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Sent to: superannuationobjective@treasury.gov.au

Director
Superannuation Insurance and Governance Unit
Member Outcomes and Governance Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
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Legislating the Objective of Super Consultation

Thank you for the opportunity to comment on the issues raised in *Legislating the objective of superannuation Treasury Consultation paper* of 20 February 2023.

As Australia's largest asset consultant and consultant to multiple superannuation entities, we believe we are well placed to respond to the consultation.

JANA is overall supportive of legislating the objective of super and this is reflected in our responses to the set consultation questions. There are some additional areas of consideration we have identified for Treasury's consideration.

We would be delighted to discuss further any items covered in this consultation response.

Regards,

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About JANA Investment Advisers

JANA Investment Advisers was established in 1987 and is Australia's leading and largest investment advisory and research firm. For 35 years, we have provided advice to our clients, rooted in our depth of talent, global research, deep insight, and innovative thinking.

Today, we have grown to over 140 staff members, with \$1.3tn in funds under advice. A management-owned asset consultancy, JANA advises over 80 institutional clients across superannuation funds, universities, foundations, endowments, charitable trusts, insurers, corporate clients, long-service leave funds and family offices. JANA-advised clients have a history of outperforming both their internal benchmarks and peers.

At JANA, we believe that together with our clients, we can make a meaningful positive difference to the lives of millions of everyday people directly or indirectly impacted by the advice we provide. We believe superannuation has a strong role to play in providing a dignified retirement to Australians. Therefore, we are strongly aligned to supporting a legislated objective for Australia's retirement income system.

Responses to Questions

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

Overall, we agree that there must be a clear, shared understanding of the objective of Australia's retirement income system. Whilst the sole purpose test has generally served the industry well in terms of setting out a "purpose" for superannuation assets, the reality has been that this appears insufficient as an overarching system objective since the "three pillars" retirement income system touches a wide range of policy levers, e.g. taxation, social security and fiscal settings.

Operating a system that delivers income for a dignified retirement is a complex global challenge, and Australia is fortunate to be well-positioned to deliver on this through its effective superannuation system. A risk to this positioning is the temptation to use the large accumulated pool of capital for multiple objectives beyond its original intent. The risk of aiming for multiple objectives is achieving none effectively and/or competing/conflicting policies. An agreed legislated objective should aim to assist in mitigating this risk.

The other practical benefits are well covered in the Treasury Consultation paper, and we won't repeat them here for brevity. The major risk of the proposed legislated "objective" lies in the potential for misinterpretation of the final wording of the objective and future changes to the legislation that purport to be consistent with the objective but contravene the original intent.

We believe these risks can be minimised through careful consideration of definitions, a clear Explanatory Memorandum, underpinned by a comprehensive considered process of finalising the objective (as has essentially already occurred through the 2014 Financial System Inquiry, the proposed Superannuation (Objective) Bill 2016, the 2020 Retirement Income review, and the current consultation process).

JANA believes that while all risks cannot be eliminated, the benefits of legislating an objective for superannuation outweigh the risks of not proceeding.

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

Broadly yes. We make the following comments and suggestions:

Proposed Objective	JANA Comment
Preserve Savings	JANA agrees with this proposal on the basis that it aligns with long-standing legislative requirements for superannuated savings to be preserved until a condition of release has been met.
Deliver Income	<p>JANA agrees with this proposal in principle, but would suggest the following refinements:</p> <p><i>“Orderly drawdown” or “income”?</i></p> <p>JANA prefers “orderly drawdown” in preference to “deliver income”. “Deliver income” potentially blurs the lines between (a) a product or suite of products that are designed to achieve an “orderly drawdown” of superannuation; and (b) having an appropriate investment strategy that generates sufficient returns (including income) and liquidity to meet a member’s drawdown profile. For example, some members may have low account balances at retirement, making it impractical for the member to take an income stream alongside the Age Pension. In these instances, members may wish to use their low superannuated savings as a supplement to the Age Pension.</p> <p>In this regard, our proposal for this modification aligns with the FSI proposal to “facilitate consumption smoothing over the course of an individual’s life”.</p> <p><i>Superannuation not for “minimising tax on wealth accumulation or enabling retirees to leave tax-effective bequests”.</i></p> <p>JANA believes that these comments set out in the Treasury Consultation paper would be better included under the “Equitable and Sustainable” elements of the proposed objective.</p> <p>In addition, we believe that most participants are not using superannuation for the dominant purpose of leaving a “tax effective bequest”. Rather, we consider that most retirees are faced with an obvious and natural behavioural bias to be conservative with drawing down on their superannuation in retirement because of fear of either (a) outliving retirement savings or (b) unanticipated significant health care costs (e.g. modification to primary residence to address safety/mobility concerns, significant medical treatment, aged care support etc).</p>

