

Gender Equity in Australia's Tax System: Analysing the "Capabilities" Approach

Miranda Stewart

Associate Professor, Melbourne Law School, University of Melbourne

On May 13, 2008, the new Australian Labor government announced a review of *Australia's Future Tax System* (the Review), which is due to report at the end of 2009. The Review was born of a '2020 Summit'¹ held in April 2008 by the new government soon after it came to office, succeeding 11 years of conservative Liberal-National government. It has a broad remit to examine Australia's federal income tax and transfer (welfare) systems, which are the primary focus of this chapter.² It is the first major review to do this in Australia since the Asprey Committee which reported more than 30 years ago (Asprey 1975), although other reviews have examined business and international taxation. In particular, the Review examines the *combined* and interactive effect on individuals of the personal income tax system and the income support transfer (or welfare) system, which it describes overall as the 'tax-transfer system'. This nomenclature adopted by the Review is used throughout this chapter. The Review has consulted widely with the public and tax experts and Review papers make frequent reference to submissions, most of which are published.

Gender issues are at play at some crucial points in the Review papers, including the *Architecture Paper* (Treasury 2008a) and the *Consultation Paper* (Treasury 2008b). In particular, the Review's discussion of workforce participation seems to take seriously the impact of the tax-transfer system on women's work choices. In other contexts, including the taxation of capital and savings, gender largely disappears from the analysis.

This chapter analyses the 'gendered dynamics of tax policy' in the Review (Philippis 2002: 41). First, I examine the Review's approach to the importance of taxes in funding government, including the goal of 'revenue sustainability'. Second, I

¹ See www.australia2020.gov.au.

² The Review also examined all state and local taxes. The only exclusion (for political reasons) is the Goods and Services Tax (GST), a broad-based 10 per cent value-added tax.

examine the Review's view of Australia as a small, open economy which establishes a consumption tax benchmark for assessing efficiency of the tax system, in particular with regard to savings. Third, I discuss the place of gender in the Review's framing of the tax policy principle of equity and, in particular, the 'capabilities' approach to tax equity adopted by Ken Henry, Secretary to the Treasury and Chair of the Review Panel (Henry 2009a). I consider the Review's approach to efficiency and equity in respect of two issues that have important implications for women: the well-known debate about the appropriate tax-transfer unit and the less-visible issue of women's ability to accumulate assets over their lifetime.

THE IMPORTANCE OF TAXES

The role of government and its relationship with the market economy are central to the Review. Australia has tax and spending levels of about 31 per cent of GDP, below the OECD average and much lower than the Nordic countries, though higher than most neighbours in the Asia Pacific (OECD 2007). Approximately one-quarter of federal taxes are redistributed in Australia's substantial but tightly means-tested transfer system (Treasury 2008a: 223–24). The Review suggests that the size of government is a decision to be made by the Australian people, but it identifies the tax-transfer system as 'a fundamental part of Australia's social and economic infrastructure' (Treasury 2008a: 3). Implicitly, it supports maintaining the size of government and it emphasizes the importance of 'revenue sustainability', taking into account, in particular, the longer-term reality of an aging population.

This support for a redistributive tax-transfer system is positive for gender equity. Feminists have long emphasized the need for public provision to improve economic outcomes for women while also pointing to the complex interaction between the public and private domains in (re)producing gender inequity (eg, Boyd 1997; Cossman et al. 2002; Dahl 1984). In its submission to the Review, the Women's Electoral Lobby, a feminist organization, argued strongly that revenues and the role of government should be increased so as to further support the economic security of women and children (WEL 2009).

While acknowledging the importance of government, the Review envisages continued economic growth as driving Australian well-being. It suggests that the

public sector could be maintained through sustained revenues premised on higher economic growth and lower tax rates or, perhaps optimistically, ‘Australians may choose to have a larger government sector as real incomes increase’ (Treasury 2008b: 20). Crucially, the Review argues that economic growth and revenue sustainability must be achieved in a context in which Australia is ‘a small, open economy operating in an increasingly globalised world’, in which investment ‘can be switched with relative ease between alternative activities and locations’ (Treasury 2008b: 21).

EFFICIENCY

The Review’s model of Australia as a small, open economy predicts that we cannot tax mobile capital in the long term. It acknowledges that capital mobility is imperfect and that in Australia’s resource-based economy, the corporate tax may collect substantial economic rents (Treasury 2008b: 128). However, it suggests that at least some of the corporate tax burden falls on Australian workers through lower wages, instead of on shareholders, because it deters global investment and increases the cost of capital of Australian business (Henry 2009a; Treasury 2008b: Ch 6). The Review also considers that a personal tax on capital income discourages saving and results in efficiency losses because it imposes ‘a higher tax burden on deferred consumption relative to immediate consumption’ (Treasury 2008b: 64–65).

This analysis leads almost inevitably to a policy recommendation to cut the corporate tax rate and other capital taxes. The Review has explicitly canvassed a direct consumption or expenditure tax on the basis that it would create the least impediment to economic growth (citing an OECD study, Johannson et al. 2008). While it seems unlikely to make such a radical recommendation, the Review is clearly leaning toward taxing capital at lower rates than labour.³ As such, it is also considering a Dual Income Tax (DIT), similar to that adopted in some of the Nordic countries. Under a DIT, a lower schedular flat rate is imposed on corporations and capital income and a progressive rate is imposed on labour income (Sorenson and

³ The Review also refers to recent research carried out for the U.K. Mirrlees Review that casts doubt on the merits of an expenditure tax from an efficiency perspective (Diamond and Banks (2008) and others, quoted in Treasury 2008a: 216; 2008b: 64). This is the first time a direct consumption tax has been seriously considered in Australia. The Asprey Committee was attracted by the ‘philosophy’ of an expenditure tax, arguing that it more accurately reflects lifetime ability to pay, but it recommended retaining a progressive income tax (Kaldor (1955), quoted in Asprey (1975): [3.17]).

