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**‘TECHNOLOGIES OF THE SELF’ AND  
SOME CONTRADICTIONS OF THE  
ENABLING STATE: THE CASE OF TAX  
EFFECTIVE SCHEMES IN AUSTRALIA**

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**Occasional Paper 1**



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## Abstract

The role of the state has been reshaped in recent years by substantive economic and political internationalisation processes, making it replete with inherent contradictions or tensions. The aim of this paper is to consider, if this is the case, are these tensions visible 'on the ground' and if so, how do they affect citizens? The story of 'tax effective schemes' in Australia provides a pertinent example. Here, approximately 40 000 individuals made tax-related investments in the mid-1990s, which were subsequently ruled to contravene tax law. Affected investors have responded by arguing they were trying to do as the Coalition government has increasingly requested - provision their family's future economic security. Yet, inherent systemic tensions made carrying out this task within the bounds of the law problematic. For one the system of tax administration in Australia - here discussed through the Foucauldian concept of technology of the self' - requires individuals to be wholly responsible for practices and knowledge over which they have little control or access. As a result, many investors who aimed to heed the self-provisioning call are now facing bankruptcy and the state response has been to call for more regulation to be introduced into the market place, thus perpetuating and intensifying the already present tensions.

## **‘Technologies of the self’ and some contradictions of the enabling state: The case of tax effective schemes in Australia**

*Kersty Hobson*

### **Introduction: The ‘contradictory state’ in theory and practice**

A considerable amount of research has sought to typify and frame current state-level economic and social policy trends, and their implications for national governance. Some diagnoses of so-called ‘post-industrial’ countries of western Europe and the US suggest a simultaneous ‘hollowing out’ and ‘rolling back’ of the state is taking place. This is (partially) created and spurred on by the economic forces of globalisation, and further witnessed in the spread of substantive decentralisation and/or deregulation policies popularised by ‘New Right’ political agendas (Peck, 2001). However, few would suggest that prevailing trends evoke such simple, linear responses and outcomes as the ‘hollowing out’ hypothesis suggests. Rather, the role of the state and its regulatory frameworks are in a condition of flux not of absolute withdrawal (for example, Ayres & Braithwaite, 1992). Some have framed this process as a movement from provisioning citizens to enabling them, or ‘steering rather than rowing’ (Davis, 2001). In this sense, Knill (2002, p. 249) suggests that:

The key point from the perspective of governance is not that the state has retreated ... but that the state no longer has a unitary point of view and is in some sense at an impasse.

This paper aims to explore some areas of governance in Australia where this impasse is observable. To begin, debates about contradictions within capitalist modes of production and exchange are nothing new and have been extensively analysed from Marxist material, environmental and cultural perspectives (for example, Bell, 1976, Harvey, 1996, O’Connor et al., 2000). This work mostly makes long-term social-historical arguments, pointing out the intrinsic unsustainability of free market systems. More recently, new tensions specific to contemporary governance practices have been highlighted. This work focuses on shorter time scales, pointing out how social forces or policy agendas can contradict each other within specific contemporary settings. For example, Ryan (2001) has discussed

incongruence between the model of ‘citizens as consumers’ and the supposed ‘new government’ approaches to inclusion and participation, which emphasise partnership and cooperation (see also Fountain, 2001).

Melucci (1989, p. 170) for one has detailed three broad features of state contradictions amidst post-industrial ‘transformations in the structural logic and new structural contradictions of complex systems’. First, there is ‘surplus variability’. This is the necessity of maintaining both constant change *and* a stable framework of norms and procedures, which current responsiveness in organisations cannot meet. Second is an ‘undecidability of ultimate ends’, which relates to the growth of interest groups and fragmentation of political decision-making structures. This creates more decisions but less visibility of who is making them. Finally, there is ‘dependant participation’. Here, increases in citizen participation rights have also created more bureaucratic decision-making bodies that ultimately curtail participation and rights. Although Melucci’s ideas are no doubt contestable, these tensions have been detailed through empirical examples from a range of international contexts, including Australia (for example, Everingham, 2001).

This paper discusses another example in the Australian context, in relation to aspects of current economic and welfare approaches, specifically, income tax and the personal provisioning of financial security and welfare. It involves the case study of approximately 40 000 Australians who became involved in ‘tax effective schemes’ in the late 1990s, an issue, which has caused substantial political and media debate in the country since 2000. The Australian Taxation Office (Tax Office) argues that the individuals who became involved in these schemes were acting against current tax law and should be subject to considerable punitive action. By contrast, the scheme investors argue they were simply doing what the Australian Coalition government is signalling and steering them to do (that is, invest). They were not aware, nor could they access the information to tell them that what they were doing was illegal. These contrary arguments have resulted in the issue remaining in virtual deadlock for two years, with many investors refusing to pay, threatening the public legitimacy and authority of the Tax Office.

