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### **AFA Submission – Objective of Superannuation**

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for 69 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a Code of Ethical Conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are required to be practising financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting wealth.

## **Summary of AFA's position**

The AFA supports documenting the objectives of superannuation for policy-makers and other system participants to have regard to in future. However, we do not support enshrining this objective in a single statutory instrument because this may lead to a restrictive interpretation of the objectives for future legislation and policy development.

We agree with the proposed wording of the primary objective of the superannuation system provided this is always stated in conjunction with the proposed subsidiary objectives. We agree with Treasury that a single primary objective cannot encompass all aspects of the purpose and attributes of the superannuation system. In the AFA's view, the subsidiary objectives provide clarity to the primary objective and help resolve conflicts and ambiguities in the complex system that superannuation is.

In the AFA's view, a stronger and more efficient superannuation system resulting from greater policy stability will lead to improved outcomes for Australians to be more empowered, have wider lifestyle choices and increased self-sufficiency. Consumers who are more engaged are more likely to realise the value of financial advice, which has been linked to happier, less stressful lives.

## **AFA recommendations**

### *Primary Objective*

The wording of the proposed primary objective appears at first to not need the additional words of "*to supplement or substitute the Age Pension*" because superannuation reforms have led to more retirees being self-funded. Self-sufficiency should be the primary purpose of retirees and the Age Pension does not affect people's capacity to save for their retirement through superannuation or provide for their retirement through other means. If the primary objective was a stand-alone objective, in the AFA's view, linking the two systems (Superannuation and Age Pension) through a primary objective could place them on equal footing in policy-making which would be contrary to the need to prioritise incentivising people to save for their retirement whilst under age pension age.

The AFA accepts, however, that the Federal Government’s power to legislate for superannuation derives from the constitutional power over pensions.<sup>1</sup> Further, many Australians need to rely upon the Age Pension safety net in their retirement – either wholly or partially. Accordingly, the AFA accepts that superannuation and the Age Pension – whilst different schemes with different purposes and arrangements – are integral parts of a co-reliant system therefore must necessarily be tied together in the superannuation policy-making objectives.

Our support for linking superannuation and the Age Pension is conditional on the proposed subsidiary objectives clarifying the importance of the proposed primary objective – as will be demonstrated further below.

### *Subsidiary Objectives*

The AFA supports the subsidiary objectives as an integral and necessary condition to supporting the wording of the primary objective.

<b>Subsidiary objective</b>	<b>Why the AFA considers the objective to be important</b>
Facilitate consumption smoothing over the course of an individual’s life	Compulsory superannuation requires people to forego current consumption to provide for their later financial needs. Indeed Superannuation should also encourage voluntary participation to reach self-sufficiency. This in turn engenders a public attitude of responsibility and active participation instead of an attitude of reliance and entitlement.
Help people manage financial risks in retirement	Managing financial risks can be done in several ways – including diversifying and pooling of funds. Superannuation therefore assists people to manage the risk that they will need to rely upon the Age Pension in their retirement. The superannuation system provides for those who wish to actively manage their risks, as well as those who would prefer someone else to manage their risks and retirement savings. The AFA considers that consumers should also be educated on superannuation to help them manage their retirement and the risks involved – including the impact of timing their retirement to maximise personal outcomes. Flexible access to funds is also important in dealing with the uncertainty of health events throughout one’s retirement.
Be fully funded from savings	The AFA supports measures – including education about superannuation – that move toward a fully funded system with less reliance on the Government for retirement income

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<sup>1</sup> Australian Constitution s51(xxiii)

	<p>support whilst enabling Australians to maintain or improve their standards of living. Whilst we recognise that self-sufficiency may remain unachievable for some, including this as part of the objective of policy-making is critically important to incentivising self-sufficiency.</p>
<p>Be invested in the best interests of superannuation fund members</p>	<p>Not all members of a super fund have homogenous needs and thus flexibility to cater to the best interests of each member is important. For example, significant preference differences may exist with regard to after-tax returns on investment options for two different members of the fund with the same risk tolerance if one is in accumulation mode, and the other is in pension mode. Investment personalisation and flexibility is important.</p> <p>We also encourage an approach that facilitates advised clients sitting side by side with unadvised members in the same fund.</p> <p>We also strongly support the prioritising of the members interests over the interests of the trustees of the fund and employer or other interest groups.</p>
<p>Alleviate fiscal pressures on Government from the retirement income system</p>	<p>The AFA agrees that Government's contribution to the retirement income system – through both the Age Pension and superannuation tax concessions – needs to be sustainable and targeted. This policy objective will contribute to ensuring that self-sufficiency is the primary goal.</p>
<p>Be simple and efficient, and provide safeguards</p>	<p>Understanding superannuation is an important aspect to safeguarding consumers and therefore educating consumers is an integral part of superannuation policy-making and requires government funding.</p> <p>We would prefer this Subsidiary Objective to read: Be simple, efficient, widely understood and provide safeguards.</p>

The AFA does not consider that discouraging wealth accumulation and estate-planning through superannuation need to be additional considerations or objectives because the proposed wording of the objectives achieves this purpose with positive language. Of the other considerations outlined by Treasury, the AFA considers that:

- although some people use their retirement income to pay for later life medical expenses over living expenses, this a justifiable use of superannuation income which alleviates pressure on the public health system, and
- substantial financial hardship should remain an approved early use of superannuation funds because if people can avoid considerable disadvantage by accessing part of their superannuation savings earlier than they would normally

be able to, this also alleviates pressure on public systems – including the Age and Disability Pensions.