Johnson 2009). Thus, a DIT shifts the tax base partly towards a consumption tax benchmark (which would not tax the return to capital or saving at all). Some of the gender equity implications of a DIT or consumption tax in Australia's current tax system will be discussed under the heading 'Capabilities and Saving' below.

In contrast to its discussion of saving, the Review's discussion of efficiency and work is clearly intended to take gender into account. The Review applies neoclassical principles to this analysis, indicating that taxes may discourage individuals from working additional hours or encourage them to shift to more lightly taxed activities, generating an overall deadweight loss. It stresses the importance of creating incentives (or removing disincentives) 'to work, save and develop skills' (Treasury 2008a: 174–75, 225; 2008b: Ch 4). It emphasizes in particular the substitution of 'home production' for labour-market work and the impact of high effective marginal tax rates, or participation tax rates, produced by the combination of progressive income tax rates and withdrawal of family-based transfers on this decision (Treasury 2008a: 63). It highlights the impact on women as secondary earners, 'especially mothers, for whom part-time work may provide balance with caring for their children' and cites research that mothers are more responsive to marginal rates on income derived from paid work' than are working-age men (Treasury 2008b: 115). (For a discussion of reducing the high marginal tax rates of secondary earners, see Philipps, chapter x.).

EQUITY

The Review conventionally, but still significantly, supports taxation on the basis of ability to pay and vertical equity, such that 'those who are more capable of bearing the burden of taxes should pay more taxes than those with less ability to pay' (Treasury 2008a: 178). For transfers, 'this principle suggests assistance should increase with the level of disadvantage' (ibid).

More interestingly, the Review identifies a number of perspectives on equity including 'inter-temporal equity'; 'intergenerational equity'; 'spatial equity'; equity in 'opportunity', 'freedom' and 'capabilities'; and 'rights-based frameworks' (Treasury 2008a: 178). It refers explicitly to gender only in this last category (where it also affirms the need to 'rule out altogether' discrimination on grounds of 'race' or 'sexual preference'). However, the Review does not develop this 'rights-based' framework

further. Instead, it narrows its scope to issues of procedural fairness and the elimination of formal discrimination. It thereby ignores the significant work on substantive rights and the feminist literature which identifies *substantive* discriminatory gender or race outcomes arising from formally neutral tax law and policy (see, for example, Young 1997; Moran and Whitford 1996). Even so, these different perspectives on equity offer significant potential for a gender analysis of equity in tax policy.

A Capabilities Approach

In a 2009 speech entitled ‘How Much Inequity Should We Allow?’ (2009b), Treasury Secretary Ken Henry elaborated on the ‘capabilities’ approach to tax equity proposed by the Review. Henry draws explicitly on Amartya Sen’s ‘capabilities’ approach to human development and well-being, including Sen’s argument that ‘the true measure of human development is that a person has the ‘capabilities’ necessary to leading the kind of life they value and have reason to value’ (Sen 1999: 17, quoted in Henry 2009b). Thus, ‘capabilities allow an individual to fully function in society; they are not ‘income’ and, while they include basic civil rights and political freedoms, they are not limited to ‘rights’; they are ‘substantive freedoms’”.

Henry’s speech raises a more sophisticated set of questions regarding equity than is usually seen in tax policy discourse. He identifies three important consequences for the tax-transfer system arising from this approach. First, he states unequivocally that a capabilities approach supports adequate basic incomes for all, and he thereby highlights the tax-transfer system as Australian society’s main gesture toward equity. Second, he discusses the ‘proper role of society’ in ‘fostering capabilities’ of individuals. The income redistribution facilitated by the tax-transfer system cannot on its own eliminate inequity, so public expenditures ‘that directly address capability deficits’ (for example, in education or health ‘may be more effective at raising long-term well being’. I interpret these remarks about the need for ‘public expenditures’ as an affirmation of a key role for public provision.⁴ Both the public provision of infrastructure and services and the redistributive function that supplies an adequate

⁴ This may not have been what Henry intended, however, as he refers later in the speech to the possible withdrawal of the state from public housing (Henry 2009b: 4).

basic minimum are crucial for women's equity and well-being. However, Henry also accepts inequity of income based on the 'relatively orthodox' economic view that a degree of income inequity is necessary to maintain incentives to earn income so as to generate economic growth (Kaplow 2008, quoted in Henry 2009b).

Third, 'and perhaps most importantly', Henry argues that the capabilities approach requires that the tax-transfer system 'should not encourage decisions motivated by short term benefit, but which compromise development of capabilities which could open up medium to long term opportunities of improved well-being. It should not discourage people from working or studying or retraining if they can' (Henry 2009b: 2).

Women's Capabilities

The implications of Sen's capabilities approach for women have been developed by feminists and others.⁵ I draw here on Martha Nussbaum, who has sought to build a 'partial theory of social justice for women' based on the 'capabilities' approach (2000; 2002; 2003).

