INCAPABLE OF DOING IT FOR THEMSELVES: A SUBMISSION TO THE REVIEW OF AUSTRALIA'S SUPERANNUATION SYSTEM (2009)

Overview of answers to some Panel questions and key preliminary conclusions:

This submission first addresses two key questions under heading 12 entitled 'The integrity of the superannuation system', in the 'Phase Three: Structure (Including SMSFs) Issues Paper' produced by the current Review of Australia's Superannuation System. (For the uninitiated, SMSFs are self managed superannuation funds). Key questions related to the trust model, insurance and related matters are answered later. This is my third response to the review announced by the Government in May 2009.

In the above issues paper, the Review Panel '**strongly recommends**' (sic.) that those intending to make a submission also read the preliminary report of Phase One of the review, which is entitled 'Clearer Super Choices – Matching Governance Solutions' and 'to the extent applicable, frame their submission in the context of the observations made in that report' (p. 2). This submission does so.

Through analysis of a range of review products the charge is made later that the Review Panel performs poorly as a result of the panel's capture by financial service providers. The Panel will not serve superannuation fund members or industry well because of this. Some of its key recommendations are therefore partly rejected with related explanations.

As the Phase One Issues Paper on Governance stated (p. 3) that 'governance broadly refers to the ideas, laws, processes and systems by which organizations are operated, regulated and controlled for the benefit of their relevant stakeholders' it seems strange that the Review Panel makes little reference to the objects, definitions and related key requirements of the Superannuation Industry (Supervision) (SIS) Act 1993 in its report on Phase 1. The Act appears very clear and logical for legislation, which is often rubbish because it is out of date in its assumptions, without clear aims or key definitions, and by related amendment over time often rendered thoroughly incomprehensible or stupid in its dictates. The SIS Act is far from that. On the other hand, without reading the aims, definitions and key provisions of the SIS Act, one may spend one's time wondering what the Review Panel is talking about. I know because I tried it. One usually assumes reports will make more sense to the lay reader than legislation. Not in this case.

However, the worst mistake the Panel makes is to describe types of funds, not types of members, in regard to the 'Disconnected member, Universal member, Choice member, and Self-managed member' categories it recommends for reforming the superannuation system, mainly by cutting it from eight fund choice types to four. As these fund types are not clearly enough defined, this is a recipe for expensive but comparatively useless data gathering, risk and cost. Reading the SIS Act helps one deal with this problem in part because the Panel discussion of 'the trust model' leaves one wondering who the various trustees, fiduciaries, and many other characters are and what they are supposed to be doing. The Panel's statement (p.9) that their recommended approach 'starts from a member, rather than a product or industry sector, perspective' is false. It starts from the perspective of the fund managers. It shows the review is captive of financial and legal interests not serving fund members. This is discussed with reference to questions later.

Answering the following key preliminary questions leads to the above conclusions:

12.1: Security of super: What, if any, additional measures should be adopted to enhance the security of superannuation funds? *Define key aims and related data gathering according to the SIS Act and related national and regional directions and open fund performance up to more comparative and more public scrutiny.*

12.2: How is the industry best protected from systemic risk arising from a loss of confidence in the security of retirement savings? *Take better related and more competitive approaches to risk management in line with key SIS Act requirements and to achieve national aims better.*

14.1: Is the industrial relations mechanism the best way to allocate employees to a default superannuation fund? *That depends on what it is. It would need to make decisions according to related mechanisms that clearly try to be broadly fair and also based broadly and openly on good evidence, rather than everyone involved being narrowly partial, comparatively ignorant and adversarial difference splitters.*

14.2 Would there be value in the creation of a specialist superannuation court under Commonwealth legislation? *This seems highly unlikely because courts and lawyers normally apply narrow law with feudal assumptions, unclear aims and no definitions. Incomprehensible or foolish rules are instead supported by related adversarial practices which often add further to the idiocy of the legislation, at major cost. This would also be likely to unwind and destroy the SIS Act, which currently seems to be a clear and modern approach to national direction. Consider Chief Justice Spigelman's suggestion instead that the UNCITRAL Model Law be adopted as the Australian arbitration law. (For the uninitiated, UNCITRAL is The United Nations Commission on International Trade Law.)*

17.1: Trust model: Is the trust model appropriate for SMSFs? *That is best left up to the SMSF member unless the Government seeks through superannuation to protect current and future generations of taxpayers from their unintended calls on old age pensions, retirement homes, and related disability costs which often progress slowly and painfully to their final demise at huge unexpected expense to many, including taxpayers. Demand the right to point out these costs around two years before the apparently natural demise of business to have them terminated earlier, so everybody will thank you for it.*

10.4: Given the apparent cost of life and TPD (*this is third party disability*?) insurance to the superannuation system as a whole, are there more radical ways to address the need for super fund members to have life insurance? (*What exactly is the point of life insurance?)* How could super funds create sufficient risk pools to be able to underwrite such insurance themselves? *Create risk pools mainly on an industry basis, according to the Australian and New Zealand Standard Industrial Classification (ANZSIC) system and* *underwrite the risks covered on a basis which is also clearly related to key SIS Act definitions and related government directions. Contract out competitive management of pools, related data gathering and investments, and compare key outcomes with those sought by individual fund members, by the SIS Act and by related national directions.*

11.12: Should it be mandatory for trustees to manage pension assets separately from accumulation assets?' *Yes. This appears necessary for clear and reliable data gathering for security, accountability, fair competition, policy setting, quality and cost control.*

20.2.7: Anecdotal evidence suggests that there is insufficient emphasis being given to the SIS compliant component of the audit. How this could be improved? *For the Panel to have provided better information on SIS aims and requirements would have been a start. Give clear cheap education on the recommended direction.*

It should first be noted that according to the ATO paper entitled 'A Statistical Summary of SMSF's', the total superannuation assets at 30.6.08 were $1.08 trillion, - about the same as Australia's gross domestic product. There were 416,622 superannuation funds at 30.6.08, and 99% of these were SMSFs. SMSFs also contained the largest amount of money ($336.1 billion). Currently SMSFs can have no more than four members and about 90% of funds have only one or two members. The summarised preliminary conclusions of the current submission are:

1. **Superannuation security depends on data capture to serve the members' aims through better scheme administration but the kind of trust structures and concepts of risk and insurance dealt with sketchily by the Review Panel cannot deliver this because they are often incomprehensible and outdated. The SIS legislation, on the other hand, suggests a better way forward which logically includes defining members by industrial and occupational location according to ANZSIC where this seems most appropriate.**

2. **Although the Review Panel claims to serve superannuation scheme members, it is a captive of special interests because its key assumptions and recommendations are often wrong or insufficiently explained. This reflects the interests of financial and legal service providers rather than super scheme members whose interests the Review Panel claims to represent. Nevertheless, the Panel's suggestion to reduce fund types seems sensible and may appeal to many members as a way to reduce losses and gain benefits.**

All the key matters above are discussed later in their national and related global contexts. There is a general need for more consistent and effective Australian policy approaches to illness, disability and death related services, pensions, lump sums and to related taxation and other fund management, to improve the quality of life and reduce its costs for all today and for future generations through achieving more sustainable development. The Panel suggestion to reduce and reform fund types may appeal to many contributors, including those in SMSFs. Ask them. (Housing was discussed in an earlier submission.)

