

UNIVERSAL BASIC INCOME: THE POTENTIAL IMPACT ON THE AUSTRALIAN TAX SYSTEM

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Due to changes in the labour force and the effects of growing income inequality, sustenance payment policies such as Universal Basic Income (UBI) are increasingly being looked to as possible solutions. Typically, tax law concerns the extraction of money from individuals to fund government spending, however the idea of a UBI provides a different way of conceptualising the transfer system. This paper examines if UBI legislation would be valid under the Australian Constitution and the potential impacts it may have on Australian tax law.

* This paper was awarded the 2017 Forsyth-Pose Scholarship by the Law Council of Australia. The author would like to thank Dr. Brett Freudenberg for his advice and guidance in the preparation of this paper. Any mistakes are attributable solely to the author.

I INTRODUCTION

Tax law is generally about extracting money from citizens to fund government spending. However, a recent idea is for the government to provide its citizens a tax-free sustenance payment (often referred to as a Basic Income or Universal Basic Income) with tax only applying to income earned above this payment. Thus, a Universal Basic Income ('UBI') is a different way of conceptualising the transfer system of tax. However, in the Australian context, is a UBI constitutionally possible and what would it mean for Australian tax law?

For the purposes of this paper, it is important to note that UBI policies can vary greatly in structure and substance;¹ making it impossible to totally analyse the specific impacts of a specific system without knowledge of its structure. As such this paper will focus on the general impacts that a UBI system would have on the Australian taxation system if the government has a constitutional power to disburse money in such a way as mandated by the UBI philosophy. The structure of this paper is as follows: firstly, a UBI will be explained, as well as the benefits it can provide. Then it will be determined if a UBI is constitutionally possible. This will then be followed by a consideration of what impact a UBI would have on the Australian tax system; including its administration. Other areas of further research will be outlined before the paper's conclusion.

It will be argued that a UBI should be constitutionally valid and that the introduction of a UBI would have benefits for the tax system; including simplification of legislation and administration.

II WHAT IS A UBI?

The idea of a UBI has existed in various forms for hundreds of years. It first appeared as a satirical critique of 16th century crime deterrent in Thomas Moore's *Utopia*² before gaining a pragmatic structure in the work of Johannes Vives.³ In the 20th century, various forms of UBI policies were debated at several times in the United States and much of Europe before being pushed to the fringes of political policy.⁴ UBI and other welfare concepts are again appearing in political and economic discussions as a response to deepening income inequality across the globe⁵ and changes to the labour force arising from technological advancements.⁶ Wealth inequality can impact in a number of areas; with research suggesting that inequality is a cause

¹ For example, contrast Milton Friedman's Negative Income-Tax proposal for households with incomes falling below a certain level with Charles Murray's proposal of an annual \$10,000 cheque to all citizens over the age of 21.

² Thomas More, *Utopia* (1st Latin edition, Louvain, 1516), English translation by Paul Turner, (Harmondsworth: Penguin Classics, 1963) 43-44.

³ Juan Luis Vives, *De Subventionem Pauperum, Sive de humanis necessitatibus*, English translation of part II by Alice Tobriner: *On the Assistance to the Poor*. Toronto & London: University of Toronto Press ("Renaissance Society of America Reprints"), 1998, 62p.

⁴ For a brief historical overview of Basic Income see <http://basicincome.org/basic-income/history/>.

⁵ Deborah Hardoon, Ricardo Fuentes-Nieva and Sophia Ayele, *An Economy for the 1%: How privilege and power in the economy drive extreme inequality and how this can be stopped* (Oxfam, 2016).

⁶ Richard Reeves, 'Time to take Basic Income seriously', Brookings Institution (online), 23 February 2016, <<https://www.brookings.edu/opinions/time-to-take-basic-income-seriously/>>.

of poor health⁷ and impacts on success and performance at school.⁸ This in turn impacts on the macroeconomic level; individuals that performed poorly at school are less likely to become higher-skilled workers and have lower productivity compared to their peers.⁹ This effectively traps the individual and their future family in the poverty cycle, perpetuating inequality.

These issues can also be linked to the impacts of technology on the labour force. Economists suggests that technological advances are one driving factor for increasing unemployment and joblessness rates.¹⁰ Automation significantly impacts routine intensive occupations such as manufacturing¹¹ forcing a shift of labour supply to other occupations less susceptible to automation. According to Frey and Osborne, this represents a hollowing out of the middle-income routine-based labour market; and a proliferation of high-income cognitive-based and low-income service-based markets.¹² Education plays a role here as the lower-skilled workers are unable to access higher-income cognitive occupations and either experience a reduction in, or a total loss of their income. This may lead economic instability due to a reliance on borrowing to maintain consumption by individuals that have experienced income loss or reduction.¹³

A UBI may be able to address some of these issues. For example, several trial UBI programs in India showed positive impacts on health and labour participation with the most significant impacts occurring within traditionally disadvantaged classes such as women and the disabled.¹⁴ A trial in Kenya found citizens receiving automatic payments had lower stress, improved psychological health, and lowered spending on 'temptation goods' such as alcohol and tobacco.¹⁵ In Iran, a subsidy program beginning in 2010 has resulted in a sharp decline in the

⁷ Martin Karlsson, Therese Nilsson, Carl Hampus Lyttkens and George Leeson, 'Income Inequality and Health: Importance of a Cross-Country Perspective' (2009) *Social Science and Medicine* 70(6) 875-885 <<http://www.sciencedirect.com/science/article/pii/S0277953609007655>>.

⁸ It is important to note that investment in a child's education is not purely monetarily driven but can also be influenced by parental time and attention investment. Families that can invest more time and attention are typically more affluent and comprised of two biological parents whereas less involved families were typically lower income, single-parent households: Robert Bradley, Robert Corwyn, Harriet McAadoo, and Cynthia Garcia Coll, "The home environments of children in the United States Part 1: Variations by age, ethnicity, and poverty status," (2001) *Child Development* 72 1844-1867; Jonathan Guryan, Erik Hurst, and Melissa Kearney, "Parental education and parental time with children," (2008) *Journal of Economic Perspectives* 22.

⁹ Anne Holmes, 'Some economic effects of inequality' (Research Paper, Parliamentary Library, Parliament of Australia 2013).

¹⁰ Erik Brynjolfsson and Andrew McAfee, *Race against the machine* (Digital Frontier Press, 2011).

¹¹ Kerwin Charles, Erik Hurst and Matthew Notowidigdo, 'Manufacturing decline, housing booms, and non-employment' (Technical Report/ Working Paper No. 18949, National Bureau of Economic Research, 2013) and N. Jaimovich, Siu H.E, 'The trend is the cycle: job polarization and jobless recoveries' (Technical Report/ Working Paper No. 18334, National Bureau of Economic Research, 2012).

¹² Carl Frey and Michael Osborne, 'The Future of Employment: how susceptible are jobs to computerisation' (2017) *Technological Forecasting and Social Change* 114.

¹³ Michael Kumhof and Romain Ranciere, 'Inequality, Leverage and Crises (Working Paper no WP/10/286, International Monetary Fund, November 2010) 3 <<http://www.imf.org/external/pubs/ft/wp/2010/wp10268.pdf>>.

