

## INQUIRIES INTO MANUFACTURING AND SUPERANNUATION

Dear Sir/Madam

I refer to the Inquiry into Manufacturing in Victoria and would like to make the submissions below and attached which is related to the following term of reference:

2. Identify and report on the factors which influence businesses in determining whether to manufacture in Australia or overseas including consideration of:
  - (b) maintaining consistent quality standards in line with both federal and state laws
  - (d) assistance and incentives provided by government and
  - (e) the impact that the global deterioration in economic conditions in recent months will have on future decisions regarding manufacturing locations.

This submission is based on the view that most producers and consumers value stability and certainty highly and will try to invest accordingly. It also assumes that most people have social and environmental objectives which are not necessarily satisfied purely by the pursuit of money. It further assumes the free market is ideally driven by the consumers of goods and services rather than by the lawyers and financial service providers responsible for the latest international financial crisis.

The submission argues that much of the currently dominant Anglo-Saxon legal and financial discourse is feudally driven, rather than scientific. These forces are correctly perceived as incomprehensible, potentially rapacious and frightening, by many people who are not powerful or gamblers. In the light of the current financial crisis, more openly scientific collaboration by government, industry and regional communities to achieve clear economic, social and environmental goals competitively, appears likely to be much cheaper, more stable and more attractive than current financial arrangements.

Under ideal circumstances market trading is supposed to be perfectly informed and hence perfectly satisfying. Ideally there are no enormous and continuing disparities in wealth because the market corrects them. However, the discourse of financial traders and their acolytes remains feudal. It uses images of speculative battle or gaming, naturally supported by secrecy and numbers. Law and financial services still operate on pre-scientific principles which are anti-democratic.

The only good reasons for trusting others are clear evidence of their purpose and progress, or the knowledge of being loved, as distinct from being used by them. An effective way forward for Australian industry, including in manufacturing, is therefore through more open and scientific management of industry superannuation funds, acting in cooperation with government to achieve financial, social and environmental goals. This direction is addressed in the submission below and in related attached discussion aimed at cutting the costs which are associated with feudal and thus comparatively blind operation.

Dominant US interests use a predominantly feudal discourse which suggests they think that the pursuit of economic self interest is in the interests of all because through this

process markets will perfect themselves and naturally benefit all in every way eventually. In this view, however, all market players are ideally also left to their own devices, which may naturally be secret. From this feudal perspective, which eschews openness, the later historical concept that perfect information is necessary for a perfect market is forgotten and the ideal role of government remains feudal. This is mainly to assist lawyers to break up apparently unnatural monopolies and to defend the faith. The interpretations of differences between all market players, including between natural and unnatural monopolies, ideally comprise part of the lawyers' and judges' monopoly package.

The feudal perspective has led to global financial collapse led in the US. The global financial system is now being considered for appropriate restructure by the G20 Leaders, not just by those who won World War II. Compared with other OECD countries, and in spite of the continuing hegemonic importance of the US dollar, the US provides a vision of hell to many. The nation has obscenely wide income differentials, lower minimum wages, fewer paid holidays, inadequate health care, higher education costs, unstable employment, lost savings, huge government and personal debts, major homelessness, by far the highest murder rate in the OECD and many family deaths and injuries from constant war. The US appears to be the richest country in the world but also seems more like a secret casino rigged by the rich and their lawyers rather than a perfectly informed and perfectly clearing market where all are supposed to win in the long run (when all non-human life is dead?).

On the other hand, there has been growing convergence of political views in Australia during the 1980s and beyond. This is partly due to growing understanding of the failures of the Whitlam government. During the 1980s and 1990s Australian policy makers were very interested in the extent to which funds for health, related services or pensions should be underwritten (owned) and managed by government or in the private sector, to gain the best outcomes for individuals, including taxpayers, premium holders, and all other Australians. Funds owned by government and/or industry, which are transparently, regionally and competitively managed, appear likely to provide better outcomes than market based underwriting of risk, service and income provision. The market mechanism alone has provided US citizens with extremely expensive health care which offers services highly inequitably and leaves many uncovered. Why should the market drive the reduction of greenhouse gases any more effectively than it has provided US citizens with health care? The Australian government's carbon pollution reduction scheme green paper (08) and a recommended way forward is accordingly addressed in an attachment.

