

The Senate

Economics
Legislation Committee

Superannuation (Objective) Bill 2016
[Provisions]

February 2017

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Chapter 1

Introduction and overview of the bill

1.1 On 10 November 2016, the Senate referred the provisions of the Superannuation (Objective) Bill 2016 (the bill) to the Senate Economics Legislation Committee for inquiry and report by 14 February 2017.

1.2 The bill forms part of the government's superannuation reform package announced in the 2016–17 Budget on 3 May 2016. The Senate also referred two other related bills to the committee for separate inquiry and report, the Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 and the Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016. The report on these bills was tabled in the Senate on 23 November 2016.¹

1.3 The purpose of the Superannuation (Objective) Bill 2016 is to 'legislate the primary objective and subsidiary objectives of the superannuation system'.² The Explanatory Memorandum (EM) states that the bill will provide a legislative framework to guide the development of future superannuation policy by protecting the primary objective of the superannuation system in legislation and the subsidiary objectives of the superannuation system in regulation.³

1.4 The EM explains the rationale behind legislating the objective of the superannuation system:

Together with the age pension and private savings, savings from compulsory and voluntary contributions to superannuation are important elements of the three-pillars that underpin Australia's retirement income system. Superannuation is the second largest savings vehicle of the Australian financial sector.

Given its importance, it is essential that future superannuation policy is guided by clear objectives. To achieve this, the Government will legislate the objective of the superannuation system in the Objective Bill. Subsidiary objectives will be prescribed by regulation.

All future changes to superannuation policy will be assessed for compatibility with the primary objective and subsidiary objectives of the superannuation system.⁴

1 Senate Economics Legislation Committee, *Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016 [Provisions] Superannuation (Excess Transfers Balance Tax) Imposition Bill 2016 [Provisions]*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SuperReformbillsx2 (accessed 16 December 2016).

2 *Explanatory Memorandum*, p. 21.

3 *Explanatory Memorandum*, p. 11.

4 *Explanatory Memorandum*, p. 22.

1.5 In his second reading speech, the Treasurer, the Hon Scott Morrison MP, explained that the Superannuation (Objective) Bill 2016 'enshrines in law that the objective of the superannuation system is to provide income in retirement to substitute or supplement the age pension'.⁵ Further, the Treasurer stated that the package of superannuation tax reforms 'implements the government's election commitment to improve the fairness, sustainability, flexibility and integrity of [the] superannuation system'.⁶

Conduct of the inquiry

1.6 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions by 31 December 2016. The committee received 43 submissions, which are listed at Appendix 1.

1.7 The committee held a public hearing on 6 February 2017 in Canberra. The names of the witnesses who appeared at the hearing are listed at Appendix 2.

Background and consultation

1.8 The November 2014, Financial System Inquiry (FSI) report, led by Mr David Murray AO, noted that the Australian population is ageing and this phenomenon is placing increased fiscal pressure on government in terms of the provision of the age pension. The report emphasised that 'a well-functioning superannuation system will be important in alleviating these pressures and ensuring good outcomes for retirees'.⁷

1.9 However, the FSI report noted that currently:

The superannuation system does not have a consistent set of policies that work towards common objectives...

The absence of agreed objectives contributes to short-term ad hoc policy making. It adds complexity, imposes unnecessary costs on superannuation funds and their members, and undermines long-term confidence in the system.⁸

1.10 The stated rationale for setting objectives included:

Clearly defining the objectives of the superannuation system is a prerequisite to achieving the objectives efficiently. Consistent policy settings across the accumulation and retirement phases would meet the

5 The Hon Scott Morrison (Treasurer), *Second Reading Speech*, Superannuation (Objective) Bill 2016, House of Representatives Hansard, 9 November 2016, p. 76.

6 The Hon Scott Morrison (Treasurer), *Second Reading Speech*, Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016, House of Representatives Hansard, 9 November 2016, p. 78.

7 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 2.

8 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 96.

retirement income needs of Australians more efficiently and effectively. It would also assist Government in implementing policy settings that are well targeted and sustainable over the long term...

Objectives that guide policy making and frame community and industry debate would help build confidence in the system by providing a framework for considered and cohesive change.⁹

1.11 Accordingly, the report recommended enshrining an objective for the superannuation system in legislation. The recommended action in this area was to:

Set clear objectives for the superannuation system. A clear statement of the system's objectives is necessary to target policy settings better and make them more stable. Clearly articulated objectives that have broad community support would help to align policy settings, industry initiatives and community expectations.¹⁰ [emphasis in original]

1.12 Specifically, the FSI report recommended that the government should seek broad political agreement on the primary objective of the superannuation system:

To provide income in retirement to substitute or supplement the Age Pension.¹¹

1.13 In addition to the primary objective, the report stated that the government should seek broad agreement on the subsidiary objectives of the superannuation system, as set out in table 1.

1.14 According to the report, the adoption of a single primary objective:

...prioritises the provision of retirement incomes and precludes the pursuit of other objectives at the expense of retirement incomes. It will help reorient the community mindset around superannuation, away from account balances and towards the provision of retirement incomes.¹²

1.15 In addition to enshrining the objectives in legislation, more government reporting was recommended:

Increased transparency around the objectives of policy proposals would help frame parliamentary and public debate. This could be done in regulatory impact statements at little cost. In addition, Government could periodically assess the extent to which the superannuation system is meeting its objectives.¹³

9 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 97.

10 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 90.

11 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 95.

12 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 98.

13 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 99.

