SMSF
Owners'
Alliance
Limited ABN 96 161 052 464
Not-for-profit public company

SMSF Owners' submission to the Senate Economics Legislation Committee

Superannuation (Objective) Bill 2016

1. The objective of superannuation

The stated objective for superannuation in the Bill – to "substitute and supplement" the age pension is inadequate and lacks ambition.

It positions superannuation in merely a supporting role for the age pension.

It is a missed opportunity to position superannuation as the main plank of a comprehensive retirement incomes policy that encourages Australians to take responsibility for their own financial security in retirement rather than 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 enough to fund their own retirement.

Australians who have the capacity and potential to be self-sufficient should be encouraged, enabled and required to do so via mandatory and voluntary contributions that are taxed concessionally. Concessional taxation recognises that superannuation is a forced savings measure that defers consumption at the expense of other spending priorities, like buying a house, and also that 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 Government's review of the objective of superannuation, 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.

This is not a new or novel idea. The concept of a Reasonable Replacement Report was discussed in Dr Henry's *Australia's Future Tax System Review 2008-10.*

2. **Statements of Compatibility**

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.

It is not beyond the wit of any Ministerial adviser or Treasury official to devise a Statement of Compatibility that will satisfy this requirement.

Requiring Statements of Compatibility does not inhibit any government from further grinding away the benefits of superannuation.

It would be a more powerful statement of the intent of the legislation for the subsidiary objectives to be included in the Bill rather than merely mentioned in the Explanatory Memorandum and described by Regulation.

Recommendation 1: The Bill should be amended to require that:

- **(a) The subsidiary objectives are included in the Bill;**
- **(b) Future amendments must be justified by specific reference in the amending legislation to the relevant subsidiary objectives, not just a general reference in the accompanying explanatory memorandum.**

3. **Explanatory Memorandum**

In general, the Explanatory Memorandum provides a sound rationale for the general purpose of superannuation though, as argued above, the proposed objective falls short. The Explanatory Memorandum outlines the subsidiary objectives of superannuation 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.

The Explanatory Memorandum acknowledges that superannuation is one of the three pillars of the retirement income system which is an improvement on the exposure draft that saw superannuation as having just a supporting role.

Our view is that superannuation should be regarded as the strong, central pillar of an effective retirement incomes system and this status should be reflected in policy and legislation.

'Tax minimisation'

In the General Outline and other sections of the Explanatory Memorandum (e.g. 1.3, 2.13, 2.14) statements that the purpose of superannuation is not to allow for tax minimisation and estate planning should be deleted.

It is our understanding that 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.

Contribution limits and the taxation of superannuation is set in laws made by the Parliament and administered by the Australian Taxation Office.

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 to do so to within the limits set by law.

We firmly reject the notion that it is wrong for people to put as much money into superannuation as they legally can. To brand this as 'tax minimisation' is to denigrate the efforts of Australians who do what the Government expects and encourages them to do. The connotation is that they are tax dodgers, when they are not.

We note that the Australian Taxation Office already has power to remedy any excess contributions, which may be inadvertent, and impose penalty interest. This power will be extended with regard to contributions in excess of the $1.6 million transfer balance cap.

'Estate planning'

Reference to 'estate planning' is also not appropriate. The general purpose of superannuation (though not written into the Objective) is to require and enable 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 mandatory and voluntary contributions are given to encourage people to maximise their retirement savings.

As the Explanatory Memorandum notes, 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 on which to live 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 'estate planning' and prudent saving for a long retirement?

- 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 tax that currently applies to 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.

4. Consultation

We appreciate the opportunity to make this submission to the Senate Economics Legislation Committee, however we are disappointed that the Government's superannuation 'reform' package has been characterised by a lack of consultation or very rushed consultation.

The Tax White Paper process, to which SMSF Owners and many others made thoughtful submissions, was axed before it had produced as much as an options paper. There was no report, no recommendations. The submissions were not posted to the Treasury website. It's as if this major review of the Australian tax system never happened.

The Government then attempted to justify its changes to superannuation in the May budget by a hasty and expedient review of the objective of superannuation just before the budget. Again, many thoughtful submissions from the superannuation sector and the general public were brushed aside. The Government had already made up its mind.

When three tranches of exposure draft legislation were released, only a few working days were allowed in each case for comments on complex legislation with far-reaching consequences.

Even the sequencing of the superannuation 'reform' Bills is illogical. This Bill on the over-arching objective of superannuation is being considered <u>after</u> two Bills enacting significant changes to superannuation have already been passed by the Parliament. This sequencing reveals the Government's priorities – it seems it is more interested in raising revenue to prop up the budget than in genuine reform of superannuation to make it more efficient and effective in terms of assisting more Australians to achieve financial independence in retirement. As the Treasurer said about the superannuation package: *"Above all this contributes to getting the budget back into balance."*

However, it is poor economics, in our view, to convert Australians' savings for the future into revenue to meet current Government over-spending. The economic cost will be felt in the long term with less money flowing into superannuation and with greater demand on the age pension and aged care leaving a higher bill for the next generation of taxpayers.

Superannuation affects every working and retired Australian and their families. 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. 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 on the design of superannuation and taxation.

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