

**Division Head  
Retirement Income Policy Division  
The Treasury Langton Crescent  
Parkes, ACT, 2600  
4/4/2016**

Dear Sir,

Re: Submission on the Objective of Superannuation.

I refer to the Discussion Paper titled Objective of Superannuation published by the Australian Government on 9 March 2016.

This submission provides responses to each of the 3 questions posed in the Discussion Paper under the heading Questions for Consultation.

### **Question 1**

#### **Do you agree with the objectives recommended by the FSI? Why?**

I do not agree with the primary objective recommended by the FSI. I do not have any specific observations to make about the subsidiary objectives for superannuation recommended by the FSI save to the extent that my comments about the primary objective may touch on those subsidiary objectives. The reasons that I disagree with the primary objective recommended by the FSI are the following:

- The primary objective for superannuation recommended by the FSI is *“To provide income in retirement to substitute or supplement the Age Pension”*.
- This statement of objective which is intended to be enshrined in legislation benchmarks the Age Pension as the sole reference point for determining the objective, and hence the purpose of the superannuation system. Once so enshrined the appropriateness or otherwise of existing and future superannuation policy and regulation would fall to be determined on the basis of whether it was consistent with, or went beyond the legislated objective.
- The existing superannuation system is underpinned by a regulatory and policy framework that includes both compulsory and voluntary savings as key elements.

- The compulsory element is the Superannuation Guarantee Charge Legislation that requires employers to pay a defined percentage (currently 9.5%) of an employee's income up to prescribed limits into a superannuation fund which, during the superannuation accumulation phase, is not accessible by the employee. This is a legislated system of enforced saving because if the superannuation guarantee charge was not imposed on the employer, it can be assumed that the employee would receive an equivalent amount by way of direct salary or wages which would, after income tax was deducted, be available for the employee's immediate consumption. This compulsory saving element of the superannuation system deprives an employee of the right to make a choice about the money the employee earns – i.e whether to set the whole or part of it aside as savings or to spend it when it is earned in the manner of the employee's own choosing. Without more, this legislative appropriation of the employee's right of choice in respect of his or her own money might rightly be seen as an intolerable restriction imposed by the government on an individual's freedom of choice that was neither morally nor politically tenable. However the employee is compensated for foregoing this right through the taxation system where the rate of tax imposed on the monies paid into superannuation and on the earnings on those monies once in superannuation, is lower than the rate of income tax that would be otherwise imposed on those monies if received as direct salary or wages and on the earnings on those monies if they were saved outside the superannuation system. Whether that compensation is adequate will always be a matter of debate.
- The voluntary savings element of the superannuation system enables workers to supplement the compulsory savings that the superannuation system mandates by making voluntary contributions either by way of salary sacrifice in addition to the superannuation guarantee charge from pre taxed income up to prescribed limits and/or by annual or bring forward contributions (again up to prescribed limits) from income that has already been taxed at the individual's marginal tax rate. To incentivize individuals to do this the tax system imposes lower rates of tax (than marginal income tax rates) on pre tax monies that are channelled into superannuation and on the earnings on those monies within superannuation. It also imposes lower rates of tax on the earnings within superannuation derived from after tax contributions than the rate of tax that would be charged on those earnings if they were derived outside superannuation.
- The sustainability of the superannuation system does not solely depend on the financial capacity of the Commonwealth Government to support it. It also depends on the community's support for and confidence in the system. It follows that the elements of compulsion with compensation and incentive provided through the taxation system must be sufficiently attractive to enable that objective to be achieved.