1.16 The Government's response to the FSI report indicated that, by the end of 2016, it would:

Develop and introduce legislation to enshrine the objective of the superannuation system.¹⁴

Table 1: Subsidiary objectives of the superannuation system¹⁵

| Subsidiary objective | Why the objective is important |
|--|--|
| Facilitate consumption smoothing over the course of an individual's life | Superannuation is a vehicle for individuals to fund consumption in retirement largely from working life income. The system should facilitate consumption smoothing while providing choice and flexibility to meet individual needs and preferences. |
| Help people manage financial risks in retirement | Risk management is important as retirees generally have limited opportunities to replenish losses. The retirement income system should help individuals manage longevity risk, investment risk and inflation risk. Products with risk pooling would help people to manage longevity risk efficiently. |
| Be fully funded from savings | A fully funded system, as opposed to an unfunded system, is important for sustainability and stability. The system is designed to be predominantly funded by savings from working life income and investment earnings, where superannuation fund members in general have claims on all assets in the fund. |
| Be invested in the best interests of superannuation fund members | Superannuation funds are managed for the sole benefit of members, which means the investment focus should be on maximising risk-adjusted returns, net of fees and taxes, over the lifetime of a member. This results in auxiliary benefits to the economy by creating a pool of savings to fund long-term investment. |
| Alleviate fiscal pressures on Government from the retirement income system | Government's total contribution to the retirement income system, through both the Age Pension and superannuation tax concessions, needs to be sustainable and targeted. Higher private provisioning for retirement should reduce the burden on public finances. |
| Be simple and efficient, and provide safeguards | The system should achieve its objectives at the minimum cost to individuals and taxpayers. Complexity is less appropriate for a compulsory system, as it tends to add to costs and to favour sophisticated and well-informed investors. Given the compulsory nature of SG contributions, the system needs prudential oversight and should provide good outcomes in both the accumulation and retirement phases for disengaged fund members |

14 Australian Government, *Improving Australia's financial system: Government response to the Financial System Inquiry*, 2015, p. 6.

15 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 95.

1.17 Subsequently, the Government announced the Superannuation Reform Package in the 2016–17 Budget. This package included legislating an objective for the superannuation system.¹⁶

1.18 While adopting the FSI's primary objective in the bill, the EM notes that the Government intends that the subsidiary objectives will be prescribed by regulation. The EM states that the subsidiary objectives of the superannuation system are to:

- facilitate consumption smoothing¹⁷ over the course of an individual's life;
- manage risks in retirement;
- be invested in the best interests of superannuation fund members;
- alleviate fiscal pressures on Government from the retirement income system; and
- be simple, efficient and provide safeguards.¹⁸

1.19 The bill also requires that a statement of compatibility with the primary and subsidiary objectives of the superannuation system must be prepared for a bill or regulation that relates to superannuation. However, if a statement is not prepared for a bill or regulation relating to superannuation, this will not affect its validity, operation or enforcement of the Act or regulation or any other law of the Commonwealth.¹⁹

Consultation

1.20 Between 7 September and 23 October 2016, Treasury conducted a three-tranche consultation process in relation to the draft legislation that constitutes the superannuation reform package. Treasury received 156 submissions (60, 69 and 27 for tranches 1, 2, and 3 respectively). Three consultation roundtables were also held during this period in Melbourne (5 October 2016), Sydney (6 October 2016) and Canberra (18 October 2016).²⁰

1.21 A number of stakeholders raised concerns about the short timeframe provided for consideration of the draft legislation. These concerns related to tax measures, rather than legislating the purpose of superannuation. Treasury has also noted that:

16 Australian Government, *Budget 2016-17: Making our tax system more sustainable so we can cover the Government's responsibilities for the next generation*, 2016, p. 3.

17 Consumption smoothing is a term used to describe the ways in which people try to optimize their lifetime standard of living by ensuring a proper balance of spending and saving during the different phases of their life. Those who overspend and put off saving for retirement to enjoy a higher standard of living often have to work longer or reduce their standard of living in retirement. Those who over save will live a more frugal lifestyle while working to enjoy a better lifestyle while retired. In each case, the overall standard of living is less than optimal.

18 *Explanatory Memorandum*, p. 27.

19 *Explanatory Memorandum*, pp. 28 and 30.

20 *Treasury Consultation Summary*, 11 November 2016, [p. 1].

Early passage of the legislation will provide individuals and industry with certainty and the maximum amount of time to implement the changes ahead of 1 July 2017.²¹

1.22 Legislation to implement other elements of the superannuation reform package passed Parliament on 23 November 2016.²² Additionally, the Government acknowledged the importance of splitting the measures to enable further consultation.

Financial impact

1.23 While the measure set out in the bill does not have a financial impact, the Superannuation Reform Package as a whole is estimated to increase the underlying cash balance by \$2 793.6 million over the forward estimates.²³

Statement of compatibility with human rights

1.24 The bill does not raise any human rights issues.²⁴

21 *Treasury Consultation Summary*, 11 November 2016, [p. 12].

22 *Budget 2016: Superannuation Fact Sheet 01*, 29 November 2016, p. 1.

23 *Explanatory Memorandum*, p. 9.

24 *Explanatory Memorandum*, p. 34.

Chapter 2

Views on the bill

2.1 This chapter summarises the views held by stakeholders on the provisions of the bill. General support for an objective for the superannuation system is evaluated initially before consideration is given to specific views on the primary objective as drafted. Support and concerns relating to the subsidiary objectives are then explored as are other considerations raised by stakeholders.

General support for an objective for the superannuation system

2.2 The notion of defining an objective for the superannuation system in legislation received universal in-principle support from stakeholders.

