

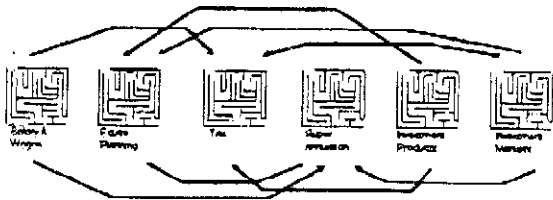
Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a) + (c)

Submission No. 46 (Supplementary to Submission
No. 37)

Note: Also Submission No. 17 to Reference (b)

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14 June, 2000

Ms Sue Morton FAX: (02) 6277 3130 PH: (02) 6277 3433
 Secretariat, Senate Select Committee on Superannuation & Financial Services
 Parliament House
 Canberra ACT 2600

Re: Submission extension for this Friday's meeting of your committee.

Dear Sue

Over the last few weeks, Celia Tancred (from your secretariat) had asked me to think about "solutions" to the problem posed in my submission to the Senate Select Committee on Superannuation & Financial Services. I have given some thought to this and enclose some extra material.

Celia also mentioned that the committee might ask me questions about other issues before the committee such as "Choice". I therefore also enclose some views on other issues that seem to be under consideration.

I am faxing this material to you today, so that the committee might have this material to consider (if they wish) before the Friday meeting.

Yours Sincerely

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Puzzle Financial Advice - Senate Submission 1

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Extension to submission to Senate Select Committee for Superannuation and Financial Services

14 June, 2000

What needs to be done to improve binding superannuation death benefit nomination law?

Celia Tancred, from your secretariat, asked me "What was the solution to the problem that I posed in my submission?" The following notes give some views on the answer to that question.

The minimalist approach.

At the very least, to address the uncertainty identified in my original submission, a binding superannuation death benefit nomination should not lapse after 3 years. That is, when a binding superannuation death benefit nomination is made, it should remain in place until either:-

- the member of the fund personally (i.e. not an Attorney, unless perhaps the Attorney has explicitly been given this Power) changes his/her nomination, or
- until he/she ceases to be a member of the fund, or
- until he/she dies and the death benefit is distributed.

What else could be done?

How could this whole area of law be made simpler and more understandable for super fund trustees and more importantly - for members?

Answer: **Provide one "standard" well-documented procedure that would exist (by default) in all superannuation funds (perhaps with an opt-out option) ... defined under the Superannuation Industry Supervision Act. It is probably desirable that trustees have the right to define alternate binding death benefit procedures, if there is some situation that might require this.**

"Standard" By this I mean the SIS Act could define a set of procedure whereby all trustees of superannuation funds could accept a binding superannuation death benefit nomination from a member - without having to update trust deeds to enable this to occur.

Well-documented. One of the problems that exists when working with binding nomination for superannuation death benefits, is that there are two large related and *interacting* bodies of legislation namely superannuation law (Commonwealth law) and succession law (state law). This means that some people understand superannuation law ... but not succession law. Some understand succession law but not superannuation law. The variations of succession law between states creates an extra level of complexity.

[By *interacting*, I mean that when you design someone's Will, you need to take into account assets being conveyed outside the Will, to ensure that the overall estate plan achieves the desired result. Superannuation death benefits are often conveyed outside the Will. However, in some cases, it may be desirable that the estate planning design includes having death benefits passing through the estate.]



I am sure that incomplete understanding of the law by taxpayers (and professionals working in this area) often leads to "problems" in the way some people implement their estate planning.

If there was a "standard" binding superannuation death benefit nomination procedure defined under the SIS Act and if it was simple, logical and well-documented (and robust to challenges by lawyers), taxpayers might be able to achieve greater certainty in their estate planning ... and families of deceased taxpayers might experience fewer unfortunate surprises.

What form should this documentation (of a set of standard binding superannuation death benefit procedures including features and issues) take?

The Attorney's General Department could use the approach of the Queensland Dept of Justice (DOJ) as a template. Over the last few years, when the Queensland Government updated its Enduring Power of Attorney Legislation, it created two very valuable sets of documents for the public.

- On the Queensland DOJ's web-site, DOJ provides 4 excellent Acrobat-format documents covering the new legislation, and
- In addition, the DOJ provides a two standardised documents for people to use, when implementing an Enduring Power of Attorney. Both the long-form and the short-form of the Enduring Power of Attorney documentation, contain a lot of extra information to guide taxpayers in the flexibility and implications of the law.