The importance of reliable data that serves members aims

A similar answer to the Panel questions on the integrity of the superannuation system is partially provided by the Panel itself, as under heading 18.3 entitled ‘Data’ it is stated:

> It is essential that the quality and availability of data relating to the SMSF sector be dramatically improved. This would allow policy-makers and analysts to compare SMSFs with other superannuation sectors. It would also enable existing and prospective SMSF members to access the type of information that might enhance their decision-making.

Superannuation may be seen as a form of forced saving for retirement, with related investment, insurance and taxation. The treatment of members and funds, including SMSFs ultimately depends, therefore, on the policy relationship between superannuation, pensions, and services for the treatment of illness and disability in old age, which are discussed later. However, considering the Panel’s statement above, it seems ironic that the reader is provided with more apparently informative and coherently presented data on SMSFs than on any other superannuation product or service discussed by the Panel in its current or previous work. This is due to the paper entitled ‘A Statistical Summary of SMSF’s’, on the review website, based mainly on Australian Taxation Office (ATO) data. One assumes the Panel does not believe the reports made by people managing their own money, whereas they do believe the less comprehensive reports made by those who make their living by managing the money of others. One may also assume that as colleagues of the Panel, the latter occupational groups are seen as inherently nicer and more believable, as well as professionally discrete. However, in the light of the global financial crisis, one wonders why anyone trusts them, knowing what secrets they have.

Information from the statistical summary on SMSFs is used later in arguments to support this submission, which first discusses the importance of clearly describing the key fund management structures and clearly defining the key terms used in superannuation. This is necessary to establish the data gathering systems which would ideally meet all the funds’ ideal aims, and thereby ideally serve all members as efficiently as possible. Were I the Panel, I would have logically begun my analysis with a discussion of members’ aims, before dealing with the structures which should serve them. However, the panel appears to approach these aims via the circuitous route of discussion of levels of investment risk, which are often dubiously estimated and controlled, as the global financial crisis has clearly shown. But risk, as I indicated in previous submissions, may not be the members’ only concern. Many also want to know what their money is invested in because they want it to be as socially and environmentally useful as possible and I’m not the only one. The review has a comparatively limited view of what members want – money. In the light of the global financial crisis it also has a determinedly rigid view of how to get it.

Preliminary Discussion of Structure and a related critique of the review

The Issues Paper entitled 'Phase Three: Structure (Including SMSFs)' began its one page discussion entitled 'Structure Overview' by stating:

> When the Review talks about the 'structure' of the industry, it means the way in which superannuation is organized, being comprised of a number of unique sectors and products (p. 4).

Fair enough. However, the discussion is a single page which also contains two tables. Table 1 is entitled 'Superannuation Assets and number of funds by sector, June 2009'. The key differences between the 8 fund types listed are never clearly explained. Table 2 is entitled 'Superannuation trustees and number of entities under trusteeship'. This is equally mysterious as it suggests there are only 274 superannuation trustees in Australia. The previous statement that 'a registrable superannuation entity (RSE) licensee may act as trustee for more than one superannuation entity' explains nothing, unless one reads the SIS Act' first which is discussed later. According to the Panel table, although 5 trustees manage 10-20 entities and 3 trustees manage over 100 entities, no trustees manages more than 20 but less than 100 entities. This seems strange and the Panel's statement that 'Superannuation funds are commonly categorised according to their profit status and relationship to an industry sector or employer' does nothing to explain it to me.

The paper entitled 'Statistical Summary of SMSFs' states on its first page:

> The Review has not yet formed a view on the questions raised in the *Phase Two: Operation and Efficiency* issues paper about what data should be collected and published (see section 8 of the issues paper dated 16 October 2009). However, it is hoped that this publication will stimulate an interest in better quality information.

The statistical summary taught me about the apparent nature of superannuation better than any other review product has so far, except the SIS Act. I made a submission on the Phase Two issues paper which is discussed briefly below. The Phase One preliminary report, 'Clearer Super Choices – Matching Governance Solutions' states:

> One submission and several stakeholder discussions suggested that the Panel not make recommendations on governance until after consultation on Phase Two and Three are complete because conclusions reached in those Phases could have a bearing on governance. The Panel accepts the logic of that position. The Panel expects that its final views and recommendations on governance will be strongly informed by the Panel's examination of Phases Two and Three of the Review: Operation and Efficiency and Structure (including SMSFs). After taking into account submissions and deliberations during Phases Two and Three, the Panel's conclusions on governance will form part of its final report due 30 June 2010.

The review had not put submissions on its website at 30.12.09. The review should put all submissions it has received on its website fast, unless the submission maker has declared his work is confidential, so that everybody, and not just the Panel, has the opportunity to learn and make more informed statements from reading them. What are they hiding?

The review chose to discuss governance in its phase 1 issues paper; operation and efficiency in its phase 2 issues paper and structure in its phase 3 issues paper. I could not answer the great majority of questions in the first issues paper. The ideal nature of governance depends on the ideal structure which is ideally designed to serve the scheme and related member aims. I did not bother to read the SIS Act as I was busy at the time and wrongly assumed it would be a load of incomprehensible rubbish based on long past practice, without any definitions. In response to the phase 2 issues paper I pointed out:

> The review paper 'Operation and Efficiency' does not centrally discuss the term **'structure'**, let alone include it in its title, and one wonders why. After a flawed discussion of 'efficiency', the paper has a heading 'Design/Architecture' (p. 6) under which technology is addressed. The design of the technology of a superannuation scheme ideally depends on who the structure of the scheme is ideally designed to serve and how, so as to establish related data capture and accountabilities. However the review paper takes a market driven and ideological rather than a scientific approach, which is wrong. The Panel appear to be covert supporters of efficient market theory, who believe that all available information about a commodity (a share or other investment) is reflected in its price. The paper appears to be a confused and deliberately confusing product.

My criticisms above were justified in the submission by related discussions of the global financial crisis and competition requirements. Although I could not answer the questions in the phase 1 issues paper on governance because it provided no information about structure, and I did not read the SIS Act, I made a related submission on housing matters which I sent to four inquiries, including this one. Among other things it stated that:

> The terms of reference of the Review into the Governance, Efficiency, Structure and Operation of Australia's Superannuation System (2009) appear to assume that the diversification principle of the superannuation system is an investment necessity……….. …In 5.5.2 (p. 9), the Issues Paper on Governance states Australian super funds have a bias towards equities in their portfolios (around 57% before the global financial crisis, compared with an average of 36% in 20 OECD countries where data are available.) The essential point in any discussion of diversification is that if a specific investment is made on highly reliable evidence, diversification of investments may be a bad choice, rather than the naturally accepted good that those constantly clipping their management fees by making fund movements would have us believe. Australians putting all their savings into paying off their mortgages may think any alternative investment activities seem comparatively risk prone, expensive and unwise. Diversification is for gamblers and scientific investment decisions are ideally made on much better evidence.