We [ACOSS] support the idea of a 'purpose for superannuation' to guide the Parliament and the Government as it develops legislation in this important area. More consensus over the purpose of superannuation would also help inform public discussion on the adequacy of retirement incomes and the role of compulsory saving and tax concessions to ensure this.¹

Seeking to enshrine the objective of superannuation in law as a means to evaluate the merits of competing proposals affecting our retirement income system is sound...²

Women in Super supports the articulation of a Primary Objective of Superannuation within legislation and the requirement that legislative and regulatory proposals are tested against the objective.³

2.3 Mercer endorsed the policy decision to enshrine the objective of superannuation, noting that 'defining clear objectives is important in both the short and longer-term if the overall system is going to provide an adequate and secure retirement income for all Australians'.⁴

2.4 CHOICE also supported the creation of a superannuation objective, stating that a 'clear objective has the potential to better align policy settings, industry initiatives and community expectations'.⁵ CHOICE further pointed out that constant changes to superannuation have the effect of undermining trust in the system, highlighting that:

1 Australian Council of Social Service, *Submission 35*, p. 1.

2 Industry Super Australia, *Submission 13*, p. 1.

3 Women in Super, *Submission 41*, [p. 2]

4 Mercer, *Submission 20*, p. 1.

5 CHOICE, *Submission 24*, [p. 1].

Setting a clear objective in legislation will require future decision makers to articulate how a policy meets that purpose has the potential to allay this uncertainty when future reform is inevitably introduced.⁶

2.5 The support for a formal legislated objective was underlined by stakeholders expressing that the absence of such an objective had facilitated some undesirable outcomes. For example, Anglicare Australia noted:

The lack of a formal objective has allowed superannuation to be used as vehicle for various objectives, including tax avoidance, wealth accumulated and estate planning.⁷

2.6 The Grattan Institute succinctly outlined what it saw to be the problem that the objective seeks to address:

Despite managing more than \$2 trillion in assets, the system has never had legislated aims. Without moorings, the system has provided excessively generous tax breaks that cost the budget \$25 billion each year in lost revenue, while doing relatively little to support the retirement incomes of those in need... Ad hoc changes, without clear aims have delivered a tangle of rules, limits and exceptions.⁸

2.7 The Association of Superannuation Funds of Australia (ASFA) believed that formalising the objective of superannuation may guard against 'constant political tinkering':

If policy makers act consistently with an appropriate objective for superannuation many more Australians will have an adequate income that meets their needs, both expected and unexpected, throughout retirement.⁹

2.8 Similarly, BT Financial Group emphasised the importance of stability and certainty in superannuation policy:

...we believe a clear objective of the system will ensure superannuation policy settings are stabilised and subject to fewer changes, irrespective of the government of the day. Greater stability will in turn improve long-term confidence in, and the growth of, the superannuation system for the benefit of all Australians.¹⁰

2.9 Stakeholders were also supportive of enshrining the objective in a stand-alone Act, rather than incorporating it as a provision in an existing Act relating to superannuation.¹¹ The Australian Chamber of Commerce and Industry considered that

6 CHOICE, *Submission 24*, [p. 1].

7 Anglicare Australia, *Submission 17*, p. 1.S

8 Grattan Institute, *Submission 34*, p. 1.

9 Association of Superannuation Funds of Australia, *Submission 29*, p. 2.

10 BT Financial Group, *Submission 14*, [p. 1].

11 See, for example, Australian Chamber of Commerce and Industry, *Submission 33*; Chartered Accountants Australia and New Zealand, *Submission 19*;

having separate legislation will help to maintain the distinction between the objective itself and the policy decisions that contribute to the system achieving the objective.¹²

2.10 Importantly, the Financial Services Council noted that stand-alone legislation provides a reference point for all future changes to superannuation, tax or social security policy.¹³

Views on the primary objective as drafted

General comments

2.11 While support was strong for the principle of defining an objective for the superannuation system, a number of stakeholders expressed concern about the wording of the primary objective proposed in the bill. For example, the Association of Independent Retirees contended that:

It is meaningless to have an objective for Australia's superannuation system that is not qualified and does not even include a very general measured performance goal.¹⁴

2.12 Indeed, a number of submissions considered the primary objective to be 'inadequate and lacking in ambition'.¹⁵ Notwithstanding, stakeholder views on an alternative objective are not aligned, and there is no consensus on what it should be, or on what meaning should be attached to words of a subjective nature— for example, adequacy and dignity.

2.13 Mercer believed that the proposed definition was 'too vague' and that more clarity was required around when income from superannuation should move from supplementing the Age Pension to becoming a substitute.¹⁶

2.14 Some stakeholders considered that the primary objective should include all three pillars of income in retirement—superannuation, voluntary savings and the Age Pension.¹⁷

To effectively enshrine the purpose of superannuation, the proposed reforms should delineate the intended interaction between the other pillars of the retirement income system – the age pension and voluntary private savings.¹⁸

2.15 The Grattan Institute agreed that, while it may also be desirable to set an objective for the retirement income system as a whole, the focus of this bill was on the

12 Australian Chamber of Commerce and Industry, *Submission 33*, pp. 6-7.

13 Financial Services Council, *Submission 28*, [p. 1].

14 Association of Independent Retirees, *Submission 15*, p. 2.

15 See, for example, SMSF Owners' Alliance, *Submission 7*, p. 1; Association of Independent Retirees, *Submission 15*.

16 Mercer, *Submission 20*, pp. 1-2.

17 See, for example, The Tax Institute, *Submission 10*; Dixon Advisory, *Submission 11*.

18 Dixon Advisory, *Submission 11*, p. 2.

superannuation system. As such, they considered the primary objective of the superannuation system as drafted was appropriate given that superannuation essentially contributes to retirement incomes by supplementing or substituting for the Age Pension:

By saying it should substitute or supplement for the age pension, it is firstly implying, 'Don't go too far.' The second thing it is implying is essentially a limit to the superannuation tax concessions. It is saying that, at a point that you are no longer even substituting for the age pension—in other words, your income in retirement is likely to be so high that you will not qualify for even a part pension—the superannuation system should stop providing support or at least should stop providing more support than it provides to everybody else.¹⁹