Nussbaum establishes a foundational list of 'women's capabilities', each of which is independent and necessary, in the sense that one cannot be substituted for another (in this she differs from Sen, who refused to identify specific 'capabilities'). Nussbaum's capabilities are as follows: life; health, including food and shelter; bodily integrity and freedom from violence; sense, imagination and thought; emotions, including family attachments; practical reason, including being able to make moral choices; affiliation, including social interaction with others, self-respect, freedom of assembly and freedom from discrimination; other species, including living in relation to nature; play and recreation; and control, including control over material assets in the sense of equal rights to own property, the right to work and political participation (Nussbaum 2003: 41–42).

Whether or not one agrees fully with Nussbaum's list, it is a reminder that income is just one component of well-being. As Henry rightly observes, 'it's not always about money' (Henry 2009b: 3). Nonetheless, the list contains significant elements that

⁵ See, in particular, 9 *Feminist Economics* (special issue of July 2003).

relate to material well-being and that can enhance our analysis of the tax-transfer system. Nussbaum is also useful in highlighting the limits on individual agency generated for women in an inequitable society. Henry's short description of capabilities in his speech emphasizes choices of individuals who should be enabled to do 'what they can'. He does not explicitly acknowledge the limits on individual agency that arise from social norms. As noted by Nussbaum, Sen was, however, aware of 'adaptive preferences' (as Sen called them), being the choices made by second-class citizens to stay, in essence, second class, and argued that the capabilities approach could respond to this problem (Nussbaum 2003: 34; Sen 1995). In applying a capabilities approach, it is essential to take into account the constrained nature and context of many women's choices (and, indeed, the choices of all individuals) and not to slide into the assumption that individuals are 'rational actors' making choices with full information (the base assumption of neoclassical economics). Fostering women's capabilities means *expanding* the potential universe of choice and agency for women.

The most important aspect of Nussbaum's theory to a discussion of gender equity in the tax-transfer system is her central placement of the issue of *care*. She observes that the 'capabilities' approach sees humans 'as animal beings whose lives are characterized by profound neediness as well as by dignity', so that

a good society must arrange to provide care for those in a condition of extreme dependency, *without exploiting women as they have traditionally been exploited, and thus depriving them of other important capabilities*. This huge problem will rightly shape the way states think about all the other capabilities. (Nussbaum 2002: 134)

I suggest that Nussbaum's approach to women's capabilities provides four principles to guide us in analysing gender equity in Australia's tax-transfer system.

1. The capabilities approach supports a focus on the *individual* in the tax-transfer system (not families or households). While family life and social connection are, of course, vital, it is fundamental to a capabilities approach that each individual has dignity and is an 'end in themselves', so that his or her 'capabilities' relate to his or her own development and well-being.

2. The capabilities approach requires an examination of the *lifecycle of individuals*. Capabilities are developed from infancy to old age and need to be fostered throughout

one's life. There is a clear link between this aspect and the Review's discussion of inter-temporal equity, 'which looks at how the tax-transfer system affects the longer-term decisions of individuals, such as work, saving, family structure and education', and which 'requires some consideration of dynamic or future lifetime resources' (Treasury 2008a: 178).

3. Specific capabilities identified by Nussbaum include security of shelter and the ability of women to own property on an equal basis. I argue that in the Australian context, this requires us to pay attention to the impact of the tax-transfer system on women's access to wealth, including the ability to own a home, to save and to control retirement savings and other assets on an equal basis with men.

4. A 'capabilities' approach requires the *equitable distribution of the burden and cost of care, without exploiting women*. As a society, we are collectively responsible for care. Thus, the distribution of this cost and responsibility should be a core function of government and the tax-transfer system.

CAPABILITIES, CARE, AND THE TAX-TRANSFER UNIT

At a number of points, the Review discusses the policy regarding the tax-transfer unit, in terms of both efficiency and equity. The individual is the formal unit of assessment in the Australian income tax system. Indeed, in 1975, the Asprey Committee stated that 'the right to be taxed as an individual has always been accorded in Australia' (Asprey 1975: 134 [10-16]). However, as has been exhaustively shown by Patricia Apps, more than a decade of conservative government has had a significant impact, so that for women with children, a *family unit* prevails in the tax-transfer system, generating a significantly unequal tax burden and work disincentives (Apps 2006: 77; 2009; and see also Stewart 1999). This is primarily the result of family-income-tested transfers, which began with the *Family Tax Assistance* package of 1996 and were expanded in 1999 through the transfers *Family Tax Benefit A* and *Family Tax Benefit B*. The latter, in particular, is structured as a payment to a household with a single main breadwinner. A joint unit also applies for many older women as a result of three factors: (1) the dependent spouse rebate, which reduces income tax payable by a breadwinner who is supporting a non-working spouse (s 159T-159TC *Income Tax Assessment Act 1936*); (2) couple-based rules for the spouse superannuation

contribution tax offset; and (3) senior Australians tax offset and age and disability pensions.

The Review emphasizes that from an efficiency perspective, ‘those most affected by the choice of tax unit are women in couple families, particularly mothers, who tend to be responsive to financial incentives’ (Treasury 2008b: 115). Women, for instance, might be motivated to stay out of the workforce as a result of the above-mentioned Family Tax Benefits A and B being withdrawn as income rises. In his speech about capabilities, Henry provides an example of such motivation albeit he expresses the situation in gender-neutral terms. He refers to the fact that the withdrawal of benefits combined with taxation of income may lead a person ‘to . . . [decide] it's just not worth their while working’ (2009b: 3):

For example, a parent with a couple of young children who has to pay for child care will often find the current system of tax, benefit withdrawal and child care benefits offer minimal financial returns from moving to part-time paid work.

