

Submission to Treasury

Legislating the objective of superannuation

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I thank Treasury for the opportunity to provide a submission into their recent inquiry into legislating the objectives of superannuation and note the intentions of the Treasurer in committing to such an inquiry process. This submission aims to achieve several goals, and articulate a view of the superannuation industry that runs contrary to many existing recommendations and viewpoints:

- (1.) The draft and proposed definitions of superannuation, as has been outlined in previous models, need to be given a degree of legal enforcement to ensure that the principles enshrined are enforceable and consequential,
- (2.) The priority in creating a ‘dignified alternative’ to the aged pension does a grave disservice to those in poverty or living on the aged pension currently, and a greater focus should be provided on their plight,
- (3.) Because of the definitionally long-term/far-sighted term of superannuation and long-term investment, strict and stringent climate credentials and restrictions on investments in coal and gas must be enforced, to ensure any definition is not just ‘sustainable’, but ‘enduring’,
- (4.) Projects and schemes such as limited recourse borrowing arrangements (LRBA) serve little function in facilitating even generous and broad definitions of superannuation as they exist, and should be scuttled and abolished, with an aim towards developing a public superannuation fund; and

(5) Given the concerns over increasing occurrences of wage underpayments and the amount of money in lost/unpaid super, wage theft must be addressed in any definition

Non-Justiciability and the existing proposal for a Superannuation Objective

In response to the Morrison Government's *Treasury Laws Amendment (More Flexible Superannuation) Bill 2020*, the Then Opposition ALP moved an amendment in the Senate that would have established an "Objective of the superannuation system" and a framework for its operation¹. The definition read as follows:

The primary objective of the superannuation system is to provide income for a dignified retirement as a supplement or substitute to an adequate age pension.

Such definitions and framework were proposed in the lapsed amendment, which outlined a process and requirement that regulations and bills should be provided with a statement of compatibility, similar to the requirements placed under the *Human Rights (Parliamentary Scrutiny) Act 2011*².and like similar requirements, are non-justiciable. While such statements can be important to establish better understanding of the reforms to the common public, the non-justiciability of these clauses effectively means that enforcement is impossible, and as has been seen in cases of misleading conduct under the Charter of Budget Honesty³. As such, given the need to ensure honesty and clarity for the superannuation system, it would be helpful to ensure

¹ Senator McAllister, Jenny.

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r6538_amend_19974cf9-a46a-4487-9752-63651712a5e2/upload_pdf/1025%20CW%20TLA%20\(More%20Flexible%20Superannuation\)%20Bill%202020_McAllister.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/amend/r6538_amend_19974cf9-a46a-4487-9752-63651712a5e2/upload_pdf/1025%20CW%20TLA%20(More%20Flexible%20Superannuation)%20Bill%202020_McAllister.pdf;fileType=application%2Fpdf)

² S.8, S.9 Human Rights (Parliamentary Scrutiny) Act 2011

³ Wells, Graeme "Time to rethink the Charter of Budget Honesty", *The Conversation*, 2015

that such statements and objectives would create rights and duties that are enforceable in judicial or other proceedings.

“Dignity, Adequacy, and Equity” as an objective. Subjective, unclear, and demeaning to pensioners.

In the Treasurer’s commentary announcing the inquiry, and in the draft amendment moved in 2022, “dignity/dignified, adequacy, and equity” are frequently used, with the system being seen as an alternative to the Aged Pension. However, there are several functional problems with this definition that both fail to provide enough specificity towards specificity and do a disservice to Australians relying on the aged pension, who are overwhelmingly lower income and struggling compared to those currently with substantial super balances.

For instance, using the first draft amendment from 2020 as an example, implies that a dignified retirement requires either support from or entire replacement with a large superannuation balance, with the aged pension merely being ‘adequate’. The need to increase the aged pension, or at least remove the means test of the Aged Pension, and move pensioners onto the Pension Rate Calculator B of the *Security Act 1991*⁴, doing so both promotes universalism as a de facto objective of the Australian welfare system, but reduces long term costs in terms of administration charges, and could be further offset by changes to superannuation tax concessions.

As such, I believe there is a need to provide greater specificity, or at least a model guide for what the definition of superannuation would mean, with practical examples.

⁴ S. Part 3-3 Security Act 1991.

