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Joint Committee of Public Accounts



REPORT 343

TAX LAW IMPROVEMENT

A Watching Brief

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DUTIES OF THE COMMITTEE

The Joint Committee of Public Accounts is a statutory committee of the Australian Parliament, established by the *Public Accounts Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being to:

- examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the *Audit Act 1901*;
- examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
- report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- inquiry into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question.

The Committee is also empowered to undertake such other duties as are assigned to it by Joint Standing Orders approved by both Houses of the Parliament.

CONTENTS

Chapter

Membership of the Committee	iii
Duties of the Committee	iv
Chairman's Foreword	vii
Recommendations	ix

1. INTRODUCTION

Background to the review	1
Scope of the review	2
The review process to date	2
Scope of the report	3

2. COMMENTS ON THE TAX LAW IMPROVEMENT PROJECT

The History of the Tax Law Improvement Project	4
Scope of the Tax Law Improvement Project	5
Criticism of the terms of reference	6
<i>Comments</i>	7
The approach to consultation	7
<i>Comments</i>	8
The rewritten law	8
<i>Comments</i>	11
Support for the Project and for further tax projects	11
<i>Comments</i>	12
Other constraints on the Project	13
<i>Not enough time</i>	13
<i>The Project is substantially composed of ATO staff</i>	13
<i>Need for a positive publicity campaign</i>	14
Conclusions	14

3. DELIVERY OF REWRITTEN LEGISLATION

Introduction	16
Concerns about a new Act by instalments	17
Concerns about an Act with a single commencement date	18
Conclusions	19

4. A SEPARATE TAX POLICY FORUM

Introduction	20
The development of tax policy	21
An alternative forum?	22
Conclusions	24

5. FUTURE ROLE FOR THE COMMITTEE

Evidence at the hearing	26
Comments	26

APPENDICES

Appendix I	Submissions	29
Appendix II	Witnesses at the Public Hearing	30

CHAIRMAN'S FOREWORD

The Tax Law Improvement Project is engaged in the task of completely re-writing Australia's income tax legislation. In the process the structure of the legislation will be improved, and it will be re-expressed in language that can be more easily understood.

It is a task of national significance and one which the Joint Committee of Public Accounts supports. Indeed the Improvement Project was established in response to one of the recommendations in the Committee's *Report 326, An Assessment of Tax*, which was tabled in Parliament in November 1993.

Since the tabling of *Report 326* the Committee has maintained an active interest in tax law improvement. We have received briefings from key players involved in the process and in October this year we held a public hearing at which 17 witnesses from government, from tax and accounting bodies, and from academia were invited to give their views on a range of issues relating to tax law improvement.

This report contains the Committee's comments on evidence taken at that hearing.

Our intention in presenting this report is not to call into question the work of the Improvement Project, much of which has been widely supported in the Parliament and the wider community. Rather, our interest is to ensure that the opportunities we now have to reform our tax law come to fruition.

Opportunities for reform are rare and it is important that the momentum for change initiated by the establishment of the *Improvement Project* is not only maintained, but built upon.

The Improvement Project shows every sign of achieving the objectives set for it. This is to the credit of all involved in the Project. But ultimately a tax simplification program must focus on more than rewriting the Tax Act, it must seek to review tax policy and simplify both the full body of tax law, and the administrative systems underpinning the law.

This broader goal is the challenge which will confront governments over the next decade.

Les Scott MP

Chairman

RECOMMENDATIONS

Recommendation 1

The Tax Law Improvement Project should aim to deliver new tax law to the Parliament progressively, with each instalment commencing in the income year after Royal Assent. (Paragraph 3.18)

Recommendation 2

The Department of the Treasury should implement improved consultative processes in relation to the development and consideration of tax policy issues. In particular, the Treasury should consider adopting processes like those used by the Tax Law Improvement Project. (Paragraph 4.19)

INTRODUCTION

Background to the review

1.1 On 17 November 1993 the Joint Committee of Public Accounts tabled its *Report 326, An Assessment of Tax: A Report on an Inquiry into the Australian Taxation Office*.¹ That inquiry was the first extensive investigation by a parliamentary committee of the administration of taxation laws in Australia. It was undertaken in recognition of the many modernisation changes of the 1980s which affected all aspects of the Australian Taxation Office (ATO) and tax administration.

1.2 *Report 326* made 148 recommendations in all - seven of which were expressly aimed at improving the taxation legislation.² In particular, the Committee recommended that the Government establish a broadly based task force to redraft the *Income Tax Assessment Act 1936* (ITAA). The Committee further recommended that the Government commit sufficient resources to the task force as would allow it to complete a priority simplification redraft within two years and full simplification of the ITAA within five years.

1.3 The Government responded to these proposals in an announcement by the then Treasurer, the Hon John Dawkins MP, on 17 December 1993.³ The Treasurer announced the commencement of a project to improve Australia's income tax law through the rewriting of the ITAA and related Acts to

1 Joint Committee of Public Accounts, *Report 326, An Assessment of Tax: A Report on an Inquiry into the Australian Taxation Office*, AGPS, Canberra, 1993.

2 See recommendations 21-27 in *Report 326, An Assessment of Tax*, pp xxvi-xxvii.

3 The Hon John Dawkins, MP Treasurer, *Press Release*, Canberra, December 1993.

make them more understandable by giving them an improved structure and layout. The intended scope of the project was to improve the formulation of the existing tax law rather than to review tax policy.

1.4 The Tax Law Improvement Project (TLIP) was thereby established, and was funded from 1 July 1994. The first Bill produced by TLIP, the Tax Law Improvement (Substantiation) Bill 1994, was introduced into Parliament on 8 December 1994.

1.5 Since the tabling of *Report 326* the Committee has maintained an active interest in the implementation of its recommendations, and has received regular briefings from the ATO and the TLIP project team. With a view to maintaining the momentum for change generated by its earlier inquiry and the positive nature of the Government's response, the Committee decided on 9 February 1995 that it would maintain a watching brief over the work of TLIP.

