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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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SUPERANNUATION (OBJECTIVE) BILL 2023  
SUPERANNUATION (OBJECTIVE) (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL  
2023

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EXPOSURE DRAFT EXPLANATORY MATERIALS



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# Glossary

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This Explanatory Memorandum uses the following abbreviations and acronyms.

<b>Abbreviation</b>	<b>Definition</b>
the Consequential and Transitional Provisions Bill	Superannuation (Objective) (Consequential and Transitional Provisions) Bill 2023
the Objective Bill	Superannuation (Objective) Bill 2023



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# **Chapter 1:      *The objective of superannuation***

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## **Outline of chapter**

- 1.1     The Objective Bill legislates the objective of superannuation to codify a shared purpose of superannuation.
- 1.2     It does this by enshrining the objective of superannuation in legislation, requiring policy-makers to assess future changes to superannuation legislation for compatibility with this objective and include a statement of compatibility with the objective in the explanatory materials accompanying all Commonwealth Bills and regulations relating to superannuation (unless an exception applies).
- 1.3     The Consequential and Transitional Provisions Bill includes consequential amendments and transitional arrangements to support the Objective Bill.
- 1.4     All legislative references in this Chapter are to the Objective Bill unless otherwise stated.

## **Context of amendments**

- 1.5     The three pillars of the retirement income system – superannuation, the Age Pension and private savings – work together to support Australians in retirement. The superannuation system plays a central role, through the compulsory savings of individuals’ income during their working life, and then through the drawdown of these assets to fund their retirement.
- 1.6     More than 15 million Australians are now benefiting from having a superannuation account and better retirement outcomes. Australia’s superannuation pool has grown from around \$148 billion in 1992 to \$3.5 trillion in 2023, and will continue to grow. Total superannuation balances as a proportion of GDP are projected to almost double from 116 per cent in 2022–23 to around 218 per cent of GDP by 2062–63.
- 1.7     As the system matures and our population ages, a greater number of Australians are expected to move from accumulation phase to the retirement phase of superannuation. The superannuation system needs to support Australians while they save for retirement and when they draw down on their superannuation savings to fund their retirement.

- 1.8 The superannuation system is an important source of capital in the economy which can support investment in capacity-building areas of the economy where there is alignment between the best financial interests of members and national economic priorities.
- 1.9 Despite the importance of the superannuation system, both for the economy and for individuals' retirement standards, there has not been a broadly agreed purpose or objective for the system.
- 1.10 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 will also ensure members and funds have more certainty over any future changes to the superannuation system throughout both the accumulation and retirement phases.
- 1.11 The 2014 Financial System Inquiry recommended the Government “seek broad political agreement for, and enshrine in legislation, the objectives of the superannuation system and report publicly on how policy proposals are consistent with achieving these objectives over the long term”.
- 1.12 The 2020 Retirement Income Review broadly agreed with the findings of the Financial System Inquiry that an objective for the retirement income system was required to “anchor the direction of policy settings, help ensure the purpose of the system is understood, and provide a framework for assessing the performance of the system”.
- 1.13 The wording of the objective in the Objective Bill builds on those two recommendations by integrating concepts of: income in retirement, providing a minimum standard of living in retirement, the interaction with government support, equity and sustainability. It was also intentionally formulated to be succinct and written in plain English to aid understanding and clarity for all Australians.

## Detailed explanation of new law

### The objective of superannuation

- 1.14 The Objective Bill enshrines the objective of superannuation in legislation.
- 1.15 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).  
**[Section 5]**
- 1.16 The objective will provide a shared understanding of superannuation and ensure that the focus of superannuation is on preserving savings to deliver income for a dignified retirement.
- 1.17 The objective also includes the key principles which policy-makers should consider in delivering on this purpose, that is, the system should operate in an equitable and sustainable way and recognise the interaction of superannuation with forms of government support, particularly the Age Pension.
- 1.18 The key concepts within the objective are not intended to be considered in isolation, rather, policy-makers will need to consider and make informed decisions on the trade-offs that may be required between the different concepts to ensure that superannuation policy delivers on the broader objective in a cohesive way.
- 1.19 The intent of the Objective Bill is to require policy-makers to demonstrate to the Parliament, and Australians, how any future changes to superannuation law are consistent with the legislated objective. The objective is not intended to change the operation or interpretation of existing superannuation law, prudential standards or governing rules of superannuation entities. For example, it will not change or prevent how members can currently access their superannuation such as the payment of a lump sum on retirement or early access to their superannuation in exceptional circumstances.  
**[Subsection 5(2)]**



