SUPER MEMBERS
COUNCIL OF AUSTRALIA

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Legislating the objective of superannuation – Exposure draft legislation

About the Super Members Council of Australia

The Super Members Council of Australia is the new collective body created by profit-to-member superannuation funds as a strong voice for 10 million Australians who have more than $1.4 trillion in super.

Our primary purpose is to protect and advance the interests of super fund members throughout their lives, while earning superannuation at work and benefitting from it in retirement. The Super Members Council advocates on their behalf to ensure superannuation policy is stable, effective and equitable.

Jointly created by the super funds who were members of the Australian Institute of Superannuation Trustees (AIST) and Industry Super Australia (ISA), the new body builds on their legacies to provide member-centric advocacy. It will work with all political parties to deliver the best possible retirement outcomes for members.

Summary of our submission

The Super Members Council commends the Government for moving to legislate the objective of super and looks forward to working with the Government throughout this process. We support the proposed wording of the Superannuation (Objective) Bill 2023 as it encapsulates the key concepts required in the definition.

Australia's superannuation system is one of our country's greatest success stories. It has materially improved the lives of millions of working Australians, ensuring dignity and security in retirement while also contributing to broader national economic growth.

Yet despite being established more than thirty years ago, there is still no formal agreement or legislation setting out what the system is trying to achieve for working Australians.

While the Government, regulators and sector have a strong history of working together to ensure any change is in members' best interests, this lack of a legislated purpose has meant some changes have been made without proper consideration given to the impact on members, nor to the alignment with the original high-level aspirations of the super system.

The impact of change on members has been amplified in recent years through an increased tempo of change and consolidation across the sector.

And as the scale of the system continues to increase, the impact of any future change will be even more material for members – both for those members with growing balances, and those members for whom the system may not be working as well as it could be, such as women and those in lower paid or less secure work.

The Super Members Council believes superannuation policy must be stable, effective and equitable.

A clearly defined and legislated objective of superannuation, with an effective accountability measure, is critical to achieving these aspirations. It will ensure better designed, evidence-based policy, which in turn will lead to a more coherent and stable system so members can save with confidence.

We strongly support the proposed wording of the Superannuation (Objective) Bill 2023 as it encapsulates the four key concepts required in the definition: a dignified retirement, equity, sustainability and preservation of savings.

The Super Members Council also supports the proposed requirement for an accountability mechanism in the form of a statement of compatibility.

However, this statement should be supported by additional safeguards, such as requiring the inclusion of the evidence base for the proposed policy change and relevant modelling and analysis to ensure the assessment against the objective is robust.

These safeguards, plus a consultative framework for proposed measures and periodic reviews of superannuation changes, will support the legislated objective to achieve its purpose of improving policy stability and safeguarding the promise of a dignified retirement for future generations.

Our recommendations are:

- **Recommendation 1**: The explanatory materials should specifically acknowledge the role of compulsion and universality in providing workers with a dignified retirement.
- **Recommendation 2**: The Bill should require that statements of compatibility include modelling and analysis around the distributional (including by income and gender), fiscal and any investment impacts of the proposed change, and other data used to support the assessment of compatibility with the objective.
- **Recommendation 3**: Statements of compatibility should be publicly consulted on alongside exposure draft legislation and explanatory materials.
- **Recommendation 4**: The Government should consider requiring a post-implementation review every five years to examine the superannuation changes in that period.

Components of the objective

We strongly support each part of the proposed objective and make suggestions about how some aspects of the description of the key concepts could be improved in the explanatory materials.

A dignified retirement

The Super Members Council strongly supports the inclusion of a dignified retirement as a key principle of the objective of superannuation.

To have a dignified retirement, a person needs financial security and wellbeing in retirement. This is a standard of living that:

- is supported by the delivery of retirement income above the Age Pension (and any other government support) which allows the person to participate economically and socially in their community,
- allows for precautionary savings to be set aside for health and aged care costs, emergencies and contingencies, funeral expenses and the retirement needs of a surviving spouse in the case of a couple, and
- is broadly consistent with community expectations, which can be dynamic.

