

Australian Institute of Superannuation Trustees



23 December 2016

Mr Mark Fitt
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Mr Fitt,

Re: Economics Legislation Committee Inquiry: Superannuation (Objective) Bill 2016

In brief:

Not including the provision of a comfortable retirement income in the proposed Objective is a fundamental defect in the Bill. The lack of support for the proposed definition, its lack of binding force, the absence of measurement tools, the lack of recognition of superannuation in increasing national savings and of the need to address the gender gap are also serious issues that must be addressed. An alternate definition is proposed, as is parliamentary review of statements of compatibility, and an approach to measurement.

This submission responds to the *Superannuation (Objective) Bill 2016*, and to Chapter 2 (*The objective of the superannuation system*) of the Explanatory Memorandum relating to this Bill (and other superannuation legislation).

Summary

AIST strongly supports a legislated Objective of superannuation (the “Objective”) but in a form and structure that will genuinely guide the development of future superannuation and retirement incomes policy: The version proposed in the Bill does not do this.

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- No recognition of retirement income adequacy

The widespread view of the superannuation industry including AIST is that absence of a reference to providing adequate income that delivers a comfortable retirement is a serious omission to the Objective in the Bill.

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- Lack of broad political support

Recommendation 9 of the Financial System Inquiry was to “*seek broad political agreement for, and enshrine in legislation, the objectives of the superannuation system...*” While AIST and other stakeholders, including the Opposition, have committed to pursuing an Objective that has consensus support, the Government has not moved from the definition the FSI proposed to start the debate.

In our view, any Objective must recognise and address the need to seek an appropriate balance between the adequacy and sustainability of the superannuation system, with recognition also given to achieving a fair outcome.

- Alternate definition proposed

AIST proposes an alternate Objective:

To provide an adequate income to ensure all Australians achieve a comfortable standard of living in retirement, supplementing or substituting the age pension.

Other industry bodies have proposed a formulation in the same or similar terms.

- Lack of binding force

The Objective is also flawed in having no binding force, with Statements of Compatibility not even being a required to accompany proposals for superannuation legislation. Statements should be mandatory and should be subject to review by Parliamentary committee.

- Absence of ongoing measurement tools

The Bill does not provide an evidentiary basis comparing and evaluating future superannuation policy proposals. AIST submits that appropriate and robust measurement tools, such as the AIST Mercer Super Tracker¹, are necessary to support the assessment process. No recognition of role in increasing national savings

¹ AIST, and Mercer, (2016). *AIST Mercer Super Tracker*. How the super system stacks up on fairness, adequacy and sustainability. [online] Melbourne: Australian Institute of Superannuation Trustees. Available at: <http://tinyurl.com/h6lyg2e> [Accessed 23 Dec. 2016].

The Explanatory Memorandum identifies (2.15) the subsidiary objectives of the superannuation system to be prescribed by regulation but omits the vital subsidiary objective of increasing national savings.

The reference to “all Australians” in the AIST-proposed alternative obviously encompasses both women and men but there is no reference to fairness of gender outcomes in either the Bill or Explanatory Memorandum.

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- Lack of recognition of superannuation in increasing national savings

The subsidiary objectives should include recognition of the role of the superannuation system in increasing national savings and funding economic activity, especially infrastructure, and in providing certainty and stability

- No recognition of gender gap

The absence of a specific reference to gender gap issues within any of the subsidiary objectives means any ‘statement of compatibility’ can ignore the impact of changes on the superannuation gender gap.

Reference to gender in the Explanatory Memorandum explanation of the subsidiary objectives would support its inclusion in any statement of compatibility. Gender analysis would be an important element in highlighting the effects of proposed superannuation policies on women, and their impact on the gender gap.

Background

AIST has been an active participant in the debate on the Objective of superannuation, and a consistent advocate for balancing adequacy, sustainability and fairness considerations in the legislated definition.

Links to the relevant submissions made by AIST since the start of last year is Appendix 1. We remain committed to the view that a lack of certainty and stability in superannuation policy settings can be addressed in part through political and community agreement on the Objective.

We echo the comments of the then Assistant Treasurer, the Hon. Josh. Frydenberg MP in February 2015:



My view is that a carefully drafted objective – with bipartisan support – would have positive benefits for the stability and accountability of the system and those who play a role in it.²

Superannuation industry associations across all sectors have been able to work cooperatively and collaboratively on the Objective of superannuation, and have made a joint approach to the Minister for Revenue about this since the Federal Election. It is disappointing that this has not been used by the Government to a greater extent as the basis for seeking bipartisan support.

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The recently released report of the Productivity Commission into the assessment of the efficiency and competitiveness of the superannuation system³ proposes system-level objectives, criteria and indicators that could be used for a benchmark assessment of the superannuation system.