¹⁴ Guy Standing, 'India's experiment in basic income grants' (2013) 3(5) *International Sociological Society Global Dialogue*.

¹⁵ Johannes Haushofer and Jeremy Shapiro, 'Household Response to Income Changes: Evidence from an Unconditional Cash Transfer Program in Kenya' (2013) *Princeton Working Paper* 36.

percentage of individuals living below the poverty line¹⁶ as well as wealth inequality.¹⁷ These trials also showed increases in spending on education and business ventures.

In contrast, a basic income experiment in the Canadian province of Manitoba (colloquially known as the ‘Mincome’) in the 1970’s generated a 11.3 percentage point reduction in labour market participation amongst program participant.¹⁸ This is somewhat explainable due to social interaction effects¹⁹ such as pregnant women, or mothers with young children taking the opportunity to take a break from the workforce or individuals nearing retirement age taking an early retirement, but is still a significant consideration for any future policy. The contrast in results from the above could be attributed to the Mincome being the first guaranteed income experiments that did not feature a recipient group comprised solely of impoverished or poor individuals.²⁰ At this time the Mincome is the only extended and expansive study on guaranteed incomes in Western economies and is thus the most informative for policy makers in Western countries. The results of the Finland Basic Income experiment will further inform the effects of guaranteed income programs in the West.

Proponents also argue that UBI offers solutions for several of the ‘issues’ often attributed to the current welfare system. For example, UBI disincentives not working by eliminating the benefits of receiving welfare payments as opposed to the benefits of working. This in turn can reduce welfare program expenditure by a government and avoid the poverty trap of traditional welfare systems.²¹ Having a UBI system in place may also provide an economic stimulus as citizens would have more disposable income due to basic needs expenditure being met by the UBI.²²

¹⁶ Djavad Salehi-Isfahani, and Mohammad Mostafavi-Dehzoeei, ‘Cash Transfers and Labour Supply: Evidence From a Large-Scale Program in Iran’, (Working Paper No. 1090, 2017, Economic Research Forum, May 2017) <<http://erf.org.eg/publications/cash-transfers-and-labor-supply-evidence-from-a-large-scale-program-in-iran/>>.

¹⁷ Pouneh Soleimaninejadian, and Chengyu Yang, ‘Effects of Subsidy Reform on Consumption and Income Inequalities in Iran’ (2016) 10(12) *International Journal of Economics and Management Engineering*.

¹⁸ David Calnitsky and Jonathan Latner, ‘Basic Income in a Small Town: Understanding the Elusive Effects on Work’ (2017) *Social Problems*; Wayne Simpson, Greg Mason and Ryan Godwin, ‘The Manitoba Basic Annual Income Experiment: Lessons Learned 40 Years Later’ (2017) 43(1) *Canadian Public Policy* 85.

¹⁹ Calnitsky and Latner estimate about 30% of the 11.3 percentage decrease can be explained by these effects, see Calnitsky and Latner above n 18.

²⁰ This has been a criticism of unconditional welfare experiments as early as the late 1960’s where economist Hyman Minsky noted that many unconditional welfare experiments either exclusively or predominately involved very poor or impoverished individuals and families and thus did not give an accurate representation of what impact an unconditional payment would have on the population at large. These types of experiments could also produce overly optimistic or artificially inflated results due to the ‘catch-up effect’ associated with sudden increases of capital to very poor individuals as opposed to the provision of capital to already financially stable individuals. See: Hyman Minsky, ‘The Macroeconomics of a Negative Income Tax’ (1969) <http://digitalcommons.bard.edu/cgi/viewcontent.cgi?article=1428&hx0026;context=hm_archive>

²¹ Wolfgang Muller, *Does an unconditional basic income provide higher effectiveness and efficiency? An Analysis of the social security systems of Germany, Sweden and the United Kingdom* (Anchor Academic Publishing, 2013).

²² Erik Olin Wright, ‘Basic Income as a Socialist Project’ (paper presented at US-BIG Congress, University of Wisconsin, 4–6 March 2005).

However, UBI is not without its criticism, primarily the methods of funding a UBI program²³ and the possible economic ramifications.²⁴

Before beginning any analysis, it is important to properly understand what UBI is. As the form and substance of a UBI can vary greatly depending upon the proposed system, for the purposes of this paper, UBI will be referred to in a broad and general sense. Generally, as a proposal, a UBI is a ‘tax-free subsistence income [disbursed] to every adult citizen, whether he or she is employed or unemployed, wealthy or poor, healthy or sick, active or idle, and...young or old, with basic incomes [including] children replacing existing child benefits’.²⁵ From this definition we can see that a UBI would act in a similar way to most welfare payments less means testing or other qualifying criteria such as age or veteran status. Consequently, it can be said that a UBI acts in reverse of the normal understanding of tax; as instead of extracting money, the government is providing funds. Of course, a government would need to be able to fund a UBI; which would likely be from tax revenue.

At present, only trial UBI programs for research or testing purposes have been implemented.²⁶ Most of these trial programs have involved automatic monthly or weekly payments to the recipients who were then left to spend the money as they wished. The only established and on-going cash transfer program in the UBI mould is the Alaskan Permanent Fund in the American State of Alaska.²⁷ The Fund is a constitutionally established permanent fund administered by a state-owned board providing an annual payment to Alaskan residents that qualify under the Fund’s eligibility criteria.²⁸ The Bolsa Familia program of Brazil²⁹ is also suggested to be a UBI type program, however this program is more similar to already existing traditional welfare programs assisting poor families with children. The effects of the Bolsa Familia do however emphasise the highly positive impacts a cash transfer program can have on economically disadvantaged families.³⁰

²³ Olivia Goldhill, ‘We talked to five experts about what it would take to actually institute Universal Basic Income’, *Quartz* (online), 6 February 2016 per Kevin Milligan <<https://qz.com/611644/we-talked-to-five-experts-about-what-it-would-take-to-actually-institute-universal-basic-income/>> and Charles Sampford, ‘Paying for Basic Income’ in Jennifer Mays, Greg Marston and John Tomlinson (eds.), *Basic Income in Australia and New Zealand: Perspective from the Neoliberal Frontier* (Palgrave Macmillan, 2016) 133–156 Note Professor Sampford’s chapter explores potential methods of funding but also details the criticisms and issues of funding a UBI.

²⁴ For example, Minsky argued that even when a guaranteed income program ‘balances’ the policy will still have an inflationary effect on the economy, see above n 20, pp 4 - 5.

²⁵ Robert Van Der Veen, ‘Real Freedom versus Reciprocity: Competing Views on the Justice of Unconditional Basic Income’ (1998) *Political Studies* 141.

²⁶ Uganda, Finland, Canada, the Netherlands and Kenya have all implemented trial programs in 2017.

²⁷ *Alaska State Constitution*, Article 9, Section 15.

²⁸ To qualify an individual must be: a resident of Alaska, intending to remain in the state indefinitely, not claimed residency in another state or country or received a benefit from another state or country, been physically present in Alaska for at least 72 consecutive hours during the calendar year and was not; sentenced as a result of a felony conviction or incarcerated during the relevant calendar year Alaska Department of Revenue, Permanent Fund Division, *Eligibility Requirements* (2017) <<http://pfd.alaska.gov/Eligibility/Requirements>>.