- The Age Pension is intended to operate as a safety net for retired workers who have reached a qualifying age and who satisfy income and asset tests. It does this by providing a subsistence level of income to those who qualify for the full pension or of top up income to enable those who qualify for a part pension to achieve a total level of income that is equivalent to a subsistence level of income. The maximum age pension is currently \$A794.80 per fortnight (\$A20,664.80 per annum) before supplements for a single person and \$A 1,198.20 per fortnight (\$A31,153.20 per annum) before supplements for a couple. That level of income is only marginally above the poverty line based on internationally accepted poverty benchmarks.
- It is not the purpose of this submission to argue whether the Age Pension should be set at a level that only provides to pensioners reliant on it, a subsistence level of income at, or approximating, the poverty line. What is clear however is that the provision of subsistence or poverty line income in retirement, has not, until recently, ever been considered as an appropriate benchmark against which the fitness for purpose of the policy and regulatory framework for the superannuation system should be judged.
- There is a clear implication in setting the Age Pension as a whole or partial substitute benchmark for assessing the appropriateness of superannuation policy and regulation. That implication is that any superannuation policy or regulation that could operate to support or permit the accumulation of a level of superannuation savings capable of generating retirement income in excess of poverty line or subsistence income that the Age Pension would otherwise provide arguably does not measure up to the benchmark and therefore should, if existing, be rescinded or, if proposed, be abandoned. The word “substitute” is limiting. It does not contemplate the possibility of superannuation producing retirement income that exceeds an amount sufficient to merely replace the Age Pension. The word “supplement” reinforces that implied limitation. It envisages a stream of income from superannuation that would be less than the Age Pension because it implies that whilst the person receiving it would have partial access to the Age Pension the aggregate of the two income streams would not exceed the amount of the Age Pension.
- Such a benchmark is not consistent with the objectives or purposes of the superannuation system as originally envisaged even though those objectives and purposes may not have been explicitly articulated. This is apparent from the very extract from former Treasurer Dawkin’s speech in introducing the Superannuation Guarantee Legislation in 1992 that is quoted in the Discussion Paper and repeated here:

*“The increased self-provision for retirement will permit a **higher standard of living** in retirement than if we continued to **rely on the Age Pension alone**. It would also enable future governments to improve the retirement*

*conditions for those Australians unable to fund their own retirement adequately. Lastly, self provision will increase the flexibility in the Commonwealth's Budget in future years, especially as our population ages, and will increase our **national savings** overall, thus reducing our reliance on the savings of foreigners to fund our development. (emphasis added).*

There is nothing in this statement about limiting superannuation and the policy and regulatory support for it to something that can produce no more than a mere Age Pension substitute. In fact the contrary is to be inferred from the words *"The increased self provision for retirement will permit a **higher standard of living** in retirement than if we continued to **rely on the Age Pension alone**". (emphasis added).* An income stream from superannuation that at its highest does not exceed the subsistence level of income that the Age Pension provides does not provide a higher standard of living than reliance on the Age Pension alone. Former Treasurer Dawkin's statement also highlights other important objectives of superannuation such as increasing future Commonwealth Budget flexibility and increasing overall national savings – an objective that could not be seriously disputed in the light of the protection to Australia's economy that national superannuation savings are generally held to have provided in the 2008 Global Financial Crisis.

Moreover, the way the superannuation system has evolved since former Treasurer Dawkins 1992 speech does not provide any evidence that there has been a shift in the objectives of the superannuation system of the radical kind proposed in the Discussion Paper. For example it cannot be deduced from either historical or current superannuation contribution limits for both before and after taxed monies that the superannuation system should not provide support for the accumulation of superannuation savings greater than that which would produce an income stream equivalent to the Age Pension. Assuming an average earnings rate of 5% on superannuation savings (without any adjustment for volatility from fluctuating market conditions or for fees) the amount of savings that would currently produce earnings equivalent to the Age Pension for singles would be \$A413,296.00. The current annual contribution cap for pre taxed monies paid into superannuation is \$30,000.00 for < age 49 and \$35,000.00 for age 49+. For after tax monies paid into superannuation the current annual contribution cap is \$180,000.00 and \$540,000.00 on a 3 year bring forward basis. A working lifetime of superannuation savings taking maximum advantage of those contribution caps implies a much greater accumulation of such savings than the amount required to generate Age Pension equivalent income. The present superannuation system does not impose a limit on the maximum amount that can be accumulated in superannuation.