As Henry notes, ‘the longer-term capability costs of the decision not to work, for both the parent and for the children of such households, should be of concern to policy makers’. Working, even part-time, will enhance a mother’s current income and her ability to build superannuation savings. It also has the potential to contribute to the maintenance of other capabilities, including skills and expertise and social and workplace connections. In the event of divorce or other crisis, having employment is likely to strengthen a mother’s self-esteem and her capacity to support herself and her family. (See also chapter x, Scheiwe) for a discussion of German tax policies designed to support families with a single main breadwinner and later developments that have supported both parents being in the workforce.)

Nevertheless, the goal of increasing women’s capability to engage in part-time work is a minimal expression of the capabilities approach—for a number of reasons. First, women are *already* entering the workforce part-time, even in the current system, which, as Apps explains, provides clear disincentives for women to do so (those who participate simply bear an unjustifiably large tax burden as a result). Seventy-three per cent of women (compared to 92 per cent of men) between the ages of 25 and 59 are now employed, and women’s participation continues to trend upward (Apps 2009: 18,

citing the Household Income and Labour Dynamics in Australia (HILDA) survey of 2005). As observed by Apps, the work patterns of women after they have had at least one child are heterogeneous and so there is scope to increase women's participation. However, merely expanding options or hours of part-time work may not significantly expand the horizons of choice for many women.

More importantly, government policy directed at part-time work does not relieve women of the bulk of responsibility for care. The Review does not appear to be considering a more fundamental approach to restructuring work so that *all* parents work part-time and share care. Indeed, the specific concern about secondary earners (usually the woman) assumes that there is a primary breadwinner (usually the man) in the household. The focus on part-time work of a secondary earner sidesteps the 'huge problem' in Nussbaum's words of ensuring that care is provided to all *and* that all are responsible for it *without exploiting women*. Finally, access to part-time work is not enough to eliminate gender inequity in women's income, to enable economic independence, to generate sufficient superannuation savings or to prevent many women who are single parents from living in poverty. It simply does not generate sufficient reward. Thus, access to part-time work will not alone result in a significant increase in women's other capabilities.

The Review is more equivocal about whether an individual or family tax unit is most equitable. It accepts that a family unit tends to change 'the distribution of tax within couples—with higher tax being paid by the lower income earner, though lower tax would be paid by the couple', thereby implicitly accepting that this will generally increase tax on women (Treasury 2008a: 179 and Box 3.6). However, the Review also states that the couple unit in the transfer system is supported by 'the principle that providing targeted support should take into account other sources of financial support, including from close family members (spouses, parents of dependent children)' and by the 'key argument' that 'couples or families form a single economic unit' (Treasury 2008a: 179 and Box 3.6). It then raises the possibility of adopting a family unit in the income tax, as well as in the transfer system, as this might 'better reflect the ability to pay of individuals in a family' (*ibid.*).

In its consideration of whether an individual or family unit is more equitable, the Review does not interrogate the assumption of income sharing that underlies the view

of a couple as a single economic unit and hence as the appropriate tax-transfer unit. This runs counter to the Asprey Committee's 1975 observation that while 'much is jointly consumed' by married couples, 'in some marriages, and not by any means only unhappy ones, almost completely separate patterns of spending and enjoyment may be the rule. Between the extremes a whole range of intermediate arrangements will be found' (Asprey 1975: [10.18]). The Asprey Committee's early skepticism about income sharing is supported by a number of more recent empirical studies demonstrating the wide variety of financial arrangements within de facto couples (Gray and Evans 2008; Kornhauser 1993; Singh and Lindsay 1996).

More generally, I argue that a 'capabilities' approach supports an individual tax unit on the basis that this is necessary for women's autonomy, which also requires women to have the capability to control their own income and assets. (See chapter x, Wersig, for a discussion of feminist arguments supporting this approach). The Review's focus on consumption leads it to ignore the argument that *control* of income is the appropriate test for ability to pay in an income tax. This is the classic argument that 'income' measures the economic gain of an individual taxpayer, so that the tax burden is distributed according to each taxpayer's control over economic resources (Simons 1938: [51]). Asprey himself supported this argument that women should be taxed as individuals on income that they control in 1975, stating that 'a married woman should be treated both under the general law and in the taxation system as an individual in her own right and, in relation to the income which is both morally and legally her own, she should pay no more and no less tax than if she were a single person.' (Asprey 1975: 141). In 1985, the Australian government accepted this approach, in its decision to retain the individual unit as being 'consistent with Government policy of promoting equal employment opportunity and of furthering the independence of women' (Treasury 1985: 63).

Although the Review does not question the assumption of income sharing, it does mention the problem of defining the 'family' appropriately in the context of creating a family unit (Treasury 2008a: 179). In 1991, the tax law was amended to extend the definition of 'spouse' to include de facto couples 'living together as a couple on a genuine domestic basis'. In the transfer system, a several-factor test for determining whether a person is a 'member of a couple' has applied since the 1980s.

Administration of this test, in particular the ‘man in the house’ rule that has been applied to women who are sole-parent pensioners, is highly invasive (Tranter, Sleep and Stannard 2008). Effective from July 1, 2009, same-sex couples are also included as de facto couples in tax and transfer laws (Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008). These reforms ensure that ‘rights-based’ equity exists for lesbians and gay men. Ironically, they also serve to embed the breadwinner-homemaker model of caring and work within same-sex, as well as opposite-sex, couples. They also expose lesbian or gay sole parents to the invasion of privacy mentioned above, to which heterosexual sole parents have been exposed for the last 20 years. Finally, these reforms have the effect of privatising care and saving the government an estimated \$60 million a year through a reduction of transfer payments because of testing on joint same-sex couple income (*Explanatory Memorandum to the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008*). (See chapter x, Warman and Woolley for a discussion of the effects of taxation and child benefits on both heterosexual and gay/lesbian couples in Canada).