²⁹ The Economist, ‘Happy Families’, *The Economist* (online), 7 February 2008 <<http://www.economist.com/node/10650663>>.

³⁰ Deborah Wentzel, ‘Bolsa Familia: Brazil’s Quiet Revolution’, *The World Bank* (online), 4 November 2013 <<http://www.worldbank.org/en/news/opinion/2013/11/04/bolsa-familia-Brazil-quiet-revolution>>.

Many Western nations have begun either debating the practicalities of, or preparing to introduce UBI programs.³¹ In Australia, a UBI concept was recommended during the 1970's through the Henderson Inquiry into Poverty.³² More recently, there have been several calls from both the academic³³ and political spheres,³⁴ for the introduction of a BI or UBI in some form. The introduction of a UBI may also be able to address the concerns about inequities within the Australian tax system.³⁵ With arguments for the introduction of a UBI in Australia, it is pertinent to ask that while the Federal Government has a power to tax under the constitution, does this extend to having the power to provide a UBI?

III CONSTITUTIONAL CONSIDERATIONS

The powers of the Federal Government are governed by the Australian Constitution, which provides powers as well as limitations. For the potential implementation of a UBI there are a number of provisions that may be relevant. The Constitution provides the Commonwealth the power to make laws in respect to taxation: but so as not to discriminate between States or parts of States.³⁶ Revenues collected under the s 51 taxation powers formed part of the Consolidated Revenue Fund (CRF). These funds may then be disbursed by way of s 83 which provides that CRF funds may only be withdrawn under appropriation made by law. The appropriation of money under law is provided by s 81 which allows the federal government to appropriate money out of the CRF 'for the purposes of the Commonwealth'. The s 83 appropriation power is often referred to as the 'spending power'.³⁷ The limitations of the 'spending power' are uncertain³⁸

³¹ Most notably Finland is currently concluding a UBI experiment. The experiment was originally slated to run for two years with an option for extension, however the extension was not granted with the Finnish Government wishing to explore alternative options such as a universal credit system due to the expense and public 'discomfort' associated with the experiment. Elsewhere, the Work and Pensions Committee of the UK Parliament conducted oral hearings of UBI evidence, Sweden held an ultimately unsuccessful referendum on UBI introduction in 2016, the provincial government of Ontario, Canada has stated it has concluded the 'enrolment' phase for a study across four towns, American Company Y Combinator launched a small pilot program in the city of Oakland.

³² The Inquiry's suggestion was a guaranteed minimum income that was made in the context of supporting access to work: Australian Government, Commission of Inquiry into Poverty, *Poverty in Australia, Interim Report* (1974) <<https://digitised-collections.unimelb.edu.au/handle/11343/62381>>.

³³ Charles Sampford, 'Reconceiving the good life: the key to sustainable globalisation' (Paper presented at The Good Life Conference, Griffith University, Brisbane Australia 12 February 2009) <<https://eprints.qut.edu.au/43380/1/Sampford-Reconceiving-the-Good-Life-HL.pdf>>. Professor Sampford is leading author on BI/UBI in Australia but has not considered whether a UBI or BI would be constitutionally valid.

³⁴ The leader of the Greens Party the Hon, Richard Di Natale has proposed a UBI, amongst other things such as a 'people's bank', as part of a large-scale reform of the Australian welfare system, see Adam Creighton, 'Greens' income plan to cost extra \$254bn a year', *The Australian* (online) 5 April 2018 <<https://www.theaustralian.com.au/national-affairs/treasury/greens-income-plan-to-cost-extra-254bn-a-year/news-story/7e330391575e9f9787e0d0293c426127>>.

³⁵ An example of these concerns is the Hon, Bill Shorten citing issues of negative gearing, trusts, CGT and tax rates for Australian taxpayers; Katherine Murray, 'Bill Shorten says inequality threatens Australia's economy and social cohesion', *The Guardian Australia* (online) 21 July 2017 <<https://www.theguardian.com/australia-news/2017/jul/20/bill-shorten-says-inequality-threatens-australias-economy-and-social-cohesion>>.

³⁶ *Australian Constitution* (Cth) 1900 s 51(ii).

³⁷ Cheryl Saunders, 'The Development of the Commonwealth Spending Power' (1978) 11 Melbourne University Law Review 369.

³⁸ *Ibid.*

with three prior cases — the *Pharmaceutical Benefits*,³⁹ the *AAP Case*⁴⁰ and *Davis v Commonwealth*⁴¹ — examining the power, but not providing a clear indication of the scope or limitations of the power. The 2009 case of *Pape v Commissioner of Taxation*⁴² (*Pape*) did however address the uncertainty of the ‘spending’, the executive powers as well as the power to tax. It is argued that the case of *Pape* is of particular relevance to a UBI.

Pape concerned the *Tax Bonus for Working Australians Act (Bonus Act)*,⁴³ which was passed in 2009 in response to the Global Financial Crisis (GFC). The *Bonus Act* created a tax bonus payment entitlement of \$250, \$600 or \$900 for a limited class of individual Australian resident taxpayers who had lodged an income tax return for 2007–08.⁴⁴ Membership of the class was defined by reference to a person’s adjusted tax liability (which had to be greater than nil) and taxable income (which had to be less than or equal to \$100 000).⁴⁵ The sum that would be received would be determined by reference to an individual’s taxable income for the 2007-08 income year.⁴⁶ Generally, the *Bonus Act* provided for payments to be made to (rather than extracted from) taxpayers, and for this reason shares some similarity to a UBI system.

Mr. Pape disputed the validity of the *Bonus Act*’s tax bonus disbursement on the basis that the bonus was not a proper exercise of the Commonwealth’s taxation powers but was instead a gift, which the Commonwealth does not have to power to appropriate CRF funds for under ss 81 and 83.⁴⁷ In response, the Commonwealth relied on six grounds to support the *Bonus Act*’s validity with the first three grounds forming the primary basis of the argument:

- (a) legislative power, founded in s 81 of the Constitution, to authorise the spending of appropriated funds, combined with s 51(xxxix);
- (b) the executive power of s 61 read with ss 51(xxxix), 81 and 83;
- (c) an implied ‘nationhood’ power;
- (d) the trade and commerce power (s 51(i));
- (e) the taxation power (s 51(ii)); or
- (f) the external affairs power (s 51(xxix)).

The Court’s analysis and decision primarily concerned grounds (a) and (b) although the taxation power was also discussed. Ground (a) was unanimously rejected on the basis that s 81 did not confer a power to spend only a power to appropriate. The majority (French CJ, Gummow, Crennan and Bell JJ) found that the validity of the *Bonus Act* could be upheld under ground (b). In dissent, Hayne and Kiefel JJ held that the *Bonus Act* was invalid but could be read down to fall within s 51(ii) — the basis of ground (e) — whilst Heydon J held the *Bonus Act* was entirely invalid. From this decision, we can see that the principles contained in grounds (a) and (b) are

³⁹ *Attorney-General (Vic) ex rel Dale v Commonwealth* (1945) 71 CLR 237.

⁴⁰ *Victoria v Commonwealth and Hayden* (1975) 134 CLR 338.

