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Director  
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Retirement, Advice and Investment Division  
The Treasury

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Dear Sir/Madam

## Legislating the objective of superannuation

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### Brief

AIST strongly supports both enshrining an objective of superannuation into legislation, and the wording of the objective proposed in this consultation. The proposed wording is clear, concise and covers many fundamental principles against which future changes can be assessed and measured while reinforcing much of the common understanding of the purpose of super.

Given the importance of the objective, AIST strongly supports the release of a detailed Explanatory Memorandum that can provide additional context to the objective, such as clarifying the rationale for the objective, the operation of the objective alongside the existing SIS Act and other legislation, and the intent and interpretation of specific words and principles in the context of the objective.

For the objective to meaningfully deliver on its intended purpose, a mechanism for assessing and reporting on how policy proposals are consistent with the objective will need to be implemented. We recommend a stronger accountability framework than the one proposed.

We recommend the Government move quickly to pass the objective into law to guide the development of other reforms affecting super that are currently under review or announced as proposed changes.

### About AIST

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*Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds. As the principal advocate and peak representative body for the \$1.7 trillion*

*profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research. AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education, or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.*

## Submission

AIST thanks the Treasury for the opportunity to provide input to this consultation.

AIST strongly supports a legislated objective for the superannuation system, including its relationship to the overall retirement income system. Lack of a co-ordinated approach in meeting an objective for superannuation can result in ad hoc and inefficient policy.

AIST strongly supports the wording of the proposed objective:

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

In our view, expressed in many previous submissions over the history of this issue, the objective should capture the principles of preservation, compulsion, universality, adequacy, integrity, equity and cohesion as vital elements of the system. The proposed wording recognises many of these principles explicitly (preservation, adequacy – “dignified retirement”, equity) or implicitly (cohesion – government support).

The two alternative wordings provided in the discussion paper remove the principle of preservation which would ultimately undermine the principle of adequacy. Without preservation, the compulsion to keep super specifically to support retirement spending is weakened. This increases future reliance on the Age Pension.

The second of the two alternatives removes the role of other government supports in delivering retirement income, choosing instead to emphasise support[ing] savings. This undermines the principle of cohesion with the other pillars of the retirement income system, further weakens compulsion and places the onus of delivering income to support a dignified retirement on the individual rather than being a feature of a well-designed default system with strong consumer protections.

Both of these alternatives point to a superannuation system that only serves those who have the resources and discipline to voluntarily save for retirement within the system, undermining the stated principle of equity.

Given the importance of the objective, AIST strongly supports an accompanying Explanatory Memorandum (EM) to the proposed Bill that clearly sets out the rationale for the objective and the principles underlying the chosen wording. This will allow any future legislation or regulation to be measured against the objective and its underlying intent. The wording rationale in the discussion paper is a good start but several concepts should be expanded on and reinforced. The EM should also clarify the interaction between the objective and the SIS Act, which provides for numerous ancillary purposes of super that are not explicitly addressed within the objective.

## Equity

The discussion paper links Equitable and Sustainable together as a single concept, signifying that:

*...the system should provide similar outcomes for people in similar circumstances and government support should be targeted to those in need. Superannuation also needs to fit within the broader fiscal strategy.*

This approach is consistent with the Retirement Income Review which identified that retirement income inequalities largely reflect factors outside the system, however this does not, in our view, give equity the weight that it deserves as its own concept nor give it sufficient framing against which to measure a policy's consistency with the principle.

While it is true that superannuation policy settings should not be required to do the heavy lifting of addressing structural inequality, they should also not amplify those inequities. The central tenet of equity being that "people in similar circumstances should have broadly similar retirement outcomes" does not capture the differential impacts of policy settings on e.g. men vs women, low balance members vs high balance members, those with lower life expectancies vs those with higher life expectancies, singles vs couples, renters vs homeowners, and so on. These are all factors that have knock on effects to the concept of adequacy and the barriers that exist to achieving 'dignity', financial security and wellbeing in retirement.

In 2020, New Zealand instituted its own objective for its retirement income system. While not explicitly calling out structural factors in the objective itself, it has provided a framework against which to test the impact of current policies and retirement savings outcomes for specific cohorts in their regular Review of Retirement Income Policies. The recent 2022 review gave particular focus to the experiences of Māori, Pacific Peoples, and women, while also recognising the need for future reviews to consider people with disabilities and wider demographic groups reflective of the country's changing population. This nuanced approach recognises that gender, ethnicity, financial literacy, accessibility and other factors intersect and interact with retirement policy and lead to widely different outcomes, and allows policy settings to be adjusted to better target government support.

Without further detail about what constitutes equity, the existing framing risks a broad brush "anyone can use this so it's fair" approach to current and future policy settings and risks embedding and exacerbating existing structural inequity.