2.16 Stakeholders also questioned whether the bill, as currently drafted, would be able to meet the goal of assisting policy makers. Industry Super Australia provided a number of recent examples of where the primary objective as drafted would have contributed to the consideration of superannuation policy reforms:

For example, there has been considerable debate about whether or not the rate of compulsory superannuation should be increased to 12 per cent and, if so, by when. Not increasing the SG [superannuation guarantee] rate, or increasing it over a shorter or longer time periods, are all consistent with the Government's preferred objective: to provide income in retirement to substitute or supplement the Age Pension.²⁰

2.17 By contrast, a small number of submissions supported the primary objective in the bill.²¹ The Grattan Institute supported the proposed wording in that it was appropriate to promote retirement savings so that people can enjoy a higher standard of living in retirement, while reducing future Age Pension liabilities, subject to the budgetary costs of doing so.²²

2.18 CPA Australia also agreed with the recommended primary objective as drafted and further noted their support for the inclusion of a compatibility statement in any future superannuation legislation.²³

2.19 The committee notes that Ms Patricia Pascuzzo, Executive Director of the Committee for Sustainable Incomes, has previously said that:

...the government is right to resist locking itself into mandating higher contributions by including reference to the comfortable retirement income standard in the objective for super. Instead, an appropriate benchmark for

19 *Proof Committee Hansard*, 6 February 2017, p. 7.

20 Industry Super Australia, *Submission 13*, p. 3.

21 See, for example, COTA, *Submission 42*, p. 8.

22 Grattan Institute, *Submission 34*, p. 3.

23 CPA Australia, *Submission 32*, p. 1.

adequacy should be determined after consultation with industry, community and consumer groups before being prescribed in regulation.²⁴

2.20 Further, Ms Pascuzzo also said that:

...an objective for super is not the place for audacious goals that lock governments into putting retirement income provision ahead of other important policy goals.²⁵

Adequacy

2.21 While the proposed primary objective seeks to provide income in retirement, it does not specify what level of income is desirable. Stakeholders held mixed views as to whether it was necessary to include the concept of adequacy in some form.

2.22 BT Financial Group considered that a reference to adequacy was essential:

It is therefore critical that the primary objective of superannuation be expanded to include a reference to 'adequacy' and providing a dignified retirement to as many Australians as possible, to ensure that future reforms of the system do not unreasonably impact on the ability of future generations to achieve a comfortable lifestyle in retirement.²⁶

2.23 Similarly, the ACTU supported an approach to define an appropriate level of adequacy, and the development and adoption of adequacy targets.²⁷

2.24 Mercer considered that the objective of the overall retirement income system should include a desired level of income in order to provide meaningful guidance to policymakers.²⁸

2.25 Indeed, the Institute of Public Affairs contended that:

It is of the gravest concern that maximising personal income in retirement is not deemed to be the primary, or even a subsidiary, objective of the system.²⁹

2.26 Like many submitters, Drew, Walk and Co emphasised that retirement adequacy is more important than just wealth at retirement:

We have argued for some time that there has been too much emphasis on measure of retirement adequacy that are based on terminal wealth (the

24 *Australian Financial Review*, 22 November 2016, <http://www.afr.com/opinion/columnists/comfortable-superannuation-target-threatens-adequate-retirement-outcomes-20161122-gsumj4> (accessed 10 February 2017).

25 *Australian Financial Review*, 22 November 2016, <http://www.afr.com/opinion/columnists/comfortable-superannuation-target-threatens-adequate-retirement-outcomes-20161122-gsumj4> (accessed 10 February 2017).

26 BT Financial Group, *Submission 14*, [p. 2].

27 Australian Council of Trade Unions, *Submission 12*, p. 3.

28 Mercer, *Submission 20*, p. 4.

29 Institute of Public Affairs, *Submission 21*, p. 8.

metaphorical 'pot-of-gold' at retirement) and not about the sustainability (or otherwise) of retirement income.³⁰

2.27 In an interview discussing the superannuation objective recommendation, Mr David Murry, Chair of the Financial System Inquiry, is reported to have stated that:

The legislated objective of the \$2 trillion superannuation system should not include references to achieving 'comfort' or 'adequacy' because it would open the way to constant political interference...

The objective can't contain a specific promise...

A debate about adequacy becomes a debate about social equity.³¹

2.28 However, COTA did not support the use of subjective terms, such as adequacy, in setting the objective of superannuation because ultimately government would be involved in defining these terms. Responding to a question about benchmarking adequacy to the Association of Superannuation Funds Australia's (ASFA's) 'comfortable standard', Mr Ian Yates, Chief Executive COTA, said:

'Adequacy' in terms of what government will support has to be defined by the government in its measures. I just do not see government of either side deciding that they will put that in the hands of some other body.³²

2.29 The Grattan Institute also contended that the concept of 'adequacy' should not be included in the primary objective because superannuation is only one part of the retirement income system. Any proposed objective for superannuation (not the retirement income system more broadly) should be focused on targeting concessional taxation for superannuation to provide the most value for government, while maintaining safety nets through the Age Pension and Rent Assistance.³³

2.30 It is clear from submissions and witnesses at the public hearing that terms like 'adequacy' mean different things to different people, and that no broad consensus exists among stakeholders.

Financial security for dependants

2.31 Some stakeholders highlighted the important role that life insurance plays in helping families recover from unforeseeable events and offers valuable support for dependents in the event of death or total and permanent disablement of the primary breadwinner.³⁴ For example, Mr Phillip Sweeney argued that the financial security

30 Drew, Walk & Co., *Submission 3*, [p. 1].

31 Joanna Mather, *Australian Financial Review*, 'Super change invites political interference', 12 October 2016, <http://www.afr.com/news/politics/david-murrays-super-objective-plea-20161012-gs0gt8> (accessed 10 February 2017).