⁴¹ *Davis v Commonwealth* (1988) 166 CLR 79.

⁴² *Pape v Commissioner of Taxation* (2009) 238 CLR 1.

⁴³ *Tax Bonus for Working Australians Act* (No 2) 2009 (Cth).

⁴⁴ *Ibid* ss 5, 6. An Australian resident for the purposes of the Act holds the same meaning as s 6(1) Income Tax Assessment Act 1936 (Cth): see the Act s 4(1); Income Tax Assessment Act 1997 (Cth) s 995.1(1).

⁴⁵ *Tax Bonus Act* s 5(1)(c), (d).

⁴⁶ *Ibid* s 6.

⁴⁷ This section states that no money can be withdrawn from the Treasury of the Commonwealth except under appropriation made by law.

the most important for constructing constitutional validity for any potential UBI legislation. The Court's analysis of ground (e) is also relevant for characterising the relationship between the payment of money and extraction of money. As such, these grounds will be examined individually to fully understand the reasoning of the court. Following the examination, the reasoning will be applied to a potential *UBI Act*.

A. *Ground A*

The analysis of ground (a) can be divided into two sub-issues; 1) does s 81 provide a substantive spending power, and 2) did the *Bonus Act* satisfy the 'for the purposes of the Commonwealth' requirement of s 81.

In their analysis of the first sub-issue, the Court was of the view that neither the section itself, nor the chapter it appears in contained words that concerned or expressed a conferral of power to the executive,⁴⁸ but instead served as regulating provisions or stipulations on the methods of government spending.⁴⁹ In coming to this interpretation, the Court favourably cited previous characterisations of appropriations such as; '[a] provisional setting apart',⁵⁰ 'earmarking of'⁵¹ or '[a means of] legally segregating [money] from the general mass'⁵² of funds in the CRF as a basis of jurisprudence to emphasise the limitations of the scope of appropriation. This finding is significant as it overturns the assertion that s 81 is the source of a 'spending power'.⁵³

With the characterisation of s 81 as a power to set aside money rather than spend, the process of government spending effectively becomes a two-part process: 1) the setting aside of money for a purpose (an appropriation under s 81); and 2) a legislative or executive action to spend the appropriated funds to achieve a purpose. As such, an appropriation under s 81 is by itself insufficient to support the spending of money. By way of this characterisation, the second part of the ground (a) submission — that s 51(xxxix) in conjunction with s 81 would validate the spending of money — is also defeated as s 51(xxxix) allows the Commonwealth to act on matters incidental to an enumerated head of power. As s 81 does not confer a head of power to spend, s 51(xxxix) cannot provide authority to act.

The second sub-issue concerned the phrase 'for the purposes of the Commonwealth' as contained in s 81. This phrase was seen as a potential limiting factor of the power to spend. From the prior cases of *Pharmaceutical Benefits* and the *AAP Case*, two interpretations

⁴⁸ *Pape* at [606] per Heydon J.

⁴⁹ *Ibid* [80] per French CJ and [291] per Hayne and Kiefel JJ.

⁵⁰ *New South Wales v Commonwealth* (1908) 7 CLR 179 at [191] per Griffith CJ, cited at [78] per French CJ, [292] per Hayne and Kiefel JJ and [602] per Heydon J.

⁵¹ *AAP Case* (1975) 134 CLR 338 at [411] per Jacobs J, cited at [177] per Gummow, Crennan and Bell JJ, [177] per Hayne and Kiefel JJ and [602] per Heydon J.

⁵² *New South Wales v Commonwealth* (1908) 7 CLR 179 at [200] per Isaacs J cited at [79] per French CJ, [176] per Gummow, Crennan and Bell JJ, [292] per Hayne and Kiefel JJ and [602] per Heydon J.

⁵³ There are some similarities to the finding of Mason J in the *AAP Case*. Mason J also found that appropriation of CRF funds by the legislature should be distinguished from the actual spending of appropriated funds by the executive. The views of the Court in *Pape* and that of Mason J in *AAP* diverged at this point as Mason J seemed to be of the view that the payment of appropriated money to third parties did not require any further power to be valid (unless the spending of the money involved action by a Commonwealth actor) which the Court rejected.

emerged: 1) there are no limitations on what purposes for which an appropriation can be made;⁵⁴ and 2) an appropriation will be valid if the purpose to which it is directed may be the subject of a valid law.⁵⁵ Mr. Pape submitted that the second, narrower appropriation should be preferred. The majority however preferred a broader interpretation for varying reasons.⁵⁶ From this, it can be inferred that an appropriation will be valid so long as it relates to a constitutionally valid law.⁵⁷ Consequently, a valid power needs to exist.

B. *Ground B*

As s 81 was held not to confer a power making it insufficient to support the validity of the *Bonus Act* by itself, the Court turned to the second ground. The majority (French CJ, Gummow, Crennan and Bell JJ) held that the bonus provision could be supported through the executive power in s 61, along with the express incidental power in s 51(xxxix). The executive power of s 61 authorised the expenditure of appropriated funds, whilst the incidental power of s 51(xxxix) would support the remainder of the act as it was incidental to the expenditure of funds. Whilst the majority reached the same conclusion, the reasoning of French CJ and Gummow, Crennan and Bell JJ differed.

Gummow, Crennan and Bell JJ applied the validity of executive action test established in the case of *Davis v Commonwealth*⁵⁸: ‘is the impugned action an enterprise or activity that is peculiarly adapted to the government of a nation and which cannot otherwise be carried on for the benefit of the nation?’.⁵⁹ Their Honours answered this test by identifying ‘[a] need for an immediate fiscal stimulus to the national economy’⁶⁰ that was of such severity to amount to a ‘global financial and economic crisis’.⁶¹ Their Honours then went on to conclude that as the GFC affected Australia as a nation, an appropriate response could be likened ‘to determining a state of emergency in circumstances of a natural disaster’⁶² which would engage the executive power.

French CJ agreed with Gummow, Crennan and Bell JJ that ‘[t]he executive power extends ... to short-term fiscal measures to meet adverse economic conditions affecting the nation as a whole ...’,⁶³ however he did not support the likening of the GFC to a natural disaster nor the

⁵⁴ *Pharmaceutical Benefits Case* (1945) 71 CLR 237 at [254] - [256] per Latham CJ and [273] - [274] per McTiernan J and *AAP Case* (1975) 134 CLR 338 at [396] per Mason J.

⁵⁵ *AAP Case* (1975) 134 CLR 338 at [362] per Barwick CJ and [375] per Gibbs J and *Pharmaceutical Benefits Case* (1945) 71 CLR 237 at [269] per Dixon J.

⁵⁶ Gummow, Crennan and Bell JJ likened ‘purposes of the Commonwealth’ to ‘public service’ in the UK which does not place limitations of the purposes which the parliament can make an appropriation for, French CJ concluded that the ‘purposes of the Commonwealth’ are the purposes authorised by the *Constitution* or statutes made under the *Constitution*, Heydon J concluded that the power to appropriate is limited to purposes of valid enactments under the *Constitution*.

⁵⁷ *Pape* (2009) 238 CLR 1 at [75] per French CJ and [608] per Heydon J.