It is necessary now to construct broader understanding of why the competitive pursuit of key stakeholder interests is more broadly functional for all than the narrower and blinder pursuits of multiple stockholder interests. As Stiglitz and Muet stated in the proceedings of the Annual Bank Conference on Development Economics in Europe in 1999:

If one has to choose, competition is more important than private property for the functioning of the market economy (Stiglitz and Muet 2001, p. xiii)

The Chinese government also recognized the above and acted gradually to increase grass roots competition in China. Russian government took a different approach when the

commanding heights of the economy were privatized very quickly. US commentators appeared to approve of this, but it also seems to have been disastrous for many ordinary people, as indicated by the comparative decline in community health. (But I digress.)

This submission makes the following major recommendations in a discussion of superannuation below and also provides related analysis and recommendations below and in attachments:

- Define terms in legislation and codes of practice clearly and consistently with the common dictionary or with national or international scientific categories so that the processes and outcomes of competitive action may be better assessed by all
- Use broadly scientific rather than pre-scientific, lawyer driven and adversarial approaches to evidence gathering and related deliberation
- Operate using the Australian and New Zealand Standard Industry Classification System to promote transparency and to contain cost, especially in relation to financial services.
- Manage investments openly and comparatively on a related regional industry and community basis to achieve the financial, social and environmental goals of key stakeholders, consistent with the requirements of triple bottom line accounting.

I sent the submission below and the related policy discussions attached to Senator Sherry and would be extremely glad if you would also consider acting in this direction.

Yours truly, Carol O'Donnell

Dear Senator Sherry,

### **HOW DOES ONE SUBMIT TO THE CURRENT SUPERANNUATION REVIEW?**

I refer to several references in the Australian Financial Review (AFR) about your having announced an operational review of Australia's superannuation system and want to make a submission. I am providing the information and related recommendations below and attached directly to you because I can find no reference to this review after searching the internet. I am a self-funded retiree with money in a bank, funds managed by UniSuper and a pension from State Super. I am a property owner who is also an Australian citizen, a former tax payer and a consumer of other property and financial services, so I assume I have the right to make a submission to the superannuation review. Why can't I find your press release on Google or find a reference to this inquiry on the Australian Securities and Investment Commission (ASIC) website or elsewhere? The financial service providers rather than the service consumers should not be the only ones to comment. They have a vested interest in disguising and continuing any practices that makes their incomes higher.

In an article entitled ‘Super sector faces hefty fee shock’ Mr Jeremy Cooper, who is apparently deputy head of ASIC and who apparently heads the forthcoming ‘operational review of the retirement sector’ (sic.), stated to the AFR that he appreciates that segments of the industry are working to address some of the financial issues but that:

‘let’s be clear, nothing is sacred. Everything is on the table.....There are too many lawyers, too many moving parts and too many people clipping the ticket and we’re trying to get to the bottom of all this (AFR 19.6.09, p.3).

I would like to get to its bottom too, but am not paid to do it like he is. I am just a person who wants to invest in safer, greener development. Instead, as a new retiree and an investor, I find UniSuper has lost far more of my money in the past year than I ever lost in my entire life. I have little idea what kind of development my investments now support but guess they have nothing to do with achieving the greener production or more stable returns that I want. I have generally noted that worst performing investments are often ‘ethical’ or ‘responsible’ and these may be highly volatile or perhaps even Ponzi schemes. In short, I am an extremely unhappy investor. I don’t direct my investments away from UniSuper because I trust most financial advisers less than UniSuper and have no way to judge any of them which would help ensure that they care about investing my money safely and to improve the environment. How many would mainly be happily engaged in clipping fees for their own delight, whether or not they lose my money? – the lot of them?

In perhaps the most recent of the AFR references to your review, Mr Cooper stated, in an article entitled ‘Commissions ban alone is not enough’ (AFR 22.6.09, p. 44) that:

The aim (of the review) is to understand every little bit of where the money goes; who splits what with who, what each fee and charge is for, and does it have to be this way. ....When you strip it all down, all you have is a money-making machine called funds management.’

