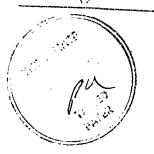
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PARENT NO. 2837
DATE
PRESENTED

22 AUG 1996

The Parliament of the Commonwealth of Australia,

Joint Committee of Public Accounts



REPORT 345

An Advisory Report on the Income Tax Assessment Bill 1995, the Income Tax (Transitional Provisions) Bill 1995 and the Income Tax (Consequential Amendments) Bill 1995

August 1996

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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 intergovernmental 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 connection 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.

TERMS OF REFERENCE

On 19 June 1996 the House of Representatives resolved that:

- (a) the Income Tax Assessment Bill 1995, the Income Tax (Consequential Amendments) Bill 1995 and the Income Tax (Transitional Provisions) Bill 1995 be referred to the Joint Committee of Public Accounts for consideration and an advisory report by 22 August 1996; and
- (b) the terms of this resolution, so far as they are inconsistent with the standing and sessional orders, have effect notwithstanding anything contained in the standing and sessional orders.

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LIST OF ABBREVIATIONS

AMEC	Association of Mining and Exploration
APPEA	Australian Petroleum Production and Exploration Association
ATO	Australian Taxation Office
BCA	Business Council of Australia
CGT	Capital Gains Tax
CTA	Corporate Tax Association
EM	Explanatory Memorandum
JCPA	Joint Committee of Public Accounts
LMC	Legislative Management Committee
MCA	Minerals Council of Australia
SAPs	Substituted Accounting Periods
TLIP	Tax Law Improvement Project

The Accounting Bodies:

The Australian Society of Certified Practicing Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia, and the Taxation Institute of Australia.

CHAIRMAN'S FOREWORD

This report is the culmination of several years interest by the Joint Committee of Public Accounts (JCPA) in tax law simplification. In Report 326, An Assessment of Tax (1993) the JCPA recommended that a task force be established to rewrite and simplify the Income Tax Assessment Act 1936. In Report 343, Tax Law Improvement (1995) the JCPA examined the work of the Tax Law Improvement Project (TLIP), which had been established to undertake the rewrite. This report, Report 345, reviews a package of three Bills which provide the framework for a new income tax assessment Act, in place of the 1936 Act.

The Bills, which have been prepared by TLIP, represent a significant improvement over the current law - they are widely regarded as being far easier to read and understand than the legislation they will replace. Most of the evidence taken during the JCPA's review focussed on proposals to fine tune the Bills, rather than calls for a fundamental rethink. This stands as testimony to the quality of TLIP's drafting and the effectiveness of its consultative processes.

However, the JCPA's review revealed a number of concerns about the Bills. The most significant of these is that the legislation, as drafted, will commence from 1 July 1996, making it retrospective in application. It is unacceptable that tax legislation be retrospective and the Committee recommends strongly that the Bills, and subsequent instalments from the TLIP rewrite, commence on the 1 July following enactment.

One of the recurring themes in comments to the JCPA over the last few years is the need for governments to tackle and resolve the underlying complexity in tax policy. There is a clear sense of frustration in the tax profession that highly complex sections of the 1936 Act are being perpetuated in the new legislation, since changing them would require policy to be reassessed, which is beyond TLIP's mandate. Although there is broad acceptance that the rewrite process would stall, and probably fail, if TLIP's mandate were expanded to encompass policy simplification, there is an equally strong conviction that alternative mechanisms for addressing policy complexities must be found.

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One approach, suggested in Chapter 7 of the report, is that a parliamentary committee be charged with the responsibility of examining the tax policy complexities highlighted by the work of TLIP. Such a committee could perform a clearing-house function, publicly gathering and examining simplification options, and making recommendations for government consideration.

However, tax simplification ultimately requires more than just consideration of the policy complexities highlighted by TLIP's rewrites: it needs an open and wide ranging review of tax policies at the Federal and State level. Only after such a review will substantial and continuing reductions be made to tax compliance costs. This is the course we urge the Government to take.

In conclusion and on behalf of the Committee, I would like to recognise the contribution made by the many people who have provided written and oral evidence on the Bills. A number of people have appeared twice before the Committee, and several witnesses have appeared on three occasions over the last eleven months. The efforts of these people have allowed a sensible and well informed debate - a debate which will lead to better legislation.

