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## *Gender Equity in Australia's Tax System: A Capabilities Approach*

MIRANDA STEWART

ON 13 MAY 2008, following a '2020 summit' of ideas, the Australian Labour government announced a review of *Australia's Future Tax System*.<sup>1</sup> Known as the Henry Tax Review after its chair, Ken Henry (Secretary of the Treasury), the Review reported in December 2009. The Henry Tax Review was the most comprehensive review of the tax system since the Asprey Committee report (1975).<sup>2</sup>

Gender issues are at play at some crucial points in the Review's *Final Report* (Treasury 2009b), the *Architecture Paper* (Treasury 2008a) and the *Consultation Paper* (Treasury 2008b). This chapter analyses the 'gendered dynamics of tax policy' in the Henry Tax Review (Philipps 2002: 41). It focuses on the Review's analysis of the combined effect on individuals of the income tax system and the transfer (or welfare) system, referred to throughout this chapter as the 'tax-transfer system'.

The chapter's main focus is the 'capabilities' approach to equity in the tax-transfer system which was proposed by Ken Henry (2009), drawing on the work of Sen (1999). The chapter argues that the capabilities approach holds promise for enhancing gender equity in the tax-transfer system and defines some guiding principles for analysis of women's capabilities in tax policy. The chapter then examines whether the Review's analysis and outcomes live up to this promise. It discusses two issues with important implications for gender equity: first, the well-known debate about the

<sup>1</sup> Reports, commissioned research and submissions are available at <http://taxreview.treasury.gov.au>.

<sup>2</sup> The Review examined the income tax, transfer system, state and local taxes, resource taxes, excises and road pricing and the retirement savings system. The government insisted that retirement fund payouts should remain tax-exempt and excluded (for political reasons) the rate and base of the Goods and Services Tax (GST), a broad-based 10 per cent value-added tax.

tax-transfer unit, and secondly, the less visible issue of the impact of tax on women's saving and wealth.

## TAXES AND GOVERNMENT

Australia has tax and spending levels of about 31 per cent of GDP, below the OECD average though higher than most neighbours in the Asia Pacific (OECD 2009: 40). Approximately one-quarter of federal taxes are redistributed in Australia's substantial but tightly means-tested transfer system (Treasury 2008a: 223). The Henry Tax Review affirms that the tax-transfer system is 'a fundamental part of Australia's social and economic infrastructure' and implicitly supports maintaining or even increasing the current size of government (Treasury 2008a: 3). In particular, it emphasises revenue 'sustainability' in the long term, taking into account Australia's ageing population.

The Review's support for a sustainable, redistributive tax-transfer system is positive for gender equity. Feminists have long emphasised 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 (for example, Boyd 1997; Cossman and Fudge 2002; Dahl 1984; WEL 2009).

However, while acknowledging the importance of government, the Review argues that Australia needs strong economic growth to drive increased well-being and tax revenues. It states that a pro-growth policy must be adopted in a context in which Australia is 'a small, open economy operating in an increasingly globalised world' (Treasury 2008b: 19–21). The overall approach of the Review is to recommend reform so as to reduce taxes on mobile capital investment and to encourage both market work and saving by Australians.<sup>3</sup>

## EFFICIENCY AND EQUITY

The Henry Tax Review accepts the standard tax efficiency argument that 'all taxes and transfers affect the choices people and businesses make by altering their incentives to work, save, invest or consume'. It argues, therefore, that 'the tax and transfer system should raise and redistribute revenue at the least possible cost to economic efficiency' by minimizing the effect on these choices (Treasury 2009b: Part 1 Box 2.1, 17).

<sup>3</sup> The Review acknowledges that global capital mobility is imperfect and that in Australia's resource-based economy, the corporate tax may collect substantial economic rents (Treasury 2008b: 128).

In respect of equity, the Review conventionally, but still significantly, supports taxation on the basis of ability to pay (Treasury 2009b: Part 1 Box 2.1, 17):

The tax and transfer system should treat individuals with similar economic capacity in the same way, while those with greater capacity should bear a greater net burden, or benefit less in the case of net transfers. This burden should change more than in proportion to the change in capacity. That is, the overall system should be progressive.

The Review takes both efficiency and equity into account in its analysis of the impact of the tax system on the choice to work. In this analysis, it explicitly acknowledges the issue of women's workforce participation (Treasury 2009b: Part 1, 18):

International and Australian research has highlighted the different ways in which tax and transfer rules impact on the workforce participation of men, single and partnered women and women with children. In particular, partnered mothers and single parents are quite sensitive to the impact of taxes, transfer withdrawal rates and the level of transfer payments in deciding whether to undertake paid work.

