Chapter 1 SUPERANNUATION IN AUSTRALIA

Para

¶1-000 Objective of the superannuation system

The Superannuation (Objective) Bill 2016 implements the government's intention to enshrine the objective of superannuation in a stand-alone Act.

On 7 September 2016, the government had released Exposure Draft — Superannuation (Objective) Bill 2016 which contained a legislative framework to enshrine the primary objective of the superannuation system in legislation. This followed a recommendation in the Financial System Inquiry (FSI) Final Report issued on 7 December 2014 and the adoption of the recommendation in a Treasury discussion paper released on 9 March 2016. The FSI Report recommended a clear statement of the objectives of the superannuation system to align policy settings, industry initiatives and community expectations.

The Superannuation (Objective) Bill 2016 was introduced into parliament on 9 November 2016.

The Senate Economics Legislation Committee recommended in a report tabled on 14 February 2017 that the Bill be passed and that compliance of future superannuation reforms with the legislated objective be periodically assessed and reported on. The Committee considered that the objective as stated in the Bill would ''enhance the stability of the superannuation system by creating a clear framework for assessing superannuation policy''.

The Superannuation (Objective) Bill 2016 was still in the Senate at 30 June 2018.

Context for enshrining a superannuation objective in legislation

Superannuation generally comprises compulsory contributions under the Superannuation Guarantee scheme and voluntary member or salary sacrifice contributions. It is one pillar of the Australian retirement income system, together with the age pension and other voluntary savings. Over 80% of working age Australians have superannuation savings and superannuation makes up around 22% of all assets held by Australian households.

Superannuation is a key component of the financial services industry and of the economy more broadly, with superannuation assets having increased from $245b in 1996 to $2.6 trillion in 2018.

The government considers that, as the superannuation system matures and superannuation assets increase, superannuation changes should be considered in light of an objective that is enshrined in legislation. This is intended to promote confidence in the superannuation system.

Objective "to provide income in retirement to substitute or supplement the age pension"

The Superannuation (Objective) Bill 2016 proposes that the primary objective of the superannuation system is ''to provide income in retirement to substitute or supplement the age pension''. This objective clarifies that the role of superannuation is to assist individuals to support themselves by providing income to meet their expenditure needs in retirement.

Subsidiary objectives will provide a framework for assessing whether superannuation legislation is compatible with the primary objective. The Bill states that the subsidiary objectives will be the matters prescribed by the regulations.

Proposed subsidiary objectives are set out in the Exposure Draft — Superannuation (Objective) Regulation 2016 which, when finalised, will commence at the same time as the Superannuation (Objective) Bill 2016 commences. The following subsidiary objectives are proposed:

- to facilitate consumption smoothing over the course of an individual's life
- to manage risks in retirement
- to be invested in the best interests of superannuation fund members
- to alleviate fiscal pressures on the Australian government from the retirement income system, and
- to be simple and efficient, and provide safeguards.

The Objective Bill requires every Bill or regulation relating to superannuation to be accompanied by a statement of compatibility with the objective of the superannuation system. The statement must include an assessment of whether the Bill or regulation is compatible with the primary and the subsidiary objectives of the superannuation system.

¶1-050 Historical background

In Australia, retirement incomes are funded privately through superannuation savings (both voluntary and compulsory) or publicly through the age pension. The superannuation guarantee scheme underpins the national retirement incomes framework by extending superannuation coverage generally across the workforce.

The policy of superannuation for all Australians is a significant part of our tax and superannuation systems. Among the concessions and benefits provided by the Commonwealth through the tax system, superannuation is the second largest expense.

Tax concessions have, for many years, encouraged employers to make superannuation contributions on behalf of their employees. Individuals have also been encouraged to provide for their own retirement, although tax concessions have particularly favoured high-income earners.

Historical survey

Before 1983, superannuation tax concessions were extremely generous — generally, contributions were deductible and earnings on the contributions were exempt from tax as long as the fund satisfied certain conditions. Lump sum benefits paid on retirement were virtually tax-free because only 5% was included in assessable income.