Alex Somlvay MP

Chairman

RECOMMENDATION

Recommendation 1

The footnote on each page of the Income Tax Assessment Bill 1996 that states:

"*To find the definition of this term, see the Dictionary, starting at section 995-1."

should be amended to state:

"*To find the definitions of asterisked terms, see the Dictionary, starting at section 995-1.". (paragraph 4.15)

Recommendation 2

The Commissioner of Taxation and the major tax bodies (through the National Tax Liaison Group) should agree, as a matter of urgency, to a process and timetable for rewriting existing Public Rulings affected by the Income Tax Assessment Bill 1996 and subsequent legislation. The process and priority to be given to rewriting individual Rulings should be determined by the end of 1996 and be made publicly available. The public statement should also include a completion date for the process of rewriting the Rulings. (paragraph 4.42)

Recommendation 3

Clause 1-4 of the Income Tax Assessment Bill 1996 should be amended to state that commencement of the Act begins on 1 July following Royal Assent. The Income Tax (Transitional Provisions) Bill 1996 should be amended accordingly. Furthermore, the commencement dates for subsequent legislation rewriting parts of the Income Tax Assessment Act 1936 should be written in similar terms. (paragraph 5.8)

xvi INCOME TAX ASSESSMENT BILL 1996

Recommendation 4

Item 5 of Schedule 1 of the Income Tax (Consequential Amendments) Bill 1996 be amended by inserting:

5A Subsection 18(1)

Omit "His" and substitute "For the purposes of this Act, the person's". (paragraph 5.15)

Recommendation 5

Versions of training material prepared by the Australian Taxation Office for its staff to convert from the Income Tax Assessment Act 1936 to the Income Tax Assessment Act 1996 should be made available for purchase by the public. (paragraph 5.38)

Recommendation 6

Clause 6-5(2) of the Income Tax Assessment Bill 1996 should be amended by inserting the phrase "during the income year" after the word "Australia".

Clause 6-5(3)(a) of the Income Tax Assessment Bill 1996 should be amended by inserting the phrase "during the income year" after the phrase "Australian sources".

Clause 6-5(3)(b) of the Income Tax Assessment Bill 1996 should be amended by inserting the phrase "for the income year" after the phrase "assessable income". (paragraph 6.9)

Recommendation 7

Clause 330-95 (1)(a) of the Income Tax Assessment Bill 1996 which states:

"*plant (whether or not depreciation is allowable under the Income Tax Assessment Act 1936);"

should be omitted and replaced with: "*plant;". (paragraph 6.12)

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Clause 330-495(1) of the Income Tax Assessment Bill 1996 should be amended by omitting:

"(of a kind that qualifies for a deduction under this Division, or qualified for a deduction under a corresponding previous law)".

As a consequence, the associated Note 1 at Clause 330-495, page 288 (lines 29 & 30) should be omitted.

As a further consequence, Clause 330-65(3) of the Income Tax (Transitional Provisions) Bill 1996 should be omitted and replaced with:

"(3) Second:

- (a) the total capital expenditure of the transferor in relation to the property; or
- (b) if there have been 2 or more prior applications of the old roll-over provisions the total capital expenditure of the prior transferors in relation to the property;

is taken to have been capital expenditure of the transferee in relation to the property.". (paragraph 6.16)

Recommendation 9

Technical errors in the Income Tax Assessment Bill 1996 should be corrected as a matter of priority. The corrections should either be incorporated in future instalments of the legislation to replace the Income Tax Assessment Act 1936 or be dealt with as part of the technical corrections process recently put in place by the Australian Taxation Office, whichever process is quicker. Furthermore, technical amendments legislation should become the regular vehicle for making technical corrections to tax law. (paragraph 6.24)

Recommendation 10

The Australian Taxation Office should undertake or assist with further research attempting to quantify the costs of tax compliance in Australia. (paragraph 7.6)

Recommendation 11

The Government should provide sufficient additional resources to allow either:

- (a) the Joint Committee of Public Accounts to oversight the processes for resolving the minor tax policy simplification issues that are highlighted by the Tax Law Improvement Project and make recommendations to government; or
- (b) the establishment of a Joint Standing Committee on Revenue with terms of reference and powers to review all matters in relation to Commonwealth revenue and to make recommendations to government; or
- (c) the establishment of a joint select committee with terms of reference and powers to assess the minor tax policy simplification issues referred to it by Parliament and to make recommendations to government. (paragraph 7.40)