In detailing the case study above, this paper aims to do three things. First, to add to Melucci's list by detailing a set of economic and personal welfare tensions, which here are labelled as 'impossibility of self-regulation' and are discussed through the Foucauldian idea of 'technologies of the self'. Second, this paper provides not only a broad analysis of some discourses and practices, but also considers how they have infiltrated, are experienced, and have become part of personal practices for some Australian citizens. Finally, it aims to consider the implications of this case study for the operation, workability and direction of some current approaches to economic governance in Australia, especially in relation to tax.

### **Australia's policy approaches: Big government pretending to be small?**

First, it is important to briefly outline the current policy environment in Australia. In the past two decades, the nation has been subject to extensive economic modernisation, welfare reform and taxation changes (for example, see Stimson, 2001). The reforms that Labor Prime Ministers Bob Hawke and Paul Keating began in the 1980s and early 1990s have substantially gained momentum under the current Coalition government, who have been in office since 1996. Kelly (1994) details how the Coalition Prime Minister John Howard has four main ideals. These are free market economics; traditional family values; an international alliance with the United States (to the detriment of relations with Asia); and a Liberal party coalition with the lesser Australian National Party, with the aim of keeping the Opposition Labor party out of power. These ideals and policy approaches have brought Australia firmly into the category of liberal market economies (Hall & Soskice, 2001), sharing many policy approaches with Western Europe and the US (for example, introducing market mechanisms into welfare provision, introducing consumer-oriented service ethos into the public service). In a recent ranking of nation level indices of 'economic freedom', Australia came sixth in the world (Buckingham et al., 2001). However, this 'freedom' comes at a cost, such as a widening of the income gaps between rich and poor (see Eardley, 1998; Stimson, 2001) and substantial increases in percentage of individuals living in poverty (Saunders, 1998). However, despite growing concern that such negative outcomes are eroding the egalitarian foundations of Australian society, the

fact that average annual economic growth has in recent years been well-above OECD average (Stimson, 2001) has enabled the Coalition to argue its policies are working.

In terms of welfare and social security provisions, Australia has shifted from a 'big top' to 'safety net' model. For one, spending in this sector is consistently lower than other OECD countries (Robbins, 2002; Saunders, 1998). The 2002 budget emphasis on border security and protection - in the wake of September 11<sup>th</sup> and controversial border protection incidents<sup>1</sup> - will no doubt create a further downturn in social security spending. Also, the market-orientated mechanisms such as 'Work for the Dole' have introduced a level of contingency in citizen's qualification for welfare support. Although some figures do suggest that welfare and social security spending in Australia did increase marginally in the 1990s (Buckingham et al., 2001), it is argued that the ethos of the welfare system has been eroded through such policy mechanisms. For example, schemes which introduce compulsory job applications and means-testing into welfare provisioning are considered unnecessarily directional, authoritarian (Robbins, 2002), putting off the people who most need help from seeking it.

In this sense, Australia has come into line with other conservative-oriented countries such as the US and UK in attempting to practice 'small government' that focuses on individuality and efficiency. Yet, although Australia is ranked 6th in terms of overall 'economic freedom', when broken down into various components the 'size of government' ranking puts Australia into 17<sup>th</sup> place (Buckingham et al., 2001). It seems therefore that a

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<sup>1</sup> For example, the 'Tampa crisis' occurred in August 2002 when an Indonesian fishing boat containing over 400 people was sinking within Indonesia's search and rescue region. A Norwegian container ship, MV Tampa was asked by the Australian Search and Rescue to save the passengers. It did so and started to head for Indonesia, at which time several passengers threatened to commit suicide as they wanted to go to Australia, not return to Indonesia. The captain (Captain Rinnan) then changed course for Christmas Island, an Australian Territory, but was refused entry. A prolonged debate then followed about who was responsible for these people, with Australia refusing to allow these asylum seekers on Australian soil and persuading other countries in the region to take the asylum seekers in return for aid - the so-called 'Pacific Solution'. Following on from that, there was the 'children overboard affair' that occurred in October 2001. Here, the Coalition government alleged that another boatload of asylum seekers had threatened to throw their own children overboard if they were not taken to Australia. Government Ministers claimed to have seen video evidence and photographs, which they refused to release to the public. Later investigation and an on-going Senate Inquiry has shown how the story was a fabrication, with the Howard government perpetuating it in light of the up-coming November 2001 Federal election, being fully aware three days before the election that the alleged incident never took place.

