



Law Council of Australia Superannuation Conference
Sofitel Central, Brisbane
Thursday, 19 February 2015, 9.00am

**The Hon Tim Carmody
Chief Justice**

Introduction

Welcome to the Sunshine State. I am told that numbers are a bit down on previous years – 120 from 150. Obviously there are 30 or so who have heard me speak before. Thank you for the invitation to open this conference at such a stylish venue. It is a privilege to be here in such esteemed company and impressive minds.

Whether you have come for the opportunity to learn more about pressing industry issues or listen to and discuss divergent views, you all share an interest in superannuation and concerns about the future of the system in this country. The Law Council has been organising this conference successfully now for 28 years and we are all thankful for its efforts.

I do not profess to be an expert in the field of superannuation (unlike so many of you who probably are). Nonetheless, I will try in the time allocated to me to raise some issues that, although not listed on the schedule, tie in with the conference theme and I think are worth considering.

The ageing population

In a letter to Jean-Baptiste Leroy, Benjamin Franklin famously wrote that “in this world nothing can be said to be certain, except *death and taxes.*” Apologies for opening the conference on a seemingly dark note. But as this adage suggests, one thing we know is that despite all the cosmetic advancements, snake oil and magic potions promising immortality or eternal youth life on earth is finite. It will come to an end. For those of us on the cusp of 60, this somewhat confronting reality brings the thought of ageing into sharper focus. It is something that will – at some point – touch the lives of every one of us and all those we love.



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Ageing as both an inevitability and ongoing process has been an enduring cause of stress and anxiety worldwide. A recent British survey from the Department of Health revealed that:

86% of people said they are worried about growing older. More than half fear losing their mind and memory; the same number are concerned about illness or infirmity; 39% are anxious about being lonely; and 38% stress about poverty.¹

In 'The future of Australia's super: a new framework for a better system', the Association of Superannuation Funds of Australia (ASFA) underscored this significant "demographic shift"². Sourcing information from the Australian Bureau of Statistics it observed that whereas in 2007 there were *five* working-age people for every person over 65, in 2056 this figure will be *less than three* and that the "old aged dependency ratio" will double.³ We all need to be conscious of these changes when considering the future and sustainability of the superannuation system in Australia. Or, as the theme of the conference describes it – *super forever*.

It is in the face of hard truths like the inevitability of growing old and dying that the importance of having a sustainable superannuation system becomes apparent. For working Australians, superannuation is viewed as a "cushion", or "parachute" intended to soften the hard landing of retirement. In truth, it is virtually impossible to miss the image of the golden egg and nest in advertising campaigns.

Yet, for many of us – especially the lawyers – the retirement phase of life can be a turbulent time. Some of the risks and uncertainties frequently linked to retirement are highlighted by Olivia Mitchell and Stephen Utkus in their 2003 Pension Research Council Working Paper when observing:

People confront many sources of risk during the retirement period...longevity risk, inflation risk, health risks (leading to unexpected expenses and costs), and capital

¹ Trade Publication Article, 'New service to tackle fears around ageing' (2009) 38(7) *Practice Nurse* 7.

² The Association of Superannuation Funds of Australia, 'The future of Australia's super: a new framework for a better system' (Report, The Association of Superannuation Funds of Australia, 2014) 3.

³ *Ibid* 6.



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market risks...complicated by psychological considerations...[which] combine to make it quite difficult for retirees to deftly manage the drawdown process for retirement accounts in old age.⁴

The effectiveness of the current superannuation system and whether it is adequately meeting the needs of Australian retirees are questions well worth thinking about.

The position of women in relation to superannuation

Disparities in superannuation account balances for women is an ongoing concern most recently manifested in the form of a federal private member's Bill introduced to Parliament by Greens' Deputy Leader, Adam Bandt, called the *Sex Discrimination Amendment (Boosting Superannuation for Women) Bill*.

The Bill is intended to change the form of Section 14(2) of the *Sex Discrimination Act* which makes it unlawful for an employer to discriminate against an employee on gender grounds unless they seek an *exemption* first.