The 1983 amendments resulted in benefits still being taxed at a concessional rate but less generously than before. The nature of the concession changed from virtually a tax exemption to a tax deferral, in that tax on the savings was postponed until they were withdrawn from the fund.

From 1 July 1986, responsibility for regulating superannuation funds was transferred from the Commissioner of Taxation to the then Insurance and Superannuation Commissioner (ISC) through the introduction of the *Occupational Superannuation Standards Act 1987* (see ¶1-200).

In 1988, changes designed to tax retirement savings on an accruals basis and to reduce deferral advantages were introduced. Tax was imposed on fund income and on deductible contributions, generally at a flat rate of 15%.

Until the 1990s, occupational superannuation generally only existed for white collar employees. The superannuation guarantee (SG) scheme which was introduced in 1992 made superannuation available to employees regardless of the type of their employment. Choice of fund rules, which commenced on 1 July 2005, gave most employees the right to choose the fund to receive the SG contributions made by their employer on their behalf.

The matching of voluntary contributions made by low-income earners with a government co-contribution was introduced in 2003 (¶6-700).

Surcharges on deductible contributions made by or on behalf of high-income earners and on ‘‘golden handshakes’’ by employers were imposed from 1997. These imposts were tempered by initiatives to allow tax rebates for contributions on behalf of non-working spouses, a savings rebate (abolished, however, after 12 months), and a tax exemption for the proceeds from the sale of a small business where the proceeds are used for retirement. The surcharges were abolished from 1 July 2005.

From 1 January 2006, members may split with their spouse contributions made on their behalf in the previous year. Contributions splitting allows the couple to build two superannuation accounts, and this may have favourable tax consequences.

Simplified superannuation from 1 July 2007

The taxation of superannuation was significantly reformed in a package of 11 Bills that were introduced into parliament in December 2006 and February 2007 and that generally commenced operation on 1 July 2007. These Bills changed and rewrote the law on contributions to superannuation entities, taxation of superannuation entities and benefits paid from superannuation entities. All the superannuation provisions in the *Income Tax Assessment Act 1936* (ITAA36) were repealed and the rewritten law incorporated into the *Income Tax Assessment Act 1997* (ITAA97).

The simplified superannuation laws aim to overcome the complexity of the pre-1 July 2007 taxation of eligible termination payments, which included both lump sum superannuation benefits and employer termination payments. From 1 July 2007, there are two distinct taxing regimes:

- one for the taxation of superannuation benefits, whether paid as a lump sum or an income stream, and whether paid to a member or to someone else because of the member’s death, and
- one for the taxation of employment termination payments.

Superannuation benefits received by a member aged at least 60 are generally tax-free, whether paid as a lump sum or as an income stream. Superannuation benefits paid to a member aged under 60 also receive concessional tax treatment.

The reasonable benefit limits (RBL) system, which previously limited the amount of superannuation and similar benefits that a person could receive on a concessionally taxed basis, was abolished from 1 July 2007. The RBL system was replaced by ceilings on the amount of concessional (generally deducted) contributions and non-concessional (undeducted) contributions that can be made for a member in a year. A member may be liable to penalties if contributions made for them exceed the contributions cap for the year.

The current taxation of superannuation entities is similar to their pre-1 July 2007 tax treatment, although there is a new category of taxable income — no-TFN contributions income — which may be taxed at the top tax rate. The introduction of no-TFN contributions income is tied to other measures that encourage members to quote their TFN to their fund and penalises those who fail to do so.

¶1-100 Superannuation industry profile

Quarterly and annual statistics published by the Australian Prudential Regulation Authority (APRA) give information that can be used to assess the overall performance of the superannuation system. Among other things, APRA publications provide data on assets held by various superannuation entities, earnings performance, fees and taxes, membership profile, the offering of investment options and the development of MySuper products.