'rolling back' of the state has not yet become a reality in Australia. Perhaps this reluctance or inability to 'shrink' government too much relates to its potential public unpopularity. Citizens appears to hold dear, the perceptions at least, that their nation provides reliable social security, and that the government will not roll back essential public services to the detriment of individuals and their families (Saunders, 1998). Also, this unshrinking nature of government can be seen as indicative of Melucci's and others diagnosis of a political impasse. Nowhere was this tension between big and small government more explicit than in the UK Prime Ministerial period of Margaret Thatcher. Between 1979 and 1990 her striving to achieve an ideal free market state ironically resulted in one of the most profound periods of centralisation in modern British history (Jenkins, 1995).

Similar 'ironies' can also be seen in Australia. For example, despite political rhetoric, government's central role has not been one of just managing markets for the public good. The Australian executive has also been instrumental in building markets (Sbragia, 2000). One example can be seen in the private medical insurance market. In 1998, Medibank Private Limited was established as a public company wholly owned by the Commonwealth, and has since become the nation's largest private medical insurer. The aim of this is to encourage individuals to move away from a reliance on public health and to subject health provisioning to market forces. To encourage this further, the government has structured tax and rebate incentives to tempt middle-income households to take out such insurance. For example, there is a 30% rebate on premiums and a 1% tax levy on all high-earners who do not take out this insurance (although the predicted premium rises in upcoming years have made many question the financial sense of taking out this insurance: for example, Baker, 2002). Added to this, Federal and State executives have also stepped in to mitigate the effects of private insurance company collapses. This includes providing temporary cover in 2002 when one of the largest insurer of doctors, United Medical Protection, collapsed, as well providing financial cover when the insurance company HIH collapsed in 2001. Thus, markets are not so much 'free' as directed through policy and incentives (Knill, 2002; Sbragia, 2000)

*Discourses of neo-liberalism: Self-reliance and responsibility*

Such approaches exist both as policy, practice and discourse. For example, in countries such as the UK, USA and Australia, political leaders have argued that there is no alternative but to see the state's role as one of managing the impacts of the apparently unstoppable global economy (Eardley, 1998). Although there is no doubt some credence in this point, it has been well-argued that current policy approaches are choices, deliberate attempts to construct ways of seeing the world and limit the options available for action to keep them in line with political ideologies (Lemke, 2001). The 'no alternative' view of globalisation, espoused by the Coalition government (Saunders et al., 2000) does not tell us 'how the world is' (Mouchot, 2001). Rather, this language and ideals take an active part in constructing shared political views of the world, feeding into and constructing policy aims and mechanisms (Ericson et al., 2000), as well as affecting public perceptions of world events and issues.

Take for example the subject of individual economic self-reliance, investment and provisioning for retirement in Australia. The Coalition government has of late framed welfare provision as founded upon the 'bedrock' principles of family and personal responsibility (Eardley, 1998). This is part of an on-going conservative discourse. As Roche (1995, p. 206) has observed:

In the 1980s and 1990s ... interest groups, parties, movements and governments on the Right have developed and deployed a duty discourse, a repertoire of rhetorical and policy strategies focussing on individual's personal responsibility for themselves and their (as against the community's, the public's, the state's) dependants ... and generally upon the social obligations of citizenship'

One issue this 'duty discourse' has been applied to is private superannuation. In Australia, superannuation is compulsory for the employed. Investment funds have grown from just under \$A300 million in 1990 to \$A405 billion in 1998. Along with this growth, the past decade has seen an increasing political emphasis on Australians investing more of their income in superannuation, as well as other long-term investments, as the way to secure personal and family security without having to rely on the state. Indeed, in a speech delivered during March 2002, the Prime Minister John Howard talked about 'opening up'

superannuation to enable individuals to access its benefits from the time of birth (ABC News Online, 2002). Thus, superannuation is to take on the ‘cradle to the grave’ projection once applied to the welfare state, with there being little public debate about what happens to those who cannot access such investments from an early age. The Australian National Party, part of the ruling Coalition government, has even gone as far as suggesting that organising one’s own financial future is the duty and within the character of every good Australian:

Australians fundamentally desire self-reliance—it is the hallmark of a society built upon the aspirations of generations of pioneers, migrants, self-sufficient indigenous Australians and all their descendants. At a time when Australia's population is ageing, this virtue-building personal self-reliance in retirement—will vitally contribute to Australia's ongoing national prosperity. (<http://www.nationalparty.org/policies/2001-11-05-super.htm#summ>).