To use two recent examples, the COVID-19 early release scheme was most drawn upon by younger and lower balance members who then crystalized losses at a time of market downturn for an immediate cash windfall, with many completely draining their accounts. In addition, while slightly fewer women than men accessed the scheme, those that did so reduced their balances by a greater proportion on average, due to their lower pre-access balances. Many of these women were under the age of 40 and are now entering their childbearing years with little or no super. AIST is also aware of anecdotal evidence that many women were coerced into accessing the early release scheme by abusive partners. Again, this policy exacerbated existing inequity and disadvantage. The result was that most of the users of the scheme were those who could least afford to do so, entrenching that financial disadvantage later in life. Likewise, the Coalition proposal to allow women to use super to escape family violence has similar pitfalls in that it forces women to choose between retirement

savings and an immediate change in circumstances, while also opening up the scheme to the heightened risk of economic abuse from current or former partners.

In another example, the absence of mandated super on parental leave has differential impacts on retirement outcomes for men and women even when their circumstances could otherwise be viewed as similar.

**Case Study: Employer-paid Parental Leave**

Brian and Donna are the same age, work in similar roles at the same company and earn the same wage. Their employer is one of the 3 in 5 employers that offers employer-funded parental leave but is one of the 19% of these employers that do not voluntarily pay super for parents while on paid leave.

Company policy is to provide 12 weeks at full pay for primary carers and 3 weeks for secondary carers. Both Brian and Donna take their full entitlement.

Donna misses out on 9 more weeks of superannuation than Brian despite other circumstances being equal.

**Case Study: Commonwealth-paid Parental Leave**

Louise and Simon work for a company that does not provide employer-funded parental leave. They access the Commonwealth scheme of 18 weeks for primary carers and 2 weeks for the secondary carers, paid at the rate of the minimum wage.

Louise misses out on 16 more weeks of superannuation than Simon while also missing out on the balance of direct earnings between the rate of the minimum wage and her usual salary.

Further, the government’s current proposal to amend tax concessions for high balance members fits within the equity framework as it better targets government support by removing support from those who least need it and addresses a legacy policy that would likely fail against the objective if enacted now.

<b>Recommendation</b>	AIST strongly recommend that the principle of equity specifically acknowledges and addresses different demographics such as women, indigenous Australians and low-income workers to ensure that existing structural disadvantages are not exacerbated. Calling out specific demographics within the EM will encourage policymakers to consider the differential impacts of policy on different cohorts.
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**Deliver Income**

The discussion paper states that:

***Deliver income** emphasises the principle of superannuation – to provide income in retirement.*

The Explanatory Memorandum should explicitly confirm that retirees, and especially those with modest levels of retirement savings, are not precluded from accessing these as a lump sum.

The objective must not undermine the benefits of letting retirees choose how they access their retirement balances. Many members are retiring with relatively modest balances, and they should not be precluded from accessing some or all of this as a lump sum. Access to a lump sum may help retirees clear debt or for other purposes that help them prepare for retirement aligned with their needs.

The risks arising from a lack of liquidity are higher as a person approaches retirement or is in retirement, and this type of access may alleviate these risks. Retirement income strategies must recognise circumstances where it might make sense for a retiring member to use their savings in a way that contributes to their quality of life (for example, purchasing a car) over receiving a small superannuation pension.

<b>Recommendation</b>	AIST strongly recommend that the reference to retirement income in the proposed objective be clarified to confirm that it does not preclude or limit access to lump sum payments by retirees
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### Other features of superannuation

AIST welcomes the commentary in the consultation paper that the legislative objective:

*...is not intended to impact regulatory supervision activities and while aligned with, it would be separate from, trustees' fiduciary duties such as the best financial interests duty and the sole purpose test.*

AIST submits that this also be stated and expanded upon in the Explanatory Memorandum, so that the architecture of the legislated objective makes it clear beyond doubt that existing features of superannuation as codified in the SIS Act not be disturbed or displaced by the legislated objective. The focus of the objective is on policymakers, not fund trustees. It is a yardstick by which to measure proposed policy and clarity about this is needed.

The sole purpose test provides that a super fund is maintained solely for the provision of benefits to a member after attaining preservation age or retiring. The proposed objective accords with this purpose, however, there are also other features of super within the SIS Act. These features include:

- Death and disability insurance
- Disability payments made into super
- Provision of advice, especially in relation to meeting the requirements of the Retirement Income Covenant
- Early release of superannuation on compassionate and financial hardship grounds
- First Home Saver Scheme (FHSS)
- Other ancillary purposes

Ancillary purposes also provide benefits to members, but in more specific and less likely situations. They include:

- Termination of a member's employment where the employee had made contributions to the fund on behalf of the member

- Cessation of work due to ill-health (whether physical or mental)
- The member dying after retirement, and their benefits being paid to their dependent(s) or legal representative
- The member dying after reaching their preservation age, and their benefits being paid to their dependent(s) or legal representative
- Anything else approved in writing by the regulator (usually APRA for most superannuation funds or the ATO in the case of SMSFs)

In practice, a legislated objective will affect future public policy decisions and should still allow trustees to deliver a range of benefits to members, including lump sums, commutations, death or disablement benefits, access to the FHSS and early access on financial hardship or compassionate grounds.