Chapter 2 - The objective of the superannuation system

AIST supports the creation of a stand-alone Act relating to the primary objective of the superannuation system, and the identification of subsidiary objectives in the Explanatory Material.

The critical importance of the objective requires careful consideration. Consultation in response to the Government's discussion paper of 9 March 2016 on the Objective of superannuation was limited and left important issues unresolved.

While there has been other limited consultation since the Federal Election, and the opportunity to respond to a public consultation version of the Bill (that contains an Objective in the same terms), the Government has not undertaken a significant engagement with the superannuation industry and other stake holders. AIST and some other industry associations support a legislated objective that reflects the core purpose of the system in providing adequate retirement outcomes, in the terms and on the basis articulated in a confidential letter sent to the Minister for Revenue and Financial Services in August 2016. Unfortunately, this approach to the Government for industry-wide collective consultations were rebuffed.

Adequacy

AIST maintains our support for a version of the primary objective that differs from that proposed in the Bill.

It is our view that the primary objective proposed by the Financial System Inquiry and now reflected in the draft Bill, is a sound starting point for the development of a more holistic

² Frydenberg, J. (2015) *Address to the SMSF Association National Conference*, 20 February 2015.

³ Productivity Commission, (2016). *How to Assess the Competitiveness and Efficiency of the Superannuation System*. Productivity Commission Research Report. [online] Canberra. Available at: <http://tinyurl.com/zzlgwr3> [Accessed 22 Dec. 2016].

objective. It recognises that the superannuation system must provide income to retirees in conjunction with the Age Pension.

However, it fails to articulate the goal of the system to maximise the number of Australians living in comfort and dignity in retirement. In our view, the core purpose of the superannuation system is to deliver income which affords a comfortable standard of living in retirement, over and above what the Age Pension delivers.

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Incorporating these elements will establish a primary objective aligned with the core purpose of the system. This, in turn, will ensure that the superannuation system is working towards a clear goal of providing Australians adequate retirement incomes and a comfortable standard of living, now and into the future.

A definition for the primary objective that addresses these elements has been agreed upon by the industry associations as signatories to the letter of 3 August 2016 referred to above. The agreed definition is:

To provide an adequate income to ensure all Australians achieve a comfortable standard of living in retirement, supplementing or substituting the Age Pension.

The definition in the draft Bill omits adequacy, and AIST proposes the above definition its place.

Without in any way in derogating from this preferred and strongly held position, AIST also makes comments in relation to adequacy on our response to the subsidiary objective of smoothing consumption later in this submission.

Context of amendments

- **Increase national savings**

AIST submits that, notwithstanding its omission in both the Bill and in the recommendations of the Financial System Inquiry, the subsidiary objectives should include recognition of the role of the superannuation system in increasing national savings and funding economic activity, especially infrastructure, and in providing certainty and stability.

This is consistent with the position advocated by AIST in response to the Government's Discussion Paper of 9 March 2016 on the Objective of Superannuation.

Increasing national savings is not just a benefit of the superannuation system; it is an intended benefit, and should be more clearly identified as such in the Explanatory Material.

When the Superannuation Guarantee legislation was introduced into Federal Parliament by the then Treasurer John Dawkins in 1992 he identified a number of purposes for the provision of universal superannuation including to⁴:

...increase our national savings overall, thus reducing our reliance on the savings of foreigners to fund our development.

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When an expanded version of this quote was included in the earlier Discussion Paper on the Objective of Superannuation, it was noted that the Government gave this purpose increased emphasis by placing “**national savings**” in bold. Superannuation indisputably has become a more important element of the Australian economy than it was in 1992. Its role and benefits cannot be easily separated from the objective of the system and it is unreasonable to attempt to do so.

This interconnectedness is evident in paragraph 2.6 of the Explanatory Memorandum where the maturing superannuation system with growing *assets*, are given as a reason why “*new proposals be considered in light of the objective of the system.*” The drafters of the Explanatory Memorandum are unable to separate increasing national savings from the objectives of the superannuation system.

Largely as consequence of the compulsory superannuation, Australia has a higher than average savings rate compared to other OECD countries. Treasury has estimated⁵ in 2011 that superannuation contributes between 1.5 to 2 percentage points to the national saving rate, and that this is projected to rise to 3 percentage points by 2050.

In making this submission, AIST does not in any way suggest that increasing national savings should be subsidiary to or at the expense of the primary objective, or investing in the best interests of superannuation fund members.

Tax minimisation and estate planning

AIST agrees with the statement in the Explanatory Material that the purpose of superannuation “*is not to allow for tax minimisation or estate planning*” (paragraphs 2.13 and 2.14 of the Explanatory Memorandum).