These are excellent documents. While I believe even these documents could be improved, these documents represent an enormous step forward in *making the law more accessible and more understandable by the public*. In due course, I believe this will lead to better outcomes.

What should be included as part of the Attorney General's documentation of binding nomination of superannuation death benefits?

- A standard form to request the trustee to accept a binding death benefit nomination could be included in the "standard" documentation.

Apart from the obvious personal details, this form might also ask about the form in which the trustee will be required to pay the benefit. Options include:-

- A form that will be mutually agreed between beneficiary and trustee after the death of the fund member,
- A cash lump sum,
- An allocated pension,
- A life annuity.

Space also should be allowed on the form for any other "special requirements".

- A standard form whereby a trustee can accept the binding death benefit nomination could be included in the "standard" documentation.

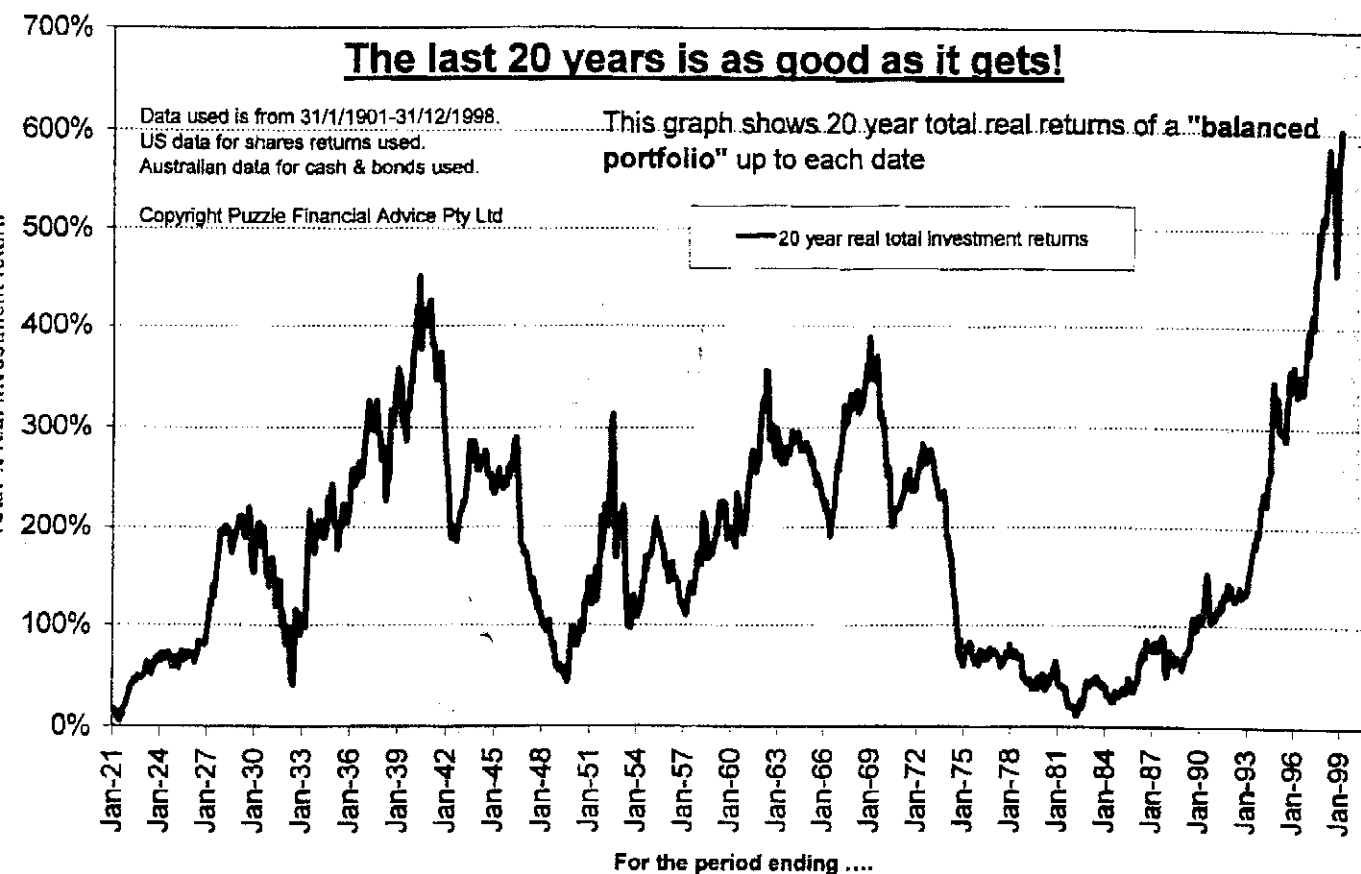


What other issues might the Senate Select Committee for Superannuation and Financial Services be interested in discussing?