Current APRA publications relating to the performance of the superannuation system are:

1. *Quarterly MySuper Statistics* which contains data on MySuper products — information on the product profile, product dashboard measures, asset allocation targets and ranges, investment performance, fees disclosed for MySuper products, or where relevant, for the lifecycle stages underlying MySuper products with a lifecycle investment strategy, and MySuper URLs
2. *Annual MySuper Statistics* which provides detailed data for all MySuper products, and allows users to analyse APRA-regulated MySuper products across a range of measures
3. *Annual Fund-level Superannuation Statistics* which contains detailed profile and structure, financial performance and financial position, conditions of release, fees and membership information for APRA-regulated superannuation funds with more than four members and eligible roll-over funds, as well as profile and structure information for the trustees of these superannuation funds
4. *Quarterly Superannuation Performance Statistics* which provides industry aggregate summaries of financial performance, financial position, key ratios and asset allocation, and
5. *Annual Superannuation Bulletin* which contains statistics that provide policymakers, regulators, trustees and the community with information to assess the overall performance of the superannuation system.

Superannuation industry overview for the year to 31 March 2018

The statistics below are taken from APRA's *Quarterly Superannuation Performance Statistics*, March 2018 interim edition, released on 29 May 2018. Since September 2013, the statistics in this publication have generally been for superannuation entities with more than four members. In the March 2018 quarter, this captures 224 superannuation entities, comprising 205 APRA-regulated superannuation entities and 19 exempt public sector schemes.

Superannuation assets totalled $2.6 trillion at the end of the March 2018 quarter. Over the 12 months from March 2017, there was a 6.8% increase in total superannuation assets.

Over the March 2018 quarter there was a decrease of 0.2% in total superannuation assets, comprised of an increase of 0.2% in APRA-regulated assets, a decrease of 1.2% in self-managed superannuation fund assets, an increase of 0.1% in exempt public sector superannuation scheme assets and an increase of 0.2% in balance of life office statutory fund assets.

Assets in MySuper products totalled $641.8b at the end of the March 2018 quarter. Over the 12 months from March 2017, there was a 15.6% increase in total assets in MySuper products.

Entities with more than four members

The statistics below are based on superannuation entities with more than four members.

Contributions, benefit transfers and benefit payments

There were $25.8b of contributions in the March 2018 quarter, down 4.0% from the March 2017 quarter ($26.9b). Total contributions for the year to 31 March 2018 were $116.2b.

Outward benefit transfers exceeded inward benefit transfers by $0.7b in the March 2018 quarter.

There were $17.5b in total benefit payments in the March 2018 quarter, a decrease of 6.8% from the March 2017 quarter ($18.8b). Total benefit payments for the year ending March 2018 were $73.0b.

Lump sum benefit payments ($8.6b) were 49.2% and pension benefit payments ($8.9b) were 50.8% of total benefit payments in the March 2018 quarter. For the year ending 31 March 2018, lump sum benefit payments ($36.9b) were 50.5% and pension benefit payments ($36.1b) were 49.5% of total benefit payments.

Net contribution flows (contributions plus net benefit transfers less benefit payments) totalled $7.8b in the March 2018 quarter, an increase of 4.2% from the March 2017 quarter ($7.5b). Net contribution flows for the year ending March 2018 were $38.2b.

Financial performance and asset allocation

In terms of financial performance, the annual industry-wide rate of return (ROR) for entities with more than four members for the year ending 31 March 2018 was 6.0%.

The five-year average annualised ROR to March 2018 was 7.6%.

Over the March 2018 quarter, total assets increased by 0.2% (or $3.5b) to $1.8 trillion.

At the end of the March 2018 quarter, 50.9% of the $1.6 trillion investments were in equities; with 22.6% in Australian listed equities, 24.2% in international listed equities and 4.0% in unlisted equities. Fixed income and cash investments accounted for 32.1% of investments, 21.1% in fixed income and 11.0% in cash. Property and infrastructure accounted for 13.4% of investments and 3.7% were invested in other assets, including hedge funds and commodities.

Superannuation industry quarterly estimates

The table below shows the estimated number of superannuation entities and their assets as at 31 March 2018.