- 1.20 Further, the objective does not impact regulatory supervision activities and while aligned with, it is separate from trustees' fiduciary duties and is not intended to guide the regulation of trustees' conduct or change existing trustee obligations.
- 1.21 The objective does however serve as a reminder to trustees of superannuation entities (which includes all APRA-regulated superannuation funds, approved deposit funds and pooled superannuation trusts and self-managed superannuation funds) of their role in the superannuation system, including to support members holistically during their working life and through retirement.
- 1.22 While the obligations of trustees and rules governing each type of fund differ, all superannuation funds serve the same purpose in preserving contributions made by or on behalf of the member during their working life (accumulation phase) and then distribute the member's contributions and earnings back to them in retirement (retirement phase).
- 1.23 The objective of superannuation is intended to codify the system's purpose, as distinct from the important benefits it delivers.

### **Context on the broader benefits of the superannuation system**

- 1.24 As at 30 June 2020, 86 per cent of Australians aged 25 to 64 have superannuation coverage. Together the system manages more than \$3.5 trillion in Australians' retirement savings, with this figure expected to grow over time.
- 1.25 The size and coverage of Australia's superannuation system has created a range of benefits for superannuation fund members and the Australian economy.
- 1.26 Superannuation is an increasingly important source of capital in the economy and the significant scale of the superannuation system contributes to the strength of Australia's financial markets through capital deepening. This can support significant investment in areas where there is alignment between the best financial interests of members and national economic priorities, particularly given the long term investment horizon of superannuation funds.
- 1.27 Given its broad reach, access to affordable group insurance is an important benefit of the superannuation system and is consistent with the objective. Through group insurance, the superannuation system provides a safety net that delivers valuable protection to the community and meets members' needs at reasonable cost.
- 1.28 In this vein, insurance in superannuation can help members achieve a dignified retirement, for example where they experience early retirement due to incapacity or interrupted work patterns during their working life. There are also other circumstances where superannuation members or their dependants may access insurance benefits through superannuation, including being diagnosed with a terminal medical condition or death.
- 1.29 The objective of superannuation does not change the legal or regulatory environment for these broader benefits of the superannuation system. Rather, the objective of superannuation makes it clear that its purpose is to deliver income in retirement.

### **Explanation of key concepts within the objective of superannuation**

#### **Preserve savings**

- 1.30 'Preserve savings' means superannuation savings should not be accessed for purposes outside of retirement income, apart from in exceptional circumstances.
- 1.31 This recognises that superannuation receives concessional tax treatment to incentivise saving for retirement and exists as a vehicle to provide income in retirement, not to meet other lifetime costs prior to retirement. When savings are preserved, the compound returns on superannuation help individuals' savings to grow over a long period of time and enhance financial security in retirement.
- 1.32 In exceptional and unforeseen circumstances, there is an existing legal framework for the early release of superannuation which allows preserved superannuation savings to be released as a last

resort for acute and rare incidents, such as permanent and temporary incapacity (including insurance payments), terminal medical conditions, compassionate grounds for specific expenses, and severe financial hardship. This principle is not changed by legislating the objective of superannuation – members will maintain recourse for early access for genuine and exceptional hardship.

## **Deliver income**

- 1.33 ‘Deliver income’ means superannuation savings should be drawn down to provide individuals with a source of income during their retirement.
- 1.34 The objective is not prescriptive about how income is provided to individuals. Some may elect to receive their superannuation as a lump sum from which they can draw income from directly, or choose other financial products which are designed to ultimately provide an income stream during retirement. ‘Deliver income’ can also mean the provision of an income stream via insurance payments, for example when an individual has retired early due to injury or illness.
- 1.35 Superannuation savings belong to the member and the objective is not prescriptive on what must happen with this income, as this is a decision for individuals. It is expected most income will be spent to fund consumption or other costs and services that need to be met during retirement, including leisure, housing, utilities, transport, health and aged care.
- 1.36 The focus on delivering income in the objective makes it clear that superannuation savings are intended to be used in retirement.
- 1.37 In this regard, the objective complements core trustee obligations under superannuation legislation: the best financial interests duty, the sole purpose test and the retirement income covenant.