Scope of the review

1.6 There are three main aspects of the Committee's review of TLIP. They are:

- whether the draft legislation produced by TLIP is easier to read and understand or whether TLIP's lack of authority to consider policy matters is a constraint on its ability to produce desirable draft legislation;
- what is the most effective manner of delivery of the rewritten legislation; and
- whether there was a need for a separate tax policy forum to be established.

The review process to date

1.7 To date, the main activity in the Committee's watching brief has been a public hearing which was held in Sydney on 11 October 1995. At the hearing 17 witnesses from various organisations were invited to give their views on a range of TLIP related issues. The Committee received a number written submissions at the hearing and subsequently sought further comments from all witnesses on matters

arising from evidence given at the hearing. The Committee also accepted submissions from other interested persons who contacted the Committee about its review.

Scope of the report

1.8 This report draws from all the evidence the Committee has received, but principally from evidence taken at the public hearing on 11 October 1995.

1.9 The report commences with a review of the work of TLIP (Chapter 2). Next, there is an examination of the preferred manner of delivery of the rewritten legislation produced by TLIP (Chapter 3).

1.10 The report concludes with a consideration of the need for a separate forum to review tax policy (Chapter 4), and proposes a future role for the Joint Committee of Public Accounts in relation to TLIP and related policy matters (Chapter 5).

2

COMMENTS ON THE TAX LAW
IMPROVEMENT PROJECTThe History of the Tax Law
Improvement Project

2.1 In December 1993 the Treasurer, the Hon John Dawkins MP, announced the commencement of a project to improve Australia's income tax law. This full time project has since become known as the Tax Law Improvement Project (TLIP). The Treasurer's announcement contained the charter for the project and stated what was expected of its work:

The initiative outlined in this statement is intended to achieve an enduring improvement to the formulation of the existing tax law over the next two to three years rather than the objective of policy review. It will be directed at getting the structure and layout right for the future.¹

2.2 The TLIP has been funded from 1 July 1994 and is to run for three years. It has 46 members of staff based in Canberra and Brisbane. The eight senior personnel leading the project are headed by the Project Director, Brian Nolan a former Second Commissioner in the ATO, and include two private sector representatives, two ATO officers and one officer from each of the Australian National Audit Office, the Office of Parliamentary Counsel and the Treasury.² In addition, a Consultative Committee has been established to advise the project team. The Consultative Committee comprises 16 people from the private sector, reflecting community and professional interests across a wide range of tax law users.

2.3 The TLIP has released numerous publications, the first in August 1994, aimed at providing information and seeking comments on the work of TLIP. The first Bill produced by TLIP was the Tax Law Improvement (Substantiation) Bill 1994 and it was initially released as an exposure draft in August 1994. The next Bill, the Income Tax Assessment Bill 1995, is scheduled for introduction to Parliament in late November 1995. This Bill will be the first of three instalments of the new Income Tax Assessment Act.

Scope of the Tax Law Improvement
Project

2.4 The TLIP has expressed the scope of its work in this manner:

This project is about reducing the costs to taxpayers that are unnecessarily incurred because of the present state of the expression and presentation of the law. The project will completely rewrite the income tax legislation. In the process, it will develop a better structure and arrangement for the law as well as re-expressing it in language that can be more easily understood by its readers³

2.5 Mr Nolan said TLIP has followed the terms of reference from the Treasurer's press release with small a modification:

With the agreement of the Assistant Treasurer we have been proposing a number of changes of rules which might be described as crossing the boundary of policy, but not in major respects: essentially, where there is very limited impact on revenue involved but where the changes can make the rules more commercial and in step with what people do in their ordinary lives rather than being specially required for tax purposes only.⁴

1 The Hon John Dawkins, MP, Treasurer, *Press Release*, Canberra December 1993.

2 *Tax Law Improvement Project - The Broad Framework*, Information Paper No. 1, August 1994.

3 Brian Nolan, *Tax Law Improvement Project (TLIP) Transcript*, p. 32, (Sydney, 11 October 1995).

4 Brian Nolan, *TLIP, Transcript*, p. 32, (Sydney, 11 October 1995).

Criticism of the terms of reference

2.6 The TLIP has been criticised, even in its formative stages, as having limited terms of reference, in particular, its lack of authority to consider policy issues. This lack of a tax policy focus was the single biggest problem raised in relation to TLIP.

2.7 Annamaria Carey, Technical Director of the Taxation Institute of Australia (TIA), accepted that TLIP had to operate within its terms of reference, but argued that the terms of reference of the project were too narrow. She expressed doubt as to whether it was possible to improve the income tax law in isolation from a review of income tax policy.⁵ She referred to a TLIP paper on capital gains tax as highlighting its inability to deal with many of the issues identified because they are policy issues. Ms Carey said there was disappointment with TLIP because the law should be simplified, not just the Act.⁶

2.8 Geoffrey Lehmann, a tax services partner in Price Waterhouse, has been a strong critic of Australia's tax legislation for some years. He told the Committee that with the limited brief of the TLIP there was little it could do to simplify or improve the law, and therefore it should be disbanded.⁷

2.9 The Building Owners and Managers Association (BOMA) has also argued in a submission that TLIP's work cannot lead to substantive improvements in the law because the law is based on historical policies which 'in no way reflect current industry practice, stifle innovation and substantially increase industry compliance costs'.⁸

2.10 Many of the witnesses argued that existing mechanisms for the consideration of tax policy were inadequate. Some thought they were inadequate to deal with

5 Annamaria Carey, Taxation Institute of Australia, *Transcript*, p. 12. (Sydney, 11 October 1995).

6 Annamaria Carey, Taxation Institute of Australia, *Transcript*, p. 12. (Sydney, 11 October 1995).

7 Geoffrey Lehmann, *Transcript*, p. 5. (Sydney, 11 October 1995).

8 BOMA, *Submission*, p. S35.

issues arising from the work of the TLIP, and others thought that these mechanism did not provide the appropriate strategic oversight of tax policy. These arguments are discussed below in Chapter 4.