32 *Proof Committee Hansard*, 6 February 2017, p. 11

33 Grattan Institute, *Submission 34*, p. 1.

34 See, for example, Dixon Advisory, *Submission 11*; Law Council of Australia, *Submission 23*.

offered by superannuation should extend beyond the individual member to include their family in the event of unforeseen serious life events.³⁵

2.32 Similarly, the Corporate Superannuation Association highlighted the important role that insurance plays in protecting Australians and their dependants from the consequences of early death and disablement.³⁶ At the public hearing, The Tax Institute and the Financial Planning Association both agreed that the superannuation system is an appropriate place to hold these types of insurances.³⁷

2.33 To ensure that insurance through superannuation continues to offer a safeguard for unexpected events for individuals and their families, some stakeholders considered that this concept should be explicitly referred to in the primary or subsidiary objectives.

2.34 That said, the Australian Institute of Superannuation Trustees (AIST) noted that insurance coverage constitutes part of the sole purpose test through section 62 of the *Superannuation Industry (Supervision) Act 1993*. While this is consistent with the proposed subsidiary objective to 'be invested in the best interests of superannuation fund members', AIST considers that more can be done to explicitly align the objective of superannuation with the sole purpose test.³⁸

Reference to 'Age Pension'

2.35 A number of stakeholders took exception to the inclusion of the Age Pension in the proposed primary objective:

...the adoption of a primary objective centred on the Age Pension is not long term thinking, it is a narrow objective aimed at avoiding controversy rather than assisting with nation building.³⁹

...linking the primary objective solely to the Age Pension is undesirable because it allows for future policy development that could significantly diminish the Australian superannuation system;⁴⁰

2.36 That said, the National Foundation for Australian Women (NFAW) took an alternative view to many submitters and supported having a reference to the Age Pension in the primary objective:

Women are more likely than men to be reliant on the Age Pension as their main source of income in retirement; and they are less likely to have retirement savings in superannuation or other investments...Accordingly,

35 Mr Phillip Sweeney, *Submission 9*, p. 2.

36 Corporate Superannuation Association, *Submission 16*, p. 3.

37 *Proof Committee Hansard*, 6 February 2017, p. 47.

38 Australian Institute of Superannuation Trustees, *Submission 31*, pp. 8-9.

39 Self-Managed Independent Superannuation Funds (SISFA), *Submission 30*, p. 1.

40 The Tax Institute, *Submission 10*, p. 1.

the role of the Age Pension in the retirement income system should be entrenched in the objectives.⁴¹

2.37 Anglicare Australia highlighted that the recent Senate Economics References Committee inquiry on women's economic security in retirement recommended that the legislated objective of superannuation should 'acknowledge its interdependency with other pillars, including the Age Pension'.⁴²

Use of the word 'substitute'

2.38 The CPA raised concerns that the primary objective could be interpreted narrowly by future governments and used to justify winding back access to the Age Pension:

The concern hinges on a literal interpretation of the word 'substitute'...Were future policies to be developed within this narrow framework, Australians may be disincentivised to save for their own retirement, in that there may be less incentive to save beyond replacing the age pension.⁴³

2.39 The NFAW considered that the proposed form of words reduces the policy commitment to maintain the Age Pension at a level that will address poverty among the aged. The NFAW notes that, for various reasons, very few people can be expected to be self-sufficient in retirement and that many retirees will need the Age Pension to supplement superannuation income.⁴⁴

2.40 That said, COTA was of a contrary opinion that the proposed objective enshrines the Age Pension as a cornerstone of retirement income policy:

We think that what the objective does do is cement, as was the original intention, that the aged pension remains—and will continue to remain for significant proportions of Australians—as the core building block of their retirement incomes. And then it adds to that, and it does so or needs to do so in a way that is fair and sustainable.⁴⁵

Views on the subsidiary objectives

2.41 Views on the subsidiary objectives were broad ranging and, in many respects, diametrically opposed.

2.42 The Financial Services Council (FSC) did not believe the subsidiary objectives would be useful:

The FSC is of the view that a clear statement should not require the support of subsidiary objectives. Subsidiary objectives are likely to be subjective

41 National Foundation for Australian Women, *Submission 8*, [p. 2].

42 Anglicare Australia, *Submission 17*, p. 2

43 CPA Australia, *Submission 32*, p. 1.

44 National Foundation for Australian Women, *Submission 8*, p. 3.

45 *Proof Committee Hansard*, 6 February 2017, p. 9.

and open to interpretation, and this is inconsistent with the purpose of a clear overarching objective.⁴⁶

2.43 By contrast, a number of stakeholders considered the subsidiary objectives to be useful but, in order to be effective, they should be included in the legislation rather than sitting outside as regulations:

We strongly **recommend**...that the subsidiary objectives are included in this Bill rather than being just a general reference in the accompanying Explanatory Memorandum.⁴⁷

We agree it is preferable to express the objectives of the superannuation system in legislation...⁴⁸

2.44 SMSF Owners' Alliance further noted that legislating the subsidiary objectives would ensure the integrity of the objectives, protecting them from any potential changes by future governments.⁴⁹

2.45 The Law Council of Australia voiced concerns that the subsidiary objectives 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...these might be incompatible with the primary objective.⁵⁰

2.46 Similarly, Save Our Super notes that the bill offers 'no guide on how to resolve conflicts or trade-offs between objectives':

Conflicts are apparently to be subject to unspecified, case-by-case 'balancing'. This destroys any coherent guidance for policy.⁵¹

2.47 As mentioned previously, some submissions noted the role superannuation insurance plays in providing financial security and safeguards. As a result, it was proposed that this should be an explicit feature of the subsidiary objectives. For example, Mercer proposed that the provision of insurance be included in the subsidiary objectives as a way to efficiently provide valuable protection and help reduce Australia's chronic underinsurance problem.⁵²

2.48 The Institute of Public Affairs (IPA) noted that although the proposed subsidiary objectives are near identical to those proposed in the Final Report of the FSI, the Objective Bill lists only 5 subsidiary objectives, not 6, leaving out the

46 *Proof Committee Hansard*, 6 February 2017, p. 14.