A climate of change: Requiring funds deal with the public interest and the climate

As comments from the Assistant Treasury have indicated, it is the Government's view that superannuation projects need only invest in public projects when it is in their member's interests⁵. While this approach has intrinsic logic, particularly given the intent for super to be for individual retirement savings, it is an incomplete approach, that fails to deal with how the totality of a fund's investments can be exposed to risks, and how such risks may impact a member's financial status outside of their fund. Climate Change is the most present case of such an arising issue, as an issue predominantly caused by excesses in industries that heavily pollute and emit greenhouse gases, and is responsible for falling financial returns in other areas due to droughts, floods, increases costs and risks, and insecurity. With other financial and monetary institutions recognising the need to address and respond to climate change in a positive and proactive way, part of the objectives must ensure that the "maintenance of a stable ecology and climate" is a core objective of the superannuation system. Furthermore, governments must be able to require that the investment of superannuation funds, a scheme created and regulated by legislation, does not fall afoul of the Government's one climate commitment under the Climate Change Act 2022. As such, any definition of superannuation should compel public superannuation funds to dedicate a percentage of their wealth into shared wealth, with an interest in alleviating private harm, and not an interest in generating profit, which would remain the responsibility of the rest of the fund's assets. Future Government's shouldn't feel compelled to subsidise wealthy funds to

⁵ <https://www.afr.com/policy/tax-and-super/labor-says-super-for-nation-building-must-serve-members-first-20230221-p5cm9n>

invest in the social good, they should be able to compel them, given how they already created their position.

Legalised chaos: Limited recourse borrowing arrangements

‘Sustainability’ has been featured repeatedly by the Treasurer and Treasury as an ideal aim to enshrine and uphold in the superannuation system, an understandable goal, but one which is undercut by existing arrangements in the *Superannuation Industry (Supervision) Act 1993* which allow for borrowing by SMSF for property and other assets. Such arrangements are nearly universally performed by the wealthy, and facilitate an interconnected relationship between housing debts and SMSF’s, which allows for housing prices to inflate and breeds instability in the superannuation sector, with volatile and dips in the housing market leaving superannuation funds in freefall.

Such recommendations were all but endorsed by David Murray’s 2015 review of financial savings and should be enacted here. As such, I’ve attached the legislative reforms needed to achieve these measures here:

Superannuation Industry (Supervision) Act 1993

1 Subsection 10(1) (definition of *acquirable asset*)

Repeal the definition.

2 Subsection 67(1)

Omit “and section 67A”.

3 Subsection 67(1) (note 1)

Repeal the note.

4 Subsection 67(1) (note 2)

Omit “Note 2”, substitute “Note”.

5 Sections 67A and 67B

Repeal the sections.

6 Subsections 71(8) and (9)

Repeal the subsections.

Superannuation: The largest facilitator of Wage Theft

Both this government and the previous government have made announcements and aimed to try and penalise and combat wage theft, that being the repeated and systematic underpaying of due wages and entitlements. The ACTU has estimated that “up to \$1.35bn in wages are underpaid each year.”⁶ in terms of general or conventional wage theft. However, Industry Super Australia has revealed that during the financial year of 2019-20, “2.9 million Australian employees missed out on \$5 billion in employer super contributions”⁷, indicating that Superannuation related wage

⁶ <https://www.australianunions.org.au/2022/05/11/what-can-you-do-about-wage-theft/>

⁷ <https://www.abc.net.au/news/2021-10-28/superannuation-rip-off-hits-retirement-plans-of-workers/100556506>

theft represents 80% of wage theft, and this is without discussing the extent to which Superannuation fees amount to wage theft.

As such, it is imperative that such a definition must ensure workers are paid their superannuation, and such payment is frequent. Words like ‘certain’ would help in any definition to ensure a degree of compulsion in any statement, and words like ‘timely’ would go to ensuring payments are frequent, allowing payments to accumulate quicker, and be easier for workers to check with their payroll. Furthermore, the Fair Work Ombudsman must be empowered to probe employers and for the recovery of unpaid employer superannuation contributions, rather than relying on contact through the ATO.

Conclusion: Superannuation, far from Super.

As has likely been made clear by my submission, I am critical of Australia’s Superannuation system that has been enshrined and heralded since the Keating government, a system that has led to excessive fees, proliferation of private wealth and vast disparities between accounts, and delivers results suboptimally when compared to other funds such as the Norges Bank Investment Management. However, I do believe that we can reach material improvements here if we set our hearts to it, and actually are willing to make these big reforms that go towards reducing inequality, promoting transparency, and futureproofing our economy.