Comments

2.11 The Committee notes that the Government did not establish TLIP to review tax policy, rather to express the existing law more clearly. TLIP's performance should be judged against what it was asked to do, not against any broader ambitions.

2.12 Nevertheless, Committee accepts that TLIP may, on occasions, and with the approval of the Assistant Treasurer, propose changes to tax rules which could be described as 'small p' policy changes. Any such changes should be clearly identified and explained in the explanatory memorandum prepared in support of the amending legislation.

The approach to consultation

2.13 Consultation has been identified as a key element in the tax law rewriting process. Draft Bills have been released by TLIP as part of its general consultation program of obtaining public feedback on its proposals. Over 3500 copies of the draft Income Tax Assessment Bill 1995 were distributed and TLIP held seminars around Australia to discuss the contents and purpose of the draft. The project team aims to review the comments and to incorporate all of them in the Bill prior to its introduction to Parliament in late November 1995.

2.14 Some criticisms have been made of the consultative methods and processes being used during the re-write. For example, BOMA has argued that the officials who make the important decisions are not involved in the consultations.⁹ BOMA would prefer that Treasury officials were also present at the consultations it had with TLIP. It feels that although TLIP listened sympathetically to its submissions, when TLIP took the proposed changes to Treasury, it then ruled out industry's preferred options. BOMA argued that all

9 BOMA, *Submission*, p. S36.

departments involved in the decision making process should be involved in the consultations as this would create a more open and transparent consultative process.

2.15 Peter Dowling, representing the Australian Society of Certified Practising Accountants, commented that although there had at times been 'frustration and friction' during the consultative process, alternative views are now being more fully considered by TLIP.¹⁰

2.16 Mr Nolan thought that many ideas had been accepted as a result of the extensive consultation processes which involved industry focus groups and more general tax audiences.¹¹ He considered that the working arrangements were breaking new ground. The drafters, the instructors, and Treasury and private sector policy analysts were combining under the one roof in a single team. He said this had led to ideas from TLIP being used in other legislation currently being prepared.

Comments

2.17 The Committee agrees that consultation is an important element in such a project. From the beginning TLIP has actively encouraged external contributions to the project, and it appears that the consultative processes established have been operating in an increasingly successful manner.

2.18 The Committee appreciates that it is not possible for TLIP to take up every suggestion that is made and that this will inevitably lead to disappointment for those whose ideas are not implemented.

The rewritten law

2.19 The Tax Law Improvement (Substantiation) Bill 1994 was passed by both Houses of Parliament in March 1995. It was the first new law to be brought forward by the TLIP team, and was initially issued as an exposure draft. It is

¹⁰ Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 15, (Sydney, 11 October 1995).

¹¹ Brian Nolan, TLIP, *Transcript*, p. 17, (Sydney, 11 October 1995).

expressed in direct personal language, for example the word 'you' is used, instead of the more formal language used in the past. The rewritten substantiation provisions have half the number of words of the original, and the operation of many of the rules has been simplified, with some rules being discarded.

2.20 The TLIP has reported that comments from tax stakeholders across the spectrum has been generally favourable. All agreed the rewritten substantiation law was better than the old, and 80% believed the draft Bill would reduce compliance costs. Although there was no 'target' audience, Mr Nolan indicated that the tax adviser was the most likely audience for the rewritten legislation.¹² He told the Committee that tax agents had said of the substantiation redraft that if all tax law was as clear as that redraft they would refer to the law a lot more than they do instead of going to secondary documents.

2.21 The comments of some witnesses provided support for such a positive response. Tony Parker, a member of TLIP's Consultative Committee told the Committee that he had tested the substantiation provisions on some university students and that they had little difficulty dealing with them.¹³ He felt this was a good test of the utility of the provisions.

2.22 The forthcoming Bill, the Income Tax Assessment Bill 1995, will contain the core provisions of a new primary Act and provide for its structure which would then be successively built upon in the following two years. The Bill will also contain the rewritten mining provisions, the rules for losses and some write-off rules for buildings.

2.23 The BOMA has stated its support for the rewritten provisions dealing with building write-offs.¹⁴

2.24 Ms Carey told the Committee that the output of the project team had been met with mixed reaction.¹⁵ There had been criticisms of the process, the style and the language used,

¹² Brian Nolan, TLIP, *Transcript*, p. 30, (Sydney, 11 October 1995).

¹³ Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, p. 35, (Sydney, 11 October 1995).

¹⁴ BOMA, *Submission*, p. S35.

¹⁵ Annamaria Carey, Taxation Institute of Australia, *Transcript*, p. 13, (Sydney, 11 October 1995).

and of the sensed change for the sake of change. In particular, she argued that most practitioners would prefer the core provisions of the tax law to be retained without change to their current wording, and noted that there was a substantial amount of case law and rulings surrounding this wording which should not be cast aside.