This is broadly consistent with what members understand to be the purpose of superannuation. Recent member research shows that 78 per cent of respondents agree that its purpose is to provide people with financial security and wellbeing in retirement, and 68 per cent of respondents consider that one of the great things about the Australian superannuation system is it forces them to save without having to think about it.[1]

The explanatory materials however, should be amended to recognise the critical role of the compulsory and universal superannuation guarantee to support a dignified retirement.

Evidence from a selection of countries that have prioritised voluntarism or soft compulsion to tackle the problem of under-saving for retirement show that this has not been as effective as the Australian approach in terms of securing near-universal coverage of employees and more adequate levels of contributions.

> **Recommendation 1:** The explanatory materials should specifically acknowledge the role of compulsion and universality in providing workers with a dignified retirement.

Equity

The Super Members Council strongly supports the inclusion of superannuation being provided in an equitable way as a key principle of the objective of superannuation.

While equity is an important objective of superannuation and the retirement income system, notwithstanding the age pension, many in the population are not receiving equitable superannuation and retirement outcomes, especially women, First Nations Australians, and those on lower incomes.

In addition, the superannuation guarantee is not compulsory for some employees, such as under 18s working less than 30 hours a week for the same employer and gig workers. This affects their ability

[1] UMR research, March 2023.

to achieve a dignified retirement, while undermining the credibility and fairness of the system; the system is delivering different outcomes to similar people in similar situations.

Women close to retirement have almost $65,000 less superannuation than men, and women at all ages have about a quarter less superannuation than men. This gender gap begins to increase significantly when women are aged between 30 and 45, when they have and care for children.[2]

Accordingly, we support the inclusion of equity in the objective as it will provide guidance to policymakers around policies that may have different impacts on different cohorts and ensure any government support is targeted at those who need it most. Potential policies that will benefit from this guidance include:

- paying superannuation on Commonwealth Parental Leave Pay, which remains one of the only leave entitlements on which superannuation is not required to be paid,
- extending the superannuation guarantee to workers aged under 18 and gig workers,
- ensuring superannuation tax concessions are better targeted towards low- and middle-income earners.

We also welcome the explanatory materials expressly recognising that in this context, differences in demographic factors and structural inequities can flow through to outcomes in the system, including intergenerational inequity and outcomes for different groups, including women, First Nations Australians, vulnerable members and low-income earners.

Sustainability

The Super Members Council strongly supports the inclusion of superannuation being provided in a sustainable way as a key principle of the objective of superannuation.

The cost of the superannuation system must be balanced against the benefits of the system. Government support in the form of tax concessions has long been a key feature of the superannuation system. They are broadly designed to compensate people for not being able to access their superannuation savings until retirement and to encourage voluntary contributions to further reduce reliance on the Age Pension.

However, sustainability is also about ensuring policy changes meet community needs and expectations. Policy changes that do not do so risk diminishing confidence and support in the system, which is unsustainable in the long term.

Including sustainability in the objective will therefore provide important guidance around policies relating to the level of government support provided to members in the system and will help ensure policy changes engender broad community support and confidence in the system. We are pleased that the draft explanatory materials reflect these matters.

Preservation of savings

The Super Members Council strongly supports the inclusion of preserved savings as a key principle of the objective of superannuation.

Preservation is the cornerstone of our superannuation system. Without it, a dignified retirement would not be in reach for many Australians. Preservation is necessary to address myopia where