Subsidiary objectives

⁴ Dawkins, J. (1992). *Second reading speech - Superannuation Guarantee (Administration) Bill 1992*, Speech by the Hon. John Dawkins MP, House of Representatives, Parliament House, Canberra 2 April 1992. Available at <http://tinyurl.com/zbmjaz9> [accessed 16 September 2016].

⁵ Gruen, D. (2011). *Compulsory Superannuation and National Saving*. Speech by David Gruen (with Leigh Soding) to the Melbourne Institute/The Australian 2011 Economic and Social Outlook Conference *Compulsory Superannuation and National Saving* Australian Treasury. 1 July 2011. Available at <http://tinyurl.com/zbe9wk3> [accessed 14 September 2016].

- **Facilitate consumption smoothing over the course of an individual's life**

AIST supports this subsidiary objective. This objective appears to imply the importance of adequacy, and this point was explicit in Treasury's public consultation version of the commentary on this objective, stating that it will "*increase self-reliance*". By definition, self-reliance requires an adequate retirement income. Again referencing the comments of Treasurer Dawkins when the Superannuation Guarantee legislation was introduced:

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The higher provision for retirement will permit a higher standard of living in retirement than if we continued to rely on the Age Pension alone.

This does not imply that the Age Pension is inadequate, and provides the basis for further consideration of adequacy through this objective. However, this is not enough in itself to be a satisfactory mechanism for addressing such a critical aspect of the superannuation system. Even if it was, the lack of an enforceable mechanism to require a statement of capability, and the lack of a requirement for the statement to address subsidiary objectives, means that this mechanism may be of limited value.

- **Manage risks in retirement**

AIST notes that this subsidiary objective differs from that recommended by the FSI (which was "*manage financial risks in retirement*"). AIST supports an amended version of subsidiary objective in the version included in the Bill, and supports a wider definition of risk (i.e., without reference to "*financial*").

Risks exist throughout an individual's participation in the superannuation system, and not just in retirement. AIST submits that this subsidiary objective should be amended to read:

Manage risk over the course of an individual's life.

The increased range of risks under this objective could include mortality risk, and governance and integrity risks, and AIST submits these should be identified in the Explanatory Memorandum.

Mortality risk, for example, could mean a superannuation fund member does not receive their optimal retirement income given the nature of their retirement product in circumstances when they die earlier than expected. While the provision of safeguards in another subsidiary objective also addresses governance and integrity, governance and integrity are nonetheless risks to be managed in retirement.

- **Be invested in the best interests of superannuation fund members**

AIST supports this subsidiary objective, subject to it being consistent with the sole purpose test in its entirety, including in relation to insurance.

AIST also submits that this objective, along with the primary objective, is consistent with and indeed supported by increasing national savings.



- **Alleviate fiscal pressures on Government from the retirement income system**

AIST supports this subsidiary objective. AIST supports the three pillar retirement income system, and recognises that the Government's contribution to the system needs to be financially sustainable.

- **Be simple, efficient and provide safeguards**

AIST supports this subsidiary objective, especially it incorporates appropriate governance and integrity measures.

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Insurance

Life and disability insurance is a core feature of pension systems. In a recent review of the global financial system, Davis, Lukomnik & Pitt-Watson noted⁶ that pensions contain two bedrock elements, savings and insurance. The Australian system is no exception.

Many people involuntarily retire for health reasons, and the integration of retirement and disability benefits allows for improved retirement incomes. It is noted that death benefits tend to decline as superannuation balances increase.

The "sole purpose test" in section 62 of the SIS Act provides that a superannuation fund must be set up to provide benefits on the death, disability or retirement of a member. Section 62 is not being amended by this Bill, and paragraph 2.18 identifies that the subsidiary objective of a members best interests is consistent with Section 62.

While Section 62 is not being amended in consequence of this Bill, the Explanatory Memorandum must nonetheless be amended to clarify that the status of insurance in superannuation is in no way changed or diminished by this Bill.

The APRA Superannuation Circular No.III.A.4⁷ summarises the sole purpose test as follows, and the Explanatory Memorandum should be amended to provide explicit recognition of this:

7. Essentially the "core purposes" are the provision of benefits on or after the member's retirement, reaching age 65 or earlier death. Similarly, the "ancillary purposes" are the provision of employment termination insurance, salary continuance (on a member's cessation of work because of ill health), reversionary benefits and other approved benefits on or after an appropriate condition has been met.

⁶ Davis, S., Lukomnik, J. and Pitt-Watson, D. (2016). *What They Do with Your Money*. New Haven: Yale University Press, p.201.