2.25 Despite Mr Lehmann's criticisms of TLIP, in referring to the core provisions he nevertheless agreed that many of the provisions redrafted by TLIP were easier to read than their predecessors and that the TLIP team had worked hard to accommodate criticism.¹⁶

2.26 He also said that TLIP would probably reduce the apparent complexity of the tax law by one third. He concluded however, that this would translate into a reduction in 'actual complexity of about 10 per cent', and this would leave '90 per cent of the world's most complex tax legislation operating exactly as it always has and always will until we have substantial reform'.¹⁷

2.27 Jeremy Low, a consultant with the Centre for Plain Legal Language at the University for New South Wales, was critical of the drafting style used in the draft Bills.¹⁸ While noting that plain language meant clear and precise language, he found the draft Bills released by TLIP 'have confused chatty and colloquial with precise and simple'. Nevertheless, Mr Low commended TLIP's use of explanatory material and examples in the legislation.¹⁹

2.28 Ian Phillips, taxation consultant for the Corporate Tax Association of Australia, told the Committee that quality control was a most important issue and that the Consultative Committee was not an ideal forum for detailed drafting.²⁰ He argued that quality control would become increasingly

16 Geoffrey Lehmann, *Transcript*, p. 5, (Sydney, 11 October 1995).

17 Geoffrey Lehmann, *Transcript*, p. 32, (Sydney, 11 October 1995).

18 Jeremy Low, Centre for Plain Legal Language, *Transcript*, p. 11, (Sydney, 11 October 1995).

19 Jeremy Low, Centre for Plain Legal Language, *Transcript*, p. 12, (Sydney, 11 October 1995).

20 Ian Phillips, Corporate Tax Association, *Transcript*, p. 14, (Sydney, 11 October 1995).

important as the rewritten law was progressively added to. He thought the control mechanism should lie outside the project team and was concerned as to how it might be funded.

2.29 Mr Nolan having reflected on the criticisms of TLIP said that in today's world and the world of future, there could be no 'skinny tax act'.²¹ The tax law has to deal with 'hard-nosed reality' and should not expose the revenue to unreasonable risk.

2.30 Mr Nolan told the Committee that the structure and numbering arrangement for the new Act had received 'virtually unanimous approval'.²² The new Act would have many innovative design features including use of footnotes, examples, informative headings and flow charts. He further commented that the rewritten substantiation rules had been a test piece in terms of style. With that project the volume of the law had been reduced by 50 per cent, and he anticipated that the mining provisions would achieve a reduction of 75 per cent.

Comments

2.31 The Committee notes the high level of support for the rewritten substantiation law, and agrees that a 50 per cent reduction in the volume of the law is considerable. The prospective 75 per cent reduction in the size of the mining provisions will be another welcome change to the tax laws.

Support for the Project and for further tax projects

2.32 Ross Lyons, President of the Corporate Tax Association, supported TLIP's approach of addressing small policy changes within the project, provided they have an 'even-handed revenue impact'.²³ Although TLIP's work is not to effect policy changes, Mr Dowling commented that, in the rewrite of the mining provisions, changes were made where

21 Brian Nolan, TLIP, *Transcript*, p. 17, (Sydney, 11 October 1995).

22 Brian Nolan, TLIP, *Transcript*, p. 16, (Sydney, 11 October 1995).

23 Ross Lyons, Corporate Tax Association, *Transcript*, p. 38, (Sydney, 11 October 1995).

the law was unclear and that most were in the taxpayers' favour.²⁴ Some changes would have a negative impact and he argued that such changes should be highlighted. Mr Dowling told the Committee that the Australian Society of Certified Practising Accountants strongly supported the work of TLIP. He argued that clearer words would bring poor policy to light and would 'set the scene for the real reform that I think is yet to come'.²⁵

2.33 Simon Gaylard, a tax partner with Coopers and Lybrand and one of two private sector representative on the project team, made a similar point in saying that 'trying to get rules rationalised in the rewrite would highlight issues of difficulty and draw out what is wrong with the current law'.²⁶ Once the difficulties were identified, the government could consider making changes at some point in the future.

2.34 Ms Carey likewise expressed support for TLIP, but also felt that unless there is a 'next stage' in the tax law review process, after TLIP, the full potential of tax simplification will not be achieved.²⁷

Comments

2.35 The Committee notes that while there is wide support for the work of TLIP, many witnesses argue that TLIP should be only the first step towards greater reform of the tax law.

24 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 16, (Sydney, 11 October 1995).

25 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 15, (Sydney, 11 October 1995).

26 Simon Gaylard, TLIP, *Transcript*, p. 22, (Sydney, 11 October 1995).

27 Annamaria Carey, Taxation Institute of Australia, *Transcript*, p. 33, (Sydney, 11 October 1995). Similar observations were also made by Jeremy Low (tax law simplification 'should not be just about simplifying the Tax Act, but the income tax law') and Peter McDonald, National Director of the Australian Taxpayers' Association (there is a public expectation that tax simplification should 'eliminate uncertainties, fill in the black holes in the current law, simplify the whole process and reduce compliance costs ... we need an extension of the [TLIP] process' to tackle these issues). See p.12 and pp.41-2 of the public hearing transcript respectively.

Other constraints on the Project

2.36 Several other issues were raised in relation to the work of the TLIP: the timeframe for the project; the composition of the project team; and the need to increase the public profile of the project.

Not enough time

2.37 BOMA has argued that the timeframe is too short for the scope of the project and that some matters are not receiving the attention they deserve.²⁸ Although he felt there was a reasonable degree of consultation, Mr Parker also felt that there was insufficient time for final consultation once the TLIP team had considered issues raised earlier.²⁹ He also expressed doubt that the rewrite could be achieved within the three year timetable.³⁰

2.38 Mr Nolan said TLIP was 'on track' to introduce the next Bill in late November.³¹ He was of the opinion that the existing charter was the only practical one within the timeframe, as a total policy review would take much longer.³²

The Project team is substantially composed of ATO staff

2.39 Mr Lehmann criticised TLIP because it was made up of staff from the ATO and OPC and could not be described as an independent review.³³

2.40 During the hearing it was asserted that that the 'ATO culture' was difficult to overcome during the re-write process. This culture was said to comprise three elements:

28 BOMA, *Submission*, p. S37.

29 Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, p. 20 (Sydney, 11 October 1995).

30 Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, p. 21, (Sydney, 11 October 1995).

31 Brian Nolan, TLIP, *Transcript*, p. 35, (Sydney, 11 October 1995).

32 Brian Nolan, TLIP, *Transcript*, pp. 32-33, (Sydney, 11 October 1995).

33 Geoffrey Lehmann, *Transcript*, p. 6, (Sydney, 11 October 1995).

first, that the revenue must be protected; second, that taxpayers are cheats and third that ATO rulings are correct.