I also pointed out in the attached responses to questions of the Financial Services Inquiry of the Victorian Competition and Efficiency Commission, that because the writers of the paper entitled ‘Operation and Efficiency’ are covert supporters of economic theories discredited by the global financial collapse and ordinary common sense, they cannot give any account of why some people think ‘offering extensive product choice is unnecessary and ineffective and only leads to higher cost’ (p. 31). However, the same writers report that according to a global pension fund analysis the following are ‘the five key levers’ that affect the administration costs of running a super fund (in order of impact) (p. 24):

1. Economies of scale (including the size of the average member account balance)
2. Transaction volumes
3. Cost environment (i.e. relative labour costs)
4. Complexity of the product; and
5. Service levels offered to members

An article entitled ‘The case for big super’ in the Australian Financial Review (AFR 2.12.09, p.61) states that retirement fund bosses who have long championed the need for consolidation in the sector recently have found new supporters in the head of the current review into superannuation and in a former Westpac banking corporation boss. The Review Panel recommendation, which is apparently to reduce the number of fund types from 8 to 4 may please many, but avoids the major problem for society which is that the Review appears unwilling to address anything that might upset its financial and legal mates. Answers to questions about the role of superannuation trustees will be attempted later in the context of the report. However, the information about trustees which is presented by the Panel is so poor that this is difficult. One must read the SIS Act, which is addressed later, to get proper direction for more sustainable development.

In the light of the importance of consistent conceptions of ‘efficiency’ (and ‘effectiveness’) for correct and consistent data definition and related management, the phase one preliminary report ‘Clear Super Choices – Matching Governance Solutions’, should be compared with the draft report, ‘Market Mechanisms for Recovering Water in the Murray-Darling Basin’, produced in December 2009 by the Productivity Commission (PC). Key definitions and treatment in the latter report make a lot more sense than those in the former. Comparison of the reports also appears crucial for meeting the investment requirements for carbon pollution reduction and sustainable development effectively.

Preliminary discussion of members, funds, risk and a related critique of the review

The Phase 1 preliminary report entitled ‘Clearer Super Choices – Matching Government Solutions’ primarily discusses members under the heading 4.1, ‘Overview of the Panel’s enhanced architecture for super’ (p.2). The panel suggests members should be classified ***‘on the basis of whether or not they have made a choice about their superannuation, using the following taxonomy: disconnected, universal, choice and self-managed.’*** The above suggestion is bad for many reasons. The first is because it is obvious from the surrounding discussion that types of funds, rather than types of members are being described, albeit with no clarity, in the recommended ‘Disconnected member, Universal member, Choice member, and Self-managed member’ categories. The statement (p.9) that this approach ‘starts from a member, rather than a product or industry sector, perspective' is false. It starts from the perspective of the fund managers. This shows the review is captive of financial industry interests, not seeking to serve fund members.

The second major problem is that for consistent and reliable data gathering to be possible, the meanings of all key descriptive terms need to be defined clearly and applied consistently in relation to each of the four fund types (which pose as member types) that are described in the Phase 1 preliminary report entitled 'Clearer Super Choices – Matching Government Solutions'. Otherwise, all investments will become ungovernable as a result of worthless data input and related worthless (but expensive) administrative practice. The preliminary report contains no clear definitions, which is discussed later.

A third major problem is that the concept of member 'choice' ideally depends on the fund following what the member wants done with her money, rather than forcing her to 'choose' between four fund types (which label her ***disconnected, universal, choice or self-managed*****).** She may want none of them if she cares about the social and environmental consequences of her investments as well as the economic ones and she also distrusts current estimates of risk and those who make them up for many reasons, including their unwillingness to gather and apply common sense and cheap information. To allocate such members to the fund types recommended by the Panel is legal force, deemed choice instead. On the other hand, superannuation choice may be appropriately constrained if government policy requires some of this forced saving to contribute to more certain upkeep in old age and in any related disability, as taxation would otherwise have had to do. This latter aspect of member choice or constraint is discussed later.

A fourth problem of the Panel recommendation is that a superannuation member who assumes that the trustees of a superannuation fund are better equipped to make choices on her behalf, better than she is herself, should not be conceived as 'defaulting', especially if 'default' is a legal requirement. The trustees are supposed to be the experts at handling money and lay people are naturally encouraged to defer to experts. 'Find a financial adviser you trust' is common financial industry advice. A person is not thought of as 'defaulting', if he goes to a doctor instead of personally diagnosing and cutting out his own skin cancers. The financial and legal concept of 'default' violates the common English language, creating confusion and further indicating the Panel is a captive of the interests of the funds, rather than serving the members. One assumes that those who use the term 'default' naturally want to encourage the naive member to manage his own money so that as much as possible can be siphoned off with ease. Why say it otherwise?

My local Westpac branch has a poster saying that lost superannuation is worth $13 billion. In relation to the discussion of the 'Disconnected member' in the Panel report, one is given no idea how such a member could become 'disconnected' from his money, or what characteristics a 'universal member' or 'choice' member might display other than belonging to a particular type of fund, which they have been put into, on the apparent assumption that the former 'did not make an express choice' while the latter did, 'except not to the extent of wanting to be self-managing'. Such statements appear to muddy the waters of the pool and thus devalue both the members and their funds. The Review statement that 'people could conceivably have interests in more than one category though this would be by choice, and not by poor record keeping or because they are unable to consolidate multiple superannuation accounts' does little to clarify the expected situation.

In regard to the 'Disconnected' member one wonders how a 'conservative investment strategy' will be defined, in comparison with the 'Universal' member's compulsory 'single diversified investment strategy' which includes 'a life-cycle strategy', or with the 'Choice' member's 'potentially unlimited menu of options for investment, insurance etc.' One wonders how advice is 'embedded' in a product, what kind of insurance is being discussed, whether the 'offer' is compulsory and what 'bells and whistles' refer to.
In spite of having read all the review products so far, one also wonders how the required 'trustee with traditional duties' is ideally defined and what he is expected to do, compared with any other kinds of trustees, besides making money by investing money of his own or money which either used to belong or still does belong to other people. In short, the crucial fund ownership, management and advisory distinctions are vague, which is hopeless for those wishing to see data input and governance of funds to achieve members' aims. Some of the review questions related to these issues are discussed later.

The four fund types recommended by the Panel depend on estimations of value and risk by fund managers who may or may not be trustees and who do not question the traditional value of investment diversifications. The global financial crisis has showed the assessments of global ratings agencies were spectacularly wrong and often hopelessly compromised by pecuniary associations with their more valuable customers. In his article 'Ratings agencies carry on as if nothing has happened', in the Sydney Morning Herald (SMH Weekend Business 5, 28-29.3.09) Ian Verrender pointed out that agencies such as Moody's Investor Services, Standard and Poors and Fitch, which designate those institutions and financial products that are supposedly risky or safe to invest in, played a major role in the dotcom and Enron collapses, as well as in the global financial crisis led by mortgage backed securities. The ratings system involves a huge conflict of interest. Those with the financial product to sell, not the client or the investor, pay for the rating, as it is easier for the product seller and the ratings agencies to make money that way. Those with a product who do not pay the ratings agencies have their operations downgraded. As financial crashes have repeatedly shown top stability ratings to be worthless, the Panel should not support financial practices going back to business as usual. This is discussed in regard to SIS Act requirements, insurance and in relation to carbon pollution reduction and related sustainable development directions later.