⁵⁸ *Davis v Commonwealth* (1988) 166 CLR 79 at [111] per Brennan J formulating the principle outlined by Mason J in the *AAP Case* (1975) 134 CLR 338 at [397].

⁵⁹ Test cited with approval in *Pape* at [228].

⁶⁰ *Pape* (2009) 238 CLR 1 at [232].

⁶¹ *Ibid* at [229] and [233].

⁶² *Ibid* at [233].

⁶³ *Pape* (2009) 238 CLR 1 at [133].

assertion that s 61 explicitly extended a power to respond to national emergencies.⁶⁴ French CJ also did not use the executive action test of *Davis* as Gummow, Crennan and Bell JJ did, but instead stated that, under established authority, the test was; whether it was peculiarly within the capacity and resources of the Commonwealth and affected the nation as a whole.

French CJ went on to conclude that the executive power of s 61 encompassed (i) a power to engage in activities peculiarly adapted to the position of a national polity; and (ii) a power to manage the national economy. On this basis, s 61 would cover short-term fiscal measures addressing economic conditions affecting the nation. As only the Commonwealth had the resources to respond to the financial crisis, the express incidental power of 51(xxxix) would give authorisation to the *Bonus Act*. This reasoning could be applied to a UBI on the grounds of the impacts of income inequality and labour force changes on the national economy. This will be discussed after the analysis.

C. Ground E

Ground (e) did not receive a significant amount of analysis compared to grounds (a) and (b), however the Court's analysis of the *Bonus Act* as a tax rebate/refund is significant. Prior to *Pape*, the prospect that legislation that provided payments to taxpayers was a law with respect to taxation had been examined in the case of *Mutual Pools*.⁶⁵ *Mutual Pools* concerned the *Swimming Pools Refund Act (Refund Act)*⁶⁶ that had been enacted to refund the revenue of a sales tax that had been ruled invalid prior to the litigation.⁶⁷ The *Refund Act* provided the refund by way of s 4 which also imposed several limitations on who could receive the refund.

The Commonwealth sought to characterise the *Bonus Act* as a rebate or refund of tax by drawing an analogy with the *Refund Act*. Several differences between the acts existed: the amount payable under the *Bonus Act* was determined by recipients' taxable incomes as opposed to income tax liabilities under the *Refund Act*; and recipients were defined by several criteria, only one of which was that they had paid income tax. The Court rejected this analogy; Gummow, Crennan and Bell JJ held the *Bonus Act* was not a rebate nor a refund as the amounts received were not related to tax paid in the relevant income year.⁶⁸ Hayne and Kiefel JJ reached a similar conclusion, stating '[there needs to be a] direct connection ... between the amount of the bonus [received] and the amount that has been paid in tax'.⁶⁹ Consequently, this 'nexus' between paying tax and receiving an entitlement is critical for the tax power. In relation to a UBI, it is argued that it cannot be characterised as a tax refund or rebate as there would likely not be a sufficient and direct connection to the amounts received and tax paid (if any in some cases). For this reason, it is argued that the tax power alone would not be sufficient to support a UBI.

⁶⁴ *Ibid* at [9].

⁶⁵ *Mutual Pools & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155.

⁶⁶ *Swimming Pools Tax Refund Act 1992* (Cth).

⁶⁷ The tax was ruled invalid under s 55 of the *Constitution* as the tax was determined to not be a sales tax, but to be a tax on land as the swimming pools, which the act concerned, were constructed on site and thus deemed to form part of the land. As a sales tax is technically an excise, the tax was invalid as under s 55, laws imposing duties of excise shall deal with duties of excise only and the act imposed a tax: *Mutual Pools & Staff Pty Ltd v Commonwealth* (1992) 173 CLR 450.

⁶⁸ *Pape* (2009) 238 CLR 1 at [254]– [255].

⁶⁹ *Pape* (2009) 238 CLR 1 at [387].

The reasoning of *Mutual Pools* contained analysis of the taxation power that may be significant for the purposes of constructing a valid *UBI Act*. Under the *Refund Act*, pool builders could claim a refund of the tax paid provided they declared to the Commissioner for Taxation whether the tax was passed on wholly or in part to a pool purchaser. If a purchaser had paid an increased price, but not received a refund adjustment from the pool builder, the Commonwealth would pay the refund direct to the purchaser. When the Commissioner declined to pay a refund, the plaintiff — a pool builder — challenged the validity of the *Refund Act* on the basis of that under s 51(xxxi) the denial of the refund was an acquisition of property and s 55 which was abandoned in argument. The Court unanimously upheld the *Refund Act* rejecting this argument on the basis that the *Refund Act* was a law with respect to taxation and therefore not a law for the purposes of s 51 (xxxii).⁷⁰ It was concluded that the *Bonus Act* was valid under s 51(ii) and (xxxix) in conjunction with s 61. This decision is similar to the decision in *Pape* in which validity for the *Bonus Act* was constructed through ss 51(xxxix) and 61; the provision was held to be a law concerning a matter incidental to the execution of the *Constitution*, the enforcement of taxation.⁷¹

D. Constructing UBI Validity

As such, from the decision of *Pape*; it is apparent that the power to appropriate does not confer a power to spend, either explicitly or incidentally, merely the power to set aside funds from the CRF for purposes specified by valid laws. As such, s 81 cannot be relied upon to validate spending for any purposes, and the Commonwealth would have to rely on other powers to establish validity. Whilst it does appear that the executive power under s 61 can be relied upon, the Commonwealth would have to provide sufficient grounds for UBI legislation to come under this head of powers. As shown by *Pape*, the power of s 51(xxxix) was engaged due to the impacts of the GFC on the national economy. A UBI may be justified on a similar basis due to the impacts of labour market changes and income inequality on the national economy. These impacts could be likened to those experienced during the GFC as income inequality, as mentioned in section II, can lead to economic instability which could also be considered as a precursor to a financial crisis.⁷² Income inequality may also lead to slowing or breaking effects on the economy⁷³ which can also drive lower income households towards borrowing as a means to finance their consumption. With these economic considerations, it may be possible to construct an argument that draws an analogy to the *Bonus Act* on the basis of a need to manage the national economy to prevent financial crisis.

Whilst *Pape* does give an indication of the constitutional validity of short-term fiscal policy, uncertainty regarding long-term policy such as that that would be created by a *UBI Act* still exists. It appears that the *UBI Act* could also not be found valid under the taxation power of s 51(ii) as there would likely not be a sufficient or direct connection to the amounts received and tax paid. Alternatively, if a nationwide UBI cannot be found valid, a narrower scope UBI or BI for towns or regions that have been impacted by economic downturn⁷⁴ like the model proposed

⁷⁰ *Mutual Pools & Staff Pty Ltd v Commonwealth* (1994) 179 CLR 155 at [12] per Mason CJ.

⁷¹ *Ibid* at [14].

⁷² Michael Kumhof and Romain Ranciere, 'Inequality, Leverage and Crises (Working Paper no WP/10/286, International Monetary Fund, November 2010) 3. <<http://www.imf.org/external/pubs/ft/wp/2010/wp10268.pdf>>.

⁷³ 'How inequality affects growth' *The Economist* (online) 15 June 2015 <<https://www.economist.com/blogs/economist-explains/2015/06/economist-explains-11>>.