Mr Cooper apparently said no stone would be left unturned in the inquiry, which would consider investment management fees platform rebates, the relative benefits of passive and active investment styles and insurance products and premiums (p.44). If no stone is to remain unturned the inquiry has started very badly. How are submissions made?

### **DEFINE TERMS CLEARLY, SCIENTIFICALLY AND CONSISTENTLY WITH COMMON, NATIONAL OR INTERNATIONAL USAGE**

A major concern about third party intervention in financial relations is the one I guess was also addressed by Mr Turnbull, the Leader of the Opposition (LOO) in his Review of the Managed Investments Act (MIA) (1998), which he carried out in 2001. This review had the ‘Better protection of investors’ investments’ as its first term of reference. Should I assume that the recommendations of this earlier review are also of major interest in the current inquiry? In his discussion of Investor Protection in chapter 2, Mr Turnbull addressed ASIC policy on the requirements for ‘Responsible Entities’ (REs) to appoint third party custodians in certain situations. The following confidential submission to the

Review of the MIA stated the following problem, which seems likely also to be the case from my experience, as discussed in the attached:

The operational structure, compliance and reporting mechanisms required to operate by the MIA were providing sufficient investor protection and ASIC requirements for an independent custodian merely increased the administrative burden and cost for an RE.

I address an apparently related problem of third party cost generation and related lack of transparency and management accountability in an attached discussion of ideal trust management structures for an Australian industry superannuation fund and a bank. Can I assume Mr Turnbull and I are both addressing similar investments services and problems? Is the 'trustee' the same as the 'responsible entity (RE)'? One wonders who the RE is in the case attached. Is it Members Equity Bank or Perpetual or another group entirely? I have no idea from reading the MIA report, in which Mr Turnbull states:

It is considered that any attempt to define the accountability of 3<sup>rd</sup> party custodians or to impose duties and obligations upon them should be approached with the utmost caution. Further, the legislation is still in its early stages and not unexpectedly there appears to be no instructive case law on the subject.....

In view of this, legislative prescription of a custodian's duties and liability is not considered desirable (p.32.3).

Spoken like a true merchant banker and lawyer? Should one assume he speaks independently and should therefore be heard? As distinct, may one assume, from a self-interested, moronic loser such as I, or millions of other ordinary citizens like me?

Since laws seldom define their terms intelligently and lawyers naturally love the pre-scientific absence of all sensible definitions, how could more law do much other than create more picnics for lawyers and the leeches in the financial sector that grow fat off millions of poor fools by taking and losing their money while charging as often as possible for playing with it along with their other controlling mates in the markets? Many of Mr Turnbull's recommendations seem relevant to the current review. Is this so?

An earlier submission I made addressed the terms of reference of the Australian Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Products and Services. It considered the stupid definitions of financial products and services in the Corporations Act. The main aim of the submission was to re-design them so they assist transparent and scientific practice in many related Australian and New Zealand Standard Industrial Classification (ANZSIC) categories. A clearer, more concise, more comprehensive, cost-effective and less biased definition of a financial product or service than the one apparently outlined in the Corporations Act 2001 seems to be:

A financial product or service is a facility or activity which aims to assist trade through assisting:

- savings and or/deposit custody
- borrowing and/or lending
- investment and/or returns on investment
- insurance, re-insurance or related hedging

I also recommend the about definition to your committee.

Pre-scientific assumptions abound in government and are offered by many around it who take their lead from lawyers. For example, Garnaut's interim report on climate change warned:

Care would need to be given to the design of the institutional arrangements for administering the allocation and use of (carbon) permits. Variation in the number of permits on issue or the price would have huge implications for the distribution of income, and so could be expected to be the subject of pressure on Government. There is a strong case for establishing an independent authority to issue and to monitor the use of permits, with powers to investigate and respond to non-compliance '(2007, p.65).

Such views appear irresponsible because government is elected to govern and by giving away its power to a body established at arm's length from itself, it can only make itself more ignorant and unaccountable than it would otherwise have been.