SETTING THE CONTEXT

Introduction

Referral of Legislation to the Joint Committee of Public Accounts

- 1.1 On 19 June 1996, a package of three Bills was introduced into the House of Representatives to replace the Income Tax Assessment Act 1936 ('the 1936 Act'). The package comprised:
 - the Income Tax Assessment Bill 1996 ('the 1996 Bill');
 - the Income Tax (Transitional Provisions) Bill 1996 ('the Transitional Provisions Bill'); and
 - the Income Tax (Consequential Amendments) Bill 1996 ('the Consequential Amendments Bill').
- 1.2 After their first reading in the House of Representatives, the Bills were referred to the Joint Committee of Public Accounts (JCPA) for consideration with an advisory report to be presented to the House by 22 August 1996.
- 1.3 The Bills are essentially the same as ones introduced and referred to the JCPA in the 37th Parliament.² The Committee did not complete that inquiry before Parliament was dissolved in January 1996 prior to the general election.

Votes & Proceedings, No. 18, 19 June 1996, p. 266.

² See Votes & Proceedings, No. 184, 30 November 1995, p. 2678

Conduct of the Review

- 1.4 Invitations for submissions on the 1995 versions of the three Bills were advertised by the previous JCPA in the national press in December 1995. In addition, that Committee invited a number of people and organisations to comment on the legislation. On 22 and 23 January 1996, the previous Committee held public hearings in Sydney
- 1.5 Invitations for submissions on the 1996 versions of the Bills were advertised by the current JCPA in the national press on 28 & 29 June 1996. The Committee also decided that it would consider the evidence gathered by its predecessor, given the similarities between 1995 and 1996 versions of the Bills. A list of submissions received by both Committees can be found at Appendix I and a list of exhibits at Appendix II.
- 1.6 On 8 and 16 July 1996, public hearings into the 1996 Bills were held by the Committee. The hearings in both January and July followed the same format of 'round table' discussions and were structured to encourage all participants to comment on issues of concern to them. Officers from the Tax Law Improvement Project attended on all days. A list of participants at the four hearings can be found at Appendix III.

References to 1995 and 1996 Versions of the Bills

1.7 As mentioned, the Committee has considered evidence gathered for the inquiries into the 1995 and 1996 versions of the Bills. Given the few number of changes in the 1996 version, references in earlier submissions to the 1995 Bills are assumed to be equally relevant to the 1996 Bills and are described in the report as if applying to the 1996 Bills. Of course, any references to the 1995 Bills will be maintained where there are differences between them and the 1996 versions.³

The Tax Law Improvement Project

- 1.8 In 1993, the JCPA conducted the first extensive investigation by a parliamentary committee of the administration of taxation laws in Australia, which culminated in Report 326, An Assessment of Tax: A Report on an Inquiry into the Australian Taxation Office. One of the Committee's recommendations was that the Government establish a broadly based task force to redraft the 1936 Act.
- 1.9 The Government responded to this proposal by establishing the Tax Law Improvement Project (TLIP), which was to be funded for three years from 1 July 1994.⁵ The task was, and is, to simplify income tax law by rewriting and restructuring the 1936 Act to make it easier to understand. TLIP's mandate is limited to improving the formulation of the existing tax law and does not extend to making significant policy changes. The consequences of this limited mandate have been of major concern to the Committee and are addressed in Chapter 7.
- 1.10 However, during the rewriting process, TLIP has been able to make small policy changes with the approval of the Assistant Treasurer. Such changes have only been made where they have had no significant revenue impacts and where the changes help to clarify the operation of the law or bring the operation of the law into line with commercial or actual practice.⁶
- 1.11 The Bills before Parliament are the culmination of TLIP's first eighteen months of consultation, information papers and exposure drafts. The 1996 Bill is the main bill of the package and contains rewritten sections of the 1936 Act. The 1996 Bill rewrites only part of the 1936 Act, which will be progressively phased out as rewritten sections, currently being drafted, are enacted.⁷

³ For a list of differences between the 1995 and 1996 versions of the Income Tax Assessment Bill see Appendix IV.

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

⁵ The Hon John Dawkins MP, Treasurer, Press Release, Canberra, December 1993.

⁶ Policy changes are indicated in the Explanatory Memorandum.

⁷ The next set of legislation is due to be introduced into Parliament in late 1996.