⁷ APRA, (2001). *The Sole Purpose Test*. Superannuation Circular No.III.A.4. [online] Canberra: Australian Prudential Regulation Authority. Available at: <http://tinyurl.com/ja2vwwd> [Accessed 14 Sep. 2016].

AIST also submits that that, for increased clarity and to maintain consistency with Section 62, the Explanatory Memorandum should also be amended to identify other features of a superannuation fund that are appropriate, including in relation to the objective of superannuation. This text could also be sourced from the APRA Circular cited above:

41. It is open to trustees to develop features of their fund which add value to, or differentiate it from, other funds. For example, fund sponsored member awareness, education and financial advice programs, targeted at fund specific issues such as benefit features (including insurance options, the making of binding death benefit nominations etc) or investment choices offered in the fund, may be appropriate.

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It is also noted that the provision of minimum levels of death and TPD insurance are also required benefits of default MySuper products, and submit that this further supports more specific alignment of the objective of superannuation with the sole purpose test.

Statements of compatibility

The Bill requires statements of compatibility to be prepared for Bills relating to superannuation but does not refer to the subsidiary objectives or contain any mechanism for their consideration. The Explanatory Memorandum states that addressing the subsidiary objectives in the statement of compatibility (with the primary objective) is considered to be “best practice”, rather than a prescribed step. In other words, consideration of the subsidiary objectives is not a requirement.

Notwithstanding this however, a failure to prepare a statement of compatibility does not appear to affect the validity of any given Bill or Regulation.

The requirement to prepare a Statement of Compatibility does not extend beyond Bills and Regulations, and does not cover legislative instruments that are not regulations.

It is understood that the requirements for a statement of capability have been modelled on the Human Right Statements of Compatibility. AIST submits that changes be made to the Bill and Explanatory Memorandum to bring it closer to the Human Rights Statement:

AIST submits that the Bill be amended to provide that a statement of compatibility must:

- Be provided for all disallowable legislative instruments relating to superannuation;
- Address each of the subsidiary objectives; and
- Be reviewed (along with the Bill or other instrument) by either the House of Representatives or Senate Economics Committees.

Assessing compatibility with the objectives



Clause 7(2) of the Bill requires that a statement of compatibility must include an assessment of whether the Bill is compatible with the primary subsidiary objectives of the superannuation system.

AIST submits that appropriate and robust measurement tools are necessary to support the assessment process. The framework developed by the Productivity Commission to assess the competitiveness and efficiency of the superannuation system will also assist with this process.

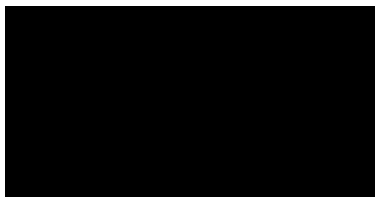
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The measurement of proposals affecting the superannuation system should consider both macro-economic effects and the impact at the personal (or micro) level. Both are important. Hence, tools such as the AIST-Mercer Super Tracker can be used to consider the movement in certain macro-economic measures, such as the value and fairness of tax concessions and the level of assets within the economy, as well as measures that affect individuals, such as net retirement income and the gender gap.

AIST recommends the establishment of an independent publicly-funded body to assess the superannuation policy changes, to develop and refine tools to be used in this process, and to be available to Parliamentarians intending to propose superannuation changes.

AIST would welcome the opportunity to discuss our submission with the Committee. Please contact [REDACTED]

Yours sincerely,



Tom Garcia
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

Australian Institute of Superannuation Trustees



AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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Appendix 1

AIST submissions addressing the legislated Objective of superannuation since 2015

06/04/2016: Submission to Treasury, discussion paper:

<http://www.aist.asn.au/media/16222/Objective%20of%20Superannuation%206%204%2016%20FINAL.pdf>

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16/09/2016: Submission to Treasury, exposure draft:

http://www.aist.asn.au/media/836975/20160916_submission_treasury_objective_v1_0_final.pdf

31/03/2015: Submission to Treasury, FSI final report (section 5.1):

http://www.aist.asn.au/media/14388/20150331_submission_treasury_FSI_Final%20v1.1%20FINAL.pdf

02/06/2015: Submission to Treasury, Tax Discussion Paper (refer sections 3.3.3, 4, 5, responses to questions 57, 65):

http://www.aist.asn.au/media/14792/20150602_submission_tax_taxwhitepaper%20v1.1%20FINAL.pdf

24/07/2015: Submission to Treasury, Tax Discussion Paper (refer section 3.1):

http://www.aist.asn.au/media/14973/20150724_submission_tax_retirement%20v1.1%20FINAL.pdf

30/10/2015: Submission to Senate Economics, inquiry (refer section 5):

http://www.aist.asn.au/media/703134/20151030_submission_senate_economic_review.pdf