

SMSF Owners' Alliance submission

16 September 2016

Superannuation (Objective) Bill 2016 – Exposure Draft

1. The Objective

The primary objective for superannuation set in the Bill – to provide income in retirement to substitute or supplement the age pension – is inadequate.

It lacks vision and ambition.

It subordinates superannuation to supporting the age pension which remains the central pillar of the retirement incomes system.

It is a missed opportunity to instead position superannuation as the central pillar by providing the means for more Australians to take responsibility for the own financial security in retirement rather than to rely on the taxpayer-funded age pension.

As Australians live longer and spend longer in retirement it is imperative to boost their savings via superannuation so they do not become a burden on the next generation.

Unless the focus of retirement income policy is shifted to superannuation rather than the age pension, the gloomy prediction of the 2015 Intergenerational Report – that by 2055 two thirds of Australians will still be reliant on the age pension – is likely to be realised.

The role of the age pension should be a social safety net for Australians who are unable to save sufficiently to fund their own retirement.

Australians who have the potential to be self-sufficient should be required, enabled and encouraged to do so via mandatory and voluntary contributions that are taxed concessionally, recognising that they are a forced savings measure that defers consumption at the expense of other priorities and savings are locked away until retirement.

Defining superannuation as merely to “substitute or supplement” the age pension sets no benchmark for the performance of superannuation. It is meaningless to set an objective for superannuation that does not include even a very general performance goal.

In our submission to the review of the objective, we proposed the following definition:

The primary objective of the superannuation system is to give every working Australian the opportunity and encouragement to save enough so that they can fund an income in retirement that allows them to maintain to a reasonable degree their living standard after retirement.

We suggested that an appropriate benchmark for retirement income is the Reasonable Replacement Rate generally accepted to be two-thirds of pre-retirement, after-tax income.

This would provide a target for the achievement of an effective retirement income system that rests on the main pillar of superannuation.

2. Statements of Compatibility

Requiring legislation to be justified in terms of the primary objective is good practice however the primary objective is defined so broadly that virtually any legislation on superannuation can be justified. It does not inhibit any government from further grinding away the benefits of superannuation.

Section 6(3) of the draft Bill should be amended to require that Statements of Compatibility must also require legislation to take into account the subsidiary objectives.

3. Explanatory Memorandum

The Explanatory Memorandum provides a sound rationale for the general purpose of superannuation.

It outlines the subsidiary objectives of superannuation (which should be referenced in the Bill) and canvasses the purpose and benefits of superannuation while acknowledging there may be some inherent tensions which policy makers will need to balance – for instance, facilitating consumption smoothing over the course of life will need to be weighed against the fiscal pressure on government.

However section 1.11 should be amended.

- (a) The first sentence is loosely worded and describes superannuation as supporting the other pillars of the retirement income system, the age pension and other savings. It downplays the proper role of superannuation. It should instead read:

“Compulsory superannuation is one of the three pillars of the retirement income system, the others being the age pension and voluntary savings via superannuation and other savings.”

Such wording would better position superannuation as a key pillar of the retirement incomes system rather than assigning it just a supporting role for the age pension. It would be more consistent with the Financial System Inquiry statement that: *“The superannuation system spans two of the three pillars of Australia’s retirement income system: the mandatory savings pillar and the voluntary savings pillar”* and the 2015 Intergenerational Report: *“Australia’s Age Pension payment is designed to provide pensioners with a basic standard of living and is only one of three retirement income pillars — the others being compulsory superannuation and private savings.”* (our emphasis)

- (b) The second sentence, namely: “Its purpose is not to allow for tax minimisation or estate planning.” should be deleted. It is incorrect and misplaced.

First, the function of the Explanatory Memorandum is to explain the intent and meaning of the legislation as written. It is not to explain what the legislation does not cover or does not mean.

Second, the taxation of superannuation is set in laws made by the Government and administered by the Australian Taxation Office. Contribution limits are defined by the Government and concessional rates of taxation are determined by the Government.