2.41 Professor Pat Gallagher, President of the Australasian Tax Teachers Association, responded to the comments on ATO culture by saying that although tax officers had formed such opinions over many years, he thought they were being reversed at the present time.³⁴ He felt that tax officers were now able to be convinced that most taxpayers are quite honourable in their approach to taxes and do not in fact intend to cheat.

2.42 Mr Gaylard said he was extremely impressed with the people in the ATO and on the TLIP team.³⁵ He felt they were taking an objective approach to the improvement of the tax law and was most satisfied with the ability of the other members of the team.

Need for a positive publicity campaign

2.43 Mr Dowling expressed concern at general community apathy about the project and wanted to see more input and more comment.³⁶ Mr Parker felt there was a need for publicity about the TLIP that was positive and honest.³⁷

Conclusions

2.44 The Committee considers that TLIP has followed the spirit of its terms of reference as prescribed by the Treasurer, and considers their modification to include minor policy adjustments to be a practical adaptation which enhances the intentions of the Government to produce clearer tax law. Of course, such adjustments should always be identified and explained in the explanatory memorandum prepared in support of any amending legislation.

34 Professor Pat Gallagher, Australian Tax Teachers Association, *Transcript*, p. 21, (Sydney, 11 October 1995).

35 Simon Gaylard, TLIP, *Transcript*, p. 22, (Sydney, 11 October 1995).

36 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 15, (Sydney, 11 October 1995).

37 Tony Parker, Tax Law Improvement Consultative Committee, *Transcript*, p. 34, (Sydney, 11 October 1995).

2.45 The Committee notes there is considerable support for the rewritten substantiation rules and for the draft Income Tax Assessment Bill which is due to be introduced to Parliament in late November 1995. The anticipated reductions in the volume of tax law should contribute significantly to satisfying the objective of reducing compliance costs.

2.46 The Committee endorses the current terms of reference for TLIP, and its current operations. The Committee does not support an expansion of TLIP's terms of reference to include a review of tax policy.

2.47 The Committee acknowledges that the new legislation produced by TLIP will help highlight areas of tax law and policy which warrant further consideration. In this regard, there is an argument to say that TLIP should be seen as an initial step in a broader program of tax law improvement. This issue is considered further in Chapter 4.

DELIVERY OF REWRITTEN LEGISLATION

Introduction

3.1 One of the issues canvassed during the Committee's hearing was the delivery schedule for the rewritten taxation laws being produced by TLIP.

3.2 As discussed above, TLIP is to rewrite the taxation law over a three year period that began on 1 July 1994. The first Bill to create a new Income Tax Assessment Act is scheduled for introduction into Parliament in late November 1995. The TLIP has proposed that it will provide the balance of the new Act over the following two years with amending Bills introduced at the end of 1996 and 1997.¹ This proposal would effect a progressive delivery of the legislation to Parliament and would lead to a correspondingly progressive implementation of the rewritten law in the new Act, with each instalment commencing for the income year beginning after Royal Assent.

3.3 The TLIP advised the Committee that some stakeholders in the tax industry were supporting an alternative delivery option, known as the 'big bang' approach. Like the TLIP proposal, the alternative proposal is also based on a progressive introduction of draft legislation into Parliament, but differs from the TLIP proposal by favouring a single commencement date of the Act at the completion of the whole project.

3.4 The witnesses were divided in their views on a preferred delivery option.

¹ TLIP, 'An information Paper on Delivery Options', *Submission*, p. S16.

Concerns about a new Act by instalments

3.5 Several witnesses were concerned about the way in which the several Bills would actually come together as one complete Act under progressive implementation.

3.6 Ian Phillips said that although the Corporate Tax Association supported the proposal for the progressive implementation of the new law, it considered that the linkages between the progressive enactments would be critical to the integrity of the law as a whole.²

3.7 Tony Parker was also concerned about how well the completed Act would fit together,³ although he too thought there should be progressive implementation of the new law.⁴ He also felt there would need to be an efficient process to correct those technical errors that will inevitably occur with a progressive introduction process.⁵

3.8 Peter McDonald said that he had initially thought the rewritten law should be introduced as one 'big bang', but that he had seen the substantiation provisions and the changes, and considered that the incremental approach has worked quite well and should be adopted for the project.⁶

3.9 Annamaria Carey was perhaps the strongest critic of the progressive delivery option. She said the TIA was of the view that there would be practical problems with a progressive introduction because the whole package is not available and individual sections could not be properly considered out of the context of the Act.⁷

² Ian Phillips, Corporate Tax Association, *Transcript*, p. 14, (Sydney, 11 October 1995).

³ Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, p. 20, (Sydney, 11 October 1995).

⁴ Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, p. 34, (Sydney, 11 October 1995).

⁵ Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, p. 21, (Sydney, 11 October 1995).

⁶ Peter McDonald, Australian Taxpayers Association, *Transcript*, p. 29, (Sydney, 11 October 1995).

⁷ Annamaria Carey, Taxation Institute of Australia, *Transcript*, pp. 23 and 24, (Sydney, 11 October 1995).

3.10 Ms Carey proposed that the legislation should take effect at the end of the rewrite project. She said that the implementation date for the legislation should be when 'there is a critical mass of legislation written and able to fit together. This will produce a more coherent impact.'⁸

3.11 Geoffrey Lehmann argued in support of the single commencement date option, because he felt that the pressure to produce very good legislation was much greater with a big bang than an instalment approach.⁹

Concerns about an Act with a single commencement date

3.12 Peter Dowling spoke in support of the progressive introduction of the rewritten law.¹⁰ He spoke of the tax industry being a 'just-in-time industry' where the legislation is only properly considered when it is actually operating. He thought that even if legislation was introduced into Parliament, if it had a prospective application date it would not get attention from tax advisers until the new provisions were actually in force.

