



Law Council Superannuation Conference 2008 Sofitel Hotel

Thursday, 28 February 2008, 9:30am

**The Hon P de Jersey AC
Chief Justice**

I am very pleased to have been given the opportunity to open the conference. This is the 21st annual conference. The conferences have been run in an unbroken sequence since 1988, which bears testimony to a perception of their worth. I congratulate the Law Council for its initiative in convening the conferences.

I was interested to note the conference was first held a number of years before the introduction of compulsory superannuation for all employees. I confess I am no expert in this area of law, or perhaps more accurately, this area of law, finance, investment, taxation, industrial relations, trusts and so on, for superannuation is clearly a topic requiring an understanding of many different aspects. It does not require expertise, however, to realise that immense changes to superannuation have occurred over the lifespan of these conferences. The changes, even for a lay person, have been considerable, and keeping up with the changes must be extremely demanding for practitioners and other professionals working in the field.

Just as a 21st birthday is a significant personal milestone, with opportunity to reflect on a person's development to that point, this conference also offers occasion to consider the evolution and substantial growth of superannuation over that period. Please let me make a few observations.

'Growth' is the word that perhaps best sums up the development of the superannuation industry over the past 21 years: growth in size, with the Australian industry worth close to \$1 trillion; strong growth in superannuation savings; growth in the coverage of the superannuation scheme, and in employer and voluntary contributions; growth in the number of superannuation member accounts, now almost three times the number of Australian workers; growth in choice for employees; and, perhaps inevitably, growth in the amount of regulation, supervision and applicable legislation. I expect there has been a



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considerable, and corresponding, increase in the number of legal practitioners and other professionals involved in the industry over that time as well.

Superannuation earnings now make up an “important proportion of the national income mix”, and APRA reports that superannuation assets, as a proportion of Gross Domestic Product, have increased from under 40 per cent in 1996, to just under 100 per cent in 2006.¹ Over that period, superannuation assets nearly quadrupled in size. Trustees of superannuation funds manage multi-billion dollar asset bases,² and for most people, superannuation savings are the second largest asset after the family home.

All these factors ensure the importance of expertise and specialisation in this growing area of practice, of increasing relevance to our ageing population as time goes on. This is, as you may know, the first time the conference has been held in Brisbane. There is no doubt superannuation issues are of great interest to the growing band of retirees and prospective retirees who find this State and its metropolis a particularly attractive final destination.

I respect and admire a mind sufficiently acute to comprehend the complexities of this area of the law. I have counted approximately forty pieces of current Commonwealth legislation relating specifically to superannuation. This does not include legislation which also has considerable bearing upon the area, like income tax and trusts legislation. Nor does it include the multiplicity of applicable regulations and subordinate legislation, tax rulings and relevant policies. I do not envy your task in advising clients about superannuation law. Practitioners and professionals bear important responsibilities to keep clients informed of relevant changes in legislation and regulatory regimes, whether they be individual account holders, trustees of self-managed funds, or large scale industry or corporate funds: the consequences of non-compliance can be severe.

Despite the rapid growth and evolution of the superannuation industry over the past 21 years, it has by no means stopped changing, as you would all be aware. Superannuation

¹ Australian Prudential Regulation Authority (APRA) *Insight: Celebrating 10 years of superannuation data collection 1996 – 2006* (2007) pp 11, 18



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law is one of the fastest growing, most frequently changing areas of law. Last year, the former federal government introduced significant changes to the tax treatment of superannuation, and a push towards simplified superannuation. The tax office website provides a seven page reference guide to some of the terms it uses with "Simpler Super". This is a good indication of just how simple superannuation really is.

The Deputy Commissioner of Taxation commented that super simplification was one of the biggest changes the tax office has had to implement since the introduction of the GST. The Deputy Commissioner estimated the reforms would impact on approximately 27 million fund accounts, 1.3 million employers, and more than 300,000 superannuation funds.³ Large scale changes indeed, and not just for the tax office, but for practitioners, funds and individuals too.

As the industry is so closely regulated, the change of government may mean there are more reforms on the way. I note that during last year's election campaign, Senator Nick Sherry, then shadow, and now Minister for Superannuation and Corporate Law, said that he would like to see standardised forecasting introduced, with funds required to provide estimates of members' retirement incomes. The Senator also foreshadowed an overhaul of product disclosure statements, perhaps introducing a standard statutory form for the statements, and requiring that they be no more than three pages long. Another change proposed is rolling together lost accounts based on tax file numbers. Superannuation law certainly does not stand still, and clients, whether they be members, super funds or trustees, will need good and comprehensive advice from practitioners and professionals like yourselves to help them keep pace with the changes.

The reach of superannuation law does not stop with the legislation, but extends also to potentially difficult concepts of the law of trusts for example. I will not go so far as to describe this as an arcane specialty. That cannot be so simply because the demand for superannuation is now so common place. But it is a difficult and demanding specialty, an

² APRA, above, p 12



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area of law properly dubbed expert. It is also an area which, as I have said, absolutely demands the practitioner keep pristinely up to date. But my purpose this morning is not to suggest the practitioner or related specialist in this area suffers from an intolerable isolation. What I wish to emphasize, rather, is the range of support that the specialty rightly expects.

One indispensable area of support concerns the availability of research materials in a reliably up to date and informative condition. With some of the legislation of almost Byzantine complexity, there must be the assurance it can be accessed with absolute accuracy.

That takes me to the responsibility of legislatures in such fields. Some of the fiscally based legislation which confronts us these days is remarkable for its complexity, and that is the consequence of building on already difficult provisions, as the years have gone on, without proper attention to radical reform. Just as we are all equally bound by the law, and ignorance of the law is no excuse, there is an underlying assumption, frequently not met, that the law is not only accessible, but readily comprehensible as well.

Which takes me to the courts of law. For those who advise in these areas, in the office of the solicitor, the accountant, or the financial adviser, the Holy Grail must be certainty. In developing a landscape where the construction of difficult legislation is plainly defined, and where the application of non-legislative legal principle is also clear, the courts carry a large responsibility. Its discharge is not aided, at the appellate level, by multiple judgments differing in subtle ways, or by recourse to concepts by nature indefinite and unpredictable, like fairness.

I turn finally to our host. The Law Council is to be commended for taking on a range of areas of continuing professional development, especially those of national orientation. The professional associations throughout the country now discharge, and discharge well, a

³ Raelene Vivian, Deputy Commissioner of Taxation *Defining moments and industry impacts in the implementation of Super Simplification*, speech delivered on 2 August 2007



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considerable responsibility in relation to continuing professional development. That is very reassuring for practitioners. To have the comfort of knowing that in a field like this, for example, the updating exercise will be devised and implemented by other practitioners in tune with current issues and with the expertise to present them, must be a source of great comfort.

I conclude by again congratulating you, ladies and gentlemen, upon your expertise in what is, by nature, a difficult area of specialisation, and in wishing you well for the duration, I now with pleasure formally open the Law Council Superannuation Conference 2008.