The JCPA's Previous Involvement in the Tax Law Improvement Project

- 1.12 Since the Tabling of Report 326, the JCPA has maintained an active interest in the tax law rewrite and has received regular briefings on TLIP's progress.
- 1.13 As part of this interest, the Committee held a public hearing in Sydney on 11 October 1995 to assess public reaction to TLIP's mandate, its draft legislation and the timetable for implementing the rewritten legislation. In an associated report, Report 343, Tax Law Improvement: A Watching Brief, the Committee recommended that:
 - TLIP should aim to deliver new tax law to Parliament progressively with each instalment commencing in the income year after Royal Assent; and
 - 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 TLIP.8
- 1.14 While these recommendations received the current government's endorsement, the Committee notes that acceptance of the first recommendation is not reflected in the commencement date proposed for the 1996 Bill.⁹ The Committee discusses the appropriateness of this date in detail in Chapter 5.
- 1.15 The current Committee considers that the recommendations made in Report 343 remain valid, a fact that is reflected in conclusions reached in this report.

Structure of the Report

- 1.16 The report is divided into eight chapters, the bulk of which address issues dealing with the 1996 Bill. given that this is the primary bill in the package. Chapter 2 discusses concerns about the constitutional validity of the 1996 Bill. and concludes by accepting legal advice or that the risk that the 1996 Bill is unconstitutional is negligible.
- 1.17 In Chapter 3, the Committee examines general drafting issues associated with the 1996 Bill, and assesses whether the Bill could be better structured or made still easier to understand.
- 1.18 In Chapter 4, the Committee surveys the aids to interpreting the 1996 Bill, including the dictionary at the back of the Bill, the use of diagrams and non operative provisions and the utility of the associated Explanatory Memorandum. The chapter concludes by stressing the need for amending Rulings by the Commissioner of Taxation as speedily as possible to reflect the introduction of the new Bills.
- 1.19 Chapter 5 discusses the most appropriate commencement dates for the 1996 Bill and for future rewrite packages. In this chapter, the Committee also weighs up the proposal that taxpayers be able to fall back on provisions of the 1936 Act.
- 1.20 In Chapter 6, the Committee comments on several clauses individually and stresses the need to correct technical errors in the 1996 Bill as quickly as possible.
- 1.21 Chapter 7 acknowledges scepticism about whether the new legislation will reduce long term compliance costs. The Committee concludes that there needs to be a more effective mechanism for resolving the policy anomalies that the rewrite project is highlighting, but which are beyond TLIP's mandate to address.
- 1.22 In the final chapter, the Committee stresses the need for a commitment by all involved to ensure that the rewrite project and broader policy consideration is conducted expeditiously.

⁸ JCPA, Report 343, Tax Law Improvement: A Watching Brief, AGPS, Canberra, 1995.

⁹ Secretary, Department of Finance to Secretary, JCPA, Department of Finance Minute on JCPA Report 343 - Tax Law Improvement: A Watching Brief, 3 May 1996.

Comment on Individual Clauses

- 1.23 During the inquiry, the Committee received much evidence on the words and phrases used by TLIP for individual clauses in the 1996 Bill. Comment centred on whether these words and phrases accurately or adequately reflect the intent of equivalent sections in the 1936 Act.
- 1.24 The Committee's approach, in almost all cases, has been to refer the comments to TLIP for a response. The results of this process are shown in Appendix V which tabulates, on a clause by clause basis, each comment and TLIP's responses. The Appendix is presented principally as an aid to members and senators during parliamentary debates on the legislation. The Appendix may also be useful for witnesses and members of the public seeking to track TLIP's responses to individual criticisms.
- 1.25 In most cases the Committee has not arbitrated between TLIP and its critics on nuances of tax law interpretation. Such differences, however concern the Committee and they have the potential to devalue TLIP's work if they remain unresolved.
- 1.26 The Committee has commented on individual clauses in Chapter 6 and only there when they have been the subject of overwhelming criticism, or where critics and TLIP alike have agreed that changes are necessary and appropriate.

Preliminary Observations

General Support for the 1996 Bill

1.27 The Committee notes that, despite some criticism of details, the vast majority of commentators see the provisions of the 1996 Bill as a substantial improvement on their equivalents in the 1936 Act. For example, the Centre for Plain Legal Language sees the 1996 Bill as 'much easier to understand' and 'far better drafted', that the equivalent sections in the 1936 Act. Similarly, the Australian Society of Certified Practicing Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia and

the Taxation Institute of Australia ('the Accounting Bodies') jointly 'recognise and congratulate the TLIP for its tremendous effort in producing the Bill'. 10

- 1.28 Furthermore, there was acknowledgment of the comprehensive nature of TLIP's consultation process, with the Minerals Council of Australia (MCA), for example, recording its 'appreciation, both for the dialogue and consultative process that has been established for the mining rewrite'. The Committee has been impressed with TLIP's consultative efforts and notes that this process is being further refined. 12
- 1.29 Nonetheless, the range of criticisms of the 1996 Bill described at Appendix V indicates that, at the very least, there is a need to be ready to draft amending legislation in response to any unintended consequences that emerge during the first years after the Bill's introduction.