In contrast, the Review does not directly refer to gender in its discussion of the impact of income tax on saving and investment.

The Review's *Architecture Paper* identifies a number of different perspectives on equity. These are 'inter-temporal equity'; 'intergenerational equity'; 'spatial equity'; equity in 'opportunity', 'freedom' and 'capabilities'; and 'rights-based frameworks' (Treasury 2008a: 178). The Review refers to gender only in this last category, in relation to which it affirms the need to 'rule out altogether' discrimination on grounds of 'gender', 'race' and 'sexual preference'. However, the Review interprets a 'rights-based' analysis narrowly as encompassing procedural fairness and the elimination of formal discrimination. It thereby ignores the important work identifying *substantive* gender and race inequality arising from formally neutral tax law and policy (see Gunnarsson, chapter four, this volume; Young 1997; Moran and Whitford 1996).

#### EQUITY IN CAPABILITIES

In a speech entitled 'How Much Inequity Should We Allow?' (2009), Ken Henry proposes a 'capabilities' approach to equity in the tax-transfer system. Henry draws explicitly on 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'; 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” (Sen 1999: 17).

Henry’s speech identifies three important consequences for the tax-transfer system arising from the ‘capabilities’ approach. First, he states that it supports adequate basic incomes for all, and he thereby highlights the tax-transfer system as Australian society’s main gesture toward equity. Secondly, he discusses the ‘proper role of society’ in ‘fostering capabilities’ of individuals. He states that public expenditures ‘that directly address capability deficits’ (for example, in education or health) ‘may be more effective at raising long-term well being’. These remarks can be interpreted as an affirmation of a key role for public provision.<sup>4</sup> However, a capabilities approach does not mean equality of outcomes for Henry (or, probably, for Sen) and he accepts 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, in Henry 2009; see also, Sen 2009: 235).

Thirdly, ‘and perhaps most importantly’, Henry argues that the capabilities approach requires the tax-transfer system to support the development of individuals’ capabilities that would improve their wellbeing in the longer term (2009: 2). The Review’s final report states (Treasury 2009b: Part 1, 19):<sup>5</sup>

In framing policies to alleviate disadvantage, a simple focus on the adequacy of income ... has been replaced by broader goals that focus on lifetime income and the capacity of people to engage in work and other social activities. In particular, there is greater awareness that assistance should not encourage short-term choices which compromise the development of capabilities that offer potential medium to long-term improvements in a person’s wellbeing.

## WOMEN’S CAPABILITIES

The implications of Sen’s capabilities approach for women have been developed by a number of theorists. In particular Martha Nussbaum has sought to build a ‘partial theory of social justice for women’ based on the ‘capabilities’ approach (2000; 2002; 2003).<sup>6</sup>

<sup>4</sup> 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 2009: 4).

<sup>5</sup> The Review also refers to ‘social inclusion’, a concept that has been adopted by the Labour government (see: [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au)) in much the same terms as ‘capabilities’, eg, in discussing family and child payments (Treasury 2009b: Part 2, 556).

<sup>6</sup> See also 9 *Feminist Economics* (special issue of July 2003); Berik et al (2009); and Sen’s own recent discussion of capabilities which refers frequently to gender issues (2009).

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. Nussbaum's capabilities are, in brief summary: 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; 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). Nussbaum's list is a reminder that income is just one component of wellbeing. Nonetheless, the list contains significant elements that relate to material wellbeing and that can enhance our analysis of the tax-transfer system.

Nussbaum's theory of women's capabilities places at the centre 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 (2002: 134; emphasis added):

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 also highlights the limits on individual agency generated for women in an inequitable society. Henry's speech does not explicitly acknowledge the limits on individual agency, although Sen is aware of 'adaptive preferences' restricted and shaped by societal norms (Nussbaum 2003: 34; Sen 1995). Berik et al express these three components nicely in proposing a feminist approach to development and economic growth (2009: 2):

Human well-being requires at a minimum adequate provisioning (through inter-connected paid labor and unpaid care activities and entitlements from the state or community); capabilities (the ability to do or be, based on provisioning); and agency (the ability to participate in decision making so as to shape the world we live in).

It is proposed that Nussbaum's approach to women's capabilities provides four principles for analysis of gender equity in Australia's tax-transfer system.