The idea that establishing fund management bodies at arms length from an original body will guarantee objective management is particularly misguided if the appointed trustees have secret relationships and drivers of their own. The report of the Parliamentary Joint Committee on Corporations and Financial Services (2007) on the structure and operation of the superannuation industry recommended treasury conduct a review of regulation governing superannuation funds to identify how they may be rationalised and simplified. There is a prior need to describe and justify the funds' trustees and their wider aims and relationships, which the Joint Committee did not question. Otherwise, Australians may be paying for the privilege of increasing their own ignorance, costs and loss of control over their financial affairs. If industry superannuation funds openly tender their key service provision agreements it would encourage the market through educating it. This assumes that perfect information, perfect competition, perfect accountability, perfect risk management and perfect democracy are logically and positively related.

### **USE THE AUSTRALIAN AND NEW ZEALAND STANDARD INDUSTRY CLASSIFICATION SYSTEM FOR TRANSPARENCY AND TO CONTAIN COST**

Unfortunately the integration of the concepts of industry and the consumer into Australian financial analysis and practice remains embryonic and erected upon a base of feudal financial propositions and related law and practice which are a dysfunctional and expensive inheritance from English common law and statute. Australia may be typical of many former colonial jurisdictions and their communities in having this problem. The subordinated communities may also express many differing expectations based upon their own particular brand of feudal and family loyalties. This inhibits the development of

appropriately scientific industry, consumer and community management. This problem is addressed in letters below which also question Mr Turnbull's dealings and in attachments.

The attached discussion of ideal trust management structures for an Australian industry superannuation fund and a bank assumes that key services and fund management structures are ideally designed so fund managers can achieve not only contributor savings, adequate pension provision and effective housing loan assistance competitively, but also so that they can undertake regional investment for sustainable development more scientifically and cost-effectively than competitors. It is also assumed that ANZSIC should provide useful guidance in this development context and that more rational construction and delivery for related services industry categories, such as the following, should now be of primary interest:

- Construction
- Communication
- Health and community services
- Finance and Insurance
- Property and business services

Other recent submissions are attached in support of this assumption. I would like to send a new submission to the current review if I could find out more information about it. I note that David Bushby, Liberal Senator for Tasmania, has also raised his concern about the lack of information and unanswered questions on superannuation in his letter entitled 'Concern over Sherry's gaps on super' which was printed in the AFR 22.6.09, p.51.

The government Green Paper on the Carbon Pollution Reduction Scheme is not consistent in its approach to industry and suggests that whatever regulation exists should not normally be challenged. This is a major and increasing cause of inefficient management and consumer cost. The paper suggests adopting ANZSIC but at other times builds uncritically on outdated law. Broadly recognized industry and environment categories which are used consistently are necessary for scientific regional management. Greenhouse gas related categories and practices need to be reformed in concert with coordinated land use planning which also assists the protection of biodiversity through consideration of the Interim Biogeographic Regionalisation of Australia (IBRA) system. This divides Australia into 85 distinct biogeographic regions and 403 sub-regions. Planning reform to achieve sustainable development is ideally led in the primary sector because air, land and water are the foundations of all future life.

The comfort of Australians depends on a variety of forms of mining and energy production which also harm the environment. Better understanding of key industry production chains and their ideal links with surrounding communities and environments is vitally necessary to achieve the goals of sustainable development effectively and fairly. Strategies to reduce greenhouse gas emissions are ideally an element of more holistic, cooperatively planned approaches to competition to achieve broad community goals which are economic, social and environmental. Market trading alone may achieve service provision only in indirect or costly ways, and may never do so, as the international evidence on health care provision already indicates. President Obama is trying to reform the extremely poor market

performance for US health care consumers. (See related discussion in the attached article entitled ‘Sustainable development and the Carbon Pollution Reduction Scheme’).

Another article attached provides answers to questions from the Productivity Commission (PC) Issues Paper ‘Contribution of the Not for Profit Sector’. Ideally, the research the PC proposes should help to align the services of finance and insurance and property and business services so that all consumers and communities are better served. Consideration should include the key funding, ownership, management and endowment structures related to foundations and to industry superannuation funds, which are not for profit financial structures the PC ignores. I have little or no understanding of the key distinguishing features and related strengths and weaknesses of these fund structures in terms of their capacity for *service, advocacy, connecting the community or enhancing its endowment*, which are the community goals the PC seeks. However, the size and potentially positive national and international influence of industry superannuation funds seems huge. These investment forms also appear to have the competitive potential to out-perform and so reform many more secretive, volatile, costly and dysfunctional investment types to provide greener, more stable and more affordable services and endowments.