⁷⁴ Examples of these areas include: Yabulu in Northern Queensland following the closure of the Queensland Nickel refinery, mining towns in Perth and areas affected by the closure of car manufacturing plants such as Altona, Broadmeadows, Elizabeth and Geelong.

in Ontario, Canada.⁷⁵ As this model is more focused, and narrow in membership scope, it can be more likened to current welfare legislation than a more general UBI.⁷⁶ Due to the similarity of UBI to other welfare provisions, it can be said that a UBI Act would come under the same head of power.⁷⁷ A second alternative method of introducing a UBI is through constitutional amendment, similar to the Alaskan Permanent Fund. However, this is particularly unlikely considering the historical lack of success constitutional amendments have experienced in Australia.⁷⁸

Whilst there is some uncertainty around the constitutional validity of a UBI, it is argued that a UBI Act would be valid pursuant to ss 61 and 51(xxxix) and potentially s 51(xxiiiA). If this is the case; what impact could a UBI have on Australia's tax system; including legislation and its administration? This is addressed next.

IV IMPACTS ON TAX LEGISLATION

The existing taxation legislation has been criticised as overly complex and rigid in application.⁷⁹ These criticisms have come from tax professionals,⁸⁰ the legislature⁸¹ and the judiciary.⁸² Perhaps one of the most descriptive criticisms of the tax law was delivered by Justice Hill where he described a provision he was ruling on as being drafted “with such obscurity that even those used to interpret the utterances of the Delphic oracle might falter in seeking to elicit a sensible meaning from its terms”.⁸³ The tax law has also been likened to a ‘jungle’ that only specialist could navigate.⁸⁴ Approximately 72.4 per cent of Australians tax filers lodged their tax return through a tax agent⁸⁵ which is one of the highest percentages of usage in the world and could support assertions of the complexity of the existing legislation.⁸⁶ McKercher also

⁷⁵ Rebecca Fortin, ‘Canada is betting on a universal basic income to help cities gutted by manufacturing job loss’, *Quartz* (online) 20 February 2017 <<https://qz.com/914247/canada-is-betting-on-a-universal-basic-income-to-help-cities-gutted-by-manufacturing-job-loss/>> and Hugh D Segal, ‘Finding a Better Way: A Basic Income Pilot Project for Ontario’ <<https://www.ontario.ca/page/finding-better-way-basic-income-pilot-project-ontario>>.

⁷⁶ This may however raise an issue of non-discrimination between states, Gummow, Crennan and Bell JJ suggested this to be a significant consideration, see *Pape* (2009) 238 CLR 1 at [237] - [238].

⁷⁷ The power to make laws in respect to welfare is provided by s 51(xxiiiA).

⁷⁸ Benefits of a fund include; extra legal protections for recipient's due the fund being administered by a board of appointed trustees and more efficient policy changes due to it's being administered by a dedicated board.

⁷⁹ See for example, *AAT hearing of Trustee for the Estate of EV Duke v FCT* (2002) 50 ATR 1060, quoted in David Wallis, ‘The tax complexity crisis’ (2006) 35 *Australian Taxation Review* 274, 278.

⁸⁰ Colin Brinsden, Australian tax system complex: survey, *Sydney Morning Herald* (online) 19 June 2008 <<http://www.smh.com.au/national/australian-tax-system-complex-survey-20080619-2tgj.html>>.

⁸¹ Examples include: Commonwealth, *Parliamentary Debates*, House of Representatives, 9 October 2006, 111 (Hon A Cadman MP) and Commonwealth, *Parliamentary Debates*, House of Representatives, 22 June 2006, 1 (Hon P Costello MP, Treasurer).

⁸² *FCT v Scully* [2000] HCA 6, 43 per Kirby J.

⁸³ *FCT v Cooling* (1990) 90 ATC 4472, 4488 per Hill J.

⁸⁴ *Hepplis v FCT [No. 2]* (1991) 65 ALJR 650, 657 per Deane J.

⁸⁵ Australian Taxation Office 2014, Taxation Statistics 2011-12, Australian Taxation Office, Canberra.

⁸⁶ This figure could also suggest that taxpayers want to ensure the accuracy of their returns and access to all entitlements they are eligible for.

found that the level of complexity was directly related to taxpayer compliance costs and accordingly a taxpayers' commitment to compliance.⁸⁷

However, as noted by the Commonwealth Ombudsman, in some cases, complex and nuanced tax laws are necessary to deal with the diverse pool of tax filers.⁸⁸ A recent parliamentary report on UBI acknowledged that introducing a UBI would not be possible without significant changes to government programs and/or the taxation system.⁸⁹ These changes could serve to decrease tax legislation complexity. There are several suggestions on how to reduce tax legislation complexity, the most relevant to a UBI are perhaps; elimination of the tax-free threshold and offsets, and the elimination or reduction in number of deductions. The elimination or reduction of these may also assist in the funding of the UBI due to reduced tax expenditure.

If a UBI is introduced, it could be argued that the tax-free threshold would no longer be necessary as the UBI would instead effectively be providing the income, making the threshold redundant.⁹⁰ If the threshold were to be eliminated, it is important to consider what amount the UBI payment would be set at to prevent issues similar to those of effective marginal tax rates occurring.⁹¹ The actual amounts paid under a UBI vary from policy to policy⁹² but generally fall between \$10,000 and \$20,000 per annum. If the tax-free threshold were to be eliminated, perhaps it would ideal to set the payment amount around \$18,200 to replace the previously 'protected' income.

Creedy, Herault and Kalb found that such a modification is possible whilst maintaining approximate revenue neutrality⁹³ and not adversely effecting low income earners so long as they were adequately subsidised.⁹⁴ Similarly, tax offsets, such as those available to low income earners, could also be eliminated due to the UBI payments effectively making them redundant. It may also be pertinent to review the current tax brackets to address any issues effective tax rate issues occurring in higher brackets. However one issue with this review is a necessity to move middle and high-income earners to higher tax rates. Social Researcher Ben Phillips modelled a proposal for The Australian under which all Australian residents aged 15 and over would receive \$23,000 a year with children additionally receiving \$5,500 a year. Phillips

⁸⁷ Margaret McKerchar, *The Impact of Complexity upon Tax Compliance: A Study of Australian Personal Taxpayers*, (Australian Tax Research Foundation, Sydney, 2003).

⁸⁸ Joint Committee of Public Accounts and Audit, Office of the Commonwealth Ombudsman, submission 38, Report 410 - Tax Administration, 2008, 4.

⁸⁹ Don Arthur, Parliament of Australia, *Basic Income: a radical idea enters the mainstream* (2016) 6.

⁹⁰ Generally, it is suggested that the tax-free threshold be increased to promote equity: Jeff Pope, 'reform of the Personal Income Tax System in Australia' (2005) 24 *Economic Papers: A journal of applied economics and policy* 316. A UBI may also provide the same benefits that are suggested to arise from increasing the threshold.

⁹¹ This refers to proportion of an additional dollar of earnings that is lost to both income tax and the reduction of welfare benefits which can promote a disincentive to working: Guyonne Kalb, 'Interaction of the Tax and Social Security Systems in Australia: The Effect on Effective Marginal Tax Rates' (2007) 40 *The Australian Economic Review* 186. A UBI may result in a similar experience for low income earners as they will no longer receive welfare support/income subsidisation and would no longer have their income 'protected'.