## **Dignified**

- 1.38 In the context of the objective of superannuation, ‘dignified’ denotes a standard of financial security and wellbeing in retirement which allows the person to participate economically and socially in their community.
- 1.39 ‘Dignified’ does not mean the same level of income in retirement for all Australians and many Australians will rely on a combination of superannuation savings, government support and private savings to achieve a dignified retirement.
- 1.40 As a subjective concept, ‘dignified’ allows individuals to apply their own values and judgements about what a dignified retirement is to them. Accordingly, community expectations of a dignified retirement may change over time which should be reflected in policy-makers’ assessment of this concept.
- 1.41 The inclusion of dignified in the objective indicates there is a certain standard of living in retirement to which the superannuation system should strive to deliver for Australians, alongside Government support.
- 1.42 ‘Dignified’ also reinforces the concept of ‘delivering income’ and clarifies the need for trustees to ensure they know their members’ needs and support members to optimise their standard of living in the retirement phase.

## **Government support**

- 1.43 As Australia’s superannuation system continues to mature over time, more individuals are expected to retire with larger superannuation balances, but many Australians will continue to rely on government support to substitute or complement their superannuation and private savings to achieve a dignified retirement.
- 1.44 Government support is provided by all levels of government and may include the Age Pension, Commonwealth Rent Assistance, and the Home Equity Access Scheme. While many Australians rely on government support to achieve a dignified retirement, it is noted that not every Australian will draw upon government support, particularly as the superannuation system continues to grow and mature.

- 1.45 The inclusion of Government support in the objective reflects the important link between superannuation policy and government support, and provides certainty to all Australians by articulating the existence of a social safety net. Policy-makers need to consider their interaction in making policy decisions relating to the superannuation.

### **Equitable**

- 1.46 The inclusion of the concept of equitable in the objective reflects that superannuation policy can have a distributional impact across Australian society, and policy-makers need to be aware of these impacts when making changes to the superannuation system.
- 1.47 While equity is a subjective concept, in this context it captures the importance of a system that delivers similar outcomes to people in similar situations and targets support in the superannuation system to those most in need. It does not mean that every policy change to superannuation must be aimed at affecting the equity of the system. However, policy-makers should give appropriate consideration to the system-wide impacts on equity of proposed changes.
- 1.48 ‘Equitable’ does not mean that all individuals will receive the same benefit from the system, nor can superannuation address every perceived inequity. Differences in demographic factors and structural inequities can flow through to outcomes in the superannuation system. This includes intergenerational inequity and outcomes for different groups including women, First Nations Australians, vulnerable members and low-income earners.
- 1.49 In this context, it also acknowledges the important role of policy action outside the superannuation system to address underlying factors that can flow through to superannuation outcomes.

### **Sustainable**

- 1.50 ‘Sustainable’ signifies that the superannuation system should be robust to demographic and economic change and cost-effective in achieving its objective.
- 1.51 It is about ensuring superannuation policy meets community needs and expectations, and responds appropriately to external factors that impact retirement incomes. For example, policy-makers will need to consider how superannuation evolves over the long term to reflect the changing needs of Australians due to increasing life expectancies and an ageing population.
- 1.52 Sustainability also reflects the Australian economy’s capacity to support the system and the need for it to be fiscally sustainable for the Commonwealth Government from a budgetary cost from both tax expenditures and government contributions.
- 1.53 Superannuation plays an important role in enabling Australians to save for their retirement, reducing reliance on the Age Pension. Tax concessions have a role in incentivising Australians to save for retirement but come at a significant and growing cost to the revenue required to fund services, so they need to be targeted at where they are needed most. Policy-makers will need to weigh up these types of factors when assessing future superannuation policies against the objective of superannuation.
- 1.54 The inclusion of ‘sustainable’ in the objective does not change how superannuation funds invest, or what they can invest in. Trustees must continue to comply with existing legal obligations when formulating investment strategies, particularly acting in the best financial interests of members.
- 1.55 The inclusion of sustainability acknowledges that the superannuation system can only deliver on its objective in the long term if it is underpinned by a robust framework and is economically and fiscally sustainable.

