

A submission to the Enquiry regarding the suitability of trust law applying to superannuation.

Trust Law originated during the Crusades to protect the assets of absent warriors. The courts and the legal profession still apply the principals laid down then so that Trust Law is not suitable for Superannuation today. Trust Law is a State matter derived from precedent and modified by statute. Investment is governed by " The prudent man rule". Investment of superannuation funds are made using the" Modern portfolio theory" developed after World War 11 by the University of Chicago which implies diversified investment as to industry, country and risk which is at odds with the" Prudent man rule".

A trust beneficiary is a person entitled to a share of the trust fund subject to a restriction as to that entitlement whereas a superannuitant is an absolute owner of the money compulsorily contributed with tax benefits which contribution cannot be defeated. The interests are not the same.

Superannuation should be brought under the Corporations Law so as to give the Commonwealth sole jurisdiction and the Funds should be incorporated as Mutuals similar to the AMP before demutualisation. The current arrangements will lead , in the event of an economic downturn, to substantial litigation where the above issues will arise, judged on the basis of trust law as it applies to domestic estates, leading to disruption. loss of confidence and further Royal Commissions.

I make these comments from experience as the former Managing Director of a Statutory Trustee Company.

David Davis
32 Reynolds street,
Cremorne 2090
02 9953 2031