⁹² Compare Charles Murray's \$10,000 per annum payment to the suggestion of Peter Hartcher where a UBI is set at approximately \$20,000 per year: Peter Hartcher, 'A basic income isn't the answer to jobs panic', *Sydney Morning Herald*, 7 June 2016, 16 <<http://www.smh.com.au/comment/the-basic-wage-isnt-an-answer-to-the-jobs-panic-20160606-gpcuww.html>> .

⁹³ John Creedy, Nicolas Héroult and Guyonne Kalb, 'Abolishing the Tax-Free Threshold in Australia: Simulating Alternative Reforms' (2009) 30 *Fiscal Studies* 219.

⁹⁴ John Creedy, Nicolas Héroult and Guyonne Kalb, 'Tax Policy Design and the Role of a Tax-Free Threshold' (2011) 11 *Public Finance and Management* 338.

analysis found that such a proposal would require all marginal income tax rates, including the tax-free threshold, to rise by 33 percentage points to pay for the proposal, bringing the top tax rate on incomes above \$180,000 to 78 percent. Phillips noted that '[O]ne of the claims of UBI advocates is that they remove the high effective marginal tax rate. To some extent that's true but the majority of taxpayers move to even higher effective rates'.⁹⁵

The elimination of, or reduction of available personal deductions has been the subject of significant debate.⁹⁶ Advocates state that deductions increase tax system complexity and reduce potential tax revenue. In a recent speech⁹⁷ Taxation Commissioner Chris Jordan expressed concern for the amount being claimed in deductions. It was stated that in 2014-15 approximately \$22 billion was claimed for work related expenses. As such it is apparent that deductions are a significant source of tax expenditure; whilst some of this, as noted by the Commissioner, is likely the result of legitimate mistake owing to tax complexity,⁹⁸ it is possible tax deductions are being exploited. With the introduction of a UBI, it may be possible to either reduce or eliminate deductions, with the tax revenue instead being used to fund the UBI.⁹⁹ As noted by Eccleston, the removal of deduction could be met with significant disapproval and increase feelings of unfairness towards the tax system; an alternative method to total elimination of deductions is to instead roll the currently available deductions into a single standard deductible amount such as the model proposed by Tran-Nam and Evans.¹⁰⁰ This method may be preferable to a sudden total elimination of deductions and could also be used as a transitional measure toward the total elimination of deduction.

Another consideration that could assist in the funding of a UBI is the reduction or elimination of the CGT discount and negative gearing. The actual cost to tax revenue arising from the CGT discount and negative gearing is difficult, however it is estimated that the total cost is between \$8 billion to \$11 billion,¹⁰¹ with approximately \$6.2 billion attributable to the CGT discount.¹⁰² When the CGT discount was introduced, it was argued that the policy would result in greater

⁹⁵ Adam Creighton, 'Greens' income plan to cost extra \$254bn a year', *The Australian* (online) 5 April 2018 <<https://www.theaustralian.com.au/national-affairs/treasury/greens-income-plan-to-cost-extra-254bn-a-year/news-story/7e330391575e9f9787e0d0293c426127>>.

⁹⁶ Richard Eccleston, 'Confronting the sacred cow: the politics of work-related tax deductions', (2006) 21 *Australian Tax Forum* 4.

⁹⁷ David Chau, 'ATO tax deductions warning for small businesses and individuals', *ABC News* (online) 5 July 2017 <<http://www.abc.net.au/news/2017-07-05/ato-coming-after-small-businesses-and-individuals/8680948>>.

⁹⁸ Evans notes that availability of too many deductions can increase compliance burden due to added complexity; Chris Evans, 'Taxation compliance and administrative costs: An overview' In Michael Lang, Christine Obermair, Josef Schuch, Claus Staringer and Patrick Weninger (eds.), *Tax Compliance Costs for Companies in an Enlarged European Community* (Kluwer Law International, The Netherlands. 2008).

⁹⁹ The tax reforms of New Zealand in the 1980's which eliminated work related deductions may provide insight here. Examples of others countries that have substantially or totally eliminated deductions include: Canada, Britain, The Netherlands, Spain and Switzerland; Adam Creighton, 'Deduct the tax deductions', *The Australian* (online) 7 July 2017 <<http://www.theaustralian.com.au/business/opinion/adam-creighton/deduct-the-tax-deductions/news-story/ed01d6e58326ec1fcd89095b717df362>>.

¹⁰⁰ Binh Tran-Nam and Chris Evans, 'Tax Policy Simplification: An Evaluation of the Proposal for a Standard Deduction for Work Related Expenses' (2012) 26(4) *Australian Tax Forum* 719-735.

¹⁰¹ Matt Grudnoff, 'Top Gears: How negative gearing and the capital gains tax discount benefit the top 10 per cent and drive up house prices' (2015) *The Australia Institute* 3 and John Daley and Danielle Wood, 'Hot property: Negative gearing and capital gains tax reform' (2016) *Grattan Institute* 2.

¹⁰² John Daley and Danielle Wood, 'Hot property: Negative gearing and capital gains tax reform' (2016) *Grattan Institute* 2.

revenue collection,¹⁰³ however an examination by Minas et al however concluded that this is not the case and that the 50% discount is a revenue-losing policy.¹⁰⁴ On this basis, it can be argued that the CGT discount could either be eliminated or reduced.

V IMPACTS ON TAX ADMINISTRATION

Typically, a UBI would replace existing income support/subsidy programs such as pensions or unemployment payments. Also, depending on the policy, a UBI may also partially or comprehensively replace other welfare services. Some UBI proponents also suggest the mass elimination of other government support programs such as agricultural and rail road subsidies.¹⁰⁵ A more moderate approach, such as the one advocated by Bruenig has the UBI program working in conjunction with target payments for disability, unemployment and childbirth.¹⁰⁶

A reduction or elimination of income support programs may also partially address the question of how the UBI would be funded. The cost of cash transfers and administration are quite significant in Australia. In the 2016-17 year, the Federal Government expected to spend \$158.6 billion on social security or welfare¹⁰⁷ which represented 35% of total expected government spending. Forecasts predict this expenditure will raise to approximately \$191.8 billion by 2019-20.¹⁰⁸ Further the cost of administering Centrelink was estimated to be approximately \$3 billion in the 2012-13 year.¹⁰⁹

If, as proposed in section IV, the UBI were to be set around the current tax-free threshold maximum of \$18,200 to replace the previously tax-free income, this would cost the Federal Government \$333 billion per year to cover all adults in Australia. The current welfare expenditure would cover almost half of this cost (47%) whilst the 2019-20 estimate would cover 57% of the cost assuming the adult population stays somewhat static. Not all of the Centrelink administration costs would be eliminated as there would still be a need for a body to administer the UBI payments. Centrelink and other welfare departments could be formed into one administrative body due to the elimination of the various welfare payments. This could also further eliminate the administrative costs of these payments. As a UBI is universal, and therefore provided to all eligible recipients regardless of circumstance and characteristics, the

¹⁰³ John Minas, *The Implications of Capital Gains Tax Rate Preferences for Personal Taxpayers in Australia* (PhD Thesis, University of New South Wales, 2017) 49.