1. The capabilities approach supports a focus on the *individual* in the tax-transfer system. This does not mean, as Sen (2009: 244ff) is careful to point out, that individuals are not fundamentally influenced by each other or that individuals should not care about others. 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. It is particularly important to emphasise women’s *individual* capabilities in the present context, as women are so frequently embedded (and invisible) within families or households in tax policy discourse.

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. This inter-temporal aspect of capabilities is clearly central to the Review’s approach which looks at medium to long-term decisions and lifetime resources (Treasury 2008a: 178). For example, Henry’s speech demonstrates an awareness of the long-term impact that a decision not to work may have on women’s capabilities and the capabilities of children in the household (2009: 3).
3. Specific capabilities identified by Nussbaum include security of shelter and the capability of women to work and to own material assets. Here, it is important to take note of current gendered economic inequalities and not to lose sight of the goal of ‘equality of outcomes’ for women (Berik et al 2009: 5).
4. The capabilities approach requires the equitable distribution of the burden and cost of care. Valuing capabilities of each individual requires the distribution of the cost of care across all individuals; the tax-transfer system is a primary mechanism of the state to achieve this.

#### CAPABILITIES, CARE AND THE TAX-TRANSFER UNIT

The debate about the unit of assessment is a central trope in tax policy discourse. This apparently formal issue of tax law design hides a fundamental struggle about family, caring responsibilities and work. (See also Wersig, chapter eleven and Phillips, chapter twelve, this volume who address different facets of the tax unit debate.)

#### The Individual Tax Unit

The individual is the formal unit of assessment in Australian income tax. In 1975, the Asprey Committee stated that ‘the right to be taxed as an individual has always been accorded in Australia’.<sup>7</sup> However, there have always been some aspects of the tax system that indirectly import a spousal unit, including the dependent spouse tax offset (credit); the spouse superannuation

<sup>7</sup> Asprey 1975: 134 [10–16]; for history, see Stewart 1999.

contribution tax offset; and joint income testing for the senior Australians tax offset, Medicare Levy and private health insurance tax offsets.

The Henry Tax Review affirms the individual tax unit (Treasury 2009b: Recommendation 3) for both efficiency and equity reasons. Its primary reason is the beneficial effect on work incentives (2009b: Part 2, 23–26):

[I]n a couple where one partner is the primary earner and the other earns less, perhaps working part-time and caring for children, imposing the same marginal tax rate on both may cause the secondary earner to reduce their work effort. By contrast, a lower marginal rate for that person may encourage and support work. . . . A progressive individual tax system, with resulting lower tax rates for typically female secondary earners, is therefore more efficient than family taxation.

The Review also supports an individual unit based on horizontal equity between individuals. It therefore rejects the possibility, raised in an earlier paper, of adopting a family tax unit on the basis that this might ‘better reflect the ability to pay of individuals in a family’ (Treasury 2008a: 179). Finally, the Review describes the individual tax unit as more stable because ‘families change over time, as people partner and separate, and society’s conception of what constitutes a couple also changes’ (Treasury 2009b: Part 2, 24). The Review does not, however, refer to the classic argument that *control* of income is the appropriate test for ability to pay (Simons 1938: [51]) so that the tax burden should be distributed according to each individual taxpayer’s control over economic resources. In 1985, a previous Labor government adopted this argument as being ‘consistent with Government policy of promoting equal employment opportunity and of furthering the independence of women’ (Treasury 1985: 63).

Consistently with its position on the individual tax unit, the Review recommends removal of the various dependency tax offsets. It proposes a single ‘dependant tax offset’ payable if the dependant is unable to work due to disability, or carer responsibilities; or either the taxpayer or dependant has reached the age at which they would be eligible for the age pension (Treasury 2009b: Recommendation 6). Structurally, it appears that this dependant offset would directly benefit the taxpayer (the breadwinner) and not the dependant. If the dependant has no market income solely because of ‘carer responsibilities’, they are statistically much more likely to be female. In this case, it would seem more appropriate for the tax offset to be paid directly as an allowance directly to the carer, to alleviate her financial dependence on the breadwinner in the household. The Review’s implicit assumption of income sharing in this recommendation is discussed further below.

The Review’s recommendation for an individual tax unit must be placed in context of its proposal for reform of the tax rate structure by eliminating the targeted low income tax offset and replacing it with a high tax-free threshold (Treasury 2009b: Recommendation 2). The rate structure suggested by the Review is compared with the current rate structure in Table 1.