However the statutory expression of the objective for superannuation proposed in the Discussion Paper which is the objective recommended by the FSI necessarily implies a level of policy and regulatory support for superannuation that goes no further than facilitating through tax

incentives or otherwise, the accumulation of superannuation savings up to a level that would produce an income stream equivalent to the Age Pension. A further implication is that if the proposed objective is adopted specific statutory support (if not licence) would be afforded to government to eliminate or significantly curb existing taxation incentives for superannuation which clearly do not align with the proposed objective as they are designed to produce a far more aspirational and far less parsimonious outcome. It is trite to observe that the government currently has no popular mandate to do this, let alone do it by stealth through the adoption of a statutorily enshrined objective that may at first sight appear innocuous but in reality is anything but that because it implies a radical change to the objectives of the existing superannuation system.

- Whilst the Final Report of the FSI discusses in some detail various issues surrounding superannuation including the need for a clear articulation of the objectives of superannuation there is no analysis, discussion or development of any argument as to why the primary objective for superannuation should be the one that it recommends. Nor is any evidence presented to warrant such a proposition. There is reference to the fact that submissions made to the inquiry nominated two major objectives: providing income in retirement and reducing pressure on the Age Pension. However if the recommended primary objective is an attempt to conflate these two considerations into one principle that addresses both matters, the choice of language that by inference give rise to the limitation on the objective of superannuation as discussed above involves a misguided leap of logic. Neither of the major objectives nominated in submissions to the FSI taken on its own suggests there should be such a limitation. Nor is there any argument or rationale put forward in the FSI Final Report that seeks to explain why in conflating those major objectives into a statement of one primary objective, such a limitation should be imposed. Clearly the elimination or reduction of the need to access the Age Pension is, along with other important benefits, one of the benefits that a self funded superannuation system provides. Indeed this is acknowledged in former Treasurer Dawkins 1992 speech. But that is quite a different thing to the elevation of the Age Pension (or more correctly Age Pension equivalent) as the sole and limiting objective that defines the extent to which policy and regulatory support for superannuation should be provided.
- There is a good reason why benchmarking the objective of superannuation to the Age Pension (and by inference nothing greater than the Age Pension) has not been considered appropriate historically and should not be considered appropriate now. Setting such a parsimonious benchmark is entirely at odds with both the compensatory and incentivization principles that underpin superannuation policy as described above and that are intended to engender the necessary

community support for superannuation. The compensatory principle needs to provide adequate recompense to a wage and salary earner who as the result of the Superannuation Guarantee Charge is compelled to forego immediate access to and enjoyment of his or her own monies. If the worker is to be told that he or she is forced to save solely for the purpose of funding a stream of retirement income that should provide no more than the poverty line or subsistence income they would otherwise receive from the Age Pension it is submitted that community or political support for the superannuation system would rapidly evaporate. Moreover the incentives that the superannuation system provides to savers to voluntarily contribute to superannuation over and above the mandated contributions whether by salary sacrifice from pre tax monies or from monies already taxed would disappear. What incentive is there to voluntarily save through superannuation if the level of incentive to do so is designed to ultimately generate a retirement income that is, at maximum no more than equivalent to the Age Pension? The obvious and sensible choice for a worker would be to spend the monies that might otherwise be voluntarily contributed to superannuation or to save those monies outside the superannuation system and then in retirement, access the Age Pension to the extent that the qualifying criteria permit the worker to do so. The proposed benchmark can therefore only undermine the existing superannuation system, reduce political and community support for it and significantly reduce over time the pool of national superannuation savings. This will result in more, not fewer, people accessing the Age Pension in retirement. This not only defeats the purpose of superannuation but is at odds with the aspirations for superannuation expressed in former Treasurer Dawkin's speech and the objectives of the superannuation system as it has evolved over time.