Accordingly, the AFA agrees with the wording of each proposed subsidiary objective. We also consider that the presence of the subsidiary objectives ensures that superannuation policy-making encourages people to actively fund their own retirement and have the information and understanding that they need to be empowered to take responsibility for their standard of living in retirement.

### *Location of the Objectives*

On enshrining the objectives in legislation, the FSI Final Report said:

#### ***Enshrine the objectives in legislation and provide more Government reporting***

*Submissions strongly agree with the need for greater policy stability to promote long-term confidence in the system. Submissions also acknowledge that the ability to respond to changing circumstances is important but that new policies must be well considered and take a long-term perspective.*

*Enshrining the primary and subsidiary objectives in legislation would provide a framework against which Government and the broader community could assess superannuation policy proposals. Parliamentary approval would be required to amend the objectives over time.*

*Increased transparency around the objectives of policy proposals would help frame parliamentary and public debate. This could be done in regulatory impact statements at little cost. In addition, Government could periodically assess the extent to which the superannuation system is meeting its objectives. This could be done in a stand-alone report or as part of the Intergenerational Report, which is prepared every five years.*

From this there appears to be two primary reasons for enshrining the objectives within legislation, being:

1. to provide a framework to assess superannuation policy proposals, and
2. the requirement for both Houses of Parliament to amend the objectives.

To the first reason outlined above, a policy framework does not need to be within legislation to be effective or transparent. There are numerous examples of government departments outlining the framework for a particular field of government action. The recent Energy White Paper set out a framework for a future energy system and it outlined the relevant policy objectives.<sup>2</sup> Likewise, the Defence White Paper set out the

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<sup>2</sup> Commonwealth of Australia, Department of Industry and Science, 'Energy White Paper' (2015), page 2.

Government's approach to defence<sup>3</sup> before going on to outline a plan for the future defence system. This was in addition to a related Policy Statement, which backgrounded in detail the reasons for the recommendations.<sup>4</sup> These documents are examples of how a policy framework can be effectively documented without being within legislation.

To the second reason, the AFA appreciates that there is merit in strengthening the integrity of the objectives – several submissions to the FSI argued strongly for clear, long-term policy-making objectives to drive efficiency in the superannuation system. There is appeal therefore in limiting the changeability of the objective. Likewise, there is an assumption that together both Houses are representative of a broad political spectrum and therefore widely representative of the community.

However, legislation is not a completely certain vehicle. Although both Houses of Parliament need to agree on any amendments should the objectives be legislated within an Act, if any one political party (or a coalition of parties) obtained a majority in both Houses – which has occurred within the last 20 years – the objectives could be amended along sectional or discrete interests. Likewise, legislation can be amended infinitely as long as it is the will of the Parliamentary body, and statutory interpretation principles are founded on the point-in-time approach – that is, that an Act of Parliament outlines the intention of the Parliament at a particular point in time and each successive amendment outlines the intention of the Parliament at *that* point in time.

The reasons that Parliaments legislate are many and varied. Legislation (and by derivation, regulations) can regulate, prescribe and sanction conduct. Legislation can also be used to authorise and empower people or legal entities, or to provide, grant or appropriate funds either directly or indirectly through excise, taxation or concessions. The other general functions of legislation are to restrict (for example, entry to a profession) or to declare a decision of government (such as a World Heritage Area or the penalty for a contravention). All of these are fairly described as acts of Parliament – things that Parliament is empowered to do and does do. To the best of our knowledge, legislation that serves solely “to guide future policy-making” would not appear to exist within Australia.

Our point is that legislating the objectives of superannuation will not, in the AFA's view, guarantee a long-term set of policy objectives, nor protect the objectives from future

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<sup>3</sup> Commonwealth of Australia, Department of Defence, 'Defence White Paper' (2016), page 29.

<sup>4</sup> Commonwealth of Australia, Department of Defence, 'Industry Policy Statement' (2016)

change by sectional interests – not any more so than through other methods of documenting the objectives. Legislation could arguably provide for greater certainty or provide piece of mind at particular points of time compared to other methods of documenting an objective of superannuation. However, this again depends on the future make up of Parliament.