Table 1: 2010–11 Australian Personal Income Tax Rates compared with Henry Tax Review suggested Tax Rates (a)

Taxable income brackets 2010–11 (\$) (a)	Marginal tax rate 2010–11 (a) %	Effective taxable income brackets 2010–11 with low income tax offset (\$) (b)	Effective marginal tax rates 2010–011 with low income tax offset (b) %	Henry Tax Review suggested taxable income brackets (a)	Henry Tax Review suggested rates (a) %
0–6000	0	0–16,000	0	0–25,000	0
6001–37,000	15	16,001–30,000	15		
		30,001–37,000	19	25,001–180,000	35
37,001–80,000	30	37,001–67,500	34		
		67,501–80,000	30		
80,001–180,000	37	80,001–180,000	37		
180,000+	45	180,000+	45	180,000+	45

Notes:

- (a) For current tax rates see [www.ato.gov.au](http://www.ato.gov.au). For proposals, see Treasury 2009b: Part 1 29–30 and Recommendations 2 and 4.
- (b) For 2010–11, the maximum low income tax offset will be \$1500 and the phase-out limit will be \$67,500. The offset raises the zero threshold to \$16,000 and phases out at 4c in the dollar above \$30,000 taxable income.



The Review's position on tax and work incentives for secondary earners might lead one to expect a recommendation to reduce rates in the lower middle income range that will affect most women seeking to increase working hours or a higher paying job. However, Table 1 reveals that the Review's proposal leaves current effective marginal rates more or less unchanged, and in fact would *increase* the marginal rates applying between \$30,000 and \$80,000 of income relative to 2010–11 rates.

Finally, the Review notes (as have many others) the risk of income splitting between family members to generate a de facto family tax unit and take advantage of an individual tax unit and progressive rates. As Grbich explains, income splitting is most effective in a traditional breadwinner-homemaker family, in which the taxpayer and his spouse are inevitably constituted in a hierarchical and gendered fashion (1987: 315). Income splitting has long been widespread in Australia, in particular by the 'professional and commercial classes' (Murphy J in *FCT v Everett* (1980) 143 CLR 440 at 457) but also by individuals providing personal services. Arrangements to ensure income splitting for tax purposes while still enabling the breadwinner to retain control of the disposition of income have often been upheld (see, for example, *DFCT v Purcell* (1921) 29 CLR 464). Today, discretionary trusts are widely used for this purpose.

The Review's proposal for an individual tax unit with a high tax-free threshold is likely to make the tax benefits of income splitting even more attractive. This will have to be addressed by tightening the income tax rules against income splitting.<sup>8</sup> One possibility is to apply automatic income attribution rules, like those applicable in Canada. However, such rules may themselves operate to undermine women's autonomy. Philipps (chapter twelve, this volume) suggests that income splitting could be tolerated to the extent that it provides women as 'recipients' of the split income with full control of the income. Such a proposal could be consistent with a capabilities approach as it would enhance women's economic independence within the family.

### **The Joint Transfer Unit**

In Australia's contemporary tax-transfer system, the income tax unit is only half the story. In contrast to its support for an individual tax unit, the Review recommends joint (couple) income and asset testing for transfer payments such as unemployment benefits and the age pension, and testing on joint taxable income for family payments and childcare assistance. Its

<sup>8</sup> Reforms in the 1980s outlawed most income splitting with minor children and through short-term income assignments: Div 6AA and Div 7 of the Income Tax Assessment Act 1936. More recently attribution rules were enacted to prevent some personal services income splitting: Divs 84–87 of the Income Tax Assessment Act 1997.

main recommendation is to replace the current system of multiple family payments (with different tests) with a single payment, increased per child and phased out at an unspecified but 'low' rate tested on joint income (Treasury 2009b: Recommendations 89–96).

It has been exhaustively shown by Patricia Apps that in the current tax-transfer system, a joint unit prevails for most families raising children, as a result of the joint income-tested family payments introduced by the Howard Liberal-National (conservative) government during the 1990s.<sup>9</sup> In their recent analysis of the Review's proposals on this topic, Apps and Rees (2010) demonstrate that the Review's recommendations for family payments continue this joint family unit. Combined with the tax rate proposals outlined above, the Review proposals continue the trend to shift the tax burden towards middle income dual-earner families. This generates a significantly unequal tax burden and work disincentives for women through high effective marginal and average tax rates on secondary earners in a couple.

In respect of childcare payments, the Review proposes consolidation of the current system of two payments with a single payment based on a percentage of childcare costs, withdrawn on joint income but with a relatively high base level of assistance provided across the income distribution (Treasury 2009b: Recommendation 99; Part 2, 586). Here, the Review's stated purpose is 'to facilitate participation' and alleviate 'a number of biases against paid work'. Nonetheless, when childcare payment phase outs are layered on phase out of family payments, the significant effective marginal and average tax rates for secondary earners remain.