One significant concern regarding an individual tax unit in a progressive income tax is income splitting, which, as Judith Grbich notes, depends on ‘ordinary family dealings’ in the traditional breadwinner-homemaker family, in which the taxpayer and his spouse are inevitably constituted in a hierarchical and gendered fashion (1987: 315). Income splitting is widespread in Australia, in particular by the ‘professional and commercial classes’ (per Murphy J in *FCT v Everett* (1980) 143 CLR 440 at 457). Arrangements to ensure income splitting for tax purposes while still retaining control of the disposition of income have often been upheld (see, for example, *DFCT v Purcell* (1921) 29 CLR 464). The most egregious forms of income splitting with minor children or through short-term income assignments have been outlawed (Div 6AA and Div 7 of the Income Tax Assessment Act 1936), but discretionary trusts are widely used for income splitting of both business and investment income. In 2006–07, more than four hundred thousand discretionary trusts filed tax returns, and this number has increased by several percentage points each year for the last few years (ATO 2008: Ch6).

To prevent income splitting, automatic income attribution rules, such as those applicable in Canada, can be used. However, such rules may also pose problems for gender equity where they assume that women do not have independent control over income or assets. (See chapter x, Philipps). Philipps suggests that it may be better to allow income splitting to the extent that it provides women with full control of assets. The capabilities approach could support such a proposal as a reasonable compromise that reconciles an individual unit with support for women's autonomy. It may also enhance women's ability to accumulate assets. However, the use of trusts to hold assets indefinitely for tax-effective income splitting year by year cannot be justified in a capabilities approach. Reform of trust taxation in Australia has proved extremely difficult in the past, but a reform that included all trusts in the corporate tax base (whether in the imputation system or with a lower corporate rate) would go a long way toward eliminating income splitting and strengthening the individual tax unit.

CAPABILITIES AND SAVING

Sen's 'capabilities' approach focuses on a substantive basic minimum for all individuals to lead a 'fully functioning' life. However, it seems more difficult to apply this approach to the treatment of savings, or to inequity of income and wealth, above the basic minimum.⁶ Sen leaves this problem to the political or democratic processes of any particular country (Sen, 1999, discussed in Nussbaum 2002: *). Henry states that in a capitalist society, some level of inequity may be seen as essential for the efficient operation of the economy (Henry 2009b: 4).

The Review takes a lifecycle approach to saving as 'deferred consumption' and, as explained above, it favours a consumption tax benchmark or, at least, a reduction in taxes on capital and savings. A consumption tax is essentially equivalent to an income tax, except that it exempts the return to saving (capital income, such as interest on a bank account) and investment. As is the case for most other countries, Australia's current income tax law operates as a somewhat incoherent hybrid income-

⁶ If a global, rather than a national, perspective is applied, there is a strong capabilities argument that rich countries should redistribute to poor countries where the mass of people, especially women, are far below any acceptable basic minimum and that asset accumulation in any rich country above a certain level is unethical while such global inequities remain. However, this makes it difficult to intervene actively in a tax-transfer policy debate within a rich country and it demands a global redistribution system that is nascent, at best. I take the approach of seeking to further women's capabilities in Australia while also seeking to strengthen global redistribution.

consumption tax, by exempting some important forms of saving and investment from the tax base.

Feminists are understandably concerned about the implications of a shift from a progressive income tax to a consumption tax (even if it were applied at progressive rates), for the obvious reasons that women are generally poorer than men, save less, have fewer assets and have fewer opportunities to invest. Thus, as a class, women benefit less than men from a shift to a tax system that exempts savings and are also likely to suffer more from any loss of tax revenues that results from such a tax base shift. Nonetheless, I suggest that we must make a realistic appraisal of the extent to which the income tax currently fails to tax capital income and to be mindful of the historical and current impediments (political, economic and administrative) that stand in the way of implementing a comprehensive progressive income tax.

We also need to apply a lifecycle approach to analysing women's capabilities because so much of women's disadvantage is directly related to lifetime patterns of work and care.⁷ The capabilities approach seeks to ensure that women have equal access to opportunities for education, play, security of home and income levels, independence and the ability to decide their own destiny throughout their lives. In Australia, as in other developed capitalist states, this requires both public and private provision over the lifecycle. If women cannot accumulate savings and assets, their capability will be unequal to that of men in all these areas. Thus, it is important to examine the impact of the current Australian tax system on women's capability to save and accumulate assets and to consider whether reforms are needed that would enhance women's capability in this regard.

Distribution of Savings and Wealth

To carry out this analysis of the impact of tax on women's saving, it is useful to look at the actual components of household wealth. The Review identifies average household wealth in Australia as comprising 44 per cent home ownership; 13 per cent private superannuation saving; 16 per cent other real estate; 13 per cent other financial

⁷ Of course, other gendered features of the economy also contribute to women's lower income and wealth, including gender differentiation and lower pay in the workforce, as well as fewer women in senior work and business positions and fewer women investing in risky financial assets (see chapter x, Kornhauser).

investments (including shares); and 4 per cent bank accounts (ABS 2007; Treasury 2008a: 181, Chart 3.5). These averages obscure a highly unequal distribution in which the top 20 per cent of households have more than 20 times the wealth of the bottom 20 per cent and derive 65 per cent of capital income. Furthermore, the top 10 per cent derive more than half all capital income (Treasury 2008a: 184). Lifecycle effects are also significant: older households have higher average net worth (and lower incomes), while younger households have higher incomes and lower wealth (Treasury 2008a: p. 182).