At the G20 Meeting of Finance Ministers and Central Bank Governors in Brazil, in November 2008, Xhou Xiaochuan, Governor of the Peoples' Bank of China, pointed out conflicts of interest of financial ratings agencies and problems of the Nationally Recognized Statistical Rating Organizations (NRSRO) structure, in which a handful of quantitative analysts' financial models dominate and are correlated throughout the global financial system. This adds massively to systemic global instability. He argued the institutional users of credit ratings, such as money managers and financial institutions, should be required to complement external pricing models with the internally developed capacity to judge risk. Organizations should be held accountable to their customers and shareholders by exercising their own judgment, not merely by outsourcing risk assessment to ratings agencies. To give organizations issuing financial products more incentives to better assess their risks, regulators should also ask them to retain a meaningful share of the underlying assets on their balance sheets to alleviate the problems associated with the 'originate to distribute' business model, which includes moral hazard and related fraudulent loan underwriting. (Peoples' Bank of China website.)

Later discussion outlines how more certainty may be provided through the SIS Act. Citizens normally make money from doing work and by making related choices about how to save, invest or otherwise deploy the funds they earned or inherited. Therefore, a normal person's choice about superannuation is ideally first addressed in the context of standard international and national classifications for production and related personal or organizational saving, investment, spending or related deployment on behalf of charitable or other beneficiaries. Thus the defined placement of fund members ideally first relates consistently to relevant industrial or related community affiliations and so to ANZSIC, as pointed out before. As the ATO deals with self-managed funds, one assumes they are easily adapted to discussion in such industrial and more scientific management contexts. One assumes this would also be supported by the PC, statistical experts and others. There appear to be quality, production and related profit and cost cutting incentives for this direction in the SIS Act and in the existing data on SMSFs, which is discussed later. The ideal relationship between member choice and government compulsion on broader socially protective grounds is discussed later, in regard to insurance and old age pensions.

Preliminary discussion of the trust model and a related critique of the review

Financial discussion may be confusing because the same word – fund – may describe either a pool of money, or the structure for managing it. This tends to imply a total identification of interest between the owners of the money and the money managers. A 'growth in funds' may describe a growth in a pool of money for some reason, or a growth in the number of institutions established to manage amounts of money, or both. Meanwhile, the activities of money managers in the 21st century remain conveniently hidden behind their feudal and related legal origins. Courts and lawyers normally abhor all definitions based on the common dictionary. However, clear definitions are vital for consistent and reliable practice and evaluation. From any scientific perspective, this does not mean that defined treatments have to rule, as distinct from assist, the treatment of the individual case, because the latter may be atypical in some justifiable way, from the class which it more superficially inhabits. This scientific process of judging the individual and his situation may eventually lead to broad paradigm shift and major change in legislation. The scientific process ideally often works like that.

In legislation, the normal lack of clear definitions based on the common dictionary also suggests that those normally dealing with legislation have for many centuries wanted it to confuse people because it gets them off the hook of accountability while making them more money. One can think of no other reason for the lack of common dictionary definitions in a legal system led for centuries by brilliant men who also claim as a basic assumption that the pursuit of pecuniary self-interest stands for all other interests and also serves all in the longer run. They seem unable to question many of their assumptions in the light of the obvious reality that rather than markets clearing, major booms and slumps continue, while the gap between the richest and the poorest gets ever wider, and these markets are likely, at present rate, to destroy much beautiful, valuable biodiversity.

A key difference between feudal and scientific modes of thought is that in the former the concept of trust ideally depends upon ignorance, whereas in the latter it ideally depends upon evidence. The law often privileges commercial secrecy over information, unless the latter is obtained with difficulty in court, which occurs after related problems have occurred. For the scientist, the gathering of evidence is ideally seen as a disinterested pursuit, which is as widely informed as possible. This contrasts with the earlier legal model of evidence which is introduced by adversarial lawyers and related methods which legitimate the secretive pursuit of the interests of opposing clients also driven by lawyers. This is not even the fair fight it has been described as being by judges. It usually just produces a lot of extremely expensive drivel.

Even the SIS Act, which is normally a comparative model of enlightenment in its clear objects and definitions, has suffered in relation to defining a trustee, probably through no fault of its drafters. It states that 'trustee, in relation to a fund, scheme or trust means:

(a) if there is a trustee (within the ordinary meaning of that expression) of the fund, scheme or trust – the trustee; or
(b) in any other case – the person who manages the fund, scheme or trust'.

Has the 'ordinary meaning' been dictated over centuries in court, not in the street? The Act defines other key terms. An 'investment manager' is 'a person appointed by a trustee of a fund or trust to invest on behalf of the trustee or the trustees of the fund or trust'. As the Panel points out, 'one problem with outsourcing is that the trustee must be vigilant it does not become so reliant on the outsourced service provider that it becomes unable to assess the provider's performance adequately. Taken to the extreme, the provider could usurp the trustee's function in respect of important aspects of the fund's operations' (p. 15). Long before that extreme, data may be wrong, useless but expensively gathered if its input is not guided by clear definitions related to key member and national aims.

Under heading 6.2 'Trust Model' the Panel states 'there is no common understanding as to what the 'trust model' entails. It claims 'Few submissions seriously questioned the continued relevance of the trust model'. Perhaps people felt they could not do so, for any number of reasons which the Panel may share. Questioning the existence or goodness of God used to be a bit like that. Many pages later, the Panel adds the complicating concept of a 'fiduciary' to this earlier discussion of trust relationships and cautions that its technical meaning is far narrower and with much greater consequences than its lay meaning. The Panel is working on this. (Hooray?) It is cheaper to follow the SIS Act.

According to the Panel, the SIS Act 'deems rules imposing a certain minimum standards of trustee behaviour to be included in the governing rules of every regulated super fund'. One wonders if 'deems' means such rules are taken to exist and work whether they do or not, and commercial in confidence practices will naturally rule unless challenged in court. This is discussed again later.

The Panel claims the SIS Act requires super fund assets are applied for the 'sole purpose' of providing retirement benefits. The Act actually has better aims, also discussed later. It seems some schemes have augmented the Panel's 'sole purpose' with a variety of different insurance purposes, perhaps designed to deplete, rather than augment funds in some cases. For example, selling insurance products related to home and commercial mortgages, which were then repeatedly on sold as investment opportunities for others, contributed substantially to the global financial crisis without preventing default on mortgage payments. Are there problems still to come? I bet there are. This is discussed later in regard to SMSFs, especially those at the lower fund end. Soros, Roubini and Stiglitz, who are not lightweights, appear to share similar concerns. (Weekend Financial Review (29.12.09-3.1.2010, p. 54)(AFR Outlook 4.1.2010, p. 16). I guess this is also what Steve Keen may worry about in Australia. Mortgage debt is discussed again later.

In justification of its recommendations for the ***disconnected, universal, choice or self-managed*** member and related fund and risk management models, the Phase 1 Preliminary Report entitled 'Clearer Super Choices – Matching Governance Solutions' states:

> Apart from the moral authority derived from using an individual's own choices (or lack of them) to calibrate the protection they receive, this approach removes the ambiguity currently present in the market around such issues as a trustee's responsibility for the investment choices made by members.

The four types of funds and risk management requirements recommended by the Panel do not remove ambiguity about a trustee's responsibilities because the trustee role in any current fund is the least clear aspect of all discussed in this opaque review product. The Panel indicates in Diagram 2 entitled 'Key features of fund models under choice Architecture' that the 'Governance Philosophy' of the Disconnected and Universal member models is 'Trustee-centric'; the Choice member model is 'Disclosure-based' and the SMSF member model is 'Self'. One assumes that the concept of 'Governance philosophy' is a polite but wrong synonym for many inconsistent legal requirements which have grown over many years, but one has no idea what clearer ones might be, except from reading the SIS Act. Related implications for direction are discussed later.