¹⁰⁴ Chris Evans, John Minas, and Youngdeok Lim 'Taxing personal capital gains in Australia: An alternative way forward' (2015) 30(4) *Australian Tax Forum* 735–761.

¹⁰⁵ For example, see Charles Murray, *In our hands: a plan to replace the welfare state*, American Enterprise Institute, Washington DC, 2006, 130–139.

¹⁰⁶ Matt Bruenig, 'A universal basic income approach', on Demos, *Policyshop*, (15 September 2015) <<http://www.demos.org/blog/9/15/15/universal-basic-income-approach>>.

¹⁰⁷ Australian Federal Government, Budget Overview, Budget 2016-17, Appendix B <<http://budget.gov.au/2016-17/content/glossies/overview/html/overview-13.htm>>.

¹⁰⁸ Australian Government, *Budget strategy and outlook: budget paper no. 1: 2016–17*, pp. 5-25-5-29.

¹⁰⁹ Department of Social Services, *A New System for Better Employment and Social Outcomes*, Final Report (February 2015) <https://www.dss.gov.au/sites/default/files/documents/02_2015/dss001_14_final_report_access_2.pdf>.

administration of the payment is more simple than typical means tested payments. This would reduce the administrative burden and associated compliance costs.

The introduction of a UBI may also result in savings from other areas. Mason suggests that whilst a UBI may increase total welfare costs, the effects of a UBI on improving the health of lower socioeconomic recipients may ultimately result in significant savings from the health sector.¹¹⁰ These savings or reductions in spending, combined with the elimination of administrative costs, may work to partially fund the UBI directly and indirectly.

VI IMPACTS ON THE TAXATION SYSTEM

To fund a UBI, it has been suggested that deductions against income and deductions for capital gains should be removed.¹¹¹ This would decrease complexity as well as increase tax revenue to help fund the UBI. A decrease in complexity will also have positive impacts on the tax system overall.

High levels of tax complexity result in the taxation system being less transparent and being seen as unfair. A system perceived as being unfair has been shown to result in lower levels of compliance.¹¹² Being one of the more complex systems in the world¹¹³ coupled with steady increases in compliance costs¹¹⁴ would raise concerns as to the level of compliance by taxpayers in Australia.¹¹⁵ McKechar found that complexity of the tax system can also lead to unintentional non-compliance.¹¹⁶ The question of how to increase compliance with the tax system has long been asked by law and policy makers as well as governing bodies. Braithwaite suggests that non-compliance can be linked ‘to failure to see benefits, failure to see fairness in the system and failure to feel any moral obligation to pay tax’.¹¹⁷ With the proper framing of a UBI, the issue of lack of realisable benefit may be addressed. A UBI would provide a realisable and tangible benefit in the form of ‘free money’. With the addition of the benefit of the UBI payment being linked to tax system compliance, the issue of failure to see benefit may be addressed.

What may be insightful is to consider the mechanism used by the *Bonus Act*. Section 5(e) imposed the condition that an individual must lodge their income tax return no later to be eligible for receipt of the bonus. The inclusion of a similar condition in any UBI legislation

¹¹⁰ Paul Mason, ‘PostCapitalism’ (Speech delivered at Talks at Google, London, December 2015) <<https://www.youtube.com/watch?v=cQyr9I22fLE>>.

¹¹¹ Referring to deductions of the cost base of a CGT asset.

¹¹² John Braithwaite, ‘The Essence of Responsive Regulation’ (2011) *University of British Columbia Law Review*, 44 (3); John Braithwaite, *Markets in Vice, Markets in Virtue* (Oxford, 2005); Valerie Braithwaite, *Taxing Democracy: Understanding Tax Avoidance and Evasion* (Ashgate Publishing Ltd, Aldershot, 2003).

¹¹³ Australian Government, *Re:think Tax Discussion Paper March 2015* (2015), Australian Government, The Treasury, *Stocktake of Regulation Final Report March 2015* (2015) and World Bank Group and PricewaterhouseCoopers, *Paying Taxes 2015* (2015) 152-154.

¹¹⁴ Philip Lignier and Chris Evans, ‘The Rise and Rise of Tax Compliance Costs for the Small Business Sector in Australia’ (2012) 27(3) *Australian Tax Forum* 615-672.

¹¹⁵ As no statistics on rates of compliance from year to year are kept, this is a generalisation. A method of estimating the rate of compliance may be to compare the rates of litigation involving the ATO year to year.

¹¹⁶ Margaret McKechar, *The impact of complexity upon unintentional non-compliance for Australia personal income taxpayers*, Doctoral Dissertation (University of New South Wales, 2002).

¹¹⁷ Valerie Braithwaite, *Defiance in Taxation and Governance: Resisting and Dismissing Authority in a Democracy* (Edward Elgar, 2009).

could address the lack of realisable/foreseeable benefit issue suggested by Braithwaite. For instance, to be eligible for UBI payments in the coming financial year, an individual must lodge their tax return no later than a nominated date. Coupling the receipt of 'free money' with the condition of filing a tax return would give individuals an incentive to comply with the requirements of the tax system. As the key aspect of a UBI is its being universal, this condition would also serve to capture high wealth individuals. For example, the ATO experienced an increase in tax return lodgements in the 2008-9 year which was attributed to the Bonus Act payment.¹¹⁸ As such it is a realistic proposition that a UBI in conjunction with a tax return lodgement condition would lead to increased tax system participation.

VII FUTURE RESEARCH

Any future UBI legislation or policy would benefit substantially from further research into the impacts and outcomes of the introduction of a UBI. Possible areas of future research include; further financial modelling to determine what amount a UBI could be viably set at and the potential savings associated with some of the suggested tax amendments, further considerations as to what tax provisions could be removed or altered, consideration of taxpayer behaviour (including compliance with and attitude towards the tax system) under a UBI system. This research would lead to a better-informed policy and reduce risks and issues associated with its introduction.

Additionally, as noted section II, further research into the impact of UBI on Western economies is needed to more accurately inform policy makers on the potential impacts on more developed economies. Furthermore, these experiments need to be broader in scope and not focus predominately on impoverished or very poor individuals and families. The results of experiments in developing economies, or experiments made up predominately of poor recipients may produce overly optimistic results due to the sudden increase in living condition as a result of the additional funds.

VIII CONCLUSION

A UBI potentially offers realisable benefits to the individual, government and nation as a whole, with a UBI possibly complimenting Australia's tax system. This paper has discussed what a UBI is and its potential benefits, such as the promotion of income equity leading to improved health and labour force participation amongst low income earners. This paper then explored whether a UBI would be constitutionally valid; including the Australian taxation power. Then the potential impact of a UBI was explored; including possible reductions in tax system complexity and increases in compliance. Overall it was argued that UBI legislation is worth further exploration as it could address current issues within the tax system and future issues arising from income inequality and changes to the labour market.

¹¹⁸ Australian Federal Government, Final Budget Outcome Part 1: Australian Government Budget Outcome < http://www.budget.gov.au/2008-09/content/fbo/html/part_1.htm>.

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