Choice of Funds.

Celia Tancred mentioned that the Committee might like to ask about my views on Choice of Funds.

My biggest concern about choice of funds is investor education. It takes a new investor quite a long time to "adequately" understand short-term investment volatility and long-term variability of real investment returns - and to make the best decisions in this context.



I suspect this means that small investors who cannot afford good advice will always be vulnerable to the hard-sale of investments which are not-necessarily suitable to the investor. However, I do not believe there is a perfect solution to this issue ... and this issue is much broader than superannuation investments.

If you define legislation to give greater protection to consumers, you further reduce the accessibility of good advice to the tax payers who need good advice the most. The reduced accessibility comes from higher cost of providing advice - a cost which gets passed on one way or another to investors. The reduced accessibility also comes from reduced willingness of advisors to deal with investors with smaller amounts of funds, where the advisor cannot fulfill his moral & legal obligations at a cost the investor could afford to bear.

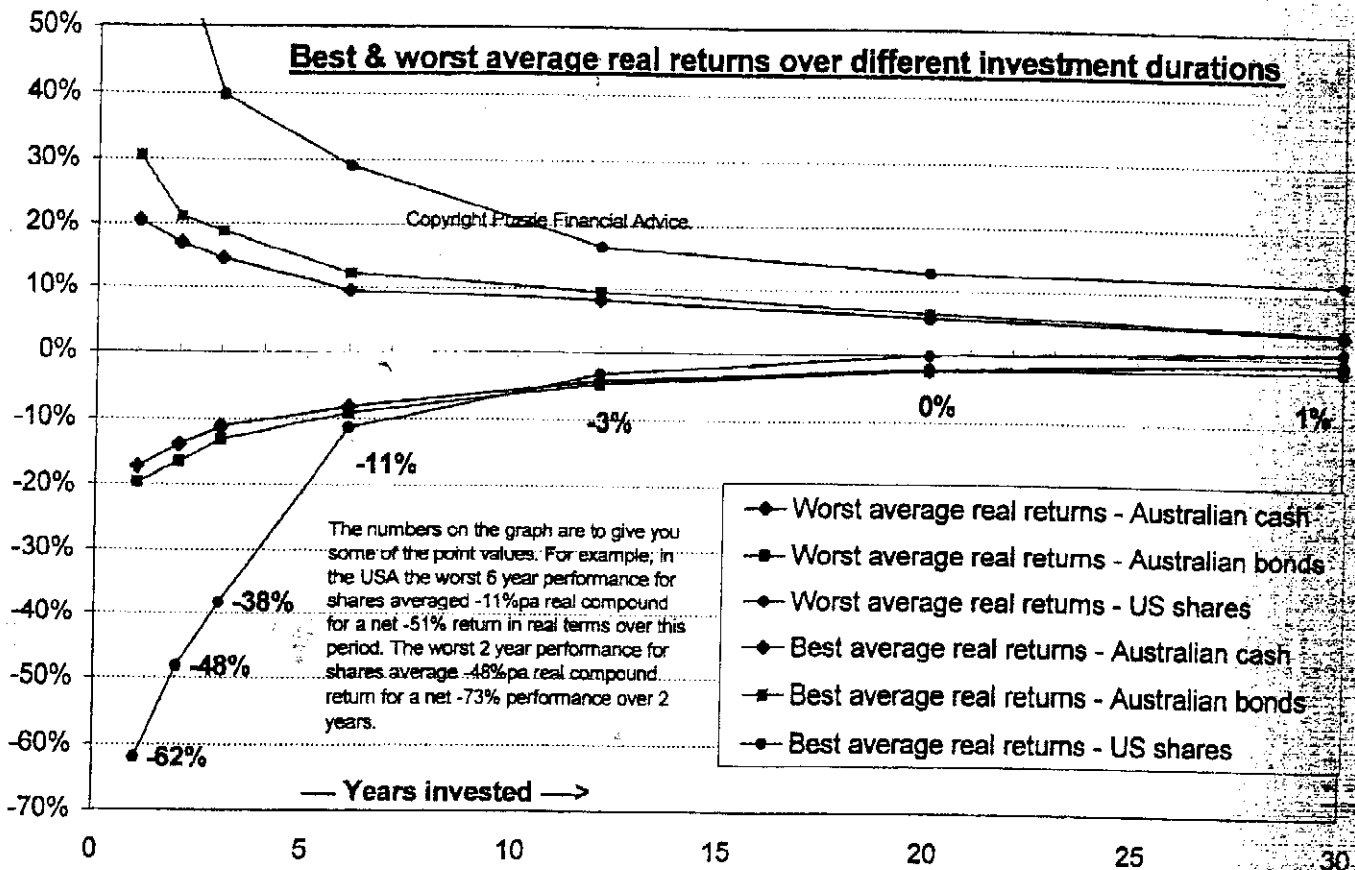
In addition, if you introduce restrictive laws to help paternalistically "shelter" investors, you need to consider that there are competent, experienced investors out there who do want personal control over their superannuation investments.