All categories of capital income apart from interest on bank accounts and dividends on shares benefit from subsidies in the tax system that bring their tax treatment closer to a consumption tax benchmark than an income tax benchmark. Wealth statistics are household based and capital gains tax statistics from the Australian Taxation Office are not disaggregated by gender. However, it is expected that women derive fewer and smaller capital gains than men and hence benefit less from concessions such as the capital gains tax 50 per cent discount, since there is evidence of this in similar countries (see, for example, Philipps 1996 and chapter x, Kornhauser). Women's wealth is increasing over time as their participation in market work increases, but it remains limited because female working life is interrupted by care responsibilities (Kelly, Percival and Harding 2001: 25; Tually, Beer and Faulkner 2007: 31). Women also occupy many of the poorest households, although individual poverty (after taxes and transfers) is equal in the case of both men and women (NATSEM 2004). However, women comprise over 83 per cent of sole parents, and female-headed households make up more than 60 per cent of households in public housing or receiving rent assistance (Baker and Tually 2008: 129). Fourteen per cent of all households have both low income and low wealth, and about 40 per cent of these are female-headed, single-parent households.

Retirement Savings

Private retirement savings (in superannuation funds) in Australia are taxed at 15 per cent on contribution and earnings, and they are fully exempt on payout. This system may be even more generous than a consumption tax benchmark (which would fully exempt contributions and earnings but would tax payouts at individual marginal

rates). The previous government introduced concessions enabling high-income, self-employed individuals to contribute large sums on a deductible basis into superannuation (up to \$50,000 in a year, or \$150,000 over 3 years, although as of July 1, 2009, this has been reduced to \$25,000 in a year by the Labor government). High-income-earning employees can ‘salary sacrifice’ so as to obtain the benefit of increased deductible employer contributions on their behalf. Low-income earners receive the much smaller benefit of a government co-contribution of up to \$1,500 a year and a taxpayer can contribute up to \$3,000 to a superannuation fund for their spouse if the spouse has a low income. The contributing taxpayer also receives a tax offset for the contribution. Estimated revenue foregone from superannuation tax expenditures was \$22.4 billion in 2007–08, the second-largest tax expenditure (Treasury 2008c: Items C5 and C6).

Women benefit much less from superannuation tax concessions than men do both because they have lower incomes and because their interrupted working lives mean they cannot save as much over the lifecycle. Middle-aged, full-time employed women have about 66 per cent of the superannuation balances of men, but women close to retirement have only 46 per cent (AMP.NATSEM 2003, cited in Tually, Beer and Faulkner 2007: 29). The Review acknowledges that women are differently situated in this regard because of their ‘varied’ or ‘broken work patterns’ and because, on average, women live longer than men (Treasury 2009: 26, 45). Women represent 55 per cent of the population over 65 and rely heavily on the age pension because of their low savings. The Review states that ‘support for people who have experienced broken work patterns should be achieved through the Age Pension’ (ibid, 13): clearly, adequate public provision for retirement remains crucial for women.

The Review appears to accept that some private retirement saving is a necessary part of Australia’s retirement system, and it has also opposed recommendations that would remove, for most individuals, the primary link between superannuation and their employment (Treasury 2009). The best solution for women in this constrained environment is to increase their attachment to the workforce, but it might also be good policy to enhance women’s ability to save through co-contributions or accounts for primary caregivers—that is, to extend government subsidies to private savings at lower income levels. On the other hand, while the government has ruled out taxation

of superannuation benefits on payout, from a gender-equity perspective, the tax concession on benefits must be capped (as was done in the past, using the concept of reasonable benefit limits). This would also help to ensure that revenue is sustained so as to maintain adequate levels of the age pension on which women depend.

Home Ownership

The largest component of Australian household wealth is the home itself, and about 70 per cent of Australian households own or are purchasing a home (ABS 2007). As is the case for those with superannuation savings, home owners benefit from massive tax expenditures, primarily because imputed rent and capital gains on sale are exempted from income tax. The combination of these subsidies means that Australia's current income tax system essentially applies a *consumption tax* treatment to home ownership. Applying a tenure-neutral benchmark that compares home owners with landlords, the Treasury estimates \$23.5 billion in revenue foregone from home ownership tax expenditures (2008c: Table C1; Yates 2009). Overall, these subsidies are regressive. Australian renters are significantly worse off than home owners in terms of both income and wealth (Treasury 2008b: 203; Yates 2009).

Nussbaum's list of capabilities suggests that 'shelter' is a fundamental capability, and in a society such as Australia's, there is an argument that home ownership as a specific form of access to shelter should be fostered. Home owners derive multiple benefits, including shelter (a consumption good), savings (an investment good) and, in recent years, a form of insurance against risk. Most Australians do not rent long-term by choice; where they can afford it, they have a strong preference to own a home (Yates 2001).