3.13 Professor Rick Krever, Professor of Law at Deakin University, spoke of a need to recognise that there is a continuum of tax changes that never stops.¹¹ A big bang approach would require the draft law to be updated each time amendments occurred outside the TLIP process. He said this would mean maintaining two sets of legislation at the same time and would require considerable extra resources.

3.14 Brian Nolan felt that if the rewritten law were drafted and 'stacked up for some delivery time a fair way down the track' tax advisers would put off coming to grips with the parts and this would lead to an 'indigestible problem' of having to come to grips with the whole volume at once.¹²

8 Annamaria Carey, Taxation Institute of Australian, *Transcript* p., 13, (Sydney, 11 October 1995).

9 Geoffrey Lehmann, *Transcript*, p. 24, (Sydney, 11 October 1995).

10 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 29, (Sydney, 11 October 1995).

11 Professor Krever, Deakin University, *Transcript*, p. 25, (Sydney, 11 October 1995).

12 Brian Nolan, TLIP, *Transcript*, p. 24, (Sydney, 11 October 1995).

Delivering the law progressively however, would allow businesses and others to undertake training and make changes to computer programs progressively. He further foreshadowed a difficulty in scheduling the draft legislation for parliamentary consideration when its date of effect was some considerable time into the future.

3.15 Mr Nolan told the Committee that it would be very disappointing for people involved in the mining industry, who are most satisfied with the rewritten mining provisions (which are to be included in the Bill due in November 1995) should they have to wait some years before they could get the benefits of the rewritten legislation.¹³ He raised the possibility that other industry groups might be less inclined to cooperate in the re-write process if they knew that any changes or benefits would not be obtained for an extended period..

Conclusions

3.16 The Committee notes that there are valid arguments in favour of both options for the delivery of the rewritten legislation. The Committee especially notes the reservations that some witnesses have about the integrity of the consolidated Act after being amended by progressive instalments. The TLIP project team will need to take particular care to ensure the integrity of the completed Act.

3.17 Nevertheless, the Committee considers that the option for the progressive implementation of the rewritten legislation is to be preferred to that which would provide for deferred commencement of the legislation at the conclusion of the project.

3.18 Recommendation 1

The Tax Law Improvement Project should aim to deliver new tax law to the Parliament progressively, with each instalment commencing in the income year after Royal Assent.

13 Brian Nolan, TLIP, *Transcript*, p. 28, (Sydney, 11 October 1995).

A SEPARATE TAX POLICY FORUM

Introduction

4.1 As discussed in Chapter 2, from its inception the charter of TLIP has been to rewrite the existing tax laws in plain language, not to review significant elements of tax policy. Brian Nolan, the Project Director, advised the Committee that TLIP has followed the terms of reference in rewriting, but not substantively changing, the law. On those occasions where TLIP has proposed changes of rules which could be considered to effect minor changes of policy, such changes have been agreed with the Assistant Treasurer.¹

4.2 The rewrite-only mandate has been a source of frustration for some tax stakeholders. It was suggested by several witnesses at the Committee's hearing that although the rewrite may make many areas of tax law more readable and thereby easier to use, it will not overcome the difficulties which result from ill-considered tax policy. It was said that the complexity of the tax laws will not be substantially reduced unless questions of tax policy, including those highlighted by TLIP's work, are considered and resolved. A suggestion made by a number of witnesses was that a separate tax forum should be established to consider at least those tax policy issues which have arisen and will arise over the course of the rewrite. Once established, such a forum could be ongoing.

4.3 These issues are considered in the following sections.

¹ Brian Nolan, TLIP, *Transcript*, p. 32, (Sydney, 11 October 1995).

The development of tax policy

4.4 The Department of the Treasury is primarily responsible for tax policy, and it works closely with the ATO on tax policy issues. Dr Ken Henry, First Assistant Secretary, Taxation Policy Division in the Treasury, said the Treasury receives hundreds of submissions annually and senior Treasury officials hold regular meetings with various groups in which tax policy issues of all dimensions are discussed.² These meetings range from discussions with business taxpayers to pre-budget submissions from organisations like the Australian Council of Social Services and the National Farmers Federation.

4.5 There are liaison committees in which policy issues are considered jointly between the ATO and professional body representatives.³ Consultation may also be undertaken on specific issues, thereby enabling interested parties to participate in the policy formulation process.

4.6 Notwithstanding these mechanisms, Peter McDonald said there seemed to be a policy chasm because nobody is capable of correcting particular problems.⁴ He called for an extension of the current process to enable problems that are identified by practitioners and taxpayers to be brought to a formal independent forum and to generate continual improvement in the tax system.⁵

4.7 Tony Parker thought that the current consultation processes were not really working.⁶ He expressed concern that the present system would not be sufficient to progress issues identified by TLIP's work and that a further supportive mechanism is needed. Peter Dowling thought that although

² Dr Ken Henry, Treasury, *Transcript*, p. 61, (Sydney, 11 October 1995).

³ Kevin Fitzpatrick, Australian Taxation Office, *Transcript* pp. 45 & 46 (Sydney 11 October 1995).

⁴ Peter McDonald, Australian Taxpayers Association, *Transcript*, p. 42, (Sydney, 11 October 1995).

⁵ Peter McDonald, Australian Taxpayers Association, *Transcript*, p. 42, (Sydney, 11 October 1995).