Proposed Objective	JANA Comment
Dignified	JANA agrees with this proposal on the basis that it appropriately recognises that the definition of “dignified” is different for each Australian.
Government Support	JANA agrees with this proposal on the basis that it appropriately recognises the significance of the Age Pension (combined with other Government provided support mechanisms) as a means tested underpin / safety net to the system.
Equitable and Sustainable	<p>JANA agrees with this proposal though we question the specific use of “Equitable and Sustainable” as it may lead to confusion.</p> <p>“Sustainability” can refer to “fiscal sustainability of the system” or as it relates to an Environmental, Social, and Governance (ESG) context (sustainable/impact investment strategies). We consider that the Treasury Consultation paper uses the word “sustainable” in reference to “fiscal sustainability of the system” and the system being robust to meet evolving and future needs. In addition, we note that the use of the word “equitable” may also create confusion as “equitable” has precedence as a legal term while the context for the Treasury Consultation appears to be “equitable” taxation treatment/outcomes.</p> <p>We encourage Government to consider clarification of definitions or consider alternative language with respect to “Equitable and Sustainable”.</p> <p><i>It is imperative that the system strikes the right balance between appropriate incentives to use superannuation as a means of growing retirement savings, and appropriate incentives for members to drawdown on their superannuation savings as a retirement income stream in preference to drawing lump sums.</i></p> <p>To have credibility, the system needs to manage the risk of being “unaffordable” and having skewed incentives for taxpayers that moves beyond a “dignified” or reasonable retirement into wealth maximisation beyond a certain threshold.</p>

Other areas we consider important for Government to address as part of developing a proposal for legislating the objective of superannuation would be as follows:

Other Potential Objectives	JANA Comment
Confidence in the system	We think it is imperative that the system objective should be to support consumers and policy makers having confidence in the system i.e. for superannuation members to be able to make long term retirement plans without the risk of system changes that materially undermine those long-term plans. The primary risk is that future changes to the system are made which are contrary to the system’s intended purpose and design (e.g. Early access to superannuation savings and/or uses that are outside of the well-established preservation rules).

Other Potential Objectives	JANA Comment
Confidence in the system (continued)	This concern was referenced in the Treasury Consultation paper, and we consider this concern sufficient to be one of the proposed objectives by adding "Confidence in the system" as one of the objectives.
Investment outcomes	<p>There is no reference to 'investment outcomes' – which we consider to be one of the key elements underpinning the super system.</p> <p>In addition, we note the reference in the Treasury Consultation paper to "There is a significant opportunity for Australia to leverage greater superannuation investment in areas where there is alignment between the best interests of members and national economic priorities, particularly given the long-term investment horizon of superannuation funds."</p> <p>In relation to the above, we make three comments:</p> <ul style="list-style-type: none"> Any legislated objective should mitigate against the potential risk of "opening the door" to the temptation of future governments wanting to compel superannuation trustees to make investments into or out of certain asset classes or specific investments (beyond that which is already in legislation i.e. current legislated prohibitions with respect to in-house assets and gearing). Any legislated objective should reference investment strategies serving the long term, best interests of members. This must be central to any future objective, and the system must support Trustees developing investment strategies aligned to the long-term objectives and outcomes being sought for members. Trustees must be able to judge proposed investments on their merits. If there is alignment between Government (pursuing the "national interest") and investment opportunities, these should be considered by Trustees as part of the "competition for capital" in the pursuit of generating strong long-term risk adjusted returns for members. To deliver the required long term investment outcomes, which will be driven by long term investment market/economy outcomes, there is a clear requirement for Trustees to consider sustainability. We think it is important to highlight that many ESG considerations will play out over a multi-decade time horizon, and the financial benefits can often be challenging to quantify. In the above context we believe the legislated objective should enable Trustees to have flexibility to implement an investment strategy they deem appropriate to deliver outcomes over multiple time frames. <p>We encourage the Government to ensure that the objective of the system references investment outcomes to (a) promote members interests and (b) ensure that Trustees have the flexibility and independence to develop investment strategies considered appropriate for member outcomes over the long term.</p>

Other Potential Objectives	JANA Comment
System coverage	We believe an important objective for the Government to consider would be to promote system coverage for employees and self-employed to ensure that the system supports a wide group of taxpayers. We encourage the Government to include “broad coverage of taxpayers” as part of the system objectives.

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

JANA agrees with the approach that legislating an objective will seek to provide certainty and consistency to policy makers, regulators, industry, and the community and will ensure that there are clear boundaries to inform future superannuation policy focused on preserving savings to deliver income for retirement. JANA does not recommend any alternate way to enshrine the objective.

There are however different considerations if the objective is drafted into existing or standalone legislation.

If in existing legislation such as the Superannuation Industry (Supervision) Act 1993, it needs to be drafted so that there are no unintended consequences of the amendment or uncertainty with the current interpretation of applicable superannuation law, such as uncertainty around the operation of the sole purpose test.

If in standalone legislation, all future reforms could be assessed for compatibility with the objective and there are examples of this approach working well in practice (e.g. Human Rights Act 2011). We believe this approach has merit as a potential means to test any future proposals against a legislated objective and help ensure that they are consistent with the objective.

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

JANA has no comments with respect to this question.

Next Steps

Thank you for the opportunity to provide our feedback. As noted above, we would be delighted to discuss further any of the points raised in this consultation response.