In contrast to superannuation, women do benefit from home ownership tax concessions. For the majority of women, their home is the *only* asset of significant value that they accumulate during their lifetime. Although most data focuses on 'households', the 65 per cent of women in couple families who purchase a home obtain housing wealth through that home purchase (ABS 2007, cited in Baker and Tually 2008: 129). In the transfer system, the main residence is exempt from the pension assets test and there is a particularly strong lifecycle element in housing subsidies, as approximately 90 per cent of people over the age of 65 own their home

outright. Thus, many women receiving the age pension are living in their own homes. Even on relationship breakdown, women frequently retain home ownership (Sheehan and Hughes 2001), although some low-income, female-headed households are vulnerable to homelessness and rely disproportionately on rent assistance and public housing.

A capabilities approach to housing might support subsidies for home ownership for women and protection of their housing wealth in old age while extending access to home ownership to a wider class of low-income women and men, for example through subsidized savings vehicles such as the First Home Owner Accounts (earnings taxed at 15 per cent) introduced by the Labor government in 2008. However, high-income households benefit disproportionately from a complete exemption of homes from taxation. Thus, capping home ownership subsidies is probably necessary. A capabilities approach also requires increases in the public housing and rent assistance transfers on which many poorer women depend.

In sum, a capabilities approach to gender equity in the tax system demands that we examine women's patterns of saving and their ability to accumulate assets over the lifecycle. However, caution is required when taking a general lifecycle approach, as such an approach tends to 'smooth' exactly the kind of lumpiness that arises in women's income earning and asset accumulation throughout their lives and leads to the suggestion that an ideal consumption tax would better reflect ability to pay over the lifecycle, which may not be true for women (Asprey Committee 1975: [3.17]; Bradford 1980: 107). Indeed, if such a general approach is combined with commonly used household measures of wealth and assumptions of income sharing within couples or families, this analysis can achieve a near-total erasure from the policy debate of gender inequity in income and wealth. Instead of assuming that individual patterns of work and consumption can be 'smoothed', I suggest that we need to examine the components of saving more carefully to determine where women would benefit from tax subsidies for saving and where, on the other hand, such subsidies reinforce gender inequity and public provision remains crucial.

CONCLUSION

This chapter examined some aspects of the review of *Australia's Future Tax System* from the perspective of gender equity. Overall, the Review is operating within an economic discourse premised on an analysis of Australia as a small, open economy in a global market. This discourse almost inevitably tends toward lower taxation of capital income and a move toward a consumption tax benchmark.

The Review adopts a conventional neoclassical approach to tax efficiency with respect to work and saving but a more interesting 'capabilities' approach to equity in the tax-transfer system, reflected primarily in an important speech by Ken Henry, chair of the review. Utilizing the work of Nussbaum on capabilities and gender, this chapter sought to draw out some principles from a 'capabilities' approach to gender equity in tax policy. In the Australian context, these principles require attention to the individual; a lifecycle perspective; acknowledgement of the importance of saving, in particular for home ownership and retirement; and the centrality of the cost of care.

In relation to the tax-transfer unit, an approach which takes seriously the capabilities of women provides strong support for a progressive individual income tax, combined with the expansion of public provision for care and reforms to end income splitting. The Review is cognizant of work-incentive issues for women and favours an individual tax unit in this regard, but it seems more equivocal about whether the individual or family tax unit is more equitable. Most importantly, it has not come to grips with the full implications of sharing the cost of care equally across the population without exploiting women. The Review also seems to ignore the revenue and other policy implications of introducing an individual unit into the transfer system.

With respect to tax policy for savings, those with retirement savings and those who own homes benefit from the largest tax expenditures in Australia's income tax, and these expenditures shift the base toward a consumption tax benchmark. While all such subsidies will benefit higher-income taxpayers more than low-income taxpayers, a capabilities approach to gender equity could support a subsidy for home ownership. However, there are compelling arguments that in order to create greater gender equity, retirement saving subsidies need to be wound back to some degree, as they

disproportionately benefit high-income earners and exacerbate gender inequity in income over the lifecycle.

It must be emphasized that public provision of both retirement income (the age pension) and public housing are crucial for women's capabilities. The most important function of the tax system from a perspective of gender equity is to raise adequate tax revenues. In the current political and economic climate, as the Review has described, a DIT that would impose some tax on savings, even if at a relatively low flat rate, may provide a secure revenue base and so could make sense from a gender-equity perspective.

The 'capabilities' approach to tax equity proposed by Henry has the potential to reinvigorate what is often a rather impoverished analysis of gender equity in taxation. However, Henry situates the 'social choice' about how much inequity we should allow firmly within the bounds of a market economy (Henry 2009b: 1). There is a risk, too, that his definition of equity in capabilities might collapse entirely into an efficiency analysis, equating 'capability' of individuals with what is necessary for the market while leaving largely untouched fundamental, gendered norms of caregiving. We must be careful not to settle for the same old patterns of work, care and wealth within this new discourse of capabilities.