⁶ Tony Parker, Tax Law Improvement Project Consultative Committee, *Transcript*, pp. 55 & 56, (Sydney, 11 October 1995).

the ATO had a good record of being able to fix tax law administration issues in a timely manner, difficulties arose when tax policy issues needed consideration.⁷

4.8 Both Kevin Fitzpatrick, a First Assistant Commissioner in the ATO, and Dr Henry agreed that the government's priorities are crucial in determining which policies were adopted and when.⁸ Dr Henry said tax laws were complex in part because the tax system was used to serve many policy objectives. Geoffrey Lehmann was critical of the tax system being used for other policies. In particular, he thought social policy change should occur outside the tax laws.⁹ Mr Lehmann was also critical of TLIP's attempt to simplify income tax law in the absence of a review of tax policy as well:

*Complicated tax policy is what causes complicated law. Using simple-sounding words will do little to reduce this underlying complexity.*¹⁰

An alternative forum?

4.9 Several witnesses thought that policy issues identified in the TLIP project should be referred to another forum.¹¹ Mr Dowling described the current tax law as a 'policy morass'¹² and called for another forum to enable straightforward policy issues to get through the log jam.¹³

4.10 Professor Rick Krever commented that the Australian tax system was agreed to be the most complex

model by experts throughout the world.¹⁴ He also described the Australian system as the world's most uncertain income tax system. In comparison, tax legislation applying to business taxpayers in European countries, such as France, Germany, The Netherlands and Belgium, was quite modest in volume, did not contain capital and income distinctions, and levied tax on balance sheet figures.

4.11 Others spoke of the need for a separate tax forum to consider the tax system as a whole.¹⁵ Mr Lehmann thought that the only way to get real reform was to have an independent commission of tax law experts 'who would have a complete brief and produce a world's international best tax act.'¹⁶ Professor Pat Gallagher expressed support for this proposal and suggested that such a group might be able to formulate the goal for the tax system.¹⁷

4.12 Professor Krever took a contrary view, arguing that it would be inappropriate for fundamental issues about the design and purpose of the income tax system to be determined by a committee of experts.

*Those experts would be making what are essentially political and social decisions that are really the role of the Parliament.*¹⁸

4.13 Professor Krever thought that as minor policy issues arise in the course of the project, they should continue to be dealt with by the TLIP and the Consultative Committee, while the more important policy issues should be referred to the Treasury for advice to government and ultimately for Parliament's consideration.¹⁹ He argued that this was more

7 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 59, (Sydney, 11 October 1995).

8 Kevin Fitzpatrick, Australian Taxation Office and Dr Kenneth Henry, Treasury, *Transcript*, pp. 50 & 60, (Sydney, 11 October 1995).

9 Geoffrey Lehmann, *Transcript*, p. 50, (Sydney, 11 October 1995).

10 See Geoffrey Lehmann, *Transcript*, p. 5, (Sydney, 11 October 1995).

11 Tony Parker, Tax Law Improvement Project Consultative Committee and Annamaria Carey, Taxation Institute of Australia, *Transcript*, pp. 21 & 38, (Sydney, 11 October 1995).

12 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 42, (Sydney, 11 October 1995).

13 Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, p. 59, (Sydney, 11 October 1995).

14 Professor Krever, Deakin University, *Transcript*, p. 9, (Sydney, 11 October 1995).

15 See Geoffrey Lehmann, and Peter Dowling, Australian Society of Certified Practising Accountants, *Transcript*, pp. 49-50 and p. 43, (Sydney, 11 October 1995).

16 Geoffrey Lehmann, *Transcript* p. 7, (Sydney, 11 October 1995).

17 Professor Pat Gallagher, Australasian Tax Teachers Association, *Transcript*, p. 61 (Sydney, 11 October 1995).

18 Professor Krever, Deakin University, *Transcript*, p. 63, (Sydney, 11 October 1995).

19 Professor Krever, Deakin University, *Transcript*, p. 10, (Sydney, 11 October 1995).

logical and efficient than creating a new committee to deal separately with policy issues.

4.14 Ross Lyons thought that policy issues which arise over the course of the project should be identified, recorded and submitted for consideration for legislative amendment, outside the project but concurrently if possible.²⁰ He felt they should not be dealt with by the TLIP team, as its already allocated task would take the planned three years. He suggested that the larger policy issues should be addressed by a white paper or a discussion document that would be put out for wide consultation.²¹

4.15 Martin Soutter, from the Business Council of Australia, argued for a more open and rigorous process of taxation policy review.²² He said that at the moment tax policy was ad hoc and considered in a very closed way without public interactive discussions, along the lines of TLIP's processes. He argued for a strategic approach to tax policy and a commitment to tax reform as an ongoing process.²³ He also referred to specific issues which he felt weren't being addressed in a strategic sense. Dr Henry responded that the issues Mr Soutter raised were in fact being addressed both in the Treasury and the ATO.²⁴

Conclusions

4.16 The Committee senses in these suggestions for a variety of special tax policy forums that there is a degree of frustration in the way in which tax policy has evolved and is debated in Australia. However, as noted by Professor Krever, there appear to be a number of competing and probably

20 Ross Lyons, Corporate Tax Association, *Transcript* p. 38, (Sydney, 11 October 1995).

21 Ross Lyons, Corporate Tax Association, *Transcript*, pp. 38 & 39, (Sydney, 11 October 1995).

22 Martin Soutter, Business Council of Australia, *Transcript*, p. 39, (Sydney 11 October 1995).

23 Martin Soutter, Business Council of Australia, *Transcript*, p. 40, (Sydney, 11 October 1995).

24 Dr Ken Henry, Treasury, *Transcript*, p. 53, (Sydney, 11 October 1995).

incompatible visions of how an alternative forum might be constituted and what such a forum might consider.²⁵

4.17 On balance, the Committee does not support the suggestions for a new external forum for the development of tax policy. The Committee notes Mr Lehmann's view that such a forum would not usurp Parliament's role, as any resulting laws would ultimately need to be passed by Parliament.²⁶ Nevertheless, the Committee does not agree that any external body should dictate to a government what its tax policy should be.