## Statement of compatibility with the objective of superannuation

- 1.56 A statement of compatibility with the objective of superannuation must be prepared for a Bill or regulation that relates to superannuation (unless an exception applies).  
**[Sections 6 and 7]**
- 1.57 For Bills relating to superannuation, the member of Parliament introducing the Bill into a House of Parliament is responsible for ensuring that a statement of compatibility with the objective of superannuation is prepared. The statement of compatibility with the objective of superannuation must be presented to the House of Parliament by the member of Parliament who introduces the Bill, or another member acting on his or her behalf.  
**[Subsections 6(1) and (2)]**
- 1.58 For regulations relating to superannuation, the rule-maker for that instrument is responsible for ensuring that a statement of compatibility with the objective of superannuation is prepared. The statement of compatibility with the objective of superannuation must be included in the explanatory statement relating to the regulation.  
**[Subsection 7(1) and the note to subsection 7(1)]**
- 1.59 The term **rule-maker** has the same meaning as in the *Legislation Act 2003*. For regulations (made by the Governor-General), the rule-maker is ordinarily the Minister responsible for administering the provision of the enabling legislation under which the regulations are made.  
**[Section 4 (definition of rule-maker)]**
- 1.60 The statement of compatibility with the objective of superannuation must include an assessment by the member of Parliament or rule-maker as to whether the Bill or regulation is compatible with the objective. This is similar to the statement of compatibility with human rights that is currently included in explanatory materials.  
**[Subsections 6(3) and 7(2)]**
- 1.61 The statement of compatibility with the objective of superannuation should include consideration of the proposed policy against the key concepts within the objective and a determination on compatibility with the objective as a whole, based on these assessments. There may be times when there are trade-offs between the key concepts within the objective.
- 1.62 The legislation does not prescribe what information must be included in the statement of compatibility and it may take whichever format and structure is most conducive to the nature, size, and complexity of the Bill or regulation to which it applies. Superannuation policy has a broad remit and the information and analysis in the compatibility statement will need to be flexible enough to reflect this. For example, whilst data or modelling will be appropriate and useful for analysing some superannuation policies, it would not be suitable in all circumstances.
- 1.63 Requiring a statement of compatibility with the objective of superannuation to be included in the explanatory materials will help inform parliamentary scrutiny and debate on future superannuation legislation, by focussing on how that legislation would be consistent with the objective of superannuation. This provides a key mechanism for accountability, in addition to public consultation processes for any amendments to legislation.

### Meaning of ‘relating to superannuation’

- 1.64 Statements of compatibility with the objective of superannuation are only required for Bills or regulations *relating to superannuation*. ‘Relating to superannuation’ is not a defined term so takes its ordinary meaning.
- 1.65 A Bill or regulation will relate to superannuation if it amends a law that is relevant to superannuation, irrespective of whether the relevant law being amended predominantly relates to superannuation (such as the *Superannuation Guarantee (Administration) Act 1992*) or merely contains some provisions that deal with superannuation (such as the *Taxation Administration Regulations 1976* or the *Fair Work Act 2009*). It is the subject matter of the amendment that is relevant as to whether it relates to superannuation, rather than the Act or regulation being amended.

- 1.66 The statement of compatibility need only address those parts of the Bill or regulation that relate to superannuation. For example, if an omnibus Bill implements several measures, one of which relates to superannuation, a statement of compatibility need only be prepared in relation to that measure.  
*[Paragraphs 6(4)(a) and 7(3)(a)]*

### **When is a statement of compatibility not required?**

- 1.67 A statement of compatibility with the objective of superannuation will not be required where the nature of the legislation, regulation, or amendment does not involve a substantial change in policy in the law relating to superannuation.
- 1.68 This includes Bills and regulations that relate to superannuation where:
- the provisions are minor or technical in nature (such as consequential amendments or a repeal of spent legislation);
  - the regulations remake sunseting regulations, where the new regulations do not involve a substantial change in superannuation policy;
  - the amendments deal with the allocation of a superannuation interest between spouses following relationship breakdown; or
  - they deal with superannuation arrangements (schemes and governance) for Australian Government civilian employees, members of parliament and members of the Australian Defence Force and retirement benefits for Federal Judges and Governors-General. These perform a similar role to trust deeds in the broader superannuation industry and do not have industry-wide application nor represent substantive changes in superannuation policy.  
*[Section 4 (definition of excepted matter), subsections 6(4), 7(3) and (4)]*
- 1.69 Regulation-making powers have been inserted to provide for the ability to carve-out specific Acts and/or regulations, or specific provisions within an Act or regulations, from the requirement to prepare a statement of compatibility with the objective of superannuation. This enables an Act and/or regulation to be prescribed, or specific provisions within an Act or regulations to be prescribed, where they do not deal with broader superannuation policy.  
*[Paragraphs 6(4)(d) and 7(3)(d) and (e)]*
- 1.70 The regulation-making power provides a flexible approach to safeguard the regime by ensuring it works appropriately and only requires a statement of compatibility to be prepared for legislation for which an assessment of the impact on superannuation policy would be beneficial, that is to help inform parliamentary scrutiny and debate on legislation which impacts superannuation policy.
- 1.71 Any regulations carving-out specific Acts and/or regulations from the requirement to prepare a statement of compatibility with the objective of superannuation would be subject to parliamentary scrutiny, including disallowance and sunset after no more than 10 years.
- 1.72 If a Bill or regulation relates to superannuation and a statement of compatibility with the objective of superannuation is not required, the explanatory materials should include a sentence to that effect, by referring to the relevant legislative authority which provides the exemption.
- 1.73 Whether a Bill or regulation relates to superannuation and requires a statement of compatibility to be prepared will ultimately be a decision for the relevant member of Parliament or rule-maker.
- 1.74 A statement of compatibility with the objective of superannuation is not required if the Bill or regulation does not deal with matters relating to superannuation.
- 1.75 A statement of compatibility with the objective of superannuation is not required for legislative instruments that are not regulations. This includes legislative instruments made by regulators, for example determinations made by the Commissioner of Taxation regarding the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and superannuation prudential standards made by the Australian Prudential Regulation Authority under section 34C of the *Superannuation Industry (Supervision) Act 1993*.