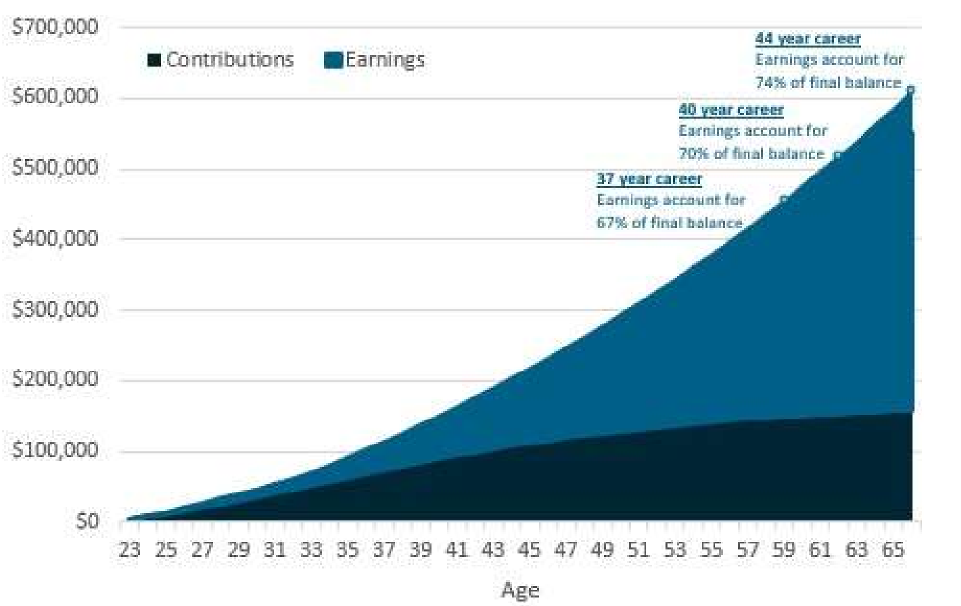
[2] Super Members Council analysis of 2020-21 ATO tax file data.

many individuals would not save enough because of a preference for current rather than future consumption.

Vitally, the preservation principle supports a long-term investment horizon allowing optimised portfolio construction and the accrual of compound investment returns on contributions and tax concessions. This is especially important given the decision to transfer investment risk to members by adopting a national system of defined contributions rather than a system of defined benefits.

To illustrate this impact, it is possible to decompose final superannuation balances by net contributions and earnings. Chart 1 below demonstrates that for a median earner, compound earnings account for between two-thirds and three-quarters of a super nest egg at retirement, subject to the length of their working career. The effect is even more pronounced if the analysis were extended through retirement.

Chart 1 – Decomposition of accumulated super balance into contributions and earnings by working life (median income earner)



Source: Super Members Council modelling

Evidently, without preserving savings and permitting early access (beyond the existing exceptional circumstances), the benefits of superannuation would be greatly diminished, impacting adversely on retirement incomes and taxpayers.

Withdrawing benefits early in accumulation and attempting to repair the damage later is very challenging. For example, withdrawing $10,000 at age 30 would require additional contributions of nearly ten times as much ($97,207 in nominal terms[3]) if left to the last five years before retirement.

Preservation has been an uncontroversial and well understood principle of the Super Guarantee since inception, but has come under challenge in recent times.

[3] Super Members Council modelling.

COVID Early Release Scheme

Extensive analysis shows that policies that adversely impact preservation – such as the COVID-19 Early Release Scheme and proposals to allow first home buyers to access their superannuation to buy a house – are not economically efficient, will not solve the problems they seek to address, and will leave retirees and future taxpayers worse off.[4]

Under the COVID-19 Early Release Scheme, 3.05 million people withdrew $38 billion in superannuation. Research and analysis[5] on the scheme show that:

- one in five Australians aged between 25 and 34 withdrew super, with those under 35 collectively taking out 40 per cent of the total,
- most people thought about the decision to withdraw for less than a week with more than a quarter deciding to withdraw within a day of hearing of the scheme,
- nearly half of applications were made within the opening fortnight of each round and most withdrew as much as they could,
- many people did not estimate, or appear to have mis-estimated, the impact the withdrawal could have on their retirement savings,
- on average, those who used the scheme cut their superannuation balance by 51 per cent and deprived themselves of up to $120,000 at retirement, locking in losses by withdrawing funds in a market downturn and missing the recovery,
- almost 725,000 Australians effectively drained their superannuation accounts under the scheme, with 594,000 (82 per cent) of those aged 35 and under,
- low paid and younger Australians will disproportionately bear the consequences of early release, and
- the cumulative cost of the scheme in forgone superannuation earnings tax and increased Age Pension payments is around $70 billion by 2085, almost double the original quantum taken out.

