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Retirement, Advice and Investment Division
The Treasury

Via Email: superannuationobjective@treasury.gov.au

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Legislating the objective of superannuation

Thank you for the opportunity to provide a submission to the Legislating the objective of superannuation - Consultation Paper.

Australian Retirement Trust (ART) was formed through the merger of QSuper and Sunsuper in February 2022 and is one of Australia's largest superannuation funds. 2.2 million Australians trust us to take care of over \$240 billion of their retirement savings. We help our members retire well with confidence, focused on strong long-term investment returns, low fees with the information and access to advice our members need to manage their super and retirement.

We see the purpose of super as creating a retirement income stream along with other retirement benefits for Australians so they can retire well, with confidence.

ART congratulates the government for seeking to legislate the objective of superannuation. As the superannuation system continues to mature, competing views and priorities on superannuation's role within the broader economy, a dynamic legislative environment, and subsequent regulatory requirements, have the ability to affect the sustainability and equity of the system. We believe that enshrining an objective in legislation will provide much needed focus for these critical debates and decisions.

We reinforce in this submission that:

- ART broadly supports the Government's proposed objective of superannuation - *The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.*
- Members expect, and trustees are obliged, to implement a strategy that provide products and services that seek to improve retirement outcomes. This is a core function for superannuation funds. We suggest Treasury makes clear in the Explanatory Memorandum of any objective bill that a legislated objective of superannuation does not change trustee obligations and therefore does not restrict trustees from continuing to provide products and services to members.
- To achieve policy stability and consistency, guidance should be provided on how to weigh and balance the differing components of the objective.
- Treasury should provide further clarity and definition around the wording rationale for components of the objective.
- Regulatory Impact Statements that measure the compatibility of proposed superannuation legislation with a legislated objective would enhance the suggested accountability mechanisms i.e existing policy development and parliamentary scrutiny processes
- A stand-alone piece of legislation to house the objective is preferable to inserting the objective into an existing piece of superannuation legislation.

We trust this feedback will be beneficial to Treasury's considerations and would welcome the opportunity to discuss our submission in further detail.

Chris Ramsay, Senior Manager Policy and Government Relations is the primary Australian Retirement Trust contact regarding our submission and can be contacted on 07 3029 9666 or Christopher.Ramsay@australianretirementtrust.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Bernard', with a stylized flourish at the end.

Bernard Reilly
Chief Executive Officer
Australian Retirement Trust

Legislating the objective of superannuation Consultation Paper - Australian Retirement Trust responses

1. What do you see as the practical benefits or risks associated with legislating an objective of Australia's superannuation system?

The 'Legislating the objective of superannuation' consultation paper (Paper) asserts that enshrining an objective for superannuation in legislation will "provide stability and confidence...that changes to superannuation policy will be aligned with the purpose of the superannuation system".

ART supports this aspiration and submits that members and industry participants would both greatly benefit from increased stability and certainty that the objective could bring by informing the policy direction of superannuation legislation and regulation development.

The Paper proposes accountability mechanisms for the objective, that are envisaged to serve to oversee that proposed changes are aligned with the objective and provide a level of scrutiny by which the public can judge changes against the objective.

The costs and benefits of changes to superannuation are ultimately felt by members. ART is of the view that imposing an appropriate level of accountability and scrutiny on policy makers will be beneficial in keeping the focus of the legislature on changes that are aligned with the objective, and by extension the interests of Australians.

While ultimately, superannuation funds provide a retirement income stream, there is a strong expectation from Australians that funds will undertake activities, and provide them with products and services that support them on a journey both to, and through, retirement. Services and products such as advice, insurance and education are crucial to ensuring Australians can retire well with confidence.

These activities and services are not a set and forget function for funds. Members preferences and expectations are evolving. Trustees need to innovate their product and services offering to meet these changing member expectations and in line with the requirements of their legal and regulatory obligations, including those of the Retirement Income Covenant (RIC) under subsection 52(8A) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act)

The RIC requires trustees to develop a retirement income strategy to assist all members 'achieve and balance the following three objectives: maximising their expected retirement income; managing expected risks to the sustainability and stability of their expected retirement income; and having flexible access to expected funds during retirement'¹. We expect the RIC will not only improve member outcomes but will encourage member engagement.

We note the Paper states the objective is not intended to change trustee obligations. However, ART cautions that legislating an objective of superannuation carries a risk, via differing interpretation of the objective's aspirations and priorities, of encouraging further legislative reform that will apply a restriction on trustees.