The Panel states in further justification of its chosen member and fund models that Diagram 2:

> ………highlights that different governance (and regulatory) models will be appropriate for the different types of members. Prudential regulation is more relevant to the 'universal' and 'choice' segments than the 'self-managed' sector, for instance. Likewise a traditional trustee role is more relevant to the 'universal' sector than the choice sector.

Having been given no idea of the requirements of 'prudential regulation', 'trustee-centric' or 'disclosure based' regulation, in comparison to 'self-managed', the above statement seems bizarre. The Panel has previously suggested the SMSF sector requires better data. One assumes this can only be related to its supposedly poorer regulation, which in turn can only be based on silence or lies about the things that matter. Why pick on SMSFs?

The Panel ponders whether the lack of serious questioning of the continuing relevance of the trust model might reflect the belief that the costs of changing from such a model would be considerable. You can bet on that, because narrow, unclear law based on wrong assumptions is normally added to rather than repealed, thus confusing everybody further even if they happen to be lawyers, which makes them even more money. The rare alternative situation I am most aware of was when Australian states introduced occupational health and safety acts in the mid 1980s and all the outdated safety legislation was reviewed for appropriately updated subordinate status under them or for other advisory status or repeal. Elsewhere I have argued that this approach would be sensible to deal with the outdated treatment of competition still found in the Trade Practices Act. The Act ignores Hilmer's later definition of competition to continue with the old embedded assumption that it will only ever be for money, which will benefit all. This wrong assumption makes sustainable development and triple bottom line accounting, which is economic, social and environmental, impossible. This discussion is also relevant for better consideration of forms of risk management later, to improve them.

The Panel states that many submissions identified features of the trust model that make it attractive in the superannuation context including 'the separation of legal and beneficial ownership which protects both member and government interests'. However, one wonders how such ownership types are presumed to differ and expected to protect both member and broader community interests. Until the means of this protection is explained by the Panel, one naturally reserves the right to assume the current situation enables both the members and broader communities to be fleeced more easily by 'trustees' (?) who are following their own economic interests. (One does not share the Panel's assumptions.)

The Panel states that some submission makers commended 'the substantial body of well-established principles that are inherent in the trust concept', but one is told nothing about what these are. Some submission makers apparently praised the flexibility inherent in the trust model because it allows separation of 'actual ownership from day-to-day control of underlying assets'. Others apparently identified the trust's flexibility as a source of risk and stated that 'the largely unfettered ability of the settlor to specify the terms of the trust need can be used to curtail the rights of members in ways that might be inconsistent with the policy objectives behind compulsory superannuation'. The Panel states that 'anecdotal evidence suggests that there is insufficient emphasis being given to the SIS compliant component' of audits (Gee, surely not?). It asks how this could be improved. For the Panel to provide better information on SIS requirements would have been a start.

One worries that the ownership and management of funds have become increasingly unclear and shrouded by secrecy, mainly to prevent any challenge to their use on the grounds of legitimacy or to a related public interest. As Weber pointed out in his discussion of the growth of the state, many mafias began as tax gatherers for a distant king. This historical context, the global financial crisis and the Panel's information (however inaccurate) on SMSFs, suggest that although taxation has come under much greater public scrutiny and thus utility for further effective policy making with the development of democracy, this is not true of other fund management. The financial sector, like the mafia, still operates in comparatively feudal secrecy. It thereby assumes it is also operating in the interests of its members, shareholders and the public, doing deals which are done first to benefit its brethren. For example, I have thereby gained a vague impression that UniSuper thinks it owns my money but that I manage it, whereas I, unschooled in financial law, naturally assume the reverse is true. (Pull the other one?)

In summary, some submission makers view trust flexibility as a good thing whereas others see it as a source of risk for members. The result of the legal incomprehensibility, confusion and secrecy regarding trust requirements and management activities, means one assumes most people either are or should be worried about the identities, capacities, activities and interests of those whose job is managing their money and may wish accordingly to fix this problem. As money is normally expected to be gained through work, one assumes the definition of members ideally relates consistently to ANZSIC definitions, and their occupational or related compulsory or voluntary service affiliations, as also addressed by the PC. This is important for clear and correct data entry and all related transparency. Correct data entry is necessary for efficient scheme competition, management accountability, quality analysis, fair and consistent treatment of members and for the development of related policy advice designed to improve all superannuation schemes further, in the interests of all. Choice and compulsion are discussed later.

Preliminary discussion of the SIS Act direction, the treatment of risk and disputes

The objects, definitions and key provisions of the SIS Act are instructive in regard to the above problems and the related achievement of greater security and cost reduction for fund members. The object of the act is not the mystical 'sole purpose test' that the Panel occasionally refers to in spite of any related 'bells and whistles'. The Act states its object is 'to make provision for the prudent management of certain superannuation funds, approved deposit funds and pooled superannuation trusts and have their supervision by the Australian Prudential Regulation Authority (APRA), the Australian Superannuation and Investment Commission (ASIC) and the Commissioner for Taxation. The basis for supervision is stated as being 'that those funds and trusts are subject to regulation under the Commonwealth's powers with respect to corporations or pensions (eg. because the trustee is a corporation)'. The object also states that in return the supervised funds and trusts may become eligible for concessional tax treatment and that the Act does not regulate others entitled to engage in the superannuation industry'.

Under the SIS Act a registrable superannuation identity means:

(a) a regulated superannuation fund or
(b) an approved deposit fund or
(c) a pooled superannuation trust but does not include an SMSF, Constitutional corporations or other bodies

In order to obtain a registrable superannuation entity (RSE) licence, the trustee, or group of individual trustees must have a risk management strategy. This may enable them to be part of any public offer entity, as well as being able to access other incentives attached.

In the light of the effects of the global financial crisis and the need to reduce carbon pollution and to develop more sustainably, the nature of the above risk management strategy and of offers made by any related public entities seem likely to be of great interest to many investors. We would like to know that our money is going somewhere we would actually like it to be, which is also comparatively safe and lucrative. The implementation of directions in the report of the Standing Committee on Natural Resources Management (Climate Change) of the NSW Legislative Assembly entitled 'Return of the Ark' requires consideration in this context. The same is so for other regional directions which are ideally related consistently to gain better standards and more equitable treatment through supporting competition which also reduces abhorrent costs. The PC recommendations in the report 'Market Mechanisms for Recovering Water in the Murray-Darling Basis' could also be considered as a model in this context.

Panel question 14.4 asks what sort of risk factors ought to be considered in setting capital requirements and the Panel asks in question 18.4 whether SMSFs should be required to complete general-purpose financial reports so that assets are annually marked-to-market.

On the Peoples' Bank of China website, Xhou Xiaochuan discusses fair value accounting, mark-to-market and mark-to-model accounting. He states the Generally Accepted Accounting Principles (GAAP) which are accepted world wide define fair value accounting as the price at which an asset and liability can be traded with a willing counter party in an orderly manner. Mark-to-market prices can be used when there is an active market which can be observed to measure the value of prices and liabilities. When there is no active market, prices are assessed by using models with observable parameters as inputs. Fair value accounting requires disclosure of the valuation approaches and assumptions as well as risk exposures and related market sensitivities.

