BCA Submission to Treasury consultation on legislating the objective of superannuation

March 2023

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1. About this submission

The Business Council of Australia welcomes the opportunity to comment on the Treasury's consultation paper on legislating the objective of superannuation.

Superannuation is one of the three pillars of the retirement income system and policy decisions about superannuation touch on major areas of government policy, including the tax and welfare systems and home ownership.

Individuals may spend more than 40 years saving for retirement during their working lives and could have over 15 years in retirement. It is undeniable that the economic and policy landscape will change over such an extended time. It is also reasonable for the public to expect a relative degree of certainty over the policy arrangements for retirement incomes given these long horizons and the complexity of the issues involved.

Despite this, retirement income policy arrangements have been changed repeatedly, undermining confidence in the system and the ability to plan for retirement.

The Business Council agrees that enshrining the objective of the superannuation system in legislation will provide a guide to policymakers, regulators, business and the community about superannuation's fundamental purpose. It will also provide a stable benchmark against which the current system and any future policy changes can be evaluated.

However, a legislated objective does not in itself guarantee that future governments will make sound policy decisions consistent with the objective. The objective does not change the incentives governments face to make short-term decisions inconsistent with long-run objectives. As with the taxation system, there will always be short-term incentives to tinker at the margins of superannuation policy in ways that individually and cumulatively add complexity and undermine confidence in the system.

The proposed objective is open to a wide range of interpretations and how it is operationalised as policy. There is no definitive formulation that will bring an end to policy contestation over superannuation and its interaction with the other pillars of the retirement income and tax systems. The government must build a strong community consensus around the meaning of the various elements of the objective to ensure its success.

2. Key recommendations

- The BCA supports the introduction of a legislated objective for superannuation to guide the future evolution of superannuation and to maintain stability and confidence in the superannuation and broader retirement income system.
- The Business Council is not proposing the precise wording for the legislated objective. However, in the Business Council's view, the objective should have a dual purpose to: provide for comfortable living standards during retirement; and reduce reliance on the age pension.
- The alternative proposed wording suggested in the consultation paper, mandating that 'The objective of superannuation is to *support savings*…' rather than '*preserve savings*' would avoid confusion with the concept of preservation in the existing superannuation rules.
- The Business Council supports the 2014 Financial System Inquiry recommendation that the government regularly and publicly report whether the superannuation system will achieve its legislated objectives. A revamped Intergenerational Report would be a suitable vehicle for such reporting.

3. The objectives of the superannuation system in historical perspective

As the consultation paper notes, Australia's superannuation system has grown in economic importance since the introduction of the Superannuation Guarantee in 1992. The superannuation savings pool has grown to around $3.4 trillion, or around 140% of GDP to be one of the world's biggest stocks of pension assets.

Australian employees are required to forgo 10.5 per cent of their take-home pay through the Superannuation Guarantee (SG), up to a maximum compulsory contribution of $25,292 per year, rising to 12 per cent from July 2025.

Compulsory superannuation is an integral part of the broader retirement income system, together with the age pension and other voluntary private saving. Superannuation also has important and complex interactions with the broader tax and transfer system and home ownership.

Given its economic importance and centrality in defining pre- and post-retirement living standards for Australians, it is not surprising that recent governments have sought to better define the objectives of superannuation. This was a recommendation of the 2014 Financial System Inquiry. The previous government introduced a legislative objective that lapsed with the 2019 federal election.

At the time of its introduction in 1992, compulsory superannuation was seen as a way of managing wage demands in the context of a still highly centralised system of wage determination and in an economy that had not yet established a strong nominal anchor via an independent, inflation targeting central bank.

The SG solved a short-term problem, which was the slow progress in extending the coverage of superannuation to employees through the then existing system of wage determination.

The SG was also seen as addressing a national saving problem identified in the 1993 Fitzgerald report on *National Saving*. By lifting individual saving, the SG would also raise national saving, narrow the current account deficit and reduce reliance on foreign capital inflows. In reality, however, Australia's current account deficit and foreign capital inflows were determined by investment demand, not the supply of domestic saving. Households that are not income or credit constrained can always offset increased saving through the SG by increasing other financial liabilities, such as home mortgages.

Superannuation was also seen as alleviating long-term pressure on the federal Budget associated with population ageing and the age pension. By mandating superannuation contributions and providing tax incentives for additional superannuation saving, the superannuation system would reduce long-term demands on the budget and taxpayers. There is a strong case for relatively favourable treatment of superannuation because savings are locked in for very long periods and compounding tax effects could have punitive impacts.

However, these tax incentives also come at a huge cost to the budget. To be sustainable, the superannuation system requires the government to forgo revenue in the short-term to reduce outlays in the long-term. Unless governments are willing to make this trade-off, the system will fail to achieve the long-term objective of reducing dependence on the age pension.

The superannuation system has thus served a number of policy objectives over time as the system has evolved. As the system approaches maturity, it is appropriate to better define the fundamental objective of superannuation in order to ensure that future policy changes remain consistent with that objective. A legislated objective has the potential to build confidence in the system through greater stability in policy settings than has been seen historically, but only if it reflects a strong underlying, preferably bipartisan, policy consensus.