The factual bases of these arguments are founded on statistical projections of future population structures in Australia. Along with most other countries in the ‘developed’ world, such statistics suggest that in the 21<sup>st</sup> century retirement aged citizens will substantially out-number working aged ones. As a result, welfare resources will be pushed to breaking point, represented by the much-quoted statistic of the dependency-ratio (see Vincent, 1996). Yet, as Saunders (1998, p. 20) points out:

... the statistical projections have tended to be accepted as ‘facts’ and the debate has been hijacked by those who see in demographic change an opportunity to wind back the ‘entitlement culture’ that has been promoted by the welfare state.

As such, these discourses can be seen as a way of making individuals ‘responsible’ for their social welfare, shifting the responsibility from state to individual by transforming it into an issue of ‘self-care’ over social care (Vincent, 1996). This point may be considered somewhat secondary to ‘hard’ or concrete policy approaches. Yet, framing self-sufficiency as such transforms it from a moral or personal quality to a collective and supposedly ‘real’ economic resource (Lemke, 2001), with there being little consideration given to the structural supports needed to make this a feasible practice for all (see Gardiner, 2000). Political discourses have proved highly affective of public opinion in recent times in

Australia, nowhere more so than in the Coalition government's immigration policy where continual use of the terms 'illegals' and 'queue jumpers' instead of the more neutral term 'asylum seekers'. Commentators have pointed out how such terms have facilitated the de-personification of asylum seekers, creating in the some part of the Australian public the hostility and distancing necessary to create the support for such immigration policies as mandatory detention for asylum seekers and the so-called 'Pacific Solution'. In this sense, discourses mark out policy directions and contents. They also shape the policy context and public perceptions of the moral and directional foundation of political practices. This political shaping of public discourse is an important argument in this paper. As will be discussed below, such discursive approaches create and typify an inherent tensions in current policy approaches, a point which becomes more explicit through examining this discourse in relation to tax and a form of investment that was rife in Australia called 'tax effective schemes.'

### **Tax in Australia**

Conservative approaches to tax the world over argue that making individuals wealthier makes society wealthier, as then individuals have more money to spend as they choose (Jacobs, 1997). However, the reality of this claim, in Australia at least, is questionable (see Fenna, 2002 for broad discussion of tax in Australia). For example, cutting the top marginal personal income tax bracket from 60% to 47% in the 1980s has since been offset by 'bracket creep'. This is where inflation-linked wage rises gradually put individuals in higher tax brackets, giving them less money 'in hand' without raising their standard of living (Buckingham et al., 2001; see also Sullivan, 2001 for discussion on how this has impacted families). This is borne out by attitude research which shows how nearly 90% of Australians surveyed felt they earned only 'just enough' or 'enough to get by on', in an average week. By contrast, only 2.7% felt their income was 'much more than we need' (Saunders et al., 2000). Buckingham et al. (2001) furthers this argument through their work on Australians' 'tax freedom' day. This is the hypothetical day of the year, from 1 January onwards, after which an individual has paid out all their tax obligations for that year. In 1988/89 it was 5 March. It is now 21 April (Buckingham et al., 2001). This 'tax burden' was increased in 2000 when the Coalition government introduced the Goods and Services

Tax (GST) never before seen in Australia, a 10% sales tax on most goods and services across the economy.

*Self-assessment and 'technologies of the self'*

This increasing prevalence of personal taxation stands in stark contrast to the administration of the income tax system in Australia. In the mid-1980s, a 'minimalist' practice of self-assessment was introduced. Here, all individuals, including those taxed from source, lodge an annual tax return, which shows all income and claimed deductions. The public administration in Australia hoped that such a system would foster a 'culture of voluntary compliance' (Sakurai & Braithwaite, 2001), which would free auditors to pursue the larger tax avoiders (Smith, 1993). Key to this paper is the fact that in the self-assessment system, the legal onus is on the individual taxpayer to lodge a correct return. As a result of this responsibility, and in face of complex tax laws (see Sakurai & Braithwaite, 2001), many Australians (that is, about 80%) use tax agents or accountants to lodge their returns (Sakurai & Braithwaite, 2001). This makes the relationship and role of tax agent an integral one in individual compliance, a point that will become more important below.