A recent submission to the Victorian Competition and Efficiency Commission Inquiry into a Sustainable Future for Australia discussed potentially related prescribed private or public funds non-profit management models, contained in the Australian Treasury paper entitled ‘Improving the Integrity of Prescribed Private Funds’. Treasury describes a PPF as a trust to which businesses, families and individuals can make tax deductible donations for the purposes of disbursing funds to a range of deductible gift recipients. A PPF cannot distribute to another PPF or to a public ancillary fund (PAF). The PAF is a common structure for community and fundraising foundations. With the exception that they need not seek contributions from the public, and control requirements, PPFs have the same characteristics as PAFs and accordingly must comply with all the other requirements of a public fund. Such Treasury approved financial structures appear to deserve consideration by industry superannuation fund managers, governments and others, to support projects aimed at improving social welfare and achieving a low carbon future in which biodiversity is also valued more highly. The Senate report on ‘Disclosure Regimes for Charities and Not for Profit Organizations’ (2008), which I have not read, may have other suggestions.

## **MANAGE INVESTMENTS EFFECTIVELY TO ACHIEVE THE FINANCIAL, SOCIAL AND ENVIRONMENTAL GOALS OF ALL STAKEHOLDERS**

According to the Australian Financial Review, before the election of the current Labor government, the then Water Minister, Mr Turnbull, who is now the LOO, mocked officials of the Treasury about having been ignored in the planning of the Howard government’s \$10 billion national water package. Apparently, the LOO said that this was unsurprising because Treasury don’t know anything about water. He said:

The Treasury does not know how much it costs to pipe a channel, how much it costs to replace a Dethridge wheel with a comprised flume gate and how much it costs to line 10 kilometres of leaky channel along the Murrumbidgee River.

The need to break ignorant financial control lies at the heart of many problems. The current Commonwealth or state treasury financial controllers may also have little useful to contribute to ensuring proper accountability for continuing expenditure of funds. Appropriate projects for sustainable development need to be openly identified, funded and managed, not controlled by ignorant, secretive treasuries or secret private interests.

Program budgeting appears necessary for triple bottom line accounting – financial, social and environmental – to meet the requirements of the United Nations Rio Declaration on Sustainable Development, to which Australia is a signatory. In 1993, Hilmer’s report to Australian Heads of Government after an independent committee of inquiry into a national competition policy, defined competition as, ‘striving or potential striving of two or more persons or organizations against one another for the same or related objects’(1993, p.2). The earlier Trade Practices Act (TPA) has no definition of competition, only the traditional legal ‘interpretation’, which states that, ‘competition includes competition from imported goods or from services rendered by persons not resident or not carrying on business in Australia’. Hilmer’s definition of competition and the related direction in his 1993 report on national competition policy appeared to be supported by all Heads of Government. It would have led naturally to triple bottom line accounting if it had been properly implemented. Instead it was botched in translation to the TPA. This now presents another rich lawyers’ picnic at huge public and industry expense. Current plans for carbon permit trading seem likely to add to the legal feast.

Program budgeting was being partially implemented in the Australian public service by Wilenski (1982; 1986) but this too appears to have fallen by the wayside. The Senate Committee report of inquiry into transparency and accountability of Commonwealth public funding and expenditure (2007) ignored program budgeting. It recommended complex additions to the existing budget process which can only add to current budget opacity and all related cost. The committee concluded its recommendations were designed to restore the Parliament’s historical and constitutional prerogatives. This is undesirable because open partnerships with industry and communities are required to achieve national and regional goals related to health and sustainable development effectively, through fair and efficient competition. (See discussion below and attached.)

### **ADDRESS THE CONCEPT OF ‘YIELD’ CLEARLY AND APPROPRIATELY**

As an investor and a householder I would like to know more about how the concept of ‘yield’ is ideally defined from the financial service consumer perspective in a variety of investment situations. For example, in chapter 1 entitled ‘The Ancient Regime’ of ‘Unfinished Business: Paul Keating’s Interrupted Revolution’ (2008) Love states:

‘With a currency, the yield is set by taking the key interest rate – say bank interest rates – as a percentage of the market value of the currency in US dollar terms. Now, if the Swiss franc is in strong international demand, as it usually is, its international price will be high and its yield low; that is to say that the interest rate you have to pay for borrowing the Swiss franc is low.....’