ART recommends the Government includes in the Explanatory Memorandum (EM) of the objective bill an explicit statement that the objective does not apply to trustees and does not in any way, either directly

¹ Corporate Collective Investment Vehicle Framework And Other Measures Bill 2021, Explanatory Memorandum,

or as the basis of other legislative reform, restrict trustees' ability to meet the requirements and duties of the RIC and other regulatory obligations...

Further, we note the proposed objective appears to attempt to bring together a series of discrete and arguably disparate aspirations. There is a risk that capricious interpretation of these potentially competing interests, could be used by Governments of the day to achieve policy priorities. This would make it less likely for the policy stability and consistency in the superannuation framework the objective seeks to achieve.

ART suggests the Government should consider including in the objective bill priorities for, and/ or high-level guidance on, how the objective's different strands are to be reconciled to support a consistent interpretation.

2. Does the proposed objective meet your understanding of the objective of the superannuation system in Australia?

ART broadly supports the Government's proposed objective of superannuation - *The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.*

Although ART's heritage in managing the superannuation contributions of Australians extends back over a century, we believe that ever since 1992, when compulsory contributions were introduced via the superannuation guarantee, superannuation has been a core component of Australia's social contract.

At its core, superannuation is about providing retirement income for Australians and achieves this in concert with the other pillars of Australia's three pillar retirement income system - private savings and the Aged Pension.

As stated in our cover letter, we believe the purpose of superannuation is creating a retirement income stream along with other retirement benefits for Australians so they can retire well, with confidence.

While we are broadly comfortable with the wording of the proposed objective, the following are specific points for Treasury's consideration:

Dignified – ART agrees with the Paper that dignified does not necessarily equate to the same level of income in retirement. Further, we agree that dignified is a qualitative measure that needs defining and interpretation. However, for the objective to be effective, we suggest that a quantitative benchmark is included in the EM definition of dignified to facilitate assessment of the outcomes of legislative and regulatory change. This could be a measure (such as the ASFA Comfortable Retirement Standard), or combination of measures, that make up a 'standard of living assessment'. ART aims for our members to retire well with confidence and contend that maintaining or enhancing pre-retirement standard of living in retirement would, for many Australians, constitute a major component of retiring well.

Preservation – ART absolutely supports 'preserve savings' being included in the objective. Recent reports² of the deleterious impact of early access during Covid under regulation 6.19B of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (SIS Regulations), on balances at

² 'Present-biased': Move that cost millions of Aussies \$120k, The Australian, 16 March 2023

retirement reinforce the need for early access to superannuation being limited to exceptional circumstances (consistent with the conventional special conditions of release³).

ART also supports the Paper's assertion that 'superannuation exists first and foremost as a vehicle to fund retirement and not a pool...to meet other lifetime costs.' To provide guidance for the application of objective, and to not inadvertently restrict consumption decisions that affect quality of life in retirement, we suggest Treasury consider providing further clarity on what is meant by other lifetime costs.

Equitable – ART believes that equitable is a key principle for the superannuation system. However, the Papers definition of equitable is unclear and prone to causing confusion regarding if the system is delivering equitable outcomes. We suggest Treasury provides clarity in the EM on the meaning of 'similar people in similar situations'.

Sustainable – We broadly support the definition of sustainable. We note the potential interplay of 'delivering income for a dignified retirement' with the Papers contention that 'beyond a certain level of income, additional Government support through tax concessions is not necessary or appropriate.' Additionally, we note the forecasts of the cost of revenue foregone from superannuation tax concessions⁴. We contend that assessment of the performance of the superannuation system against a quantitative measure of what is considered dignified (as suggested above) will provide guidance to future legislators on the level at which Government support through tax concessions is no longer needed.

3. Is the proposed approach to enshrining the objective in legislation appropriate? Are there any alternative ways the objective could be enshrined?

4. What are the practical costs and benefits of any alternative accountability mechanisms to the one proposed?

Is the proposed approach to enshrining the objective in legislation appropriate?

Superannuation is often under the parliamentary spotlight and is frequently the subject of disruptive regulatory reform, seemingly ahead of its prudentially regulated peer industries, such as banking and life insurance.⁵ We note that, unlike superannuation, the regulation of both of those industries is guided by stated objectives in their governing legislation.⁶

The cost of responding to those changes is ultimately borne by members and therefore we contend that taking steps that seek to limit changes to those which further a deliberate objective is sensible. While the 'journey' to achieving the aspirations of objective will be lengthy, we believe it is desirable to curb costly 'detours' as much as possible.