Limited early release is appropriate on compassionate and financial hardship grounds, and the current balance of benefits before preservation balances the immediate needs of those experiencing hardship against future needs. AIST also recognise this needs to be monitored and evaluated to ensure the provisions are being used as intended, and that any misuse of these provisions is addressed by the Government and regulators, including illegal multiple early releases under financial hardship.

To the extent that future policy choices recognise and support super trustees delivering on their obligations under the legislated Retirement Income Covenant, including an acknowledgement of advice within the framework supporting the objective is appropriate.

<b>Recommendation</b>	The legislated objective should clearly and unambiguously continue to allow super fund trustees to fulfill their obligations and activities permitted under the SIS Act that are in addition to delivering retirement outcomes. These include fulfilling other duties under the SIS Act such as core and ancillary purposes, and other important duties under the investment, insurance and retirement income covenants (including the provision of financial advice).
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## Accountability

Existing policy development and parliamentary scrutiny processes provide some basis for testing if changes to the superannuation system are compatible with the objective. As the consultation paper notes, the objective would provide a guide for parliamentary scrutiny and debate of superannuation legislation considered by Parliament, including by standing or select committees. However, as this is the status quo, the consultation paper does not propose or consider any additional or alternative accountability mechanism, beyond asking for feedback about the practical costs and benefits of any alternatives to the proposal.

These parliamentary policy and parliamentary processes are important, and the parliamentary system is integral to the Australian system of government. Therefore, AIST submits that these should remain but other accountability mechanisms should be additional and supplemental to these processes to give Australians confidence that superannuation policy is not caught up in the cut and thrust of day-to-day politics.

This has been the view of both previous Labor and Coalition governments. The different approaches taken by these governments provides a contrast between ‘high-touch’ and ‘low-touch’ approaches to accountability mechanisms – while both go beyond the very limited proposal in the consultation paper. The need for additional accountability mechanisms has been well articulated in the materials supporting the previous proposals.

In 2013, the then Labor government proposed a [Charter of Superannuation Adequacy and Sustainability and Council of Superannuation Custodians](#) as “*an independent and robust institutional framework through which all future superannuation changes are measured*”. At the time, AIST expressed our support for the proposal, recommending that the Council be charged with the responsibility of developing, recommending and monitoring an Adequacy Benchmark, a Sustainability Benchmark, and Longevity Index, and the role of testing superannuation policy changes against these Benchmarks, as well as weighing up the cost of implementing change against benefits to the Australian people.

Without necessarily establishing a Council or some other independent body, the role of undertaking research and analysis relevant to retirement policy and the objective, collecting and publishing data and assessing policy proposals could be delegated to Treasury, and in particular, the division responsible for the Intergenerational Report.

Another more independent option could be to more closely align the process to parliamentary processes. For example, this could be the expanded task of an existing parliamentary committee, or a parliamentary committee created for this process, either of which could be supported by committee secretariats and/or the Parliamentary Library.

When the then Coalition government put forward its proposed objective legislation in 2016, it required a ‘statement of compatibility’ to be prepared by a Member of Parliament who introduces a Bill into the Parliament relating to superannuation. The Parliamentary Library’s [Bills Digest of the Objective of Superannuation Bill](#) contains an excellent analysis of the proposal, its rationale, and the example form of words that was included in the Bill’s EM.

The Senate Standing Committee on Economics subsequently recommended that statements of compatibility and compliance with the objective be reinforced through periodic assessment and reporting as part of the as part of the Intergenerational Report.

AIST therefore shares the view of previous governments, the Senate Committee and many other stakeholders that independent monitoring and review is important to keep policymakers accountable. All of the previous proposals extend beyond the limited mechanism proposed in the consultation paper. We therefore recommend the Government consider attaching some ‘light-touch’ accountability mechanisms extending beyond the current parliamentary process for legislative review.

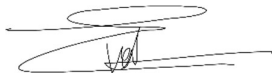
AIST recommend the Government (at the very least and initially) require a ‘statement of compatibility’ to assess superannuation legislation against the objective as proposed by the previous Government. Proposed changes to the superannuation system should also be assessed against the objective as part of the Intergenerational Report as recommended by the parliamentary committee, and that other mechanisms for assessing proposals and monitoring and evaluating their outcome be considered in the near-term.

**Recommendation**

AIST specifically recommend proceeding with a requirement for a 'statement of compatibility' in the objective Bill, but for the explanatory memorandum to contain a fixed program for consideration of additional accountability mechanisms during 2023/2024.

For further information regarding our submission, please contact Kate Brown, Senior Manager, Advocacy & Research via email at [kbrown@aist.asn.au](mailto:kbrown@aist.asn.au) or David Haynes, Senior Policy Manager at [dhaynes@aist.asn.au](mailto:dhaynes@aist.asn.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Eva Scheerlinck', with a horizontal line drawn through it.

Eva Scheerlinck

**Chief Executive Officer**