Some funds also reported that the scheme had an adverse impact on their returns, as they needed to increase their liquidity by carrying more cash (a lower performing asset) to meet withdrawal requests.

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[4] See for example, the Grattan Institute, *Housing affordability is a problem, but superannuation isn't the solution* (April 2021); the McKell Institute, *COVID-19: 9 reasons why accessing super early is a risky idea* (March 2020); and the McKell Institute, *Mortgaging our Future* (December 2021).

[5] See APRA statistics on the COVID-19 Early Release Scheme; Steven Hamilton, Geoffrey Liu and Tristram Sainsbury, *Early pension withdrawal as stimulus* (February 2023); Hazel Bateman, Isabella Dobrescu, Junhao Liu, Ben R. Newell and Susan Thorp, *Determinants of Early-Access to Retirement Savings: Lessons from the COVID-19 Pandemic* (February 2023); joint analysis by AIST and Mercer, and joint analysis by ISA and Rice Warner using the SPROUT model. Nominal values are deflated by Government bond yields to convert into a present value.

Investment impacts

As noted, the inclusion of preservation in the objective also supports the ability of funds to diversify portfolios and invest in a broad range of growth assets, including unlisted assets, for the long-term financial benefit of their members, as this is contingent on stable and reliable cash flows.

Further, in periods of economic uncertainty and market volatility, the long-term focus of funds means they can provide capital to support companies navigating short-term challenges. Enshrining preservation in the objective therefore helps to ensure funds can act as a counter-cyclical force for Australian financial markets during periods of economic difficulty and in ways that limit market volatility, which creates value for members in the long term. It also avoids members locking in losses by withdrawing funds in a market downturn and missing the recovery, which occurred for many members under the COVID-19 Early Release Scheme.

Existing hardship access provisions

Beyond the existing hardship access provisions which are reflected in the current law, the threshold for accessing superannuation early should be high and considered with caution, given the significant impact it can have on superannuation balances at retirement. Consistent with the draft explanatory materials, including preservation in the objective will accomplish this.

This approach is consistent with recent consumer research which shows there is strong community support for preservation, that is anchored in knowing that early access to superannuation is still available in dire personal situations, such as a medical emergency (i.e., the existing exceptions). In particular, 65 per cent of respondents agreed that people should only be able to access their superannuation before retirement if they are facing serious hardship.[6]

Accountability mechanism

We support the introduction of an accountability mechanism to ensure future measures are aligned with the proposed objective. However, we call for this statement to be supported by additional safeguards such as empirical support for proposed measures and subsequent empirical assessment of implemented measures.

While the proposed statement of compatibility with the objective of superannuation is a step in the right direction, there is a significant risk that it will not be a robust or effective accountability mechanism in its current form.

Our recommendation below on modelling will reinforce the importance of sound evidence-based decision making and assist the Government in making the case for positive change.

In recognition of the scale and importance of the superannuation system, trustees are obliged to always act in the best financial interests of their members[7] and are subject to a positive obligation to demonstrate that they do[8]. Accordingly, it should be uncontroversial and appropriate that the Government itself be transparent and accountable in respect to new policy positions that impact members.

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[6] UMR research, March 2023.
[7] Paragraph 52(2)(c) of the *Superannuation Industry (Supervision) Act 1993.*
[8] Section 220A of the *Superannuation Industry (Supervision) Act 1993*.

Evidence base for the assessment

The Bill requires a Member of Parliament introducing a Bill relating to superannuation to ensure a statement of compatibility is prepared, and for this to contain an assessment about its compatibility with the objective.

There are no additional requirements about the contents of the statement of compatibility in the Bill. Instead, the draft explanatory materials note that flexibility is needed as superannuation policy has a broad remit, and the statement may take whichever format and structure is most conducive to the nature, size, and complexity of the Bill or regulation to which it applies. The example given is while data or modelling will be appropriate and useful for analysing some superannuation policies, it would not be suitable in all circumstances.