Although debates about self-assessment often frame it as a value-neutral policy tool that either does or does not encourage compliance, it is argued here that it amounts to much more. It is a form of self-regulation, in which the individual has to seek and acquire knowledge and skills to ensure their compliance is both legal and personally advantageous. Rather than the onus being on the government agency to collect taxes efficiently, the responsibility is transferred to the individual to be the agent of tax collection. Even if individuals seek out and trust an 'expert', such as a tax agent, to act in their best interests, they are still ultimately responsible for all outcomes.

One idea that can help frame this approach is the idea of 'technologies of self' (Triantafillou & Nielsen, 2001). This is a concept popularised in the work of Michael Foucault. He suggests that current liberal government rationality views social life as composed by numerous 'self-regulating spheres' (Helliwell & Hindess 1999, p. 1).

Although constructed to typify broad social interactions, the idea of technologies of self offers insights into how fiscal planning and security are being experienced by some Australians today. These systems of ‘technologies’, or ways of acting, necessitate and assume that individuals grasp and internalise particular forms of knowledge and power, as part of a socially constructed role of a ‘rational economic actor’ (Lemke, 2001). Thus, we are all assumed able and proficient in understanding tax laws, capable of taking appropriate action with a willingness to accept responsibility if something goes wrong.

However, something has gone wrong of late in Australia that has called into question the assumptions that technologies of self makes about social actors. This is the case of tax effective schemes in Australia, which have highlighted how the structural tensions implicit in the Coalition government’s discourses and policies make the practices of self-regulation a near impossibility as a form of effective fiscal governance.

### **Tax effective schemes in Australia: From middle Australia to the High Court**

Despite the goal of encouraging voluntary compliance amongst the Australian public, non-compliance is still rife. Non-compliance activity can involve individuals taking part in the cash economy (Australian Taxation Office, 1998). It can also take the form of ‘aggressive tax planning’, which involves the pursuit of legal—or in the Tax Office’s view, borderline legal—ways of avoiding or minimising tax, such as taking part in ‘tax effective investment schemes’ (‘schemes’ herein). These schemes involve complex structures and financing arrangements, such non-recourse loans. Here, an individual claims a tax rebate on the basis of an investment made, which in truth has only been made on paper. When the refund is received, the money is then invested retrospectively in a scheme, which offers long-term returns on this money. In recent time, the growth in such schemes across Australia has been surprising. Deductions claimed by taxpayers who were involved in schemes grew from \$A176 million in 1994 to over \$A1 billion in 1997 (Laurence, 2001; Senate Economics References Committee, 2002). Schemes, once the bastion of the wealthy, have now become available to middle income earners all across Australia, with an estimated 40 000 individuals involved by 2000. The number of schemes available has also proliferated, now estimated to be over 150. However, despite this growth, the schemes

market is open to abuse because it is predominantly self- regulated. Entrepreneurs who decide to devise and promote such a scheme have only to meet basic requirements for the provision of information to investors, also having to register with regulators. This does not make all tax effective investment schemes dubious but certainly the market is rife with arrangements that are borderline legal, run by people who are not investment or financing professionals. It is left to the layperson or their tax agent to decide which are legitimate and which are not.

During the 1980s and 1990s the Tax Office became increasingly concerned about the implications of schemes and examined their financing arrangements. In 1998, they concluded that many schemes contravened Part IVA of the *Income Tax Assessment Act* 1936 (see Pagone, 2000; 2001), the general anti-avoidance provisions of the Act, and were therefore illegal. As a result, the Tax Office announced it would be addressing this growth and the subsequent revenue lost through schemes. This included ordering all the involved taxpayers to pay back tax claimed as deductions, as well as an additional 50% fine, all which was subject to a 13.86% daily interest rate. These bills or ‘amended assessments’ thus averaged \$A75 000 per person, with a range from \$A20 000 to \$A200 000. The tax agents of the investing individuals are not culpable for any of the ‘tax mischief’ and little is known about their role in this case study<sup>2</sup>.

Rather than settle with the Tax Office, since late 2000 many of the taxpayers involved have refused to pay the Tax Office. Some have even publicly protested about the situation, bringing it to the attention of Federal politicians, national media and the Senate Economics Reference Committee. Since 2000, about 50% have settled or gone bankrupt, with many spurred on to pay in 2002 by the Tax Office winning a High Court case it had sponsored, thus setting a legal precedent.

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<sup>2</sup> However, there are two caveats to that point. First, it is known that one tax agent in the city of Kalgoorlie in Western Australia was receiving a commission from the scheme promoters for every taxpayer he signed up to a particular scheme. A few of his clients are now talking of suing him. The second point is that research into the tax agents’ role will be part of the Centre for Tax System Integrity’s future work plan.

