



22 December 2016

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT

By email: economics.sen@aph.gov.au

Dear Sir/Madam

Submission on Superannuation (Objective) Bill 2016

This submission has been prepared by the Australian Superannuation Committee of the Law Council's Legal Practice Section (**the Committee**).¹ The Committee's objectives are to ensure that the law relating to superannuation in Australia is sound, equitable and clear. The Committee makes submissions and provides comments on the legal aspects of virtually all proposed legislation, circulars, policy papers and other regulatory instruments which affect superannuation funds.

The Committee is pleased to have the opportunity to provide feedback on the Superannuation (Objective) Bill 2016 (**the Bill**). The Bill contains the 'primary objective of the superannuation system' being to provide income in retirement to substitute or supplement the age pension. In addition the Bill provides for subsidiary objectives to be made by regulation. When enacted, the Act will require any bill or draft regulation relating to superannuation to include a statement of compatibility with the primary objective and the subsidiary objectives.

Many of the matters we raised in relation to the draft Bill have been incorporated into the Bill and we have only a few comments in relation to the Bill. They are:

- The primary objective does not refer to providing disablement benefits for sick or injured members or death benefits to the dependants of deceased members despite these being among the core purposes for which a superannuation fund may be maintained under section 62 of the *Superannuation Industry (Supervision) Act 1993* (Cth). The primary objective also seems to exclude, or at least diminish, the role of lump sum retirement benefits. It is widely accepted that lump sum retirement benefits are appropriate in many circumstances, especially in the case of small account balances.

¹ The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

- Each of these matters could be addressed in the subsidiary objectives, although subsidiary objectives that are in the Explanatory Memorandum to the Bill do not refer to death benefits, disablement benefits or lump sum benefits.
- The subsidiary objectives also raise a practical issue. Regulations that relate to superannuation must be accompanied by an Explanatory Statement that includes a statement of compatibility with the primary objective and subsidiary objectives. This means that the Explanatory Statement to the Regulations setting out the subsidiary objectives should contain a statement of compatibility with the primary objective. At that time there will not be any subsidiary objectives. While the Committee thinks that this is broadly appropriate, we note that the subsidiary objectives that are proposed in the Explanatory Memorandum are not necessarily compatible with the primary objective. For example, smoothing consumption over the course of a person's lifetime is not obviously compatible with the provision of income in retirement to substitute or supplement the age pension. Further, if the subsidiary objectives include providing death benefits and disability benefits, among other things, these might also be incompatible with the primary objective.

There is no consequence proposed for a Bill or Regulation that does not contain a statement of compatibility or for a Bill or Regulation that is not in fact compatible with the primary or subsidiary objectives. The Committee queries whether it would be appropriate to require further consideration of a Bill or Regulation in either of these circumstances, for example it may be appropriate to refer it to a Parliamentary Committee for consideration.

The Committee would welcome the opportunity to discuss its submission further and to provide additional information in respect of the comments made above. In the first instance, please contact:

- [REDACTED]
- [REDACTED]

Yours sincerely

Jonathan Smithers
Chief Executive Officer