The Super Members Council submits that this is insufficient, and that there should be a specific requirement for the statement of compatibility to set out the evidence base for the proposed policy change.

It is difficult to imagine a situation where a statement of compatibility is required but data and/or modelling would *not* be appropriate or useful for analysing a proposed policy change.

The key policy debates and proposals relating to superannuation at present would certainly benefit from being analysed using robust data and modelling. The onus should be on the law maker to provide a statement of compatibility that includes (to the extent it is relevant to the particular Bill or regulation):

- modelling and analysis around:
    - the short-, medium- and long-term distributional impact of the proposed change on workers' retirement incomes (by income and balance quantiles and by gender) – to measure the impact on equity[9] and whether the change supports the delivery of income for a dignified retirement,
    - the long-term fiscal impact – to measure the impact on sustainability of the system, and
    - whether there is any impact on how funds invest – which can measure whether the change has an impact on preservation and the delivery of income for a dignified retirement,
- any other relevant data or modelling that has influenced the assessment about whether the proposed change is compatible with the objective,
    - the relevant data could include APRA data on fund performance, ATO data on the recovery of unpaid super, or population data from the Intergenerational Report, and
- the underlying assumptions for any analysis and modelling included in the statement.

The Super Members Council notes there is already capability within the Treasury and other government agencies to produce this kind of analysis.

[9] This should include analysis around whether the proposed change exacerbates, addresses, or compensates for inequities that those with lower superannuation balances experience in their working lives.

This change will ensure there is a sound evidence base for the assessment about whether a proposed policy change is compatible with the objective and help inform parliamentary and public debate on the policy change.

The Super Members Council notes that for other similar statements, such as statements of compatibility with human rights, there are templates, tools, and guidance documents available to assist in the preparation of those statements. We support a similar approach being taken here to improve the consistency and quality of the proposed statements of compatibility with the objective.

Recommendation 2: The Bill should require that statements of compatibility include modelling and analysis around the distributional (including by income and gender), fiscal and investment impacts of the proposed change, and other data used to support the assessment of compatibility with the objective.

Consultation on the statement of compatibility

Statements of compatibility should be publicly consulted on alongside exposure draft legislation and explanatory materials. This will ensure the public has an opportunity to test the statement, including any data or modelling and the assumptions relied upon before the Bill or regulations are finalised.

Alongside our earlier recommendation that the statement should contain a sound evidence base for the assessment, this change will also minimise the risk of these statements becoming tick-a-box exercises.

Given there is no legislative requirement to consult on explanatory materials at present, this recommendation should be adopted as a matter of government practice.

Recommendation 3: Statements of compatibility should be publicly consulted on alongside exposure draft legislation and explanatory materials.

Introducing a post implementation review

In addition, the Government should consider introducing a requirement to publish a report every five years that examines:

- all the superannuation changes that have been implemented in that period,
- whether the impacts set out in the statements of compatibility relating to those changes have been realised or are on track to be realised, and
- whether the changes remain fit for purpose.

The report should also consider if there are areas that could be improved to enhance member outcomes.

This would effectively be a post implementation review that is intended to test the veracity of the statements of compatibility and hold the Government to account for the assessments within those statements. We recommend that this review be completed at least every five years, which is an appropriate timeframe that will give the Government the opportunity to take stock of previous policy changes without being overly burdensome.

This review could be done as part of the Intergenerational Report (IGR), which already needs to be prepared every five years and has some overlap with these matters.

The Super Members Council also notes that this approach is consistent with recommendations of the 2014 Financial System Inquiry. The Inquiry recommended a legislative objective of the superannuation system, but also called on the Government to “report publicly on how policy proposals are consistent with achieving these objectives over the long term”[10].

Recommendation 4: The Government should consider requiring a post-implementation review every five years (as part of the IGR) to examine the superannuation changes in that period.

Yours sincerely

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[10] Financial System Inquiry Final Report (November 2014) p.94.