Despite the appearance that some resolution has been reached in this issue, the situation merits further discussion. Never before in Australia have so many individuals refused for so long (up to 2 years) to comply with a legally binding administrative decision. This issue has brought into question the legitimacy of self-assessment as an effective means to collect revenue, in light of the expectations it places on individuals, as well as the legitimacy of the Tax Office and the government in terms of considering the welfare of Australian citizens.

### **Research methods**

As this issue is both fascinating from a tax and governance perspective, researchers at the Centre for Tax System Integrity, the Australian National University have collected both qualitative and quantitative data on the views and experiences of some taxpayers involved, as well as data from Tax Office staff. The qualitative information took the form of collecting written material about the case study, including parliamentary reports, newspaper cutting and information from a web-site run by effected taxpayers. Also, 30 semi-structured and in-depth interviews were carried out. These took place in the Goldfields region of Western Australia. This region was chosen as it had a high density of affected individuals and had also been a site of some of the public protests (see Hobson forthcoming for further discussion). These interviews were extensively analysed using an open coding technique based on Strauss (1987). Codes were cross-referenced by two researchers for triangulation. This paper offers a broad qualitative discussion of some of the findings. The analysis focuses specifically on how the policy and discourse contradictions and tensions outlined above have contributed significantly to the actions of taxpayers involved in schemes.

### **Understanding the context of investment: The impossibility of self-regulation?**

Much debate in the Australian media has focussed on whether taxpayers involved in schemes are ‘cheats’ or whether they were duped by clever marketing and seemingly unscrupulous scheme promoters. Both arguments have some credence. Investors have reported feelings that they are or were ‘paying too much tax’ and that the Australian tax

system was intrinsically unfair. Some appear to have been 'taken in' by the promoters selling these schemes, arguing that the promoters were not to blame for the debacle, the Tax Office was. However, there is another important reason why many got involved in the schemes. This was the perceived necessity to invest, to secure a liveable future for themselves and their families. This refrain appeared as an implicit part of all but two investors' views of their future and that of their family.

These points can be explained further by considering one area hard hit by schemes and amended assessments - the Goldfields region of Western Australia. This is an inland region covering thousands of square kilometres, dotted with small, isolated regional mining towns and some remote pastoral centres. The city of Kalgoorlie-Boulder is the largest centre with a population of about 32 000 and was the focus of research interviews. It is estimated that in the region over 1000 people were involved in schemes, a relatively high number for such a small population. Why is this the case?

In the Goldfields, many workers are in the top marginal personal income tax bracket in Australia. Although on paper these individuals appear well off, the structuring of tax and benefits meant they actually did not have a great deal of cash 'in hand'. Add together the gruelling hours spent underground in mines; high relative living costs in the area; the toll mining takes on health; falling job security; falling wages; decreasing investment in local infrastructures and services; and a series of local retrenchments, and it is easy to see how and why many fell into schemes. In the interviews, all stated they felt fearful about their future economic security both because of the nature of their profession and the direction of Australian economic policies. They quoted government comments on the need for self-sufficiency and taking responsibility for their family's welfare. They reiterated the public discourses that 'everyday Australians' should see investment as a norm. Thus, when they were offered the chance to invest in schemes that promised long-term returns, they believed they were doing what was expected of them. Now, much to their consternation and often confusion, all face great financial hardship that will not only affect them but their children.

How this can happen relates not to investment *per se* but rather to the nature of the schemes. More specifically, why did taxpayers get involved when there are so many other tried and tested investment opportunities out there? Tax Office officers interviewed suggested that as schemes appeared ‘too good to be true’, they obviously were. But how does a lay-person make this judgment? Here, the role of knowledge and trust becomes integral. These schemes were promoted as legal, with one having Queen’s Counsel endorsement. Just to make sure, investors interviewed sought independent legal advice from tax agents, financial advisers, the Australian Security and Investment Commission and even the Tax Office. In all cases, schemes were given a verbal ‘nod of approval’ by these authorities. Added to this, all investors interviewed had their tax returns completed by a professional agent, seeing this process as the final gatekeeper of legality and trusting that no professional would allow them to be involved in an illegal practice. Finally, few investors understanding how the Australian tax system works compounded this false sense of security. After lodging their returns, all received the substantial tax refunds they had applied for as part of the schemes. Not understanding how self-assessment worked, they took this as a signal of the schemes legitimacy (that is, the Tax Office has approved it). However, this is not how the ‘minimalist’ system works. First, all deductions are approved. Then, selective audits can be done up to six years after a deduction has been awarded. Thus, it was not surprisingly a profound shock to investors to receive an amended assessment up to three years after getting the tax refund.