Why has the Review made recommendations for a joint unit for testing of family payments that contradict its stated policy in respect of the individual tax unit, in respect of the very people (mothers) who it identifies as most responsive to tax rates on work? The answer is that the Review considers itself bound by what it terms the 'iron triangle' of targeted means tested transfers in which (1) the level of payment must be balanced with (2) the cost to revenue and (3) impact on incentives to work (Treasury 2009b: Part 2, 498). The Review briefly refers to a system 'like those of Scandinavian countries', in which 'both parents, even of quite young children, are expected to work, just as any other capable adult is, but very extensive support is provided in the form of high-quality child care and early education' as well as 'family-friendly' workplaces (Treasury 2009b: Part 2, 527). However, the Review appears to conclude that Australia is not ready for this approach and, shackled by the 'iron triangle', it rejects universal family payments as 'extremely costly'.

The Review also relies on a 'horizontal equity' argument in support of a joint unit for family payments. In contrast to its discussion about equity

<sup>9</sup> In particular, Family Tax Benefit B is structured as a payment to a household with a breadwinner and dependent homemaker: Apps 2006; 2009; Apps and Rees (2010); see also Stewart (1999).

between *individuals* in the tax system, the final report frames the issue of family payments as being about equity between dual-earner and breadwinner-homemaker *couples* (Treasury 2009b: Part 2, 557):

Horizontal equity can also refer to providing similar tax treatment to couples that receive their income primarily through one earner, relative to couples where both members undertake significant work. Because of the progressivity in the tax and transfer system, the couple where both members work pays lower net tax.

The suggestion that the breadwinner-homemaker family is worse off ignores the benefit to them of the non-taxation of home production, being the provision of childcare and other services in the home, relative to the dual-earner family who not only pay tax on both incomes but must pay out significant non-deductible costs of working and for care giving. The focus on the couple also renders invisible the negative effect of a joint unit on the woman within the couple. As the Review acknowledged in its *Architecture Paper*, the joint unit changes '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' (Treasury 2008a: 179).

An additional reason why the Review supports a joint unit is based on the argument that 'couples or families form a single economic unit' (Treasury 2008a: 179). The Review does not interrogate the assumption of income sharing that underlies this view. More than 30 years ago, it was observed 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 scepticism about income sharing is supported by empirical studies demonstrating the wide variety of financial arrangements within couples (Gray and Evans 2008; Singh and Lindsay 1996; Kornhauser 1993).

Australia's tax-transfer system now defines a couple to include married opposite-sex couples and same-sex or opposite-sex couples who are 'living together as a couple on a genuine domestic basis'. Ironically, the 'rights-based' equity recently achieved for lesbian and gay couples serves also to embed the breadwinner-homemaker model of caring and work within same-sex couples, privatising care and reducing costs to government.<sup>10</sup> (See also Warman and Woolley, chapter nine, this volume.)

Overall, the policy direction of the Henry Tax Review is directed at the limited goal of encouraging mothers (back) into *part-time* work. The

<sup>10</sup> Same-sex couples were included effective 1 July 2009. The government estimated a saving of \$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.

Review states this explicitly in its discussion of transfer payments: it aims to continue ‘current policy’ which is aimed ‘at keeping primary carers in touch with the labour market. This usually means some form of part-time work’ (Treasury 2009b: Part 2, 527). From a capabilities perspective, part-time work has the potential to enhance a mother’s current income though it is unlikely to make much difference to her retirement savings. It also could contribute to other capabilities, including skills and social connection. In the event of divorce or other crisis, having employment may strengthen self-esteem and increase capacity to support herself and her family.

However, the goal of increasing women’s capability to engage in part-time work is a minimal expression of the capabilities approach for women, for several reasons. First, while there is scope to increase Australia’s participation rates for women with children that are among the lowest among rich countries (OECD 2010), the Review’s proposals ultimately make very little change to the disincentives and unfair distribution of the tax burden on women that arise under the current system. Secondly, many mothers are *already* entering the workforce part time, even in the current system (these women simply bear an unfair share of the tax burden).<sup>11</sup> Thirdly, many part-time jobs are not good jobs: they are neither secure nor well paid and they may not provide a pathway to more sustaining work. Fourthly, even a good part-time job cannot generate sufficient reward to eliminate gender inequity in women’s income or savings, or to prevent many women who are single parents from living in poverty.

