



Monthly Information Newsletter – Tax & Super

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Legislating the purpose of superannuation

On 20 February 2023, Treasury released a consultation paper on legislating the purpose of superannuation. This is an idea that has been around since 2016 when the former Coalition government contemplated doing the same thing.

The government says that legislating an objective of superannuation will provide stability and confidence to policy makers, regulators, industry, and the community, that future changes to superannuation policy should be aligned with the purpose of the superannuation system. It will also ensure members and funds have a shared understanding of the purpose of superannuation throughout both the accumulation and retirement phases.

The consultation paper puts forward the following proposed objective, seeking feedback on it:

The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.

To be clear, the purpose of legislating such an objective is to guide future policy makers – any changes they make in the superannuation space should align with the legislated, agreed objective. For example, if the Coalition returned to government, its 2022 federal election proposal to allow first-home owners to tap into their superannuation for a deposit may run counter to the legislated objective and perhaps should not be pursued or supported by Parliament. Also arguably running counter to the legislative objective, would have been the COVID measure allowing individuals to access \$20,000 of their superannuation savings, subject to certain conditions. That being said, the objective is not being hardwired into the Constitution, so it would be possible for a future government to disregard the objective if it saw fit.

On the other hand, reining in tax breaks for individuals with for example \$3 million or more in their super accounts may align with the objective because it may be arguable that the amount of super in their account is significantly more than is needed for a “dignified retirement”.

The other point to be made around this proposal is that it is not aimed at abolishing current, existing laws that may not strictly align with the new objective. Most notably, this involves superannuation conditions of release that are not aimed at preserving savings to deliver income for a dignified retirement, including:

- being temporarily or permanently incapacitated
- suffering severe financial hardship, such as being unable to meet immediate family living expenses where you have been receiving government income support payments for a continuous period of 26 weeks and had been receiving that support at the time you applied for early release
- compassionate grounds
- having a terminal medical condition, or
- taking part in the first home super saver scheme.

Unrestricted non-preserved benefits don't require a condition of release to be met and may be paid at any time. They include, for example, benefits for which a member has previously satisfied a condition of release and decided to keep the money in the super fund. Certain employer termination payments (ETPs) received by the fund before 1 July 2004 may also be included in this category of benefits.

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