This is an issue that the Wallis inquiry took a look at. You may recall we used to have two regulators for investments. We had the Insurance and Superannuation Commission (ISC) regulating investments from Life companies. We had the Australian Securities Commission (ASC) regulating many virtually identical investments with a totally different philosophical approach. As a result of the Wallis Inquiry, over the coming year we hopefully will have completed the transition to one regulator (Australian Securities and Investments Commission) with one set of regulatory philosophies.

With regards to Choice, the legislators therefore also need to be careful that we act in a manner consistent with the Wallis inquiry rationale.

Note: The graph on the previous page is intended to show you what I mean by long-term variability of investment returns. The graph below is intended to also give you a perspective on volatility of real returns This is the sort of thing that all investors (in superannuation and otherwise) need to understand if they are to make wise decisions. However, after 20 of the best years in history (from an investors point of view), too few investors seem to understand what to expect from "normal" volatility and variability of returns.





Exports of Funds Management Services.

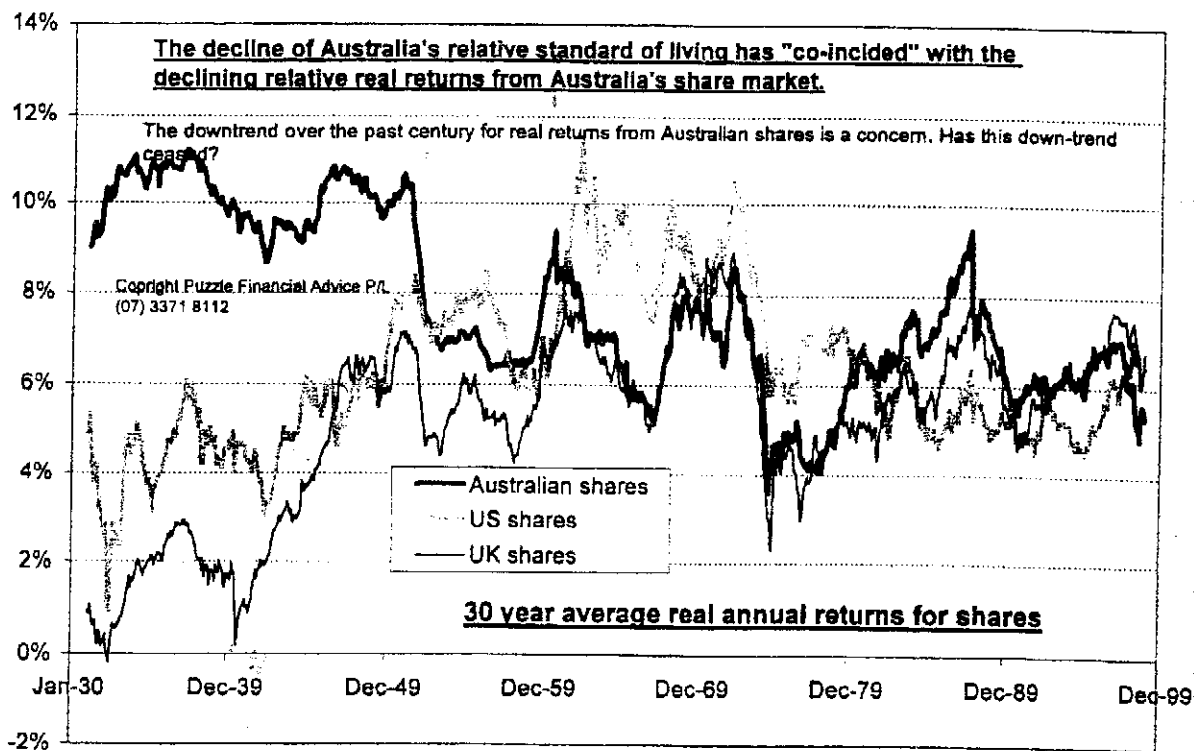
I also note from the Hansard of the 15th May 2000 meeting of the Senate Select Committee for Superannuation and Financial Services, that this committee is also interested in the issue of Australia becoming a financial centre and that we export our skills in this area to Asia.