But the very fact that the international market price for the Swiss franc is so high relative to, say, the Australian dollar means that any Australian who borrows Swiss francs and converts them into local currency is in constant danger of having the repayment value of his Swiss loan jump.....

For an Australian – a financially unskilled Australian, like your young farmer – to borrow Swiss francs on an uncovered basis is madness (2008, p. 9).

One assumes the above description of how ‘yield’ is set is true, but also that the situation may no longer be appropriate in the light of the current US financial crisis and its effects in other countries. For example, Russia and China are reconsidering the strategy of saving in US dollars at a time when the US is rapidly printing money to deal with its financial problems, which may cause inflation. Colin Archer, the Chairman of APEC International Investments Group Ltd. discussed the Beijing launch of a new market for dollar-denominated bonds that are issued by non financial firms (Sydney Morning Herald SMH, 3.6.09, p. 63). For China based companies that want to invest abroad or to buy foreign companies, product lines or other assets, these new bonds will make it possible to do these deals more easily at lower cost. On the other hand, it was also recently reported that the Treasury is looking at opportunities for Australia to become a major centre for Islamic finance which is governed by strict rules forbidding interest payments. The Hon. Chris Bowen, then Minister for Competition Policy and Consumer Affairs, is quoted as stating that ‘Many countries around the world are taking measures aimed at facilitating Islamic finance products. The Australian government is concerned to ensure that the Australian financial sector is not being left behind’ (AFR 29.5.09, p. 7). Australian profit and non-profit structures, including superannuation require investigation in this context.

In his book on Paul Keating’s ‘interrupted revolution’ Love also states:

‘My home has a yield set by taking the rent I could get for it as a percentage of its market value. If the market value goes up the yield drops, because it is now a lower percentage of the new market value’ (2008, p. 9).

From a housing consumer perspective, it seems to me Love’s statement is incorrect. If the market value of my house goes up, the yield should also go up, because ideally I should now be able to get more rent for it. This leaves aside, however, an apparently trivial point of consumer interest, which is that the normal person’s house does not have a yield because the buyer is living in it rather than renting it out, and also owes the bank a lot of money. Another financial expert, Gittens, argued (SMH 19.9.07, p.13) that by owning one’s own dwelling one is escaping tax, which those renting and those who rent to them must pay on forms of income they derive by not investing in their own homes, but in something else instead. Gittens wants government to tax home ownership, which he also laments is a politically unacceptable position. As one of Love’s ‘bewildered pensioners’, it seems to me that most people want to buy a house because they need somewhere to live and view renting as throwing money down the drain. They may also think of themselves as lucky if they can afford to owe huge sums of money to a bank. Love and Gittens often present dishonestly, on the side of the rich, rather than all citizens, in my opinion. Related

concerns are addressed in the attached discussion of an ideal trust relationship between UniSuper and Members Equity Bank which was also referred to earlier.

## **INVESTIGATE TOBIN TAXES TO HELP ACHIEVE AUSTRALIAN GOALS**

The Australian treasury paper entitled 'Australia's Future Tax System: Architecture of Australia's tax and transfer system' (2008) revealed that Australia operates in a global economy, yet appeared to take little interest in issues related to broadening the foreign income tax base (p.193). This is a major problem which affects comparative investment potential. In a brief discussion entitled 'How taxes affect savings and investment decisions (p. 248) Treasury provided one of many strange charts, entitled 'Savings and Investments in an Open Economy. In it, 'resident savers' and 'non-resident savers' face 'holding entities' which surround 'financial structures', which surround 'assets'. Apparently these 'holding entities' are banks, companies, superannuation funds or trusts. How exactly are these four entities defined and structured and how are they ideally treated by a government which seeks to govern in the public interest and provide safer, greener more affordable investment opportunities? They are far from powerless to determine economic outcomes, but Treasury wrongly treats such 'holding entities', in passing. They are much more than 'holding entities'. They are trading entities in their own right, which may trade many opaquely valued financial products with unexpected outcomes. Trading operators in tax havens require special investigation.

