

MTAA Submission

Legislating the objective of superannuation

Treasury Consultation – Exposure Draft Legislation

September 2023

ABOUT MTAA

The Motor Trades Association of Australia (MTAA) is Australia's peak national automotive association. MTAA's membership includes the Motor Traders' Association of New South Wales, the Victorian and Tasmanian Automobile Chamber of Commerce, the Motor Trade Association of South Australia and Northern Territory, the Motor Trade Association of Western Australia, and the Motor Trades Association of Queensland.

MTAA represents new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), tyre dealers and automotive dismantlers and recyclers.

The automotive industry is a vital contributor to Australia's economy, employing approximately 385,000 people across 13 sectors and 52 trades, and contributing 2.1% of Australia's Gross Domestic Product (GDP). The automotive industry is also one of the largest employers of apprentices and trainees nationally, and the majority of automotive businesses (97%) are small and family-owned enterprises.

As the national-level body, MTAA represents the unified voice of Australia's automotive industry, identifying and monitoring issues affecting the automotive sector, and informing and advising Government on relevant industry impacts, trends, and proactively participating in the development of sound public policy on issues impacting the retail motor trades, small business and consumers.

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1. This submission is filed on behalf of the MTAA with reference to the Treasury’s consultation on the *Superannuation (Objective) Bill 2023, Superannuation (Objective) (Consequential and Transitional Provisions) Bill 2023* and Explanatory Materials.
2. MTAA notes that both employees and employers (contributing superannuation on behalf of their employees) need certainty, simplicity and transparency in the system and want to be reassured that the superannuation contributions made provide the best returns over the employees’ working life into retirement.
3. Whilst this need is broadly acknowledged in the Exposure Draft Explanatory Materials (EM), with the wording of the superannuation objective “... *intentionally formulated to be succinct and written in plain English to aid understanding and clarity for all Australians.*”¹, the proposed definition does not meet this requirement.
4. MTAA’s concerns in this regard are twofold. Firstly, the objective of superannuation as being to “... *preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way*” is framed in inherently subjective and uncertain terms (as also acknowledged in the EM²) – an approach clearly at odds with an objective of providing understanding and clarity for all Australians. Secondly, the definition fails to include an essential element of the superannuation system – that of investing in the best financial interest of the superannuation fund members.

Subjective Terms

5. As directly acknowledged by the EM, the term “dignified” is “a subjective concept” that “*allows individuals to apply their own values and judgments about what a dignified retirement means to them.*”³ Again, this appears prima facie to be contrary to an objective intended to provide clarity. This point is further illustrated by the EM’s recognition that not only can individuals apply their own subjective values and judgments – but that such values and judgments “*may change over time*”⁴.
6. Accordingly, MTAA submits that the definition of a ‘dignified’ retirement is inconsistent with the intention of providing clarity and understanding and is therefore a term unsuited for inclusion in a legislated objective. It could also be construed as meaning an “elevated lifestyle”, that goes far beyond a standard that allows the person to participate economically and socially in their community. A more appropriate goal would be *to deliver adequate standards of living in retirement*.
7. As also directly acknowledged by the EM, the terms “equitable” and “sustainable” are also subjective and broad. Again, such terms do not provide clarity or aid understanding.

¹ *Superannuation (Objectives) Bill 2023 Superannuation (Objective) (Consequential and Transitional Provisions) Bill 2023 Exposure Draft Explanatory Materials*, section 1.13.

² *Ibid.*, sections 1.40, 1.47 and 1.50.

³ *Ibid.*, section 1.40.

⁴ *Ibid.*

8. MTAA notes that the EM’s discussion on “equitable” is not limited to “a system that delivers similar outcomes to people in similar situations”⁵ – but one that gives broader consideration to superannuation’s “distributional impact”⁶ and the importance of a system that “targets support ... to those most in need”, including “intergenerational inequity”⁷.
9. Similarly, the EM’s discussion on “sustainable” is not limited to the economic and fiscal sustainability of the superannuation system. Instead, it extends to a more amorphous concept of “ensuring superannuation policy meets community needs and expectations”⁸, as well as being “economically and fiscally responsible”⁹ in relation to the Australian economy and the Commonwealth Government.
10. MTAA acknowledges that the EM seeks to allay concern in this regard, stating that:

“The inclusion of ‘sustainable’ in the objective does not change how superannuation funds invest, or what they can invest in. Trustees must continue to comply with existing legal obligations when formulating investment strategies, particularly acting in the best interests of members.”¹⁰

11. However, as alluded to above, MTAA finds it hard to reconcile this statement with the fact that “acting in the best interests of members” does not form part of the proposed legislative objective; particularly given the EM clearly envisions a role for superannuation separate (or at least in addition to) this role:

*“The superannuation system is **an important source of capital** in the economy which can support investment **in capacity-building areas of the economy** where there is alignment between the best financial interests of members and **national economic priorities**”¹¹ [emphasis added]*

12. MTAA is therefore concerned the Bill appears to suggest that investments that have hitherto been lower ranked by super funds because they are likely to return lower financial returns within the lifetime of contributing members (such as social housing and the care economy) stand to receive greater investment by means of introducing the proposed legislative objective of superannuation. To the extent that investments are diverted from higher ranked investments into lower ranked investments, superannuation fund member returns will be diminished, and the businesses that lose investment streams will suffer adverse consequences.