I suspect that the goal of making Australia a major financial centre for Asia is a pipe dream, over the long-term.

Why? Size. Globalisation might leave Australia out in the cold.

Yes, our economy is currently bigger than economies of many countries to our north. But for how long?

It wasn't that long ago that Australians had a standard of living equal to that in the USA and Japan. Now, our standard of living is a long way behind these countries. Australia is falling behind at a great rate of knots.



If we are serious about ensuring that Australians have a relatively high standard of living over the next 100 years, we need to do a few key things, I believe.

- **We need to merge with a much larger block, with a view to ultimate political union.**

There are only 3 real choices:- North America, European Union and the emerging Asian block. We need to negotiate with all 3 of these blocks to ensure that we "do the best deal possible".

If merging into a bigger block makes sense for countries the size of France and Germany, it also



makes sense for us, for precisely the same reason. Note: By being in a bigger block, it will be more sustainable for large multinational firms to be based in Australia and the need for growing Australian firms to move offshore would diminish.

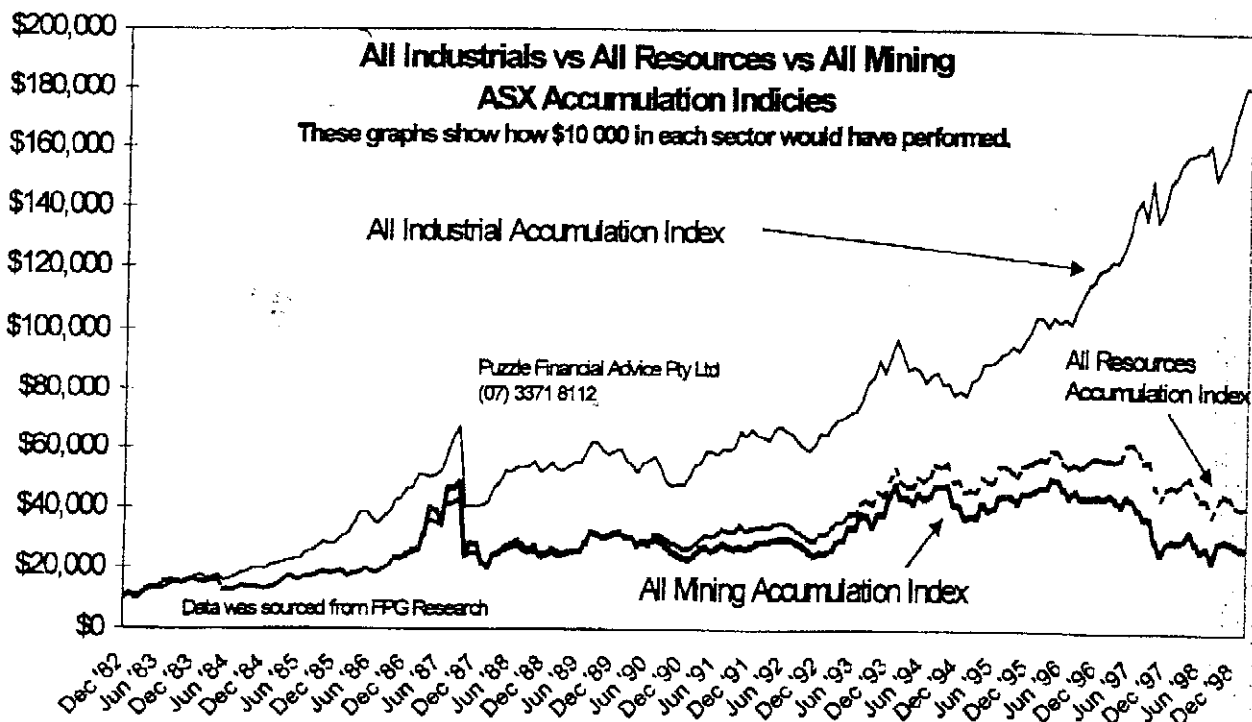
I suspect that it is inevitable that Australia becomes part of a bigger block over the next two hundred years, by one means or another. Sooner is probably better for the standard of living of Australians. We will probably also have greater control of the outcome and the process of merging if we act sooner.