47 Association of Independent Retirees, *Submission 15*, p. 3.

48 Mercer, *Submission 20*, p. 8.

49 SMSF Owners' Alliance, *Submission 7*, p. 2.

50 Law Council of Australia, *Submission 23*, p. 2.

51 Save Our Super, *Submission 39*, pp. 4 and 9.

52 Mercer, *Submission 20*, p. 8.

objective that the system be 'fully funded from savings'. IPA further notes that in the Final Report of the FSI, it is written that a 'fully funded system...is important for sustainability and stability'.⁵³

Other considerations raised by stakeholders

Statements of compatibility

2.49 Many stakeholders were critical of the proposal to require statements of compatibility and that there were no penalties associated with non-compliance.⁵⁴ For example, the SMSF Owners' Alliance contended that:

Requiring legislation to be justified by Ministers in terms of the primary and subsidiary objectives is a good and necessary approach; however, the primary objective is defined so broadly that virtually any legislation changing the terms of superannuation can be justified.⁵⁵

2.50 Similarly, the Financial Planning Association considered that the proposed provisions 'set too low a bar', particularly given that there is no requirement for any future legislated policy change to be compatible with the objective.⁵⁶

2.51 Women in Super highlighted the deficiencies in the production of statements of compatibility:

It should also be noted that failure to produce a statement of compatibility would not prevent legislation or regulations being passed and would in no way impact the validity of such legislation.⁵⁷

2.52 The Financial Planning Association advocated for enhanced compatibility requirements:

What we would rather is that there be some added discipline—for example, that reasons are given as to why a particular policy or why particular legislation has been put forward and how the legislation aligns with the objective.⁵⁸

2.53 However, the Financial Services Council supported the statement of compatibility concept as proposed:

It is appropriate that the Bill does not prescribe what information is necessary for a statement of compatibility, but leave this for the Minister to determine. This places the onus on external stakeholders to assess the

53 The Institute of Public Affairs, *Submission 21*, p. 8.

54 See, for example, Australian Institute of Superannuation Trustees, *Submission 31*; Law Council of Australia, *Submission 23*;

55 SMSF Owners' Alliance, *Submission 7*, p. 2.

56 Financial Planning Association of Australia, *Submission 25*, p. 4.

57 Women in Super, *Submission 41*, [p. 9].

58 *Proof Committee Hansard*, 6 February 2017, p. 41.

robustness of a statement of compatibility and publicly hold the Government to account for unpersuasive statements.⁵⁹

Independent monitoring and review

2.54 Submitters also sought reassurance that any objective for the superannuation system would be subject to monitoring and review:

ASFA agrees that periodically assessing how the system is tracking will provide regular benchmarks to measure performance against, facilitating informed policy decision making... such an approach will provide a higher degree of stability, integrity and accountability in relation to superannuation policy.⁶⁰

2.55 Chartered Accountants Australia and New Zealand believes that the Government should review, and publish the findings, every five years on how well the super system is tracking on meeting the agreed objectives.⁶¹

2.56 To this end, the Financial Planning Association proposed that a body like the Productivity Commission would be well placed to look at how the objectives are flowing through into economic reality.⁶²

2.57 Indeed, the final report of the Financial System Inquiry highlighted the importance of monitoring compliance of superannuation reforms with the objective:

Increased transparency around the objectives of policy proposals would help frame parliamentary and public debate...Government could periodically assess the extent to which the superannuation system is meeting its objectives. This could be done in a stand-alone report or as part of the Intergenerational Report, which is prepared every five years.⁶³

2.58 There was broad support for using the Intergenerational Report (IGR) as the mechanism for monitoring and reporting policy changes against the objectives. For example, the Financial Services Council espoused the IGR process as the vehicle for undertaking a periodic review:

It is a five-year cycle; that is a nice gap. It enables the government of the day to build up a policy evidence base for any future changes.⁶⁴

2.59 Similarly, Industry Super Australia agreed that the idea of having a review every five years aligned to the *Intergenerational Report* would be very sound for assessing if the system is on track.⁶⁵

59 Financial Services Council, *Submission 28*, p. 3.

60 Association of Superannuation Funds of Australia, *Submission 29*, p. 8.

61 Chartered Accountants Australia and New Zealand, *Submission 19*, p. 5.

62 *Proof Committee Hansard*, 6 February 2017, p. 43.

63 Financial System Inquiry Committee, *Financial System Inquiry: Final Report*, 2014, p. 99.

64 *Proof Committee Hansard*, 6 February 2017, p. 15.

65 *Proof Committee Hansard*, 6 February 2017, p. 25.

2.60 At the public hearing, support for aligning a review of the superannuation objective with the IGR process was also provided by the Association of Superannuation Funds of Australia.⁶⁶

Committee View

2.61 While the overwhelming view of stakeholders supported the notion of enshrining a legislated objective for superannuation, the committee notes that stakeholders had different views on the proposed wording and the meaning of those words. There was no consensus position for the introduction of subjective descriptors. The committee therefore considers that the objective as drafted will enhance the stability of the superannuation system by creating a clear framework for assessing superannuation policy.