Fund type	Assets ($ billion)	Number of entities
APRA-regulated		
Entities with more than four members	1,699.6	205
Single member ADFs	0.0	12
Small APRA funds	2.2	2,085
Pooled superannuation trusts	149.7	39

Fund type	Assets ($ billion)	Number of entities
ATO-regulated		
Self-managed superannuation funds	712.0	595,840
Other		
Exempt schemes	138.8	19
Balance of life office statutory funds	53.6	-
Total	**2,606.2**	**598,200**

Retirement savings accounts

There were 11 retirement savings accounts with $1.7b in assets at the end of March 2018.

MySuper products and accrued default amounts

As at 31 March 2018, assets in MySuper products totalled $641.8b, and the proportion of assets in a MySuper product was 38%. Total accrued default amounts totalled $0.0b.

As at 31 March 2018, 92 entities offered a MySuper product, and the proportion of entities offering a MySuper product was 47%. The total number of MySuper products was 107, of which 92 were generic MySuper products, 14 were classified as a large employer product and one a material goodwill product.

¶1-200 Regulation of superannuation industry

Over recent years there has been considerable upheaval in the regulation of the superannuation industry. The *Superannuation Industry (Supervision) Act 1993* replaced the *Occupational Superannuation Standards Act 1987* from 1 July 1994, providing a comprehensive regime, administered by the ISC, for the regulation of superannuation funds and related entities. Since 1 July 1997, the *Retirement Savings Accounts Act 1997* has provided a parallel regulatory regime for RSA providers.

The regulatory regime was completely overhauled again in 1998, with the ISC being replaced by new regulatory authorities — the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) (from 1 July 1998) and the Commissioner of Taxation (from 8 October 1999).

APRA is responsible for the prudential regulation of banks and other deposit-taking institutions, life and general insurance companies, superannuation funds and RSA providers. ASIC is responsible for consumer protection and market integrity across the financial system, including the areas of insurance and superannuation.

From 1 October 2001, ASIC is also responsible for the financial services regulatory regime in Ch 7 of the *Corporations Act 2001* (¶4-000). This regime has a direct impact on superannuation products and entities, imposing standards for product disclosure and for the licensing and conduct of financial services providers and financial markets. Superannuation entities must comply with the regulatory requirements imposed by the *Financial Sector (Collection of Data) Act 2001* and Corporations Act.

ASIC is responsible for the administration of the resolution of complaints scheme. Before 1 November 2018, the Superannuation Complaints Tribunal was the body to which most superannuation complaints could be made about the decisions and conduct of trustees of superannuation entities (other than SMSFs) (¶13-000). From 1 November 2018 the Tribunal's role in settling complaints about superannuation has been taken over by the new Australian Financial Complaints Authority (AFCA), which is an ombudsman scheme rather than a statutory tribunal. AFCA is the external dispute resolution body for the financial services industry generally, replacing the Financial Ombudsman Service, Credit and Investments Ombudsman and the Superannuation Complaints Tribunal.

Since 8 October 1999, the ATO has been primarily responsible for the regulation of SMSFs (¶5-000). These are funds with fewer than five members and where all the members actively participate in the fund's management. Funds with fewer than five members but which do not come within the definition of an SMSF remain the responsibility of APRA and ASIC.

From 1 November 2011, the Chief Executive Medicare replaced APRA and the Commissioner in the administration of the scheme for the early release of superannuation benefits on compassionate grounds, but the regulator role has since been transferred back to the Commissioner (¶3-280).

From 1 July 2004, trustees of APRA-regulated superannuation entities (registrable superannuation entities) must be registered by APRA. Trustees must apply to APRA for a licence that imposes minimum standards of fitness and propriety and requires the maintenance of risk management strategies and plans for funds under the trustee's control (¶3-480).

The ATO replaced Medicare in the administration of the Small Business Superannuation Clearing House from 20 February 2014 (¶12-010).

The Fair Work Commission is responsible for the default superannuation fund process (¶12-051).