASFA Comfortable standard can be accessed via this link: <https://www.superannuation.asn.au/resources/retirement-standard>.

Not all retirees will have income in retirement at or above the ASFA Comfortable level, however evidence suggests this level is what a majority of the Australian community wants and needs.

A recent ASFA survey of consumers demonstrates that the ASFA Retirement Standard well reflects the Australian community expectations of retirement spending. The majority of respondents consider they would need annual expenditure consistent with, or exceeding, the ASFA Comfortable budgets to maintain their desired living standard in retirement.