Tobin taxes are excise taxes on cross border currency transactions. As I understand it, they appear to be the logical extension of indirect taxes, such as the Australian goods and services tax (GST) to the financial services arena. Could such taxes have the advantage of restraining financial trading which appears to be primarily undertaken in the interests of financial service providers, rather than their customers? Such issues require investigation.

I would be grateful for any information you provide about the current inquiry into superannuation and how I may provide further submissions to it. Please see related discussion below and attached.

Yours truly, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037.

## **THINGS I DIDN'T CARE ABOUT AT THE TIME (THE REPUBLIC DEBATE)**

Dear Mr Turnbull and Others

Annabel Crabbe's article entitled 'Stop at Nothing: The Life and Adventures of Malcolm Turnbull' in the most recent issue of Quarterly Essays drew my attention to the Options Report of the Republic Advisory Committee entitled 'An Australian Republic: The Options Report'. I missed the Republic debate. It seemed to me to lack clear point.

At the time (1993) I thought Australians needed most to understand and debate the concept of Constitution in the light of the broader and more recent direction of the United Nations Rio Declaration on Environment. **I concluded that Australian behaviour**

**needs to be expressed in more scientific and less feudal ways and the Constitution is a problem to the extent that it calls forth feudal (i.e. pre-scientific) behaviour.**

**To the question ‘Should Australians want a Republic? I would have answered ‘Only if it means we could act more easily in a modern (i.e. scientific and enlightened) manner’.** I have now read an ‘An Australian Republic: The Options Report’ and the Australian Constitution, which I keep close by my bed to dip into when required.

**As a result of this reading I conclude that it is not necessary to change the Australian Constitution to fix many of the problems of pre-scientific (pre-modern) behaviour in Australia. Some related problems are addressed below and in the attached. Indeed, changing the Constitution, even if it were possible by referendum, could have many unintended costs and consequences, which would make the current situation of intransigent feudal rather than modern action worse.**

I suggest instead the logical ‘do nothing’ government option in regard to the Constitution, which appears from past referenda to be a popular favourite. The Prime Minister of Australia could merely phone the Queen to get her general agreement to the view that it would be more modern and scientific, and therefore a good idea, if Australians behaved more scientifically and less feudally from now on. More codes, fewer laws and lawyers and less feudal behaviour generally. (One would not want to bore with too many details.)

The terms of reference given to the Republic Advisory Committee began by stating:

The current purpose is to obtain an options paper which describes the minimum constitutional changes necessary to achieve a viable Federal Republic of Australia maintaining the effects of our current conventions and principles of government.

In my opinion there is nothing in the Constitution which prevents the Australian government ensuring that Australian behaviour is expressed in more scientific and less feudal (i.e. pre-scientific) ways in future. Chapter 3 of the Constitution entitled ‘The Judicature’, supports this view. Article 71 states that the High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes. Article 72 on the Judges’ appointment, tenure and remuneration’ says nothing about any necessary educational or service qualifications for lawyers or others who may act in a judging capacity. It seems obsessed instead with the age at which judges may retire (reminding one a little of Peter Cook’s famous comparison of the job with mining). If the Blair government appointed commoners to the House of Lords, it seems the Australian government could also act to show a more modern and less feudal face to the world.

However, the Conclusion of The Options Report was to get rid of the Queen instead of the adversarial problem. In a typically blunt, wrong and disgusting way the report states:

The primary question for Australians to consider in the course of the republic debate is whether Australia should have an Australian citizen chosen by

Australians as its head of state or whether it should retain its head of state the person who is monarch of the United Kingdom.....

The Committee has instead addressed a question which is probably just as important –What might be involved in a change to a republic in Australia.....  
(Sorry, my photocopy cuts off some of the page numbers.)

The earlier summary of conclusions and options (p. 8) states the necessary changes to the Constitution (which requires agreement of the people in a referendum) to achieve a republic in Australia. This involves a long, contentious list, beginning with terminating the Queen as head of state and establishing the office of a new Australian head of state.