### **From the view of the citizen: Policy, trust and knowledge**

None of the argument above aims to exonerate investors from their activities, or to pass judgment on whether these investors were trying to evade taxes. Normative judgments aside, this case study outlines some interesting points about how policies and discourses set up behavioural expectations of individuals as economic agents, which often stand in sharp contrast to the experiences and capabilities of citizens.

For one, the implicit assumption of self-assessment in Australia is that society consists ‘of individuals endowed with a capacity for autonomous, self-directing activity’ (Helliwell & Hindess, 1999, p. 11) founded in rational choice. And as such, self-assessment is not just

another innocuous administrative process. Rather, it becomes a ‘technology of the self’, where individuals have to become active and responsible citizens through self-management (Triantafillou & Nielsen, 2001). This is part of a broader citizen-consumer model of human agency deemed fundamental to neo-liberal perspectives but much criticised in the social sciences (Probyn, 1997). One of these key criticisms is the role knowledge plays, a point evident in this case study.

The Tax Office argues this issue is a case of tax law. Yet, if individuals are having to manage their own welfare in a complex environment where investment opportunities are growing exponentially, which of us has the economic ‘nous’ to make decisions that civil servants would see as sound (for example, Anderson, 1998)? Even when those interviewed did adopt the mantle of rational information seekers, the structural and legal boundaries of rigid administrations prevented the necessary access to information that is part of this ‘technology of self’ paradigm. For example, investors issued with amended assessments are entitled to access Tax Office files to review how the decisions about their case have been reached. Yet, when some tried to do so, they were told that much information was not available as it might breach another person’s privacy. The information that was available had to subject to an Tax Office extensive review before release to ensure it was covered by the *Administrative Decisions (Judicial Review) Act 1977* or the *Freedom of Information Act 1982* was released. This would cost. In one case, a single investor was quoted the price of \$A17 247.20 to access his case files, requiring a deposit payment of \$A4311.80 before any further action could be taken. On top of an assessment of over \$A50 000, this sum was neither realistic nor fair to the individual involved.

The idea of a ‘technologies of the self’ also has to accommodate the role of tax agents and other economic authorities here, and this implicates the complex issue of trust. Although this paper does not aim to enter into the extensive sociological debates taking place around this issue, there is no doubt that investors actively trusted that their tax agents work and that of other financial advisers questioned was undertaken with full knowledge and authority. It was not. In such a diverse market as that of personal investment, the experts themselves are not in possession of full knowledge. Or, they are proving very slow to act on their knowledge to the detriment of citizens who take their advice as definitive (for

example, the Tax Office has been much criticised for the timeliness of their rulings, as similar schemes have been in the public domain since the early 1980s). However, no matter what shape or purpose the individual's relationship with their tax agent takes, it is the individual alone who is legally responsible. Again, this returns us to the issue of how the complex economic knowledge required for the self-provisioning of ones economic welfare is attainable and digestible by the individual. In this climate, one has to acquire new knowledge to be able to evaluate the risks of investment and thus to take the role of a responsible citizen. Yet, as Beck points out:

Individuals are not expected to master these 'risky' opportunities without being able, owing to the complexity of modern society, to make the necessary decision on a well-founded and responsible basis, that is to say, considering the possible consequences (Beck, 1994, p. 8)

This begs the question of how individuals involved in these schemes were meant to assess their risk and know all the possible consequences. Having checked with financial experts and received the deduction from the Tax Office, where does the responsibility for knowing the full extent of the risk involved apply? This point has sparked fresh debate in Australia about whether financial experts and tax consultants can and should be seen as independent and able to meet clients expectations of the 'risk-free' ventures (Laurence, 2001) that citizens of nations with social security have come to expect in relation to their economic and social welfare provisioning.

### **Concluding remarks**

The Federal Government encourages people to make provision for their retirement, because with our ageing population & baby boomer syndrome there won't be enough social security funds to provide for older Australians by the time I am 65 to 70. When you try to provide for your own future through investment, so as not to be a burden on the Government, you are penalised by high taxation on investments, ATO crackdown on previously approved investments & now threatened charges to Superannuation. There is no incentive to provide for your own wellbeing and even less incentive to encourage you to be financially successful. Pride and a sense of responsibility prevents me from going on the dole, but you often to think 'is it

worth all the effort?' I work hard, long hours & am good at what I do. I earn my income. I resent being penalised for the effort I put in.<sup>3</sup>

Saunders argues that there needs to be more understanding of how people perceive and respond to the rapid change taking place in societies to take full advantage of any positive opportunities that arise and to provide people with 'the assurance and confidence to respond positively to it' (Saunders et al., 2000, p. 33). This paper supports Saunderson's point through discussing how some individuals in Australia perceived and responded to changes in policy approaches and discourses of the past decade or so. As the quote above encapsulates, there are emergent problems with individuals' abilities to provision for their own future welfare because of factors such as market regulation and knowledge. By focussing on calls for individuals to become more economically self-reliant and invest – and the resulting tax schemes debacle – this paper has aimed to highlight how 'assurance and confidence' deemed so necessary by Saunders is indeed lacking.