However, the problems of fair value accounting were exposed by the global financial crisis. Compared with the historical cost accounting approach, fair value accounting intensifies market fluctuations. While the fair value approach is more dynamic and may better reflect real time values of assets and liabilities, it magnifies the changes in their apparent values and increases the volatility of returns through the profit and loss account as a consequence. In McLean and Elkind's book entitled 'The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron' the authors explain mark to market accounting and demonstrate how it played a major role in the failure of Enron in a similar fashion to that explained above, on the Peoples' Bank of China website.

Xhou Xiaochuan calls for a corrective to market instability caused by mark-to-market and fair value accounting in specific situations and draws attention to the new Basel Capital Accord (Basel II) released in 2004 which requires regulated minimum capital requirements of 8% as one of the pillars of banking supervision. It also requires the concept of risk weighted assets to reflect not only credit risks, but also market risks and operational risks. He suggests the Basel II framework be supplemented by issue of quarterly indicators of prosperity and stability, to be used for risk rating purposes and to counter cyclical instability. Based on the history of the development of feudalism and capitalism, plus the global financial crisis, ones assume this advice is now better than the US counterpart, whatever it is. One naturally also wants openness to public scrutiny to establish and compare economic, social and environmental consequences of investment. However, good insurance practice requires full funding for future claims and perhaps something similar may be true for good superannuation as distinct from banking practice. This may change the regulated minimum capital requirements of various funds.

In late 2008 the Chinese government apparently adopted new measures to deal with financial crisis. It will invest an extra 4 trillion RMB over two years, mainly in the agricultural sector, welfare and affordable housing, transportation infrastructure, energy conservation and emission reduction. An industry revitalization plan covering ten industries was also introduced to curb and reverse the trend of declining growth in these industries. The Peoples' Bank of China lowered the benchmark interest rates five times and reduced the reserve requirement ratios to promote stable growth of monetary and credit supply. Other measures to strengthen financial support and to promote employment and living standards to stimulate consumption and demand were also undertaken, including in health care provision and taxation. As indicated earlier, China expects to maintain stable economic growth by boosting domestic demand and reducing dependence on external demand, as a stabilizing force in the global economy. Australian direction should emphasise the importance to all the world of better air, water, forest and land management to enhance population health and biodiversity in this context.

Key auditing standards, practices and related rating agency methodologies require consideration in these current and globally related policy and investment contexts. The rating of performance by financial or other institutions essentially depends upon their openness and related justifications of quality performance, rather than on the blanket application of numerical ratings systems to them. As is clear from the international financial crisis, rating systems are liable to be captured by other big service providers who pay for the ratings service that deliver what they want. A key antidote to this and many other problems is openness, which also reduces costs of practices based on ideal guesses to suit financial experts. An ideal market lets all see clearly what they may buy and how, so the consumer can better meet their particular needs as effectively as possible.

The answer is 'Yes' to Panel question 11.12 which is 'Should it be mandatory for trustees to manage pension assets separately from accumulation assets?' This is a necessary accompaniment of clear and reliable data gathering for effectively related accountability, policy setting and cost containment. Insurance, annuities and related pension matters are discussed later in this context. Panel question 14.1 asks 'Is the industrial relations mechanism the best way to allocate employees to a default superannuation fund? The concept of 'an industrial relations mechanism' is too vague to allow a sensible answer to be made. However, it seems highly likely that the answer is 'No' to the related Panel question 14.2 'Would there be value in the creation of a specialist superannuation court under Commonwealth legislation'. There are already too many additions to past narrow legislation and specialist perspectives. These may add to problems by forcing all back to the past, dominated by lawyers and related financial interests, rather than reducing them.

In a nation of comparatively bad laws the SIS Act appears to scrub up very well because it has objects, definitions and key requirements which seem comparatively clear and well directed. In a modern democracy, law that can only be interpreted by lawyers is just rubbish. UN Conventions and related instruments which countries are encouraged to adopt are also comparatively clear and short, even if one does not necessarily agree with all of them in general or in specific applications. All relevant standards and evidence related to any problem and its environment ideally guides its resolution. People ideally should be able to consider, respond to and judge matters openly and dispassionately, like scientists who broadly gather evidence about all relevant issues, not like competitors each encouraged to promote their own rotten pudding made in secret long before they end up in courts that deliver evidence in many narrowly driven, rule bound, adversarial ways.

An earlier and attached submission on the Victorian Competition and Efficiency Commission Issues Paper for the Financial Services Inquiry, pointed out that the Minister for Competition Policy and Consumer Affairs stated in the foreword to a consultation paper entitled 'The Australian Consumer Law Consultation Draft Provisions on Unfair Contract Terms' that the 'introduction of a ***national unfair contract terms law*** will be one of the most important consumer reforms in the new Australian Consumer Law'. This is extremely doubtful because the Exposure Drafts are incomprehensible rubbish (ie. not transparent) so hardly anybody, including judges, will know whether any contract terms, according to the law, are:

- fair or unfair
- prohibited or not prohibited or void

However, I bet this will not stop lawyers making up more expensive rubbish like them. I have no idea how these issues have been resolved as nobody acknowledged my submission or provided further information on the issue above or the related one below. (A full discussion of the proposed unfair contract terms law can be provided on request.) On the other hand, I naturally tend to agree with Chief Justice Spigelman's idea that the UNCITRAL Model Law should be adopted as the Australian arbitration law. (For the uninitiated, remember, UNCITRAL is the UN Commission on International Trade Law.)

Whatever one thinks about the Chinese government, they have seldom defended feudal relations. Never forget the financial and legal pups that US governments and their shadowy financial backers have sold their people and foreigners for years and stop selling them here. The US has a history of perceiving its government as a malign interference in the otherwise benign outcomes of market operation, or as a related defender of the faith. Their controlling market paradigm is clearly wrong, so is reduced to numbers. Government is allowed to attack supposed monopolies, but not the obvious legal ones. One wonders what most Americans think they have now won from this approach besides obscene income differentials, lower minimum wages, fewer paid holidays, inadequate health care, higher education costs, unstable employment, lost savings, huge debts, by far the highest murder rate in the OECD, family deaths and injuries from constant war and more unsightly fat. The US is a rich country, but is not run like a democracy to me. The Chinese, on the other hand, do not hold themselves up as a democratic model to the world.

Preliminary discussion of SMSFs

According to the ATO paper entitled 'A Statistical Summary of SMSF's' the total superannuation assets at 30.6.08 were $1.08 trillion, which is about the same as Australia's gross domestic product. There were 416,622 superannuation funds at 30.6.08, and 99% of these were SMSFs (p.4). Self managed superannuation funds (SMSFs) also contained the largest amount of money ($336.1 billion), followed by retail funds ($306 billion), industry funds ($191.1 billion), public sector funds ($151.6 billion), pooled superannuation trusts ($69.9 billion), corporate funds ($54.8) and two other smaller fund types ($2.4 billion and $0.1 billion respectively). Currently SMSFs can have no more than four members and about 90% of funds have only one or two members.

The ATO paper is notable for discussing average SMSF balances but not the median balance. According to the Panel, 'Mercer estimates as little as six percent of a person's superannuation benefit in retirement will be sourced from contributions over their working life, with the majority of benefits (66%)sourced from post-retirement investment returns' (p. 11). Russell investments estimated that a little less than 60 cents of each dollar drawn down in retirement comes from post-retirement investment earnings (p. 11). Perhaps they never saw all the people who had a bit of money in their super accounts but who lost or spent it all and then went onto the old age pension. Appropriate relationships between personal savings and choice, risk management and related government protections traditionally provided to old people through taxation are discussed later.