4. The purpose of a legislated objective

The consultation paper identifies the purpose of a legislative objective in the following terms:

> *"Clarification of the objective of superannuation in law will provide a shared understanding of the role of the superannuation system and anchor any future superannuation policy settings to a meaningful base. It will enshrine the core goal of supporting delivery of retirement incomes in law."*

The paper argues that the legislated objective will:

> *"Improve accountability and transparency in policy development. Legislating an objective of superannuation will provide stability and confidence to policy makers, regulators, industry, and the community that changes to superannuation policy will be aligned with the purpose of the superannuation system."*

It is intended that this increased accountability and transparency will flow from the legislated objective serving as a benchmark for proposed changes to superannuation policy settings. This benchmark can then be applied in the context of 'consultation on policy or draft legislation.' According to the consultation paper:

> *"It is envisaged that existing policy development and parliamentary scrutiny processes would provide checks and balances ensuring that changes to the superannuation system are compatible with the objective… The objective would provide a guide for parliamentary scrutiny and debate in the context of superannuation legislation considered by Parliament. Further, bills can also be referred to the relevant standing or select committees for inquiry and report, which provides an opportunity for organisations and individuals to have their views considered as part of the decision-making process of Parliament."*

The consultation paper thus places a significant burden on existing accountability and transparency mechanisms built into the policymaking and legislative process to operationalise the objective and ensure that future policy changes affecting superannuation are consistent with the objective.

The objective can only improve on these processes to the extent that it provides increased clarity and reflects a strong consensus about the purposes of the superannuation system. To the extent that the objective is ambiguous, open-ended or does not reflect a firm consensus, it is unlikely to provide additional discipline or accountability that is not already provided through the existing policymaking and legislative process.

It is useful to compare superannuation policy to tax policy in this regard. There is widespread agreement that the tax system should aim to promote the objectives of economic efficiency, equity and simplicity. But, those goals have not been well served through actual changes in tax policy and legislation. Like the superannuation system, the tax system has become less efficient and more complex over time because policymakers are drawn to make ad hoc changes in support of short-term objectives at the expense of the long-run integrity of the system. Widespread agreement on the objectives of the system does not eliminate these short-term incentives to act in ways that are dynamically inconsistent.

5. Defining the objective

There have been a number of attempts at defining the objective of superannuation, but none of these definitions has yet commanded an overwhelming consensus. As the preceding discussion notes, the superannuation system has served more than one policy objective over time. A single definition will struggle to capture all of the various dimensions of superannuation policy and cannot realistically be expected to manage all of the trade-offs policymakers will need to make in relation to superannuation in the future.

The 2014 Financial System Inquiry recommended that the primary objective of the superannuation system should be 'to provide income in retirement to substitute or supplement the Age Pension.'[1] This minimalist definition had the advantage of clarity and simplicity, but by the same token, did not provide strong guidance on policy without the accompanying subsidiary objectives.

The 2020 Retirement Income Review recommended the objective of the retirement income system should be 'to deliver adequate standards of living in retirement in an equitable, sustainable and cohesive way.' This definition was focused on the retirement income system as a whole and not just superannuation and to that extent provided a framework for thinking about superannuation in a broader context. A problem with this objective is that 'adequate,' 'equitable,' 'sustainable' and cohesiveness necessarily lack definition. These concepts could mean different things in the context of the three pillars.

The consultation paper proposes a new objective, as well as two alternative formulations. The proposed objective is:

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

The objective seeks to address the purpose of superannuation, how superannuation delivers on that purpose and its relationship to the other elements of the retirement income system.

The Business Council is not proposing the precise wording for the legislated objective. However, in the Business Council's view, the objective should have a dual purpose to: provide for comfortable living standards during retirement; and reduce reliance on the age pension.

Preserve savings

The 'preserve savings' element of the definition is intended preclude access to superannuation other than for the purposes of retirement income, except in exceptional circumstances. This formulation invites confusion with the definition of 'preservation' in the superannuation rules, which determines when benefits can be accessed apart from exceptional circumstances. The concept of preservation in the existing superannuation rules does not in itself preclude the use of superannuation for policy purposes other than retirement income.

The BCA recommends that the government adopt the alternative proposed wording suggested in the consultation paper, mandating that 'The objective of superannuation is to *support* savings…' rather than '*preserve* savings' to avoid confusion with the concept of preservation in the existing superannuation rules.

The concept of 'preservation' is unlikely to reduce interest in using superannuation for purposes such as facilitating homeownership, particularly given the importance of homeownership in underpinning living standards in retirement. Housing is also a tax-preferred saving vehicle and an important part of the overall retirement income system. It should not be surprising that the community and future governments view housing and superannuation as close substitutes in delivering 'a dignified retirement.' In principle at least, superannuation assets could be used to collateralise mortgage lending in a way that lowers borrowing costs for home buyers, without drawing on superannuation balances, thereby satisfying the 'preservation' element of the objective.