⁵ Ibid., section 1.47.

⁶ Ibid., section 1.46.

⁷ Ibid., section 1.48.

⁸ Ibid., section 1.51.

⁹ Ibid., section 1.55.

¹⁰ Ibid., section 1.54.

¹¹ Ibid., section 1.8.

Best financial interests of superannuation fund members

13. In reviewing the proposed objective of superannuation, MTAA is particularly concerned that the proposed wording overlooks the fact that an essential/primary objective of superannuation is that funds are *invested in the best financial interest of members* with a focus on achieving the best return on this investment over the 40 plus years of an employee’s working life.
14. As alluded to above, the need to invest in higher risk asset classes in the best financial interests of younger superannuation fund members starting out on their journey, may well be superseded by a requirement on the superannuation fund trustee to invest in lower return “capacity building” projects such as social housing in the name of equity and sustainability. This cannot be in the best interests of such members.
15. Relatedly, and consistent with an objective of investing in the best financial interests of a superannuation fund member, MTAA notes that the superannuation system should do more than simply ‘preserve savings to deliver income in retirement’; rather, its intention should be to grow savings to deliver income in retirement.
16. MTAA notes that the EM appears to acknowledge the potential harm of defining an objective of superannuation that does not include a ‘best financial interests’ requirement, seeking to allay such concerns by stating that:

“... the objective does not impact regulatory supervision activities and while aligned with, it would be separate from trustees’ fiduciary duties and is not intended to guide the regulation of trustees’ conduct or change existing trustee obligations.”¹²

17. MTAA therefore supports the proposed sub-section 5(2), which makes this intention clear:

“This section does not affect:

- (a) the operation of any law of the Commonwealth (other than this Act or regulations made under this Act); or*
- (b) the operation of the governing rules (within the meaning of the Superannuation Industry (Supervision) Act 1993) of any superannuation entity (within the meaning of that Act); or*
- (c) any power, duty, right or liability of the trustee (within the meaning of that Act) of such an entity in its capacity as trustee.”*

18. However, MTAA remains concerned that ultimately, a trustee’s fiduciary duty to ensure that funds are invested in the best financial interest of members, must necessarily be understood in terms of any legislated objective of superannuation. This much is acknowledged in the EM through its recognition of the aforementioned need for the objective to be “aligned with” a trustees’ fiduciary duties. As the meaning of the terms used in the proposed definition will necessarily “change over

¹² Ibid., section 1.20.

time”, it will result in a necessary clarification, or change, in the manner in which trustees meet their fiduciary duties.

19. The validity of this concern is illustrated by the following excerpt from the EM:

“ ‘Dignified’ also reinforces the concept of ‘delivering income’ and clarifies the need for trustees to ensure they know their members’ needs and support members to optimise their standard of living in the retirement phase.”¹³ [emphasis added].

MTAA notes such ‘clarification’ would apply equally to the other subjective elements of the proposed definition.

A better approach

20. An earlier review of the financial system by David Murray, the Financial System Inquiry 2014, proposed the primary objectives of superannuation system should be to provide income in retirement to substitute or supplement the aged pension. While this by itself is minimalist, it also included six subsidiary objectives, which make clearer the objective of superannuation:

- Facilitating consumption smoothing over an individual’s life
- Helping people to manage financial risk
- Being fully funded through savings
- Being invested in the best interest of superannuation fund members
- Alleviating fiscal pressure on Government from the retirement income system
- Being simple, efficient and providing safeguards.¹⁴

21. MTAA suggests that these elements be combined to create a superannuation objective that is succinct, but both objective and clear. Accordingly, MTAA recommends that section 5 (1) of the Bill be replaced with the following:

“The objective of the superannuation system is to assist in delivering adequate standards of living in retirement, by having investments made in the best financial interests of superannuation fund members.”

22. This is an objective that describes the key purpose of superannuation, while ensuring that investments are made in the best interests of members. Importantly, as it is a definition that is fully consistent with existing fiduciary duties (including the best financial interests duty and sole purpose test), it avoids the (unnecessary) risk of unintended consequences arising from a legislative objective that may be interpreted in a manner inconsistent with a superannuation trustee’s existing obligations.

¹³ Ibid., section 1.42.

¹⁴ The Treasury, *Financial System Inquiry Final Report*, Australian Government, November 2014, page 95.