The SMSF sector increased its fund size from $132 billion to $332 billion in the five years to 30 June 2009, with an annualised growth rate of 20%. Peak contributions occurred in the year to June 2007 as a result of incentives made available at that time. (Ouch?) Many sole traders and small family business owners use SMSFs as their superannuation vehicle. Nearly 39% of all SMSF members are self-employed or derive their income from a business or partnership. At 30.6.08, members aged 50 or over were 67% of the SMF sector, compared with 22% of other sectors. The 27% of SMSFs that were fully or partially in pension withdrawal phase owned 47% of all SMSF assets.

From 2004 to 2008 financial years, the proportion of SMSFs with $200,000 or less in assets decreased from 42% to 26%. However, over the three years ended 30.6.08 'the average performance of SMSFs with $200,000 or less in assets 'was significantly less than those of larger SMSFs and potentially other superannuation funds'. Since 1 July 2007, new funds were established at the rate of 2000 to 3000 a month, or approximately 30,000 per year and reduced by approximately 3,400 wind-ups a year. One wonders whether there are a lot more wind-ups to come, as I speculated earlier. An earlier submission to the PC Inquiry into Government Drought Support (2008) and to PC Reports on the Regulatory Burdens on Business (Manufacturing and Distributive Trades) (2008) and (Primary Sector) (2007) pointed out, according to the AFR, that the ranks of those then going into bankruptcy were dominated by small builders, with most of those who failed having less than $100,000 in assets. Over the previous three years, between 82 and 84 percent of insolvencies were for companies with less than 20 employees and between 43 and 44 percent were supposedly due to poor management of the business, according to the AFR (27.7.08, p. 17).

As the recent global history of poor government and financial policy, HIH and other insurance failures, and the related sub-prime mortgage crisis all have showed, the problems of bad management often start much higher up the food chains than small businesses. Their failures cause many unnecessary costs on businesses, consumers and communities alike. My personal experience suggests there may still be many people who may have taken out a line of credit against their housing mortgages to fund their businesses or for other investment reasons, without fully realizing either the future instability of the economy or the debt ramifications of their decisions in both arenas.

I did neither, but this was first due to the capacity to keep repeating to rapid, hard sell property and financial advisers that I understood neither their concepts nor their figures. I was also protected from finalizing purchase of property for rent in Brisbane by the fact that the Westpac head office put big red warning stickers on parts of the draft contract regarding a loan to buy it. This showed how I might enter a situation where property and financial managers in Queensland could keep siphoning money from my accounts as a result of racking up costs in a way I could not control. This was the kind of situation I recognized from workers' compensation insurance. I had guessed the deal probably stank when the nice man who spent the day showing me housing looked ashamed of himself the moment I said I was interested in buying. In retrospect I regarded the experience as a very frightening fast learning course in Queensland. Cheap at $200! Thanks Westpac. I had never before experienced such clear and helpful financial advice.

But I digress. As at 30.6.08, the average SMSF member balance was $456,000, nearly double the average SMSF balance of 30.6.04. According to ATO estimates, for financial years 2006, 2007 and 2008, the return on assets for the SMF sector was 12.6%, 16.9% and -6.1%, respectively. By comparison, at a whole of industry level, other kinds of funds returned 12.2%, 13.3% and -7.8% respectively.

The largest SMSFs (more than $2 million) outperformed the smallest SMSF's ($50,000 or less) in each of the three years to 30.6.08 by between 14 and 19 percent. The smallest SMSFs ($1-$50,000) had average returns on assets of -1.62% in 2006, 0.41% in 2007 and -18.26% in 2008. At the other end of the scale, those with balances of over $52 million made average returns on assets of 15.27% in 2006, 19.76% in 2007 and -4.24% in 2009.

SMSFs with $50,000 or less in assets have average annual operating expenses of 5-6% of their total assets. The average annual operating expense then declines uniformly with average asset size to the range of 0.36 to 0.47 percent for SMSF's with more than $2 million in assets, between the 2006 and 2008 financial years.

The largest investment categories for SMSF funds were listed shares (32%), cash and term deposits (26.4%) and non residential property (9.2%). My guess is that the future will bring continuing decline in money for many members in SFSFs, especially those with under $500,000, depending on the competing interests of their trustees and advisers, who will naturally do everything possible to support themselves and the big client best. For example, in workers' compensation insurance, where I formerly worked, one of many reasons for establishing the WorkCover structure in1987 was that insurance companies or their brokers were accused of charging small businesses higher premiums to subsidise lower premiums for large organizations to attract their business. Trustees or advisers in SMSF investment are probably in positions to exercise similar tendencies. Members with lower balances should switch from an SMSF to an industry fund?

In Recommendation 2, the Parliamentary Joint Committee on Corporations and Financial Services Report (2007) suggested that Treasury should conduct a review of laws and regulations governing superannuation to identify how they may be rationalised and simplified. Labor members supported this recommendation and most others in the report. Recommendation 6 suggested that trustees of superannuation funds should publicly tender key service provision agreements. The current Review Panel states it believes this recommendation is unworkable but does not say why. Labor members of the earlier inquiry had claimed that superannuation had been 'governed by the trustee system in a sound and effective manner' and were against the recommendation because it appeared to imply broader and 'impractical and unnecessary interference in the internal operations of business' (p. 199). They must have been kidding. It would be good if UniSuper and other fund managers publicly tender key service provision agreements because this would educate the market. What could be better for superannuation funds to do than that?

Take a historical approach to consideration of insurance and related issues

The paradigms of financial operation, related law and much economics are based on the assumption of equal trading where exchanges naturally appear fair or they would not have happened. In this market paradigm, the more traders there are and the more they trade, the better off we are all supposed to be as a result of the increasing choice we have. Yet each trader's operations may be his closely guarded secret, protected by his recognized law and related peer practice. He may spend the purse of others on himself.

The above continuing approach to the market is pre-scientific and anti-democratic as it does not recognize the power that the men who keep the purse or wield the law have over others. The productivity of capitalism later produced a clear conceptual distinction between the trading classes of capital and labour. The concept of consumers as a class of traders, as distinct from the class who deploy their capital or who sell their capacity to work, developed later still. Finally, attention has now also shifted to concern about the effects of production on the natural environment. Although some economists, such as many in the PC, use modern, historical, institutional, and culturally based economic analyses rather than more traditional trading and related legal assumptions, others continue to protect and enhance the older professional views, naturally believing this is best for all of us. Feudal legal and financial men still rule us. Compare them better.

Preliminary Treasury estimates suggest prospective tax concessions for 2010 for SMSFs of over $6.3 billion (approximately $8000 per SMSF member) compared with over $17.5 billion for the non-SMSF sector. This also suggests that only 7% of total superannuation scheme members accessed close to one third of the related total tax expenditure. The Panel wonders on what grounds this is defended. Search me. (I am just a woman.)