This dearth of citizen confidence in relation to economic security in Australia can be encapsulated in the following contradiction. An individual is willing or feels compelled to heed the messages of responsibility and self-sufficiency by making a long-term investment that is framed as legitimate. They are then responsible for the legality of the investment, which in this case reflects shortcomings in both expert systems and the markets, both of which are outside their realm of control and influence. As a result, rather than reaping the awards of investment, 40 000 households in Australia have been financially devastated, with many forced into bankruptcy.

As such, it appears that if Australia is to continue down its current path of introducing market mechanisms into welfare provisioning consideration must be given to these implicit tensions. Current policy approaches imply a 'turning inwards' of welfare provisioning from the community to the self and family. Whether this is a cause or outcome of the alleged movement in Australian society and politics from community to self-interest (Everingham, 2001) is debatable. Yet, a pressing question has to be how individuals can be

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<sup>3</sup> This is a quote taken verbatim from a research data source. As anonymity of informants was vital to this research, individuals are not identified in this paper.

at once self-interested economic actors whilst also being concerned about the ‘common good’ of society through being compliant taxpayers. In one sense, there is no choice as employed Australians have no option but to pay income tax and everyone pays GST. Yet, policy and discourses have subtle effects. In Australia, there is a slow but palpable ‘shaping [of] the norms, preferences and capacities of subjects’ (Triantafillou & Nielsen, 2001, p. 67, own brackets) as self-reliant welfare-providers. However, what appears missing are the support systems to help individuals manage these risks.

Indeed, if investment markets in Australia are to continue to become part of social security then there needs to be a reconsideration of how to provide economic security for individuals, and indeed what ‘security’ might mean into the future. For one, the notion that investment markets will regulate themselves, or that the publicity around schemes in Australia will deter others from investing is not born out in this case study. Rather, schemes continue to flourish. Tax Office data released in September 2001 suggests that deductions actually increased after the Tax Office’s 1998 announcements, standing at \$A1.5 billion in 1998-1999. The political response has been to call for more complex regulatory measures to be put in place. Some have requested the Tax Office’s ambit to be extended so they can prosecute promoters of these schemes. After the 2001 Federal election, the Coalition government announced the creation of the post of ‘inspector-general of taxation’. S/he will act as a new advocate for taxpayers with complaints about the Tax Commissioner’s activities even though a Taxation Ombudsman already exists. As such, it seems the inherent tension of free market simplicity thus creating substantive regulatory complexity continues undiminished.

What, then, is to be done to aid or stop individuals from getting caught in the tensions between self-reliance and complex regulatory practice, as outlined in this case study? The Taxation Ombudsman argues the Tax Office needs to create community confidence, responsiveness and transparency in its dealings (see Commonwealth Ombudsman, 2001). This will then deter individuals from becoming involved in illegal practices such as schemes. Yet, notions of community confidence are questionable when the economic policy climate eschews any notion of ‘community’ for that of the individual (see

Everingham, 2001 for discussion of how the concept of ‘community’ has itself been reframed).

This has important implications for policy directions. Individuals cannot self-regulate and also take responsibility for market regulation via vigilance of expert systems of knowledge. By the same token, governments cannot afford to push individuals towards self-provisioning and maintain the high tax burden required to fund the regulatory mechanisms necessary to monitor and control these self-provisioning markets. What then is to be done? This paper does not aim to offer simplistic solutions to complex problems. Nor does it proffer which direction – small, big or the ‘third way – government economic and welfare policies should take. Instead, it offers a way of looking at pressing social issues that departs from prevailing debates in Australia about whether investor’s caught up in schemes were trying to be economic free-riders or not. Instead, the political context, and the affective nature of policy discourses to individual perceptions and practices are noted. More research needs to be done in rapidly modernising contexts such as Australia to understand more about how individuals perceptions and practices are shifting in other policy domains. Also, we need to know the extent to which the ‘technologies of the self’ outlined in this paper are incongruent with the social contexts of individuals everyday practices and knowledge.

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