Most importantly, the Review’s proposals do not relieve women of primary responsibility for care. The focus on part-time work of a secondary earner who retains responsibility for parenting 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*.

#### CAPABILITIES AND SAVING

It seems at first blush more difficult to apply Sen’s ‘capabilities’ approach to inequity of saving (the distribution of income and wealth) above a basic minimum. However, it is argued here that a capabilities approach to gender equity requires us to examine women’s capability to enjoy economic security and independence over the lifecycle. In Australia, economic security requires both public and private provision and so women need to be able to accumulate savings. Furthermore, as Berik et al (2009) argue it is important not to lose sight of the goal of gender equality of outcomes.

<sup>11</sup> Seventy-three per cent of women (compared with 92 per cent of men) between the ages of 25 and 59 are employed and women’s participation continues to trend upwards: Household Income and Labour Dynamics in Australia (HILDA) survey of 2005. The majority of women with young children work part-time and balance work and care responsibilities: ABS 2009.

The comprehensive or 'Shanz-Haig-Simons' income tax (Simons 1938) has long been the ideal benchmark against which Australia's income tax is evaluated. The Henry Tax Review departs significantly from previous Australian tax policy discourse in stating that 'comprehensive income taxation, under which all savings income is taxed the same as labour income, is not an appropriate policy goal or benchmark' (Treasury 2009b: Part 1, 32). Instead, it proposes to tax savings income 'at a lower rate than labour income' (Treasury 2009b: Part 1, 17). In support of this, the Review accepts the position, long argued by some economists, that imposing tax on capital income 'creates a bias against savings, particularly long-term savings' (Treasury 2009b: Part 1, 32; see, for example, Kaldor 1955; Bradford 1980). The Review considered a direct expenditure tax but ultimately does not make such a radical recommendation.<sup>12</sup>

Unlike its analysis of tax on work, the Review does not explicitly consider the gender implications of its shift towards a consumption tax benchmark. In general, there are reasons for feminists to be concerned about such a shift. As discussed below, women are generally poorer than men, save less, have fewer assets and have fewer opportunities to invest. Consequently, as a class, women would benefit much less than men from a shift to a tax system that entirely exempts savings. Women would also likely suffer more from any loss of tax revenues for public provision and welfare that would result from such a change. (Young (1997) makes a strong gender equity argument for removing tax concessions for saving and assets.)

However, Australia's income tax already exempts significant forms of saving from tax. The following forms of saving in Australia benefit from significant tax concessions that bring their taxation closer to a consumption tax benchmark:

1. Home ownership is completely exempt from income tax.
2. Private retirement saving is taxed at 15 per cent (in superannuation funds) and benefits are usually 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. Individuals or employers can contribute large sums on a deductible basis into superannuation (up to \$25,000 annually).

<sup>12</sup> A consumption or expenditure tax is theoretically equivalent to a comprehensive income tax, except that it exempts the return to saving. The Asprey Committee was attracted by the 'philosophy' of an expenditure tax but it recommended retaining a progressive income tax and reforming it to be more in line with a comprehensive income tax benchmark (1975: [3.17]). The Henry Tax Review cites an OECD study (Johannsson et al 2008) in support of an expenditure tax but relies on research carried out for the UK Mirrlees Review that suggests that it is more efficient to impose some tax on capital income (Diamond and Banks 2008; see Treasury 2008a: 216; 2008b: 64).

3. Only half of capital gains of individuals and trusts on other forms of investment such as shares or rental properties are taxed, applying the capital gains tax 50 per cent discount.

The only categories of capital income not eligible for a tax concession are interest on bank accounts and dividends on shares (which benefit from full dividend imputation providing a credit for company tax paid). It can be seen that, as in most countries, Australia's income tax is in reality a rather incoherent 'hybrid income-consumption tax' (Aaron et al 1988). We must make a realistic appraisal of the extent to which the income tax currently fails to tax capital income and the historical and current impediments (political, economic and administrative) that stand in the way of implementing a comprehensive progressive income tax.

From a capabilities perspective, I propose that we refocus the analysis to identify who benefits from tax subsidies for saving. A brief examination of components and distribution of wealth in Australia assists in this analysis. Average household wealth comprises 44 per cent home ownership (69 per cent of Australians live in their own home); 13 per cent private superannuation saving; and the balance being other real estate, financial investments and bank accounts (ABS 2007; Treasury 2008a: 181). However, 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. Older households have higher wealth (and lower incomes), while younger households have higher incomes and lower wealth (Treasury 2008a: 182–84).