• **We need to review the role of the mining industry in the Australian economy, to ensure that it plays a more valuable role in increasing the standard of living of Australians.**

The problem: The mining industry used to be a great source of wealth for Australia. In recent decades we don't seem to be making much money out of it, and yet the mining industry is a significant sector of our economy.

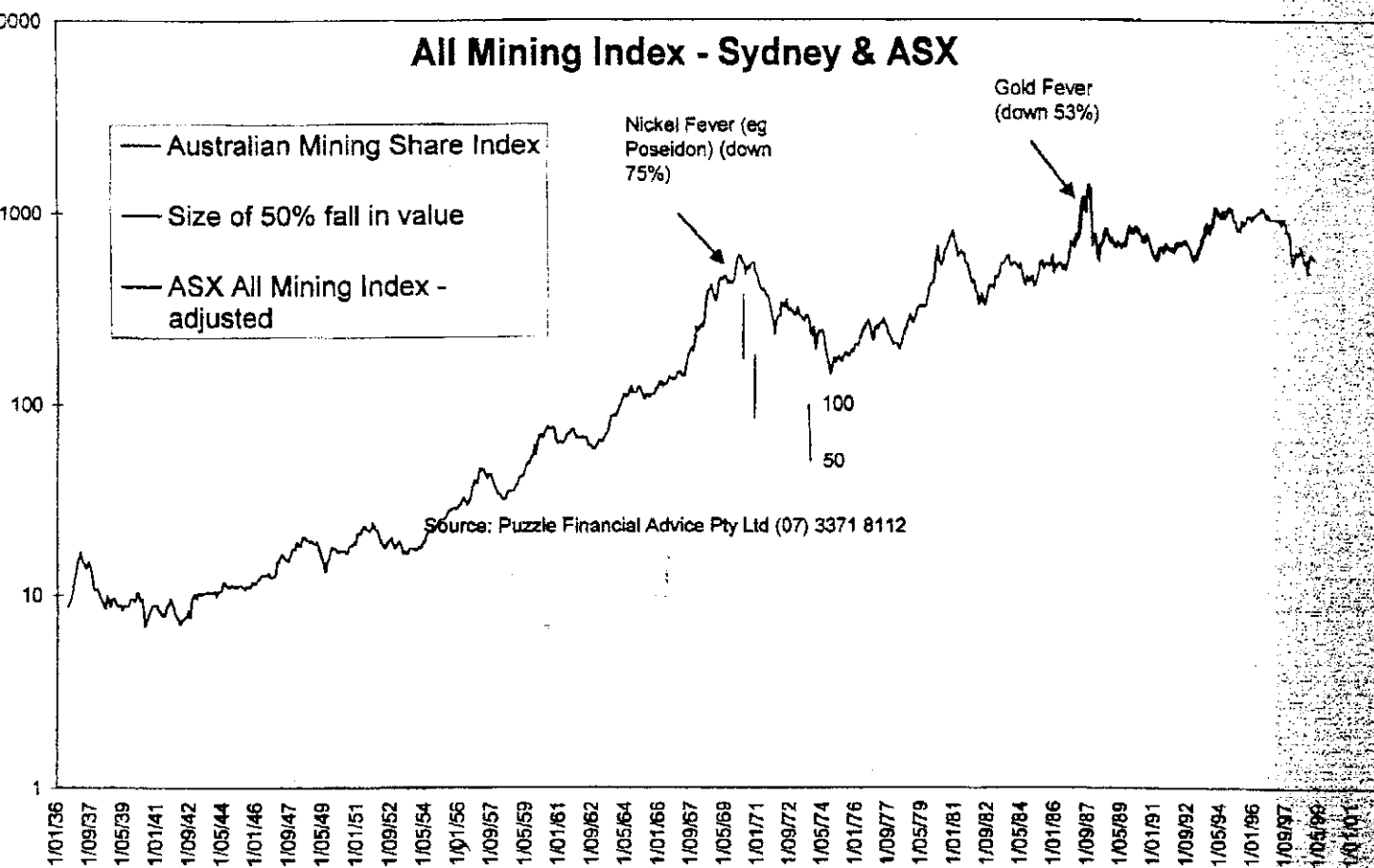
I suspect (but cannot prove) that this sector of the economy is having a negative distorting effect on our economy. The line of reasoning for this point of view, is probably not appropriate to this submission, so I will not take this any further at this point. However, while the information that I have does not prove this point, I believe that the following graphs help us to gain a sense of the issues:-