## Procedural matters

- 1.76 The simplified outline of the Objective Bill states that a statement of compatibility with the objective of superannuation is required for all Bills or regulations relating to superannuation (unless an exemption applies). This reflects that a statement of compatibility is not required under some circumstances. The statement of compatibility must include an assessment of whether the Bill is, or the regulations are, compatible with the objective of superannuation.  
**[Section 3]**
- 1.77 Simplified outlines are non-operative provisions that are used to assist readers understand the legislation. They are not intended to be comprehensive and the substantive provisions of the Bill must be relied upon.
- 1.78 The statement of compatibility will not be binding on any court or tribunal. This is not intended to exclude the operation of section 15AB of the *Acts Interpretation Act 2001*, which deals with the use of extrinsic materials in the interpretation of an Act or legislative instrument. A statement of compatibility could be used by a court or tribunal to ascertain the meaning of provisions in the Act or regulation to which the statement relates, where the meaning of those provisions is unclear or ambiguous.  
**[Subsection 8(4)]**
- 1.79 Lack of a statement of compatibility with the objective of superannuation will not affect the validity, operation, or enforcement of any Bill, regulation or any other law of the Commonwealth.  
**[Subsections 8(2) and (3)]**
- 1.80 The Objective Bill does not create any rights or duties that are enforceable in judicial or other proceedings. This reinforces that enshrining the objective in legislation is intended to serve as a true north for policy-makers, government, regulators, industry, and the wider community, on the purpose of superannuation and its role within the broader retirement income system. It is not intended to create any rights or obligations for participants in the superannuation industry (for example, it is not to be considered in assessing the conduct or liability of a trustee of a superannuation fund).  
**[Subsection 8(1)]**
- 1.81 The Governor-General may make regulations prescribing matters required or permitted by the Objective Bill to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Objective Bill.  
**[Section 9]**

## Consequential amendments

- 1.82 The Consequential and Transitional Provisions Bill makes a consequential amendment to the *Legislation Act 2003*. Subsection 15J(2) of the *Legislation Act 2003* outlines the requirements for explanatory statements which must accompany legislative instruments, including regulations. The Consequential and Transitional Provisions Bill amends these requirements so that, for regulations that relate to superannuation, the explanatory statement must include a statement of compatibility with the objective of superannuation (unless the regulation is exempt from the requirement).  
**[Schedule 1 of the Consequential and Transitional Provisions Bill, item 1, paragraph 15J(2)(fa) of the Legislation Act 2003]**

## Commencement, application, and transitional provisions

- 1.83 The Objective Bill commences 28 days after Royal Assent.  
**[Section 2 of the Objective Bill]**
- 1.84 The Consequential and Transitional Provisions Bill commences at the same time as the Objective Bill. However, if the Objective Bill does not commence, neither does the Consequential and

Transitional Provisions Bill.

***[Section 2 of the Consequential and Transitional Provisions Bill]***

- 1.85 For Bills relating to superannuation, the requirement for a statement of compatibility with the objective of superannuation applies to Bills introduced into the Parliament on or after the commencement of the Objective Bill.

***[Schedule 2 of the Consequential and Transitional Provisions Bill, item 1]***

- 1.86 For regulations relating to superannuation, the requirement for a statement of compatibility with the objective of superannuation applies to Regulations made on or after the commencement of the Objective Bill.

***[Schedule 2 of the Consequential and Transitional Provisions Bill, item 2]***