2.62 The committee does not consider that either a relative or absolute level of retirement income should be included in the primary or subsidiary objectives. Indeed, the subjective nature of terms such as 'adequacy', 'comfort' and 'dignity' have the potential to undermine the successful implementation of an objective for the superannuation system by focusing on retirement incomes as a whole. While there may be merit in striving to set an objective for the entire retirement income system, this is not the purpose of the bill under consideration by the committee.

2.63 Prescribing the subsidiary objectives through regulation is an appropriate way of ensuring that these objectives remain subsidiary to the primary objective while still contributing to a comprehensive framework for assessing changes to superannuation policy.

2.64 The committee is confident that the measures requiring future policy changes to be supported by statements of compatibility will provide a robust mechanism by which these proposals can be evaluated and will be a valuable tool in contributing to the public debate.

2.65 That said, the committee appreciates the important role that independent monitoring and review can play in keeping governments to account. To this end, the committee considers it appropriate that the compliance of future superannuation reforms with the legislated objective be periodically assessed and reported on as part of the *Intergenerational Report*, which is required to be prepared at least every five years under the *Charter of Budget Honesty Act 1998*.

66 *Proof Committee Hansard*, 6 February 2017, p. 37.

Recommendation 1

2.66 The committee recommends that the compliance of future superannuation reforms with the legislated objective be periodically assessed and reported on as part of the Intergenerational Report.

Recommendation 2

2.67 The committee recommends that the Senate should pass the bill.

**Senator Jane Hume
Chair**

Dissenting Report by Labor Senators

Background and overview

1.1 Labor built Australia's superannuation system. We will always work to ensure that it is fair, sustainable and sets Australians up for a comfortable life in retirement.

1.2 Labor Senators support the recommendation of the Murray Financial System Inquiry that the objective of superannuation be legislated.

1.3 Labor Senators believe that something as significant as the objective of superannuation needs proper consideration and bipartisan support.

1.4 If an objective is worth having and is worth legislating then it is worth doing properly.

1.5 Labor Senators are concerned that the Government has failed to secure sufficient stakeholder support for the proposed objective or to achieve the broad political consensus recommended by the Murray Financial System Inquiry.

1.6 The majority of written submissions disagree with the objective set out by the Government. Yet the hearing also revealed that some stakeholders are close to agreeing on key concepts to be included in a superannuation objective.

1.7 Labor Senators are disappointed that the Government abandoned discussions with the Opposition on the proposed objective. Labor had been engaging constructively and in good faith with the Government until it abruptly ended these conversations and rushed out with its proposed objective.

Contributions from the written submission and hearing processes

1.8 The first criticisms of the Government's superannuation objective approach were delivered in August 2016 when in rare circumstances of agreement, the Association of Superannuation Funds of Australia (ASFA), the Australian Institute of Superannuation Trustees (AIST), Industry Super Australia (ISA) and the Self-Managed Super Fund Association (SMSF Association) wrote to the Minister, asking to meet and to consider a common objective they had developed.

1.9 Industry Super Australia (ISA) also made specific reference to the lack of consultation that occurred through the Murray Financial System inquiry:

There was no consultation on the objective of superannuation. The inquiry did not seek views on the recommended objective which found its way into the final report. As a consequence, the committee members, as esteemed as they are, did not obtain the views and perspectives of other key stakeholders in the system. If they had, they may well have landed at an objective which could obtain consensus support, which is what the inquiry recommended—that is, that an objective achieve consensus support. It has not done that.

1.10 The Australian Institute of Superannuation Trustees (AIST) also made strong comments about the lack of consultation and how close different parties in the industry are to reaching a common objective definition:

First of all, like Industry Super Australia, we believe that the process that has got us to this point is flawed and that the government should go back to the drawing board in terms of the definition. Secondly, we have an alternative view in relation to what we think should be the proposed definition and the associated processes. We have some comments to make in relation to the statement of capabilities, and we think that there are some deficiencies associated with that. Finally, we believe that the role of superannuation in contributing to national savings should be recognised as a subsidiary objective.

...

Senator KETTER: When I compare the consensus definition that emerged in your letter of 2 August to the FSC's proposed objective, I see both referring to all Australians; I see in both the use of the comfortable standard; I see that in both the word 'adequate' appears, although in different places in the objective. How far apart are you from the FSC? What do you see as the significant difference between your two objectives?

Mr Haynes: In summary, I do not see any significant difference between our position and that of the FSC. The FSC was involved in many of the discussions that resulted in the other association sending the letter of August last year and there appeared to be a high degree of consensus. I hope I am not talking too much out of school in relation to that, but, given where the FSC landed, I do not think I am.

Senator KETTER: We seem painfully close to reaching a consensus with all of the major players in the superannuation industry, if I could call it that.

Mr Haynes: Yes, and hence my earlier comment about this being a wasted opportunity if that consensus was not used as the stepping stone for the next level of consensus—that is, in discussions with government and other stakeholders.

1.11 Industry Super Australia (ISA) also made a concise statement about its concerns with the bill which were repeated in many other submissions:

There are five key reasons why the bill is deficient. Firstly, the proposed primary objective does not faithfully reflect the basis on which the system was established. That is, to enable Australians to enjoy a decent standard of living in retirement.

...

Secondly, the proposed objective does not have consensus support as recommended by the Murray review.

...

Thirdly, the objective as drafted is inconsistent with the sole purpose test and conditions of release in the Superannuation Industry (Supervision) Act—the SIS Act.

...

Fourthly, the legislative architecture is flawed, because the secondary objectives are subject to regulation rather than being included alongside the primary objective in the law. As a consequence, the government of the day may set and alter secondary objectives to suit their purposes and other policy and political objectives.

...

Finally, the objective as drafted will provide no guidance to policy development or competing policies.