³ See generally 'Conditions of release', *Australian Taxation Office* (Webpage, 11 January 2023) <<https://www.ato.gov.au/Super/APRA-regulated-funds/Paying-benefits/Releasing-benefits/Conditions-of-release/>>.

⁴ 'Superannuation tax breaks', Joint media release - The Hon Jim Chalmers MP and The Hon Stephen Jones MP, 28 February 2023

⁵ An illustrative example can be seen in the significantly higher number of amendments to the [SIS Act](#) and [SIS Regulations](#) compared to the [Life Insurance Act 1995 \(Cth\)](#) and [Life Insurance Regulations 1995 \(Cth\)](#), or to the [Banking Act 1959 \(Cth\)](#) and the (unamended) [Banking Regulations 2016 \(Cth\)](#).

⁶ [Banking Act 1959 \(Cth\)](#) s 2A; [Life Insurance Act 1995 \(Cth\)](#) s 3.

Fine-tuning the proposed accountability mechanism

The Paper suggests the objective and its associated benefits will be achieved through the forward-looking nature of the objective and its application as a “yardstick” against which prospective policy changes to superannuation could be measured. Treasury envisages doing so via existing policy development and parliamentary scrutiny processes being used as an accountability mechanism to ensure compatibility of legislative changes with the objective.

This accountability mechanism takes on its natural benefits such as overseeing that policy changes align with the objective and giving stakeholders the opportunity to share their views during public consultation processes on policy proposals and draft legislation. We suggest establishing an orderly process for how this will be integrated into the passage of a bill from idea to act to ensure it does not fall by the wayside over time.

The Paper does not propose a mechanism to reject or amend legislation that represents a departure from the objective. However, we recognise putting in place such a measure would be difficult in light of parliamentary sovereignty. Under our Constitution, Parliament cannot bind a successive Parliament and holding itself to an objective for superannuation would be no exception.

That being the case, we consider it would be a reasonable middle ground for new and amending bills (and Government’s antecedent internal policy positions) in the super context to be accompanied by a regulation impact statement which, among other things, elucidates the legislation’s compatibility with the objective. Regulation impact statements should be introduced early in the parliamentary process to promote coherent regulatory design as a matter of course – they need not be overly formal at these early stages. Here they can be used more specifically to shine a light on compatibility with the objective (or lack thereof) from inception of a policy position. Government and the Parliament should be encouraged to scrutinise, and consider blocking, any bills where a cogent position on fit with the objective is not apparent.

While ultimately the objective would not be capable of rising above its aptly described station of “yardstick” to bind Parliament, the democratic process underpinning Parliament does invite public scrutiny which can be aided by the measures discussed above. We think this sort of parliamentary and public evaluation would facilitate development of appreciably more consistent super policy by treating the objective as its North Star.

Where should a legislative objective be housed?

The Paper proposes to codify an objective of superannuation in either a standalone act or within the existing SIS Act.

The objective of the SIS Act is to prudentially regulate superannuation funds and to enable their supervision by the regulators.⁷ What the SIS Act does not set out to do is govern the Government – it is an act to regulate industry – whereas the Paper suggests the objective’s purpose would be to guide Parliamentary policy and legislative development. In essence, the SIS Act and other existing superannuation legislation is generally not targeted at the legislature, unlike a new purpose-built act, which could be limited to its subject matter of legislating an objective of super that is predominantly targeted to the legislature and other law-making bodies.⁸

⁷ SIS Act s 3.

⁸ In particular, the regulators of superannuation (namely, APRA, ASIC, the ATO, and AUSTRAC) who are empowered by various acts to make delegated legislation.

Further, keeping the objective out of an act intended to regulate industry will also reduce the risk of the objective directly regulating trustees or otherwise being read into their existing duties. To this end, Treasury comments in its Paper that “the objective is not intended to guide the regulation of trustees’ conduct, it would not change trustee obligations.” Inserting the objective in the SIS Act may derogate from that proposition as that placement of the objective could cause it to be seen as inadvertently cutting across trustee obligations set by the SIS Act. In any event, Government will need to carefully craft the legislation to obviate this risk by making it clear to whom the objective applies (which ought to be the legislature and other law-making bodies that operate in the super space).

A new stand-alone act would also give the objective marquee prominence, emphasising its importance. A separate act also has the space to insert ancillary measures, such as a requirement to make a statement of compatibility, without inflating an existing act which has its own pre-existing, and separate, purpose, while enabling the new act to presumably itself remain a relatively short piece of self-contained legislation.