1. The following graph helps us to see the comparative lack of profits from mining over the last few decades. This graph suggests that the mining industry might be converting assets in the ground to cash flow but for comparatively little profit. Is that good business? Is that good for Australia?

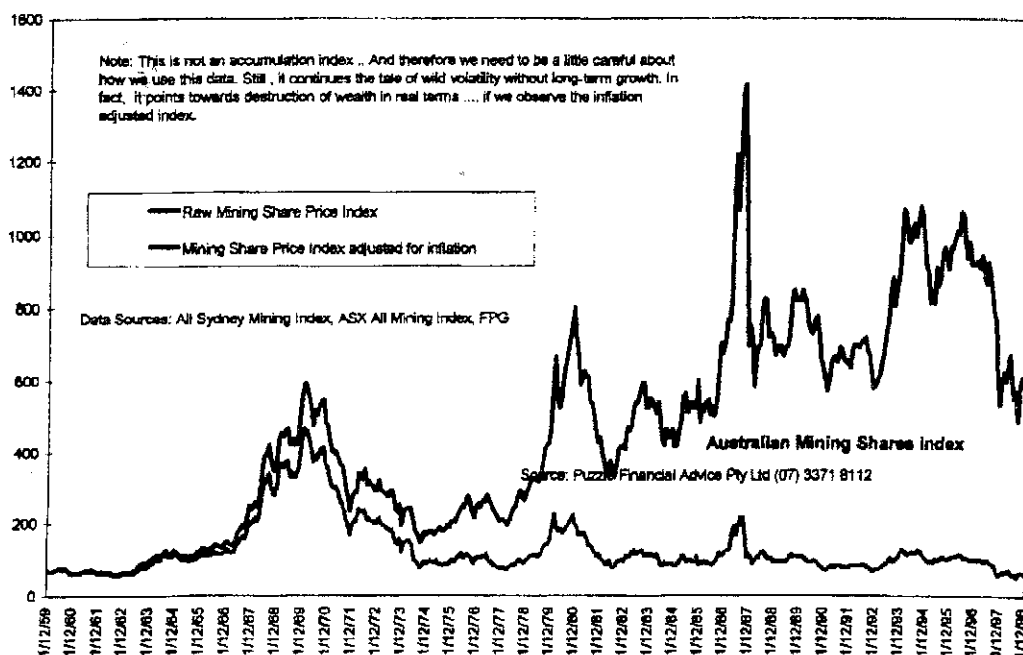




2. The following graph helps us to see what appears to be a major loss of momentum in the value of the mining industry over the last century.



3. This graph suggests a serious long-term decline in real mining share prices - and this probably reflects on "the mining industry problem".



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Bottom line: I believe that a strategic study is required to look at the future role of the mining industry in the Australian economy, what adverse impacts there might be from this sector on the sectors where real wealth will be created in the 21st century (eg services and knowledge-based industries) and on how best to ensure an improved contribution to the standard of living of all Australians from the mining sector.

Summary on the exports of funds management services.

While superficially some of the issues raised above might seem unrelated, I believe that they are integrally-linked set of issues. To find the best answers for Australia, we need to systematically work through these issues, with a very long-term vision for Australia. We need a long-term strategic plan for Australia to help ensure that the next generation of Australians will have a standard of living ranking with the Japanese, the Americans and the Europeans ... and we have to stop the continuing decline in the comparative standard of living of Australians.