1.12 The Grattan Institute in their submission and evidence stated that Australians on average are saving significantly outside of superannuation and therefore superannuation is not the main pillar of retirement income. This underpinned their claims that the superannuation guarantee level should not be lifted, that 'Most Australians can already expect an adequate income in retirement' and objectives be set for the retirement income system as a whole, not just superannuation.

1.13 ISA presented a critique of this analysis, finding that it inflates the apparent assets of low and middle income earners who actually have very little in the way of financial assets other than superannuation and are especially reliant on the superannuation guarantee to deliver income over and above the age pension. This would mean that the superannuation objective is a very important component in setting desired retirement outcomes.

Conclusion

1.14 Labor Senators recommend that the Government withdraw this Bill and undertake further consultation.

1.15 Labor Senators recommend that the Government go back and consult further with stakeholders with a view to developing an objective which has stronger stakeholder support.

1.16 Labor Senators also recommend that the Government meet the recommendation of the Murray Financial System inquiry to seek broad political agreement for the objective of superannuation.

1.17 Labor Senators are willing to engage cooperatively and constructively with the Government on an objective for superannuation.

Recommendation 1

1.18 The Government withdraw the Superannuation (Objective) Bill 2016

Recommendation 2

1.19 The Government recommence discussions with the Opposition and with stakeholders to reach broad political and industry support for a superannuation objective.

**Senator Chris Ketter
Deputy Chair**

**Senator Jenny McAllister
Senator for New South Wales**

Appendix 1

Submissions and additional information received

Submissions

| No. | Submitter |
|------------|---|
| 1 | Mr Bruce Cole |
| 2 | Ms Frances McGee |
| 3 | Drew, Walk & Co. |
| 4 | Ms Su Johnson |
| 5 | Mr Ashley Holmes |
| 6 | CDI Consulting Pty Ltd |
| 7 | SMSF Owners' Alliance |
| 8 | National Foundation for Australian Women (NFAW) |
| 9 | Mr Phillip Sweeney |
| 10 | The Tax Institute |
| 11 | Dixon Advisory |
| 12 | Australian Council of Trade Unions |
| 13 | Industry Super Australia |
| 14 | BT Financial Group |
| 15 | Association of Independent Retirees |
| 16 | Corporate Superannuation Association |
| 17 | Anglicare Australia |
| 18 | Victims of Financial Fraud Incorporated |
| 19 | Chartered Accountants Australia and New Zealand |
| 20 | Mercer |
| 21 | Institute of Public Affairs |
| 22 | Mr Andrew Freeman |
| 23 | Law Council of Australia |
| 24 | CHOICE |
| 25 | Financial Planning Association of Australia |
| 26 | SMSF Association |
| 27 | UniSuper |

- 28 Financial Services Council
- 29 Association of Superannuation Funds of Australia (ASFA)
- 30 SISFA
- 31 Australian Institute of Superannuation Trustees
- 32 CPA Australia
- 33 Australian Chamber of Commerce and Industry
- 34 Grattan Institute
 - Supplementary submission 34.1
- 35 Australian Council of Social Service (ACOSS)
- 36 Australian Council of Public Sector Retiree Organisations (ACPSRO)
- 37 Mr Luke Smith
- 38 Queensland Police Union of Employees (QPU)
- 39 Save Our Super
- 40 Police Federation of Australia
- 41 Women in Super
- 42 COTA Australia
- 43 Australian Super

Additional information

1. Additional information received from the Australian Institute of Superannuation Trustees on 9 February 2017.

Tabled documents

1. Industry Super Australia: Briefing Note - Role of Superannuation in Retirement Savings (public hearing, Canberra, 6 February 2017).
2. Industry Super Australia: Section 62 of the *Superannuation Industry (Supervision) Act 1993* and Schedule 1 of the Superannuation Industry (Supervision) Regulations 1994 (public hearing, Canberra, 6 February 2017).
3. Association of Superannuation Funds of Australia: Table 1 - Households with the Particular Component, Type of households and Table 2 - Mean Wealth Values, Type of households with the selected assets and liabilities (public hearing, Canberra, 6 February 2017).

Answers to questions on notice

1. Women in Super: Answer to question taken on notice from public hearing 6 February 2017.

Appendix 2

Public hearings and witnesses

Monday, 6 February 2017 – Canberra

BREHENY, Mr Simon, Director, Policy, Institute of Public Affairs

BRIGGS, Mr Blake, Senior Policy Manager for Superannuation, Financial Services Council

BRODERICK, Mr Philip, Member, Superannuation Technical Committee, Tax Institute

BUCKLEY, Mrs Sandra, Executive Officer, Women in Super

CAMPO, Ms Robbie, Policy Committee Member, Women in Super

COLE, Ms Nerida, Managing Director; Head of Advice, Dixon Advisory

DALEY, Mr Brian, Capital Stewardship Officer, Australian Council of Trade Unions

DALEY, Professor John, Chief Executive Officer, Grattan Institute

DIAMANTES, Mr Dimitri Peter, Policy Manager, Financial Planning Association of Australia

GALLAGHER, Mr Phil, Policy Adviser, Industry Super Australia

HANSELL, Mr Allan, Director of Policy and Global Markets, Financial Services Council

HAYNES, Mr David, Executive Manager, Policy and Research, Australian Institute of Superannuation Trustees

HODGSON, Associate Professor Helen, Member, Social Policy Committee, National Foundation for Australian Women

LINDEN, Mr Matthew, Director of Public Affairs, Industry Super Australia

McCREA, Mr Glen, Chief Policy Officer, Association of Superannuation Funds of Australia

VOLPATO, Ms Karen, Senior Policy Adviser, Australian Institute of Superannuation Trustees

YATES, Mr Ian, AM, Chief Executive, Council of the Ageing Australia