TLIP's Policy Mandate

- 1.30 In Report 343, the Committee canvassed criticisms that TLIP's terms of reference were too narrow. Witnesses before that inquiry questioned whether it was possible to substantially simplify and improve income tax law without also reviewing the underlying income tax policy.¹³
- 1.31 As has been mentioned already, TLIP has made minor, revenue neutral changes to tax rules within the 1996 Bill, which are described as 'small p' policy changes. However, these changes, identified in the Explanatory Memorandum, do not go as far as proponents of more substantial reform wish.

¹⁰ Centre for Plain Legal Language, Submission, p. S33 (Vol. 1 of Submissions); Australian Society of Certified Practicing Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia and the Taxation Institute of Australia (the 'Accounting Bodies'), Submission, p. S127 (Vol. 1 of Submissions).

Minerals Council of Australia (MCA), Transcript, p. 70 (22 January 1996); MCA, Transcript, p. 211 (16 July 1996). See also Australian Petroleum Production & Exploration Association (APPEA), Submission, p. S344 (Vol. 3 of Submissions); APPEA, Transcript, p. 208 (16 July 1996).

¹² For example, draft Explanatory Memoranda are now being circulated with exposure drafts of legislation.

¹³ JCPA, Report 343, pp. 6-7.

- 1.32 In the Committee's opinion, most interested parties now accept that TLIP is not in a position to consider broader tax law reform and have approached the 1996 Bill and the Committee's latest inquiry accordingly.¹⁴
- 1.33 In fact, there now appears to be a greater concern that the 1996 Bill contains unintended policy changes that have inadvertently crept in as the rewriting process has subtly changed the meaning of sections of the 1936 Act.
- 1.34 The Committee recognises that broad issues of tax policy simplification (including policy anomalies and complexities) beyond TLIP's mandate need to be resolved before compliance costs will come down appreciably. In Chapter 7, the Committee argues that there needs to be a parliamentary process to highlight these 'small p' policy issues and bring them directly to the attention of Government.
- 1.35 Before addressing these issues, the report begins by considering debate about a more fundamental issue: the constitutional validity of the 1936 Act, and by extension, that of the 1996 Bill.



CONSTITUTIONAL BASIS FOR THE LEGISLATION

Sections 51 & 55 of the Constitution.

2.1 Section 51 of the Constitution provides the Commonwealth Parliament with authority for enacting legislation relating to taxation. However, s. 55 of the Constitution restricts this general power by stating, inter alia, that:

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only...(underline added)

The Income Tax Act 1986

- 2.2 The 1936 Act and the 1996 Bill make laws for the assessment of income tax obligations. The authority to actually impose income tax is given by the *Income Tax Act 1986* and various other taxation imposition Acts. However, there is a section in each of the taxation imposition Acts stating that they are 'incorporated and shall be read as one' with the 1936 Act.¹ The link between the imposition Acts and the 1936 Act is proposed to be extended to the 1996 Bill by Item 1 of Schedule 1 of the Consequential Amendments Bill.
- 2.3 The Law Society of NSW has raised doubts about the constitutional validity of the Income Tax Act and, by association, the 1996 Bill. The argument is based on the premise that the Income Tax Act imposes more than one subject of taxation (in particular with respect to capital gains tax and the taxation of superannuation contributions).² The

For example, see APPEA, Transcript, p. 209 (16 July 1996); Association of Mining & Exploration Companies (AMEC), Transcript, p. 213 (16 July 1996).

See s. 4, Income Tax Act 1986

² Law Society, Transcript, pp. 7-8 (22 January 1995). See also Accounting Bodies, Submission, pp. S157-8 (Vol. 1 of Submissions).

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1996 Bill is linked to the 1936 Act, which is, in turn, linked to and to be 'read as one' with the Income Tax Act. Thus, the 1996 Bill could also be construed as being unconstitutional.