I also disagree with the summary of conclusions and options which states:

The Committee's Terms of Reference require it to produce an 'options paper' describing the minimum constitutional changes necessary to achieve a viable federal republic of Australia while maintaining the effect of our current conventions and principles of government. The committee was asked specifically not to make recommendations but did come to a number of conclusions about matters relevant to considerations. Australia is a state in which sovereignty derives from the people. The hereditary office of the monarchy is the only element of the Australian system of government which is not consistent with the republican form of government. The only constitutional change therefore required to make *Australian* (sic. My italics) a completely republican system of government is to remove the monarch.

The above appears too clever by half. One does not need to remove the monarch for Australians to be able to act in a more modern and less feudal manner. One simply needs to remove all the lawyers who have learned so many nasty feudal practices and who, as every economist knows, will never change them voluntarily because fighting and destroying others who come in their net is far too lucrative, especially when one has been on top for centuries. If the Prime Minister told the Queen that Australians would like to act less feudally and more like modern and scientific as well as free people, I feel sure she would be very understanding and supportive. One expects she has had to face this sort of thing many times in her life. One also assumes the British Prime Minister would naturally agree. Please see below and attached for related discussion and suggestions.

Yours truly, Carol O'Donnell, St James Court, 10/11 Rosebank St., Glebe, Sydney 2037.

P.S. Turnbull's 'The Spycatcher Trial' is out of print. If anybody has a spare please send it to me and I will post it back if necessary. The Law Library and photocopies drive me nuts. I found 'Spycatcher' last year in a second hand Glebe bookshop. To me it was like an engineer writing about engineering in a slightly Biggles manner. I found it awfully boring and rightly or wrongly threw it out early. Is 'The Spycatcher Trial' any better?

Dear Sir/Madam

## **REVIEW OF GENERAL INSURANCE CODE OF PRACTICE AND NSW BAR**

As a lover of codes, I write primarily to send congratulations on the clarity of the 'General Insurance Code of Practice'. The only quibble is that you introduce 'FOS', to the text but only explain later, in a tiny footnote, that it stands for Financial Ombudsman Service. Nevertheless, one yearns for more of such clarity in future as you may see from the submissions on construction and related financial matters below and attached.

I now turn to the future of marine and related insurance and to the Leader of the Opposition (LOO). According to Annabel Crabbe's article entitled 'Stop at Nothing: The Life and Adventures of Malcolm Turnbull' in the most recent issue of Quarterly Essays, the LOO's advice to the press gallery was 'Don't be dull' (p. 3). Crabbe later states that in many ways Malcolm Turnbull is the kind of prime minister you'd want Australia to have: clever, outrageous, fearless and interesting. By instinct, he is a discloser (p. 15). Tim Costello has apparently described him as a force of nature, and I do too.

Who cares about being Prime Minister, if one can have one's magic pudding and eat it too? The LOO should use his declared shareholdings in four listed companies, five unlisted public companies, eight private companies and twenty-five management funds for public education and sustainable industry development purposes. (I say nothing of the boats, artworks, books and furniture (p. 71). What is the point of life if the key policies politicians publicly espouse are being undermined by their personal and related investment actions? As a superannuation investor I would also like to know that my money will be spent in safer and green investments. The latter appear very risky and one also wonders if the 'socially responsible' tag is merely another lie to keep us happy.

Transport insurance and audit practice are obviously key concerns in a global economy. For the sake of history and the future, I would first like to know more about the Costigan Royal Commission, which was convened to investigate the Federated Ship Painters and Dockers Union and which involved allegations against a powerful figure some thought was Kerry Packer. The NSW people have a right to know more about what Malcolm Turnbull knew as Packer's lawyer. We do not want Australian ports and transport to be increasingly in the global chain Roberto Saviano described in 'Gommorah: Italy's other Mafia'. The casual tourist may often feel the problem of corruption on Italian railways.

Annabel Crabbe states that Lucy Turnbull is not just a supportive spouse, but a lawyer, businesswoman and politician in her own right (34), and she and Malcolm appear to hold each other in very high regard. As a comparatively free and independent modern woman, she should be spoken with at length. As she has always lived intimately with it, rather than merely wondering what it is doing from afar, one wonders how she feels about the NSW Bar. Such issues should be discussed by women. (Who cares what Ellis thinks?)

Yours truly, Carol O'Donnell, St. James Court.