The AFA does not consider any one piece of legislation – whether current statutes or future – should independently or exclusively hold the location of the objectives. Further, if a single statute is to enshrine the objectives, such a statute would be open to being amended in future to give greater purpose to the legislation – such as by establishing a publicly funded independent body to assess the superannuation system’s performance and report on superannuation policy changes. That is, a stand-alone policy guidance legislation is a target for amendment should Parliament’s make-up change in future.

If legislation is deemed by Treasury to be the best vehicle for documenting the objectives of superannuation, the AFA recommends that *all* current and future Commonwealth statutes that are related to the superannuation system should be amended to insert a consistent preamble outlining the objectives of superannuation. In doing so, Treasury would ensure that all legislative instruments relevant to the superannuation system have the proposed objectives as an ‘umbrella’ guide to future amendments, that future legislation also has regard to those objectives and no part of the superannuation system is omitted. We appreciate that this means amending over 30 Acts, but bulk amendments have been completed by Parliament in the past and as only a single Act would be required to amend the others, there is little work required of Parliament nor risk of not being comprehensive in coverage because some Acts are amended and others not.

Alternatively, as explanatory memoranda are considered under statutory interpretation principles to be a guide to understanding the intention of Parliament, the proposed objectives could form a consistent inclusion into future explanatory memoranda to ensure that any person or body considering any future legislation will understand that Parliament had regard to those objectives in formulating the legislation. This, however, would not amend current legislation and therefore may not sufficiently guide any policy making changes to current superannuation legislation.

The AFA did consider the other options, being:

- locating the objective in the *Superannuation Industry (Supervision) Act 1993* – this was rejected by the AFA as a recommended option because of the specific objectives of the Act, being predominantly to supervise superannuation trustees, and to provide for concessional taxation treatment and eligibility. As this legislation pertains only to these objectives and does not cover the entire superannuation industry, the AFA did not consider it appropriate to restrict the objectives to just this legislation;
- locating the objective in the *Superannuation Guarantee (Administration) Act 1992* – this legislation was referred to by Treasury in the Discussion Paper. As with the *Superannuation Industry (Supervision) Act 1993*, this legislation has a discrete purpose and only covers part of the system and is accordingly inappropriate in the AFA’s view to exclusively hold the proposed objectives;
- locating the objective in one of the four statutes titled *Superannuation Act*, of 1922, 1978, 1990 and 2005, respectively – each of these legislative instruments and their associated regulations pertain to a particular set, or system, of superannuation schemes for Government employees. For the same reasons as the above two Acts, these would also not appear to the AFA to be appropriate to be the location of the proposed objectives;
- a White Paper on the Superannuation System – departmental policy papers have been used in the past (Defence, Energy and Taxation are recent examples) to articulate policy-making objectives that underpin the plans and proposals outlined in those papers and subsequent conduct. Although these can be viewed as temporal documents subject to change of direction, they can equally be authoritative documents that the relevant industry can refer to and regard with clarity of the system’s objectives and purpose. The additional benefit of these documents is that they can also outline contemporaneous action and plans to the objectives as well as schedule a documented periodic review, say every 10 years, to ensure that the objectives remain relevant as the system and economy changes;



- future Treasury policy papers could also contain the policy objectives to give context when future changes to the superannuation system are proposed.

Although these last two are not consistent with the FSI recommendation of legislating the objectives, as outlined above, the AFA views an individual legislative location has substantial disadvantages and could restrict the policy-making or result in unintended consequences. The AFA's preference would be to see the objectives included as preambles in all current and future legislation related to the superannuation system to ensure comprehensive application and consistency. Alternatively, the AFA would support Treasury developing superannuation policy papers (or a White Paper – perhaps to give effect to the Productivity Commission recommendations on superannuation competitiveness and efficiency) that document the objectives of the superannuation system for future policy-makers.

## **Conclusion**

The AFA considers that documenting the policy-making objectives of the superannuation system will lead to greater policy stability. We agree with the FSI Panel that this can lead to a stronger and more efficient superannuation system which has contingent benefits for consumers to be more empowered, have wider lifestyle choices and increased self-sufficiency. We consider that the wording of both the primary and subsidiary objectives should achieve these outcomes provided that wherever the objectives are documented they are documented together. The subsidiary objectives play an important role in explaining the primary objective, as well as being a guide to resolving ambiguities or context issues.

The AFA does not believe that the objectives need to be enshrined in legislation. There are other ways to document the objectives that are, in our view, just as effective and transparent to guide policy-makers without the unintended consequences that legislating a stand-alone statute may bring. Alternatively, if Treasury forms the view that legislating the objectives is the only choice, the AFA would support including the objectives in all current and future legislation to ensure comprehensive application across the entire superannuation system.

If you require clarification of anything in this submission, please contact us on 02 9267 4003.

Yours sincerely,



**Brad Fox**  
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Association of Financial Advisers Ltd