



THE LAW SOCIETY  
OF NEW SOUTH WALES

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Dear Dr Popple,

### **Legislating the objective of superannuation – August 2023**

The Law Society of NSW appreciates the opportunity to provide input to the Law Council of Australia for its submission to the Treasury Consultation, *Legislating the objective of superannuation – August 2023*. The Law Society's Business Law Committee has contributed to this submission.

### **Background**

We note that the Treasury is consulting on the Superannuation (Objective) Bill 2023 Exposure Draft, and the Superannuation (Objective) (Consequential and Transitional Provisions) Bill 2023 Exposure Draft. The consultation commentary states that the draft legislation and explanatory materials reflect feedback received from stakeholders on the need to legislate the objective of superannuation to provide a shared direction for government, the superannuation industry and Australians.

The Law Society acknowledges that the previous submission made by the Superannuation Committee of the Legal Practice Section ("Superannuation Committee")<sup>1</sup> to the *Legislating the objective of superannuation - February 2023* Consultation Paper expressed the view that the objective of superannuation need not be introduced by way of legislation. However, the measures that have been adopted under the draft exposure bills and explanatory materials appear to be consistent with the alternative suggestions made by the Superannuation Committee in the event the Government proceeded to legislate.

### **General Comments**

We broadly support the draft exposure bills, noting that they are consistent with reforms proposed in the February 2023 Consultation Paper. The proposed reforms do not alter superannuation trustees' existing obligations, or how members' money can be invested or

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<sup>1</sup> Dated 5 April 2023.

accessed. In our view, legislating a clear, principles-based objective for Australia's superannuation system will improve Government accountability and transparency and promote certainty in future reform. While we recognise that legislating the objective of superannuation cannot bind future Parliaments or guarantee that policy makers will always make decisions consistent with the objective, in our view, the absence of a legislated objective potentially exposes retirement savings to erosion, as occurred during the period 2019-2021. During that period, early withdrawals of retirement savings beyond the exceptional hardship framework were approved by the Parliament to offset the economic consequences of the COVID-19 pandemic national emergency, arguably in lieu of government funded social security or disaster payments.

### **Other suggested improvements**

We note the Superannuation Committee's suggestion, in its response to the February 2023 Consultation Paper, that the proposed legislated objective could be improved by incorporating words to avoid doubt that future laws will not apply retrospectively. While we endorse the Committee's position that future superannuation reforms, even those consistent with the legislated objective, "[should] not infringe the premises on which Australians have previously foregone salary and wages, and submitted to those moneys being preserved until retirement",<sup>2</sup> in rare circumstances, a limited form of retrospectivity may be appropriate (for example, if it is curative in nature). For this reason, we suggest any clarification with respect to retrospectivity might be better dealt with in the explanatory materials.

If you have any questions about this submission, please contact Sonja Hewison, Policy Lawyer at [sonja.hewison@lawsociety.com.au](mailto:sonja.hewison@lawsociety.com.au) or on (02) 9926 0219.

Yours sincerely,



Cassandra Banks  
**President**

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<sup>2</sup> Ibid, p5.