4.18 The Treasury is rightly the focus of the Government's tax policy development in Australia. The Committee notes that the Treasury convenes and is party to an extensive range of consultative meetings and discussions. Although the Committee's hearing did not focus on the consultative processes of the Treasury, there was some criticism of its current approach to consultation. Effective consultation is clearly an essential element of policy development and there is merit in taking steps to improve those processes. The consultative processes developed by TLIP offer a useful example in this regard.

4.19 Recommendation 2

The Department of the Treasury should implement improved consultative processes in relation to the development and consideration of tax policy issues. In particular, the Treasury should consider adopting processes like those used by the Tax Law Improvement Project.

25 Professor Krever, Deakin University, *Transcript* p. 62, (Sydney, 11 October 1995).

26 Geoffrey Lehmann, *Transcript*, p. 64, (Sydney, 11 October 1995).

FUTURE ROLE FOR THE COMMITTEE

Evidence at the hearing

5.1 Several witnesses were of the view that the Joint Committee of Public Accounts might provide a suitable forum for the consideration of tax policy issues in Australia.

5.2 Peter Dowling thought the Committee might provide bipartisan consideration of 'policy horror spots' in a relatively non-controversial way.¹ Gordon Cooper, from the National Institute of Accountants, thought that if it were possible to get the support of a committee like the Joint Committee of Public Accounts for 'technical anomalies and other policy issues' it may be possible to expedite government and parliamentary consideration of tax changes.²

5.3 Martin Soutter also agreed that a parliamentary committee could help to develop tax policy solutions provided that the committee had an ongoing commitment to maintaining technical expertise in tax policy.³

Comments

5.4 As discussed in Chapter 4, the Committee believes that the Treasury is the appropriate body to convene and direct any consideration of the strategic direction of Australian's tax policy. Nevertheless, in the context of issues emerging from TLIP's work, it appears that a parliamentary committee could play a useful role.

5.5 The Committee intends to continue its watching brief in the area of tax law improvement. This review process will provide the Committee with the opportunity to not only scrutinise any aspect of TLIP's operations, but to undertake more detailed inquiries into significant matters identified during the course of the project. While the Committee expects that most tax policy matters would in the normal course of events be taken up by the Treasury and the ATO, the Committee will follow up any significant matters which appear not to be receiving appropriate attention.

5.6 In addition, the Committee proposes to seek agreement from the Assistant Treasurer, the Hon George Gear MP, to refer the Income Tax Assessment Bill 1995 to the Committee for its consideration, after it is introduced into Parliament.

5.7 Consideration of legislation by parliamentary committees is an increasingly common feature of the parliamentary process. As well as affording parliamentarians the opportunity to give more detailed consideration of legislation than is normally possible on the floor of the Chambers, committee scrutiny of legislation can help promote broader community awareness of the issues being addressed in the legislation. In the context of the Income Tax Assessment Bill, review by the Joint Committee of Public Accounts may help contribute to a greater knowledge and understanding of the rewritten tax laws.

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- 1 Peter Dowling, Australian Society of Certified Practising Accountants, Transcript, pp. 42 & 43 (Sydney 11 October 1995).
 - 2 Gordon Cooper, National Institute of Accountants, Transcript, p. 48, (Sydney, 11 October 1995).
 - 3 Martin Soutter, Business Council of Australia, Transcript, p. 54, (Sydney, 11 October 1995).

5.8 People who are unable to appear at the Committee's hearings are most welcome to provide their views on tax law improvement and the work of TLIP to the Committee Secretary in writing. Such submissions are welcome at any time.



Les Scott MP
Chairman

22 November 1995



APPENDIX I - SUBMISSIONS

Submissions

- 1 Geoffrey Lehmann - 'Tax Law Improvement Project: Public Hearing'
- 2 Corporate Tax Association - 'Tax Law Improvement: Progress So Far'
- 3 Professor Patrick Gallagher
- 4 Corporate Tax Association - 'Tax Law Improvement: Tax Policy Changes'
- 5 Tax Law Improvement Project - 'An Information Paper on Delivery Options'
- 6 Tax Law Improvement Project - 'An Information Paper on Helping Readers to Understand the Law'
- 7 Building Owners & Managers Association of Australia Limited



APPENDIX II - WITNESSES AT THE PUBLIC HEARING

Sydney, Wednesday 11 October 1995

Australian Society of Certified Practising Accountants

Mr Peter Dowling,
Fellow

Australian Taxation Office

Mr Kevin Fitzpatrick
First Assistant Commissioner

Australian Taxpayers Association

Mr Peter McDonald
National Director

Australasian Tax Teachers Association

Associate Professor Pat Gallagher,
President

Business Council of Australia

Mr Martin Soutter
Assistant Director

Centre for Plain Legal Language

Mr Jeremy Low
Consultant

Corporate Tax Association

Mr Ross Lyons
President

Mr Ian Phillips
Taxation Consultant

Department of the Treasury

Dr Ken Henry
Acting Deputy Secretary
Fiscal,

National Institute of Accountants

Mr Gordon Cooper

Private Citizens

Mr Geoffrey Lehmann, Partner, Price Waterhouse

Professor Rick Krever, School of Law, Deakin University

Tax Law Improvement Project

Mr Brian Nolan
Project Director

Mr Simon Gaylard
Private Sector Representative

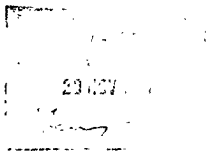
Tax Law Improvement Project Consultative Committee

Mr Stan Droder
Chair

Mr Tony Parker
Member

Taxation Institute of Australia

Ms Annamaria Carey,
Technical Director



Message No. 677

MR PRESIDENT,

The House of Representatives returns to the Senate the Bill intituled "*A Bill for an Act to amend the law relating to transport, and for other purposes*", and acquaints the Senate that the House of Representatives has agreed to the Bill without amendment.

A handwritten signature in black ink, likely belonging to the Speaker of the House of Representatives.

SPEAKER

House of Representatives,
Canberra, 28 November 1995