- It is submitted that the evolution of the proposed primary objective of superannuation recommended by the FSI and in the Discussion Paper has resulted from confused thinking that has lost sight of the significance and importance of the aspirational features of superannuation that are rightly reflected in former Treasurer Dawkin's 1992 speech. It is further submitted that this has come about because in more recent years, particularly, since the global financial crisis, superannuation has come to be viewed through a prism that is obsessively and narrowly focussed on the cost to the Commonwealth's revenue that the taxation advantaged superannuation system implies rather than allowing for a more expansive big picture view that gives proper recognition and weight not only to the national benefits that are to be obtained from enhancing the financial self sufficiency and self reliance of retired Australians but also the need to provide adequate incentives to achieve this. This unduly narrow and shortsighted focus is to be seen in the constantly publicized concerns about the size of some superannuation balances, the potential for superannuation to be used as an estate planning vehicle or for unlimited wealth accumulation, the fact that higher income earners are in a position to benefit more from the superannuation system and so on. Indeed the FSI Final Report deals with these matters in some detail and makes

observations (but not recommendations) about them. I do not address those issues in this submission other than to observe that many of these concerns are exaggerated and overblown and that the superannuation system already incorporates measures that go a significant way to addressing them. An unfortunate corollary to this narrow way of thinking is that it fosters a view that superannuation is an additional financial resource conveniently available to governments that are seeking easy ways to reduce budget deficits or fund government spending. This of course is not, and never has been a proper objective of superannuation. Nothing could be more likely to undermine and ultimately destroy the superannuation system.

- A self evident consequence of such a narrow perspective of superannuation is the constant tinkering with and modification of the rules governing superannuation that has occurred under successive governments over the years. This of course undermines the stability and certainty that are necessary for an effective superannuation system and discourages people from participating in it to any greater extent than they are forced to do so. Moreover it undermines the political tolerance that people are willing to extend to a system of forced savings. As noted above the narrowing of the objectives of superannuation in the way that the primary objective proposed by the FSI does, only increases the potential for further modification of the rules governing superannuation over time. That is because the existing structure of taxation incentives would need to be further modified in order to produce a superannuation system that does no more than allow for the subsistence level of income that the wording of the primary purpose proposed by the FSI contemplates. At the very least, the wording of the proposed primary objective provides political licence to politicians to advocate for such modifications, particularly when they encounter fiscal difficulties and are on the lookout for easy solutions for those difficulties. It is notable that the wording of the proposed primary objective makes no reference to the stability of the superannuation system. Whilst it may well be that a single primary objective cannot possibly encompass all aspects of the purpose and attributes of the superannuation system as asserted in the Discussion Paper, the need for stability and certainty is vital to the long term survival of the superannuation system. I comment further on that issue in my answer to Question 2 below.
- In summary the wording of the primary purpose of superannuation proposed by the FSI involves a radical change to the objectives and purposes of the superannuation system which, although not previously stated explicitly, can be readily inferred from former Treasurer Dawkin's 1992 speech and from features of the system itself as it has evolved over time. There is no good reason for such a radical change and indeed no argument has been made out by the FSI as to why such a change is warranted. In fact, for the reasons given above, the FSI's recommended wording of the primary objective of superannuation undermines two essential pillars of the superannuation system – the element of

compulsory saving coupled with appropriate compensation and the element of voluntary saving coupled with appropriate incentive. It does this to such an extent that the willingness of people to politically support the compulsory savings element of the system let alone voluntarily participate in it further is likely to be significantly undermined. Australia's superannuation system cannot ultimately survive unless there is public confidence in it. The wording of the primary objective of superannuation recommended by the FSI has the potential to significantly impair that confidence . It is with respect, a shortsighted objective that has not been properly thought through. It is not an example of good public policy.

