



**Robson Legal**  
Barristers & Solicitors

30 March 2023

**Contact:** Dr Michael Robson,  
Sole Director

Director  
Superannuation Insurance and Governance  
Unit  
Member Outcomes and Governance Branch  
Retirement, Advice and Investment Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

**BY EMAIL:** [superannuationobjective@treasury.gov.au](mailto:superannuationobjective@treasury.gov.au)

Dear Director

**LEGISLATING THE OBJECTIVE OF SUPERANNUATION**

We refer to the above consultation paper dated 20 February 2023.

Please find **attached** a submission for the Federal government's consideration.

Should you require any further information, or wish to clarify any matter, please contact Dr Michael Robson on (08) 9413 0333.

Yours faithfully

*Robson Legal*

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ROBSON LEGAL

**encl.**

Submission dated 30 March 2023

Submission in response to the Consultation paper titled  
"Legislating the objective of superannuation"  
dated 20 February 2023

Prepared by Dr Michael A Robson

Barrister & Solicitor

Dated: 30 March 2023

### **Brief background of the author**

1. Dr Michael Robson predominantly practices in Commonwealth and State taxation law, including superannuation law, as a barrister & solicitor in Western Australia.

### **Introduction**

2. A legislated objective for superannuation may cause superannuation trustee's investment decisions to be more focussed upon equitable and sustainable assets, which would seem to be the Treasurer's intention based on previous recent statements.
3. Legislating the objective of superannuation does not of itself seem incompatible with existing future retirement strategies which utilise the superannuation system including:
  - (a) individuals contributing additional regular amounts to their superannuation funds;
  - (b) conducting a business through a superannuation fund; and
  - (c) investing in different asset classes including; real estate, securities and bonds.
4. There are however certain risks which have been identified and are referred to below.

### **Risks Associated with legislating an objective of Australia's superannuation**

5. A systemic approach to retirement income policymaking and some of the systemic problems are in part due to the absence of a superannuation objective that is explicitly stated in legislation.
6. There are however questions which arise about the risks associated to legislating an objective for Australia's superannuation system, as follows:
  - (a) the specifics on how the objective would affect the superannuation sector and other areas of the Australian economy are unknown;
  - (b) it is unclear whether the objective is meant to complement or be independent from the legal and regulatory obligations of superannuation trustees, or whether trustees will have a newly revised obligation to act in the best financial interests of their members while taking the superannuation objective into account; and
  - (c) restrict the Commonwealth parliament's power or a Minister's powers to permit withdrawals from superannuation prior to retirement.
7. It has previously been identified by Commonwealth Government reports that the Australian population is ageing and there is therefore an increasing demand upon the

social security system.<sup>2</sup> Legislating the objective of superannuation could have the behavioural effect of Australian's limiting the amount of superannuation contributions because of concerns about the moneys being only used in the future for retirement purposes. This would ultimately have a negative impact on the Commonwealth budget because of the increased reliance on retirees on the social security system.

8. There are many circumstances arising from the vicissitudes of life whereby a substantial sum of money, if available, could be of greater benefit to the individual before retirement, than generally to the community's overall benefit. Such examples include:
  - (a) life saving treatment which is not offered or subsidised in Australia;
  - (b) severe financial hardship (including for example dependant spouses arising from relationship breakdown);
  - (c) individuals with disabilities;
  - (d) funeral expenses for dependants; and
  - (e) mortgage sales of a primary residence.
9. The current eligibility for compassionate release of superannuation moneys does address the above matters.
10. On one view, the proposed objective is inconsistent with the early release of superannuation prior to retirement on compassionate grounds. Any legislated objective would therefore need to ensure that:
  - (a) the objective does not limit the existing powers of the Commonwealth parliament to amend the legislation or the relevant Minister to amend the relevant regulations; and
  - (b) all existing grounds for the release of superannuation moneys for compassionate reasons are preserved.
11. There has also been public debate about the possible use of a proportion of superannuation moneys for an individual to purchase their own home prior to retirement. A part of the public debate is the permissibility of a superannuation trustee to invest in real estate, but not for the purpose of ownership by a member of the superannuation fund.

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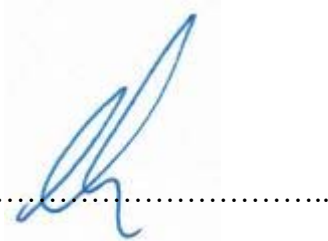
<sup>2</sup> See, especially, Productivity Commission report titled "An Ageing Australia: Preparing for the Future" dated 22 November 2013.

12. The affordability of housing is a further factor why the Commonwealth government would consider whether to permit some amount of superannuation moneys to be used for the purpose of:
  - (a) direct home ownership by members of superannuation funds;
  - (b) a greater investment by large superannuation funds in affordable housing; or
  - (c) a greater budget commitment by Commonwealth, State and Territory governments in affordable housing.
13. The First Home Owner Super Saver ('FHOSS') scheme is a limited scheme which enables a lump sum to be withdrawn prior to retirement for the purpose of purchasing a home. As discussed above, the FHOSS scheme appears inconsistent with the proposed superannuation objective.
14. Whether a greater investment by superannuation trustees in a particular class of assets, such as real estate, is consistent with a superannuation objective is unclear. The superannuation trustee's decision, subject to interpretation of the objective, may determine that, at different times and subject to economic conditions, investment in real estate, securities and/or bonds are more favourable to the members as a whole. These decisions can ultimately be to the overall detriment of the community because the decisions favour the interests of the members.

**Proposed objective does not meet the understanding of the superannuation system's objective in Australia**

15. The superannuation system has structural inequality. One such example is the gender pay gap and the fact that women generally are employed less years than men. Both of these cause women to, on average, have lower superannuation balances.
16. Different life expectancies between men and women and how they are estimated have an impact on the income that an individual may be able to obtain from their preserved savings.
17. Investment and inflation risks can jeopardise sustainability of superannuation savings in retirement.
18. The stated objective of superannuation arises at a time when there is a rise in mandatory contributions for all employees. This will ultimately increase the pool of national superannuation savings. However, as the size of superannuation savings increases over the coming decades, the amount of superannuation funds under management will increase as a proportion of the economy.

19. Investment decisions in Australia by superannuation trustees could in the coming decades affect the Australian economy in ways which are presently unknown.
20. Some examples as follows illuminate the potential risks.
21. Investment decision making may become more skewed to foreign investment and not to investment in Australia. This could be detrimental to future gross domestic product growth.
22. Ownership of the major Australian banks by Australians (directly or indirectly) could reduce and allow a majority of foreign ownership. The foreign ownership control of Australian banks could influence the businesses operated by those banks.
23. An over investment in real estate by superannuation trustees could (i) have an inflationary effect on housing prices and (ii) ultimately cause losses for the members because real estate investments are more illiquid than investments in securities and bonds.



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