Overall, women have less income and assets than men (Jefferson and Ong 2010). 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; Tually, Beer and Faulkner 2007). Women's limited asset portfolios imply that women derive fewer and smaller capital gains than men and hence benefit less from the capital gains tax 50 per cent discount; there is evidence of this in similar countries (Young 1997; Philipps 1996 and Kornhauser, chapter fourteen, this volume). At the other end of the spectrum, women occupy many of the poorest households (Lloyd, Harding and Payne 2004: 5; ABS 2007b). Female-headed households make up more than 60 per cent of households in public housing or receiving rent assistance (Baker and Tually 2008: 129).

The remaining parts discuss the implications for women's capabilities of the two largest tax subsidies for saving: the exemption of home ownership from income tax and the massive tax subsidies for retirement saving. I then consider the Henry Tax Review's approach to these key elements of saving.<sup>13</sup>

<sup>13</sup> There is not scope to examine the Review's proposal for other savings, in which it essentially adopts a 'dual income tax' schedular approach similar to that adopted in some of the Nordic countries (Treasury 2009b: Recommendation 14).

## Retirement Saving

While we do not know enough about women's overall wealth, it is well known that Australia's retirement savings system is highly gendered in both its structure and outcomes (Jefferson 2005, 2009; Sharp and Austen 2007). Tax subsidies for superannuation comprise the second largest measured tax expenditures in the income tax, estimated at \$24.4 billion in 2009–10 (Treasury 2010: 4, Items C5 and C6). The bulk of this arises from tax deductibility of contributions and the 15 per cent tax rate on contributions and earnings in the fund. Like many tax expenditures, this is an 'upside-down' subsidy from which high income earners who work full time through their working lives benefit most. 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 (Tually, Beer and Faulkner 2007: 29). While women do benefit from a government co-contribution of up to \$1500 a year and from the ability of a taxpayer to contribute up to \$3000 to a superannuation fund for their spouse if the spouse has a low income, these are tiny subsidies by comparison.<sup>14</sup> Women represent 55 per cent of people over the age of 65 and two-thirds of people over 80; not surprisingly, more than half of age pensioners are women.

The Review acknowledges that women are differently situated because of their interrupted working lives (Treasury 2009a: 26, 45). However, the Review accepts the status quo of the 'three pillar' retirement system, comprising means tested age pension; compulsory employer superannuation contributions; and increased voluntary contributions to superannuation savings. It concludes that retirement security for 'people who have experienced broken work patterns'—that is, most women—'should be achieved through the Age Pension' (Treasury 2009c: 13). In this limited context, the Review proposes some minor superannuation reforms that would improve the equity of the superannuation tax system and go some way to ensuring an individual tax unit for retirement saving (Treasury 2009b: Recommendations 18–19). In spite of these minor improvements, the structural gender inequities in the retirement system are so stark that I suggest, as do others, that the best policy to ensure women's economic security over their lifetime would be to reduce tax subsidies for private superannuation saving significantly and use the tax funds to support the age pension.

## Home Ownership

The largest component of Australian household wealth is the home itself, and 69 per cent of Australian households own or are purchasing a home

<sup>14</sup> Eg, the spouse co-contribution was estimated as a tax expenditure of only \$9 million in 2009–10 (Treasury 2010: Item C10).

(ABS 2007). Home owners benefit from very large tax expenditures because imputed rent and capital gains are exempt from income tax. Applying a tenure-neutral benchmark that compares home owners with landlords, the Treasury estimates \$19.5 billion in revenue foregone from home ownership tax expenditures in 2009–10 (2010: Table C1; Yates 2010). These subsidies mean that Australia's current income tax system essentially applies a consumption tax treatment to home ownership.<sup>15</sup>

The Review proposes to maintain the exemption of the home from income tax because it 'provides security, shelter and a savings vehicle' to millions of Australians (Treasury 2009b: 410). Shelter is a fundamental capability, and in a society such as Australia's, there is an argument that home ownership as a widely valued and secure form of shelter should be fostered. Australian renters are significantly worse off than home owners in terms of both income and wealth (Treasury 2008b: 203).