## Question 2

**If you do not agree with the FSI recommendation, what do you think should be the objective of superannuation? Why? What are the implications of this objective?**

- The primary objective of superannuation should be to facilitate and provide for financial self sufficiency in retirement.
- The above is a simple statement of objective that avoids complexity and should be uncontroversial. Unlike the objective for superannuation recommended by the FSI it does not seek to impose a parsimonious restriction on superannuation by benchmarking the Age Pension (or a level of superannuation income not exceeding the Age Pension) as the boundary beyond which the level of policy and regulatory support for superannuation should not extend. For the reasons given previously such a limitation would neither be consistent with the aspirational legislative policy intention underlying the modern superannuation system when it was established nor consistent with that intention as it can be inferred from the evolution of the system over time. Moreover this alternative primary objective does not undermine two important pillars of the modern superannuation system, which, for the reasons given above are necessary for its sustainability.
- This alternative primary objective for superannuation makes no attempt to prescriptively deal with all issues surrounding superannuation such as what is "adequate" for financial self sufficiency in retirement. Being no more than an objective it does not attempt to arbitrarily resolve such issues which will always be a matter for debate. However it does provide broad guidance on such issues. For example the term "financial self sufficiency in retirement" implies neither subsistence retirement living nor excessive wealth in retirement. Rather it implies a level of personal financial resources in retirement that will enable a person to meet their normal retirement lifestyle needs with either no or minimum taxpayer funded support such as full or partial recourse to the Age Pension.



- The alternative primary objective does not address directly the issue of stability and certainty in superannuation policy and regulation that is critical to the sustainability of the superannuation system. Nor does the primary objective recommended by the FSI address that issue. This is an issue which, while vitally important, goes more to the manner and process through which the primary objective of superannuation should be effectively realised rather than being an objective in itself. However the wording of the alternative primary objective indirectly acknowledges the requirement for stability and certainty. Constant piecemeal tinkering with and changes to superannuation could be said to neither “facilitate” nor “provide for” financial self sufficiency in retirement.
- Unlike the primary objective for superannuation recommended by the FSI the alternative primary objective for superannuation does not confine it’s focus to “income” in retirement while ignoring the superannuation capital or savings from which that income is to be derived. While the alternative primary objective does not explicitly reference either income or savings, the term “financial self sufficiency” is broad enough to implicitly encompass both. The Final Report of the FSI deliberately seeks to frame the primary objective of superannuation in a way that “prioritises the provision of retirement incomes and precludes the pursuit of other objectives at the expense of retirement incomes”. However framing a primary objective that deliberately ignores or suppresses the self evident fact that retirement income is generated from accumulated superannuation savings does not make that fact go away. It is submitted that both superannuation savings and the retirement income derived from superannuation savings are critical components of the superannuation system. Both are necessary to “permit a higher standard of living in retirement” to quote from former Treasurer Dawkin’s 1992 speech. There is no good reason why the wording of the primary objective of superannuation should explicitly mention one while ignoring the other.

### Question 3

#### **In which piece of legislation should the objective be legislated and why?**

- In the writer’s view the primary objective of superannuation should be stated as a preamble to the Superannuation Industry (Supervision) Act 1993 (“SIS Act”). Whilst the regulatory components of the superannuation system are to be found across a range of statutes such as the SIS Act, the Superannuation Guarantee Charge Act 1992, the Income Tax Assessment Act 1997 and other taxation legislation, the SIS Act stands at the apex of the statutory governance of the system. For that reason it is the most appropriate statutory location for the primary objective of superannuation to be expressed.
- The statement in the Discussion Paper that “the purpose of stating the objectives of the superannuation system in legislation is only to guide the

policy making process” is noted. However the writer does not agree with the statement in the Discussion Paper that the statutory inclusion of a stated primary objective of superannuation “will not affect the interpretation or application of superannuation legislation by the courts”. A court would not be precluded from having regard to a statutory preamble or other statutory expression of the objectives of superannuation as an aid to the construction of other statutory provisions dealing with superannuation, particularly in instances where there was a dispute concerning the interpretation of those statutory provisions.

Tim Walsh