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Legislating the objective of superannuation

Response to The Treasury Consultation paper dated 20 February 2023

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Question 1

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

A Superannuation System applying within Australia potentially has major effects on citizens, namely:

Costs to the Citizen (Superannuation Fund Member)

- Taxation to fund any Government financial support of the System from general revenue,
- Reduction of pre-retirement income due to personal taxation and super contributions,
- Reduction post-retirement of entitlements to government support, such as the government age pension and subsidies like the price of medications,

Benefits to the Superannuation Fund Member

- Greater spending power in retirement from super fund entitlements,
- Satisfaction of being less reliant on Governments for support,
- Less time spent on applying for various Government benefits.

Costs and benefits of superannuation are typically so significant to the national economy and personal well-being of citizens that both System Designers and Legislators must be clear on **what they are trying to achieve, namely an objective acceptable to citizens requiring them to forego current consumption for a better retirement income.**

Risks

There are major risks in spelling out an objective in legislation, namely that:

- Words such as "equitable" are open to widely varying interpretations, especially by politicians when selling a proposed System to the electorate in a political environment,
- **Many of the decision makers on features of a System to be legislated and applying to the bulk of citizens, are themselves on the public payroll, such as politicians and senior public servants. They are participants in "defined benefit" superannuation systems, having substantially different characteristics to those applying to most citizens; they are therefore not personally impacted by a System on which they are making decisions.**

The "defined benefit decision makers" and, in contrast, citizens who are members of funds paying benefits solely related to fund performance, are therefore prone to **differing interpretations of emotive words. "Equitable" and "sustainable", suggested in the proposed objective, are prime examples.**

Do the benefits outweigh the risks?

Most citizens are concerned more with day-to-day living, including current work and family commitments, than potential problems of future decades, especially if that future is up to four

decades ahead. Even so, wide acceptance of the need for contributory superannuation suggests that citizens generally accept that the benefits exceed the costs.

There also appears to be wide acceptance that a System needs to be understandable, stable and predictable. A clear objective should be the foundation of these qualities; yet a common citizen complaint about current compulsory superannuation is that *the rules keep changing!*

In the same breath of the government and others proposing to legislate an objective, including the words “preserving savings”, there are calls, including by government members, for mandating uses of superannuation by fund trustees controlling billions of dollars, to invest them in “worthy causes”. These include “affordable public housing” and “parental benefits”. This again suggests that emotive words such as “equitable”, open to wide interpretation, must not be used in the objective.

The consultation paper states:

There is a significant opportunity for Australia to leverage greater superannuation investment in areas where there is alignment between the best financial interests of members and national economic priorities.

This rings a loud alarm bell on conflicting views of best financial interests of members and national economic priorities.

Consultation Question 2

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

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.

The words “preserve savings to deliver income for a dignified retirement” are clear in their intention but, as pointed out above, government members themselves have already floated the idea of **tampering with savings, by suggesting that trustees invest in types of projects, regardless that these may not be in the best financial interests of superannuation members.**

The note in the consultation paper under “deliver income” emphasises that the income is for retirement. **Life expectancy and retirement for an individual is almost entirely unpredictable.** There may therefore be a level of savings in superannuation which may appear excessive for a particular citizen and a means of accumulating tax-advantaged inheritances for family. On the other hand, that fund member may be taking account of the fact that he or she has a family history of great longevity; large savings may therefore be prudent. As far as possible, the **level of savings in super to deliver retirement income should be determined by the fund member based on personal circumstances.** **The current superannuation rules inherently allow this self-determination; but the government now proposes to discourage it with new additional taxation.**

There is no obvious way of solving this problem, if it is a problem. A high level of savings is the result of a person making contributions (from after-tax income, taxed again when contributed) in accordance with the law (into a highly regulated system) and investing them wisely. **Those savings if inherited due to early death will later produce income, again subject to taxation of the beneficiary.**

By contrast, a defined benefit pension may produce major windfall savings in the form of a very large pension for a very old person, while a person in comparable life circumstances may have a

pension which he or she has funded, which has run out of funds due to the person's longevity or poor fund performance.

The proposed \$3M account cap proposed takes no account of radically different circumstances of different retirees and even proposes an onerous form of unrealised gains tax, unseen anywhere else in the Australian tax system, on those forced to pay it.

Consultation Question 3

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

Purpose of Legislation

Legislation comprises laws and regulations, which define in writing the rules which governments and citizens are required to follow.

Because words have such a vast variety of interpretation, society has developed two main methods of deciding what they mean, one being dictionaries being prepared by learned men and women, usually in learned institutions, and the other by a system of courts, usually created under national constitutions.

Legislation is created by governments. Sometimes it is very detailed and complicated, for example how taxation of personal income must be calculated; sometimes it sets out broad principles and aspirations. The legislation now proposed to specify the superannuation objective is of the latter type.

If it is to have any real use, the words chosen must have precise meanings. Otherwise the objective may be used just to give political cover to whatever the government wants to change in the current superannuation system. It will do nothing to provide long-term stability, lack of which is the biggest complaint about the current system.

The proposed objective has already failed in that the government has at the same time proposed a major change to superannuation taxation, detailed in a separate government paper (*recent Treasury fact sheet on additional taxation of super balances exceeding \$3M – "Better Targeted Superannuation Concessions"*). Given that there is no current objective of superannuation, what criteria were used for this proposed change?

Legislation is an appropriate way of enshrining the objective; but as argued above, if the words are open to wide interpretation, citizens will have little faith that it has been enacted for any purpose other than political cover. After all, the current superannuation system has operated for decades already without a legislated objective.

Consultation Question 4

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

This response does not propose an alternative way of enshrining an objective. Rather it states that some words proposed are subject to interpretations which are too wide; and therefore of little use for other than a political purpose of justifying any change which the government wishes to make for its own reasons. The cost to citizens is then general cynicism that any tampering with superannuation including its stated objective is not for their benefit - merely a government exercise in futility. Benefits are hard to identify.

Conclusions

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.

contains the phrase “equitable and sustainable”, which is open to wide interpretation, such that the objective acquires whatever meaning the government of the day wishes to give it. It is therefore of little use to the citizen whose savings are compulsorily held under the control of others for up to 40 years or more.

It is therefore suggested that the phrase underlined above be deleted in any legislation and that a simpler, clearer, less ambiguous objective would be:

The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support.