Women *do* benefit from home ownership tax concessions, in contrast to superannuation. For the majority of women, their home is the only asset of significant value that they accumulate during their lifetime (Jefferson and Ong 2010; Baker and Tually 2008). There is a particularly strong lifecycle element in home ownership and most people over the age of 65 own their home outright. The main residence is exempt from the age pension assets test and this is crucial for older women. Most women obtain housing wealth through home purchase while in a couple.<sup>16</sup> Single women have less housing wealth than couples or single men; however, when they do own a home, it comprises more than half of their total assets. On relationship breakdown, women frequently retain home ownership although divorce does generate housing insecurity for many women (Sheehan and Hughes 2001; De Vaus et al 2007).

Based on this brief analysis, it is argued that a capabilities approach to women would support the existing subsidies for home ownership. However, there is a good case for taxing high value capital gains on the home, either through a capital gains tax (and a bequests tax) or a land tax. The Review deals with this by recommending that land tax be extended to the home (Treasury 2009b: Recommendation 52). The Rudd Labor government rejected enacting a federal land tax; the result is that we are left with a very difficult political reform process for State governments.

The second limb of a capabilities approach to home ownership requires measures to extend access to home ownership to a wider class of low-income women and men. One approach would be to provide a subsidy to enable people to save for home purchase. In 2008, the Australian government established

<sup>15</sup> See further Stewart (2010).

<sup>16</sup> Almost 80 per cent of couples own or are purchasing a home and in 84 per cent of these couples, title to the home is held jointly: Jefferson and Ong (2010).



a First Home Saver Account (FHSA) scheme.<sup>17</sup> This scheme provides a low-tax house deposit savings strategy including a government co-contribution and 15 per cent rate which could be of great assistance to younger people, including women on relatively low incomes, seeking to purchase their first home. The revenue cost of FHSAs was estimated to grow from \$156 million in its first year to \$400 million in its fourth year of operation.<sup>18</sup> However, two years later, the direct expense of government contributions to FHSAs was estimated at only \$23.6 million.<sup>19</sup> This dramatically lowered estimate reveals the main flaw of this programme, like many low income savings programmes, which is the very limited uptake by eligible individuals.

### CAPABILITIES AND GENDER EQUITY

This chapter examined some aspects of Australia's recent Henry Tax Review from the perspective of gender equity and in particular the 'capabilities' approach to equity in the tax-transfer system.

If we are to take women's capabilities seriously as 'substantive freedoms', reforms to the tax-transfer system should expand the universe of choices for women. The Review's support for an individual tax unit is positive for gender equity. However, the Review's contradictory recommendations for maintaining a joint transfer unit in relation to family and childcare payments work against women's capabilities. They do not significantly change the institutional structures and pathways that limit women's capabilities in respect of work and care, constraining many women's ability to do significant paid work and to accrue significant saving for long term economic independence and security. The Review's emphasis on 'cost' of family payments suggests it continues to undervalue women's capabilities and does not come to grips with the principle of *sharing* the cost of care. It does not engage with a more fundamental approach to restructuring the tax-transfer system to enable a reconfiguration of care and work.

A 'capabilities' approach to women's saving demands that we examine the components of saving for individuals 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. Those with retirement savings and those who own homes benefit from the largest tax expenditures in Australia's income tax, both of which shift the base toward a consumption tax benchmark. While all such subsidies benefit

<sup>17</sup> Division 345 of the Income Tax Assessment Act 1997; see: [homesaver.treasury.gov.au/content/default.asp](http://homesaver.treasury.gov.au/content/default.asp).

<sup>18</sup> Explanatory Memorandum to First Home Saver Accounts Bill 2008: 7.

<sup>19</sup> Treasury Portfolio Budget Statement 2010–2011 Table 2.1: 916. Available from: [www.treasury.gov.au](http://www.treasury.gov.au).

higher-income individuals more than low-income individuals, a capabilities approach to gender equity supports maintaining the tax subsidy for home ownership. However, there are compelling arguments to wind back tax concessions for superannuation saving as they exacerbate gender inequity in income over the lifecycle.

The ‘capabilities’ approach to tax equity proposed by Henry has significant potential to reinvigorate a gender equity analysis of tax-transfer policy. The analysis in this chapter shows that gender equity becomes visible in the Henry Tax Review’s analysis where it would be consistent with the goals of efficiency and revenue raising, in particular the impact of tax on choices to do part-time work. Yet gender disappears, even at the expense of work incentives, where achieving it may be more ‘costly’ for the public sphere in the short term. Stark gender inequities in saving are not acknowledged in the debate. The most important function of the tax system for women’s capabilities remains the fundamental goal of raising adequate tax revenues for public provision of retirement income and housing. We must be careful that ‘capability’ of individuals is not restricted to what is necessary for the market, leaving untouched gendered norms of work, care and wealth.

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