It is rational and entirely consistent with the general purpose of superannuation for people to make contributions to superannuation to the extent they are able and willing to do so.

We firmly reject the notion that it is wrong for people to put as much money into superannuation as they can within the limits set by the Government. To brand this as tax minimisation is to denigrate the efforts of Australians who do what the Government expects and encourages them to do.

We note that the Australian Taxation Office has power to remedy any excess contributions, which may be inadvertent, and impose penalty interest.

(c) Third, reference to 'estate planning' is not appropriate.

The general purpose of superannuation (though not specified in the Objective) is to require individuals, by way of compulsory and voluntary contributions, to save sufficiently through their working lives to enable them to be financially independent during retirement and in their old age. Tax concessions on voluntary contributions are given to encourage people to maximise their retirement savings.

As the Explanatory Memorandum explains, a subsidiary objective of superannuation is to facilitate consumption smoothing over the course of an individual's life.

Consistent with this subsidiary objective, people endeavour to maximise their savings to the extent allowed by the law to ensure they have sufficient money to live on throughout their retirement and into old age.

People are living longer. Nobody knows how long they will live. By definition, 50% of people will live longer than the average age of death. There is a real concern by many people that they will outlive their retirement savings.

The reference to estate planning begs important questions:

- Where is the divide between prudent saving for a long retirement and estate planning?
- How can the difference between prudent saving and estate planning be defined in law and instances of it identified?
- What is the remedy to be applied to people who are believed to be engaging in estate planning?

Unless these questions can be answered in specific terms, the reference to estate planning in the Explanatory Memorandum should be removed.

If the Government's intention is to limit the ability for people to pass on unused superannuation savings to their family – other than the 17% tax that currently applies on payments to non-dependents – then it should say so as it would really be symptomatic of a return to the 'death duty' philosophy that has been rejected by governments and the Australian people for decades.

Consultation

We note that only 9 days were allowed for comments on the draft legislation. This is not sufficient and reasonable time for representative groups to consider important legislation which deals with the fundamental purpose of superannuation.

In Recommendation 9, the Financial System Inquiry Report recommended that the Government should *"Seek broad political agreement for, and enshrine in legislation, the objectives of the superannuation system..."* and that the Government should *"also seek broad agreement on the subsidiary objectives of the superannuation system."*

We are not aware if the Government has sought broad political agreement for the primary objective but we do believe the Government has not made a proper attempt to seek broad agreement on the subsidiary objectives.

Before the 2016 budget, the Government embarked on a brief process to consult on the objectives of superannuation. Substantial submissions were lodged by SMSF Owners and others and a short roundtable discussion was held with the then Assistant Treasurer. Perhaps as an indication of how little regard was paid to submissions made, they have not been posted to the Treasury website.

Earlier, the Government abandoned the Taxation White Paper process before it had produced as much as an options paper. It appears the comprehensive submissions made by SMSF Owners and many other organisations were a wasted effort.

So far as we are aware, there was no consultation with the superannuation sector on the changes announced in the budget, which have now been substantially modified as the result of community concern over their impact of the changes on their retirement savings plans. We know it is not usual for governments to consult in advance on budget measures but these particular measures made significant structural changes to superannuation and its taxation with an adverse effect on not just those immediately impacted but many whose future savings plans will be affected.

Superannuation policy affects virtually every Australian at all stages of their working lives and retirement. When governments change the rules on superannuation, it should be incumbent on them to engage in a genuine consultation process, ideally outside the pressure of the budget process.

It is a truism that nothing shakes confidence in superannuation more than sudden, unexpected and sometimes retrospective changes to the rules.

About the SMSF Owners' Alliance

SMSF Owners is an independent, not for profit organisation established in 2012 to provide a representative voice for the one million Australians who are members of self-managed superannuation funds. The sole criterion for membership is to be a trustee or member of a self-managed fund. SMSF Owners has no commercial interests.

SMSF Owners has participated actively in the superannuation policy process and has made numerous submissions to the Government the design of superannuation and taxation.

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