The effect of this Bill, if implemented, is that employers would no longer be required to seek an exemption or be held to breach discrimination law if they choose to make a higher superannuation contribution for female employees.⁵

A key reason for it is that many women are out of the paid workforce for significant periods of time caring for children or parents meaning that they have shorter fragmented amounts of covered employment over which to build a comfortable superannuation balance.⁶ Additionally, women receive lower average incomes and are increasingly working part-time or casually.⁷

⁴ Olivia Mitchell and Stephen Utkus 'Lessons from Behavioural Finance for Retirement Plan Design' (Working Paper 2003-6, Pension Research Council, 2003) 26.

⁵ Explanatory Memorandum and Statement of Compatibility with Human Rights, Sex Discrimination Amendment (Boosting Superannuation for Women) Bill 2014.

⁶ Explanatory Memorandum and Statement of Compatibility with Human Rights, Sex Discrimination Amendment (Boosting Superannuation for Women) Bill 2014.



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Together these factors result in women reaching post-work age with a significantly smaller nest egg than men. To be precise, Australian Bureau of Statistics figures reveal that in 2011 to 2012 the average superannuation account balance for men was \$82,615 while the average for women was only \$44,866.⁸ This is potentially more detrimental when coupled with the fact that women have a longer life expectancy than men by approximately four years and are, therefore, often in need of a *higher* superannuation balance.⁹

Much of what I have mentioned about the financial predicament of women in retirement is from an article from the *Australian Social Work* journal which notes that:

Old age raises particular issues for women, and nowhere is this more evident than with regard to money. Compared with men, women earn less, save less, retire earlier, and live longer lives, during which their savings must support them through a long period of non-earning. In their later years, women are likely to have to live without the relative degree of economic protection afforded by marriage or partner support and are much more likely than men to be dependent on government benefits.¹⁰

Removing barriers which may impede otherwise proactive employers from increasing the superannuation benefits of female employees approaching retirement is clearly a positive step in this direction but more needs to be done to fully address the problem of discrimination against women and give practical expression to their right to equal remuneration, including benefits.

Whether or not this Bill effectively addresses what is clearly a glaring imbalance in the superannuation account balances of men and women is not the focus of this opening and is yet to be seen. My main objective is to encourage further thought and hopefully trigger

⁷ Explanatory Memorandum and Statement of Compatibility with Human Rights, Sex Discrimination Amendment (Boosting Superannuation for Women) Bill 2014.

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informal debate of this *critical* issue, not just for women, but for all of us. After all, men are husbands, fathers, brothers and sons as well.

Surely what we want our children and our grandchildren to inherit is a sustainable superannuation system that delivers to both male and female Australian retirees in the best practicable way.

Closing remarks

Let me finish with a subject that has sparked media interest recently – the release of the Financial System Inquiry Final Report. Recommendation 8, in particular, proposes to restore the restriction on direct borrowing by superannuation funds.¹¹ According to the report, over the last 5 years borrowing has increased from \$497 million to nearly \$8.7 billion which (if these rates continue to grow) could potentially threaten the stability of the nation's financial system.¹²

This topic seems a pertinent one for the theme of “super forever” which is concerned with the sustainability of superannuation in Australia. However, the full superannuation implications of the Financial System Inquiry will be delved into later today by the experts, so I will not venture any further where others fear to tread. Suffice it to say that it seems the report could have a potentially significant impact on the nation's superannuation industry.

From what I have seen in the schedule, this conference promises to be a thought provoking and engrossing one. It is now with great pleasure that I officially declare this conference open and wish you all a tremendously enjoyable and fruitful two days. Thank you all.

¹⁰ Linda Rosenman and Wayne Scott ‘Financing Old Age: Why is There Still Gender Inequality?’ (2009) 62(2) *Australian Social Work* 287.

¹¹ Financial System Inquiry Committee, Parliament of Australia, *Financial System Inquiry Final Report* (2014) 86.

¹² Financial System Inquiry Committee, Parliament of Australia, *Financial System Inquiry Final Report* (2014) 87.