



**Submission of the
Australian Discrimination Law Experts Group**

in response to the

**Senate Economics Legislation Committee
Inquiry into Superannuation (Objective) Bill 2023**

7 February 2024

Australian Discrimination Law Experts Group

This submission is made on behalf of the undersigned members of the Australian Discrimination Law Experts Group ('ADLEG'), a group of legal academics with significant experience and expertise in discrimination and equality law and policy.

This submission responds to the 6 December 2023 Senate Economics Legislation Committee request for submissions to inform its inquiry into the Superannuation (Objective) Bill 2023.

We are happy to answer any questions about the submission or other related issues, or to provide further information on any of the areas covered. Please let us know if we can be of further assistance in this inquiry, by contacting Alysia Blackham at alysia.blackham@unimelb.edu.au or Anne Hewitt at anne.hewitt@adelaide.edu.au.

This submission may be published.

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We **support** the introduction of legislation to specify objectives for superannuation. We agree it is important to establish a shared purpose for superannuation in legislation; and to require policy makers to assess future changes to superannuation legislation for compatibility with the objective.

We note the current framing of the proposed s 5(1) is as follows:

5 The objective of superannuation

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

We acknowledge the reference to ‘equitable’ and ‘sustainable’ within these objectives. However, we suggest these terms require better clarification and specification, if these objectives are to be meaningful in practice.

First, ‘equitable’ is an important aspect of superannuation. There is a risk, though, that this is seen as requiring formal equal treatment of superannuation holders. Given the significant gender pension gap,¹ which risks leaving many women in poverty in retirement, a fair superannuation system would proactively address inequalities, rather than just requiring formally equal treatment, that is, same treatment. This is particularly important in relation to gender, but is also important in relation to other grounds and other protected characteristics. We **recommend** adding reference to substantive equality in these objectives, and explicitly noting that superannuation should attempt to ensure adequate income for all, regardless of gender or other grounds (see below).

RECOMMENDATION 1: Add a reference to substantive equality to the objectives.

Second, we note that ‘sustainable’ can have multiple meanings – ‘sustainable’ might refer to:

1. the sustainability of the retirement system itself,
2. environmental sustainability, and/or
3. sustainability for the individual.

We recommend that the superannuation objective explicitly include **all of these meanings of sustainability**, and that the Bill clarify that all of these meanings are relevant. For example, sustainable could be defined as follows:

sustainable is to be broadly interpreted, including for the individual retiree; Australia's overall provision for adequate conditions in retirement; and environmentally sustainable financial retirement systems.

¹ Alysia Blackham, ‘Pensions and the Modern Workforce’ in Sinéad Agnew, Paul S Davies and Charles Mitchell (eds), *Pensions: Law, Policy and Practice* (Hart, 2020) 271.

RECOMMENDATION 2: Clarify the meaning/s of ‘sustainability’ in the Bill.

Finally, we suggest that the Bill refer to ensuring an ‘adequate’ retirement income in the objective. We suggest this because adequate is the preferred term used internationally, for example:

- by the OECD, for example in reference to ‘adequate’ housing;²
- ‘adequate’ standard of living is the terminology used in Article 11 of the ICESCR;³
- the CESCR *General Comment No. 19: The right to social security* (Art. 9 of the Covenant) refers to adequacy and dignity.⁴

Reference to an ‘adequate’ retirement income could complement the current reference to a ‘dignified’ retirement, given the potential difficulties of interpreting ‘dignity’ in this context.⁵ While the term ‘dignity’ is used colloquially it is not useful as a statutory objective against which a measure will be assessed. In our opinion, it explains *why* retirement income needs to be maintained at a certain level, to afford the individual the capacity to live a life of dignity. However, it does not present a useful vehicle to measure the quantum of income. We therefore propose that adequate be incorporated into the objective.

A reference to adequate income necessarily addresses the impact on retirement income, and the risk of a shortfall, when considering those parameters that fall outside the control of individuals and policy makers.⁶ Such factors could include investment return, inflation, health complications and life expectancy.

Alternatively, the objectives could better articulate what is meant by ‘dignified’ in this context, by reference to international human rights law, given ‘dignity’ can have multiple, conflicting meanings.

RECOMMENDATION 3: Replace reference to a ‘dignified’ retirement with reference to ‘a retirement income that is adequate to ensure a life of dignity’.

² OECD Directorate of Employment, Labour and Social Affairs – Social Policy Division, OECD Affordable Housing Database – <<http://oe.cd/ahd>>.

³ *International Covenant on Economic, Social and Cultural Rights*, Art 11.

⁴ UN Committee on Economic, Social and Cultural Rights (2008) General comment no. 19, The right to social security (art. 9).

⁵ Alysia Blackham, ‘Interrogating the “Dignity” Argument for Mandatory Retirement: An Undignified Development?’ (2019) 48(3) *Industrial Law Journal* 377 (‘Interrogating the “Dignity” Argument for Mandatory Retirement’).

⁶ Pablo Antolin, ‘How to protect retirement income? DC pension plans in a world of uncertainty’ (2010), OECD Working Paper Series in Insurance and Private Pensions.

We are happy to speak further to any part of this submission.