- 2.4 Legal advice obtained by TLIP and provided to the Committee indicates that there is a very low degree of risk that the Income Tax Act, the 1936 Act and the 1996 Bill are unconstitutional.³ The advice, prepared by Dennis Rose QC (a special counsel with the law firm Blake, Dawson Waldron), is based on the 'very broad' definition of the constitutional term 'one subject of taxation' that has been accepted by the High Court. Under this broad definition, the different taxes collected under the Income Tax Act, the 1936 Act and 1996 Bill are likely to be construed as all falling within the one subject of taxation for the purposes of s. 55 of the Constitution.⁴
- 2.5 However, the Law Society of NSW and the Accounting Bodies are concerned that an element of risk will remain, particularly when the capital gains tax (CGT) and tax on superannuation contributions provisions are included in the rewritten legislation.⁵
- 2.6 The Committee accepts TLIP's legal advice that it is extremely unlikely that the 1996 Bill could be successfully challenged under s. 55 of the Constitution. However, the Committee notes concerns that the likelihood of a successful challenge may increase when other tax provisions are rewritten.

- 2.7 TLIP has responded to these concerns by stating that it will consider the constitutional implications of the capital gains tax (CGT) assessment provisions when they are rewritten.⁶ The Committee considers it appropriate that a decision be made then as to whether or not the CGT provisions need to be underpinned by a separate imposition Act.
- 2.8 Having examined one of the more fundamental concerns about the 1996 Bill, the report will now turn to the structure and content of the Bill itself.

Dennis Rose QC, Transcript, p. 9 (22 January 1995); see also Attorney General's Department, Submission, p. S203 (Vol. 1 of Submissions); Denis Rose QC, Blake Dawson Waldron, Opinion, 19 January 1996, Exhibit No. 3.

⁴ Attorney-General's Department, Submission, p. S203 (Vol. 1 of Submissions). The JCPA sought advice from the Attorney-General on this matter, but his department declined to provide independent advice, instead relying on the assessment provided by Blake Dawson Waldron.

⁵ Law Society of NSW, Transcript, p. 11 (22 January 1996); Accounting Bodies, Transcript, p. 11 (22 January 1996); Accounting Bodies, Transcript, p. 190 (8 July 1996); Accounting Bodies, Submission, pp. 485-6 (Vol. 3 of Submissions).

⁶ TLIP, Transcript, pp 11-12 (22 January 1996).

3

GENERAL DRAFTING ISSUES

Introduction

- 3.1 Over the years, the myriad amendments to the 1936 Act have added greatly to its length and complexity. The 1936 Act is over 5 000 pages long, contains section numbers such as 102AAZBA & 159GZZZZA and is extraordinarily difficult for readers to find their way through. Indeed, important but diverse provisions have simply been tacked onto the end of the Act as they have been introduced.¹
- 3.2 In rewriting the law, one of TLIP's first challenges was to present the law in a way which makes the provisions easier to follow and allows future amendments to be incorporated without distorting the basic structure.
- 3.3 A feature of the new Bill is its use of a pyramid structure to arrange the contents of the legislation.² Under this arrangement, the core provisions of the law, which deal at a broad level with how much income tax a person must pay, are brought together at the start of the Bill. After the core, the new legislation groups those rules which apply to large sections of the community. Next follow rules that are of specific application to particular groups of taxpayers, special types of tax and special tax obligations.
- 3.4 The 1996 Bill also contains a number of modern presentational techniques including the use of plain language, a new, more flexible numbering system and explanatory guides within the legislation.

The pyramid structure and other alternatives

Support for the Pyramid Structure

3.5 The pyramid structure has been well received as a clearer and more logical basis for the law than that contained in of the 1936 Act. For example, The Centre for Plain Legal Language observes that:

The pyramid structure is an improvement over the existing structure. The pyramid structure reflects the user-driven approach. This is because the structure groups the provisions by how broadly they apply, that is, to what extent it affects the majority of taxpayers. This allows more specialised and complex provisions to be quarantined so that the needs of the majority of taxpayers can be specifically accommodated.³

Furthermore, the Corporate Tax Association (CTA) and the Business Council of Australia have 'no difficulty' with the pyramid structure while, to the Accounting Bodies, the new structure 'seems sensible and achievable' and 'clearly an improvement over the current law'.⁴

Possible Alternative Structures

3.6 There are a number of ways in which the tax law could have been restructured and, before settling on the pyramid structure for the 1996 Bill, TLIP examined