Deliver income

The 'deliver income' part of the definition is intended to preclude the use of superannuation for tax minimisation on 'wealth accumulation' and tax effective bequests. But, this is difficult to reconcile with the tax advantaged status of super, which is designed to promote the accumulation of saving and encourage additional saving in superannuation, including over and above that mandated by the SG. Saving and wealth accumulation are the same thing.

[1] Financial Systems Inquiry Final Report (2014).

‘Deliver income’ could also be viewed as mandating retirement income streams at the expense of lump-sum benefits. While there may be a strong case to prefer income streams over lump-sum benefits in the decumulation stage of superannuation saving, current superannuation rules do not preclude taking lump-sum benefits at the expense of ‘delivering income’.

Dignified

The consultation paper concedes that ‘dignified’ ‘will require interpretation and may change over time to reflect society’s standards.’ Whereas the age pension was originally conceived as an anti-poverty measure, retirement income policy more recently has embraced the concept of substantially replacing pre-retirement incomes, with the age pension backstopping compulsory superannuation and voluntary saving in guaranteeing dignity in retirement.

Because there is little agreement on what constitutes an adequate retirement income, this element of the definition could be used to argue for a wide range of policies, including higher compulsory contribution rates than currently legislated, as well as more favourable tax treatment to achieve targeted income replacement rates. Because ‘dignity’ is an open-ended concept, there is a danger this element of the definition expands rather than narrows the scope of future policy change.

Equitable

The concept of ‘equitable’ is intended to capture the importance of a system that delivers similar outcomes to people in similar situations and targets support to those most in need. However, the tax-preferred nature of superannuation system necessarily favours those who save more. As with the tax system more generally, using the taxation of superannuation to pursue equity objectives is likely to add complexity and reduce efficiency. Equity objectives may be better served through the broader tax and transfer system. This is consistent with the phrase ‘alongside government support.’

The concept of sustainability is intended to signal that the superannuation system should be ‘robust to demographic, economic and social change, and should be cost-effective for taxpayers in achieving retirement outcomes.’ As noted previously, the sustainability of superannuation requires governments to forgo revenue today to reduce pension and other outlays in the long-term. Unless the government takes a long-run view of sustainability, this element of the proposed objective could have the unintended effect of rationalising measures that reduce the cost of the system to the budget in the near term, but at the expense of the long-run sustainability of the system. As with ‘dignified,’ the ‘equitable’ component of the objective runs the risk of expanding rather than narrowing the scope of future policy change. In particular, it could be used to rationalise a higher tax burden on superannuation contributions, balances or benefits.

6. Enforceability of the objective

The consultation paper is silent on the question of whether it is intended that the objective will have the force of law, making it potentially actionable before the courts. It would seem unlikely the government would want to expose superannuation policymaking to judicial review and interpretation.

In any event, it would be open to future governments to carve-out proposed policy changes from the legislated objective such that the objective would not apply to these new legislative proposals. To that extent, the legislated objective is a not a binding accountability mechanism.

The consultation paper envisages that accountability in relation to the legislated objective will be delivered by the existing processes for formulating and consulting on policy and through parliamentary processes and public scrutiny.

These accountability mechanisms are only like to be effective to the extent that there is a strong consensus on the meaning of the various elements of the objective. To the extent that future governments take a different view of the objective, these accountability mechanisms can at best help amplify opposing views, but cannot constrain government from implementing alternative policies.

Enshrining the objective of superannuation in legislation does not by itself guarantee future stability and confidence in the superannuation system. Governments that lean too heavily on the legislated objective to argue against future policy changes may find that the open-ended nature of some of the legislated concepts lends itself to a very different interpretation to the one intended by the current government.

The best way for the government to build confidence in the superannuation system is to avoid short-term ad hoc changes to the system, particularly tax measures, that are inconsistent with the long-run objectives of the system. A legislated objective is a useful reminder of these long-run objectives, but is not in itself a strong deterrent against making potentially harmful future policy changes.

7. Recommendations

The BCA supports the introduction of a legislated objective for superannuation to guide the future evolution of superannuation and to maintain stability and confidence in the superannuation and broader retirement income system.

The proposed objective relies heavily on existing policy formulation and parliamentary processes to hold future governments accountable and ensure that future policy changes remain consistent with the legislated objective.

The BCA cautions that the legislated objective is unlikely to achieve high levels of accountability or bind future policymakers unless the government can build a strong community consensus around the meaning of the various elements of the objective and translates these objectives into stable and predictable policymaking. The track records of successive governments are not encouraging in this regard.

The legislated objective will not by itself relieve policymakers of the incentive to make short-term changes to superannuation and tax policy that undermine the long-run objectives of the superannuation system.

The Business Council is not proposing the precise wording for the legislated objective. However, in the Business Council's view, the objective should have a dual purpose to: provide for comfortable living standards during retirement; and reduce reliance on the age pension.

The alternative proposed wording suggested in the consultation paper, mandating that 'The objective of superannuation is to *support* savings…' rather than '*preserve* savings' would avoid confusion with the concept of preservation in the existing superannuation rules.

The Business Council supports the 2014 Financial System Inquiry recommendation that the government regularly and publicly report whether the superannuation system will achieve its legislated objectives. A revamped Intergenerational Report would be a suitable vehicle for such reporting.

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