Ideal relationships between voluntary and compulsory plans for upkeep in old age from the perspectives of the individual, organization, industry, community and other current and future interests, may now be learned by considering UN, World Health Organization and related Australian community health and other policy direction in industry and related regional contexts. This often assumes the necessity for construction of a platform of guaranteed standards of citizen and environment protection, rehabilitation, and compensation in accordance with related regional directions, supplemented by the capacity for extra choice, service and related environmental enhancement through personal and broader community assumption of additional investment and related risk. I guess capacity to achieve openly shared and sensible direction, rather than amounts of money estimated for production over time, are the vital drivers for future economic stability and for achieving key goals of sustainable development, which ideally are cooperatively and competitively delivered. Trust is all you need to make some rich and achieve better outcomes of production? (Being a woman I have no idea but I bet you do.)

The Treasury Retirement Income Consultation Paper (2008) notes that the age pension and superannuation systems are intended to have complementary roles but they were developed and operate largely in isolation from each other (p.41). The same is true of state workers compensation systems, the Medicare system, private health care services and insurance, accident insurance, life insurance, the disability support pension, the carer's pension, and a range of related services. Australian policy makers have been particularly interested in the extent to which all health and other funds for disability services, pensions, lump sums and related investments should be underwritten (owned) and managed by government or in the private sector, in order to gain the best outcomes for individuals, taxpayers, premium holders and Australian communities.

The evidence is that nationally designed health and related social and environmental funds owned by government and/or industry, which are cooperatively and competitively managed, are likely to provide superior outcomes to market based underwriting of risk and related service provision. It is necessary to construct broader understanding that the competitive pursuit of key stakeholder interests is more broadly functional than the narrower pursuit of stockholder interests. Lawyers and the financial services sector do not necessarily share a genuine identity of interest with consumers and businesses outside the financial sector. The symbiotic and parasitic nature of many legal and financial relationships upon more productive others is made clear through study of the difficulties of any political march away from insurance company underwriting of state workers compensation and motor accident insurance pools. Such pools have traditionally been underwritten and therefore owned by insurance companies competing on premium price.

There are related difficulties in ending injury claiming systems which depend upon the painfully slow, uncertain, difficult and costly 'proof' of fault. Courts may deliver large lump sums which may also be hard and costly for the injured to manage. The result for industry and society of the above financial and legal combinations is more unfair cost.

Study of workers compensation, Medicare and related health insurance practices have repeatedly shown that industries should not give away the ownership of their insurance or related funds when they can reap the benefits of fund investment for themselves, as well as overseeing more stable, more effectively data driven and more competitive administration of injury, rehabilitation, investment and lump sum or pension systems by those fund managers approved to do so. Just as there is no good reason for premium holders to give away the premium pool for other underwriters to reap the benefit of its investment, there is no good reason for a legal system which takes adversarial rather than more openly scientific approaches to problems. It is difficult for people to understand that many legal and financial forces are evilly dysfunctional for the rest of society as the latter have become increasingly powerful and mysterious by being embedded for centuries with more productive forces of capitalist development, like politicians. This is another problem that has no name. Freidan wrote about its smaller partner in the home.

In his address to the Australian Conference of Economists Business Symposium on 1.10.09, Ken Henry, the Chair of Australia's Future Tax System Review Panel and Secretary to the Treasury, stated that the principle holdings of Australian households are:

Their own home (44% of household assets)
Other property – including rental property (16%)
Superannuation (13%) *(N.B. This is often compulsory)*
Shares and interests in trusts (12%)
Personal use assets (11%)
Bank accounts and bonds (4%)

Earlier, the PC discussion on first home ownership stated nearly 40% of residential dwellings are fully owned by one or more of the occupants and a further 30% are occupied by households paying off a housing loan (2003 p.14). Most Australians appear to think they need a home before any other investment. In this they appear to be like me in that they try to make their savings and investment choices primarily on the basis of security rather than speculation. They prefer their home to live in and follow this with other rental property perhaps because they touch the bricks and trust that those in the financial markets will have difficulty taking it from them. The more people are driven towards speculative insecurity and comparative ignorance by government policy the more they have good reason to see government as the enemy. Super should help, not screw us.

The purpose and management of taxation, as well as of retirement saving and investment through superannuation and related funds, are now ideally conceptualized and designed together, to meet the new international goals of health and sustainable development. These goals are ideally implemented more competitively, through open government, industry and community partnerships. This would bring Australia closer to the social insurance model of a government and industry managed retirement income and related investment system recommended by the World Bank. The ideal World Bank multi-pillar retirement income structure is outlined in Appendix C of the Retirement Income Consultation Paper (p. 48). This direction would assist creation of other more broadly stable and competitive forms of industry and community planning, saving, taxing, borrowing and related investment systems and services. In this process, financial service providers are ideally positioned by legislation to perform more cost-effectively and with greater accountability to consumers of financial services. Use the SIS Act as a guide.

The Retirement Incomes Consultation Paper (2008) states that requiring an amount of superannuation savings to be taken as an income stream would better integrate the age pension and the superannuation system and provide greater protection against longevity and inflation risks (p. 31). I assumed so at the time. However, if this money is to be safe rather than lost by those who brought us the latest global financial crisis or others like them, a broader social insurance management perspective which links many government, industry and regional community interests more clearly and effectively is necessary. This ideally aims to achieve sustainable development through more information sharing and dialogue designed to achieve regional goals which are social, environmental and economic. The carbon pollution reduction scheme provides a development opportunity.

Wellbeing is produced by the total environment surrounding every body, not simply by the services specifically designed to cure the sick. Government and major businesses should now define the major goals of key government and industry partnerships for wellbeing and sustainable development consultatively in related industry and regional community service contexts. Retirement income funding, taxation and other financial policy and services are ideally designed to achieve key regional goals more competitively. This process should also include consideration of the right to support the aims of the Australian Organ and Tissue Donation and Transplantation Authority Act (2009) by allowing personal choice of the timing and consequences of death to be exercised more effectively by old people wishing to save themselves indignity as well as current and future generations trouble and money. Give the best bits of my body to others less well off and feed a few endangered species. Feed the rest of me to fish. Give my regards to Broadway. (God would love it.)

Harnessing the broader goals of sustainable development to carbon pollution reduction offers a new global vision of protection which is ideally embraced by all. Regulations and systems which do not clearly support the new direction should be dispensed with unless another course of action appears in the public interest. Transition to sustainable development may be lead by better coordination of many industry development directions recommended by the PC as well as by those charged with implementation of the Australian carbon pollution reduction scheme, so all Australians and related others may achieve their goals more competitively, in more open and stable markets. This direction also requires open education for sustainable development, which includes education to achieve the directions outlined in UN Conventions which nations have embraced. However, many professions appear to have locked themselves firmly into outdated laws and academic enclaves forged for narrower interests. ABC and SBS ideally help drive the necessary open community education for change. An education revolution is needed.

From the above perspective, Panel question 13.2 on Women, which asks about specific issues which disadvantage women in their interaction with the superannuation industry, aside from broken workforce participation and lower average incomes, seems a little like seeking to enumerate the particular issues preventing women from making an impression on top ranking institutions in Nazi Germany. Comparatively speaking, the subject seems a bit beside the point. It might also have been reasonably pointed out to German women that they invariably lacked sufficient personal fortitude, or aggression, or discipline or the right knowledge or experience or attitudes to impress key public institutions sufficiently at higher levels and this was very probably right. Loyalty, keeping your mouth shut and the suit is never enough. Besides women, the other 'clearly identifiable groups for whom specific provision could and should be made within super', are orang utans and other endangered species. Tell this to your mentor or your mate next time you have a drink.

Thank you for the opportunity to make this submission.
Yours truly, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, 2037.