REFERENCES

- Apps, Patricia 2006 'Family Taxation: An Unfair and Inefficient System' *Australian Review of Public Affairs* Volume 7, Number 1: October 2006, 77–101
- Apps, Patricia 2009. *Tax Reform, Targeting and the Tax Burden on Women* ANU Centre for Economic Policy Research, Discussion Paper No. 609 (May 2009)
- Asprey Committee (Taxation Review Committee). 1975 *Full Report* (31 January)
- Australian Taxation Office (ATO). 2008, *Taxation Statistics 2006-07*
- Australian Bureau of Statistics (ABS). 2007 *Low income low wealth households* (4102.0: Australian Social Trends) available from www.abs.gov.au .
- Baker, Emma and Tually, Selina. 2008 "Women, Health and Housing Assistance: Implications in an Emerging Era of Housing Provision" *Australian Journal of Social Issues* Vol 43 No 1 123.
- Boyd, Susan. 1997 (ed) *Challenging the Public/Private Divide: Feminism, Law and Public Policy* (U Toronto Press, Toronto)
- Brotherhood of St Laurence. 2008 *Submission to the Review of Australia's Future Tax System*
- Dahl, Tove Stang. 1984 'Women's Rights to Money' *International Journal of the Sociology of Law* vol 12 p. 137.
- Diamond, P and Banks, J 2008, 'The Base for Direct Taxation' in: *Reforming the Tax System for the 21st Century: The Mirrlees Review*, Institute for Fiscal Studies, London, www.ifs.org.uk/mirrleesreview .
- Gray, E & Evans, A. 2008 'Do couples share income? Variations in the organisation of income in dual-earner households', *Australian Journal of Social Issues* 43(3), 441-457.
- Grbich, Judith, 1987 "The Position of Women in Family Dealing: The Australian Case" 15 *International Journal of the Sociology of Law* 309
- Henry, Ken. 2009a, *Speech to ICAA Tax Conference* (February 2009)
- Henry, Ken. 2009b 'How much inequity should we allow?', *Speech, 3 April, ACOSS National Conference* (available from <http://taxreview.treasury.gov.au>)
- Johansson, A, Heady, C, Arnold, J, Brys, B and Vartia, L 2008 *Tax and Economic Growth*, Economics Department Working Paper No. 620 (OECD, Paris)
- Kaplow, Louis. 2008 *Public Economics of Taxation* (* Press)
- Kelly, Percival & Harding. 2001 *
- Kornhauser, Marjorie. 1993 "Love, Money and the IRS: Family, Income-Sharing and the Joint Income Tax Return" *Hastings Law Journal* Vol 45 p. 63

- Moran, B I and Whitford, W 1996 'A Black Critique of the Internal Revenue Code' *1996 Wisconsin Law Review* 751
- NATSEM, 2004
- Nussbaum, Martha. 2000 "Women's Capabilities and Social Justice" *Journal of Human Development* Vol 1 No 2 p. 219
- Nussbaum, Martha. 2002 "Capabilities and Social Justice" *International Studies Review* vol 4 (2) p. 123-135
- Nussbaum, Martha. 2003 "Capabilities as Fundamental Entitlements" *Feminist Economics* Vol 9 (2-3) p. 33-59
- OECD 2007 *Revenue Statistics 1965 to 2006* (OECD, Paris)
- Philipps, Lisa. 1996 'Tax policy and the gendered distribution of wealth' in Isabella Bakker (ed) *Rethinking Restructuring: Gender and Change in Canada* (U Toronto Press: Toronto Canada) p. 141
- Philipps, Lisa. 2002 'Tax law and social reproduction: the gender of fiscal policy in an age of privatization' in Brenda Cossman and Judy Fudge (eds) *Privatization, Law and the Challenge to Feminism* (U Toronto Press, 2002) p. 41
- Sen, A 1995 'Gender Inequality and Theories of Justice' in Nussbaum M and Glover J (eds) *Women, Culture and Development* 259-73
- Sen, Amartya. 1999 *Development as Freedom* (Oxford University Press).
- Sen, Amartya. 1983, 'Poor, relatively speaking', *Oxford Economic Papers* vol 35, 153-69.
- Sheehan and Hughs. 2001. *
- Simons, Henry. 1938, *Personal Income Taxation: The definition of income as a problem of fiscal policy* (Uni of Chicago Press, Chicago: 1938)
- Singh, S & Lindsay, J. 1996 'Money in heterosexual relationships', *Journal of Sociology* 32(57), 57-69.
- Sorenson, Peter and Shane Johnson. 2009 *Taxing Capital Income – Options for Reform in Australia*, paper presented at Australia's Future Tax System Conference, 18-19 June 2009, available from <http://taxreview.treasury.gov.au> .
- Stewart, Miranda. 1999 'Domesticating tax reform: the family in Australian tax and transfer law' *Sydney Law Review*, 21(3), 453-486.
- Tranter, K, Sleep, L & Stannard, J. 2008 'The cohabitation rule: indeterminacy and oppression in Australian social security law', *Melbourne University Law Review*, 32(2), 698-738.
- Tually, Selina, Andrew Beer, Debbie Faulkner. 2007 *Too Big to Ignore: Future Issues for Australian Women's Housing 2006-2025* (September 2007) AHURI Southern Research Centre.
- Treasury (Australian). 1985 *Draft White Paper on Reform of Australia's Tax System*

Treasury (Australian). 2008a, *The Architecture of Australia's Tax and Transfer System* (August)

Treasury (Australian), 2008b, *Australia's Future Tax System Consultation Paper* (December)

Treasury (Australian). 2008c, *Tax Expenditures Statement 2008* (December)

Treasury (Australian). 2009, *Australia's Future Tax System: The Retirement Income System, Report on Strategic Issues* (May)

WEL. 2008, *Submission to the Review of Australia's Future Tax System*

Yates, J 2009 ,*

Yates, Judith. 2001 *

Young, C 1997 'Taxing times for women: Feminism confronts tax policy' in Krever R (ed) *Tax Conversations* (Kluwer Law International) 261-292

Legislation and cases

Income Tax Assessment Act 1997 (Cth)

Income Tax Assessment Act 1936 (Cth)

Social Security Act 1991 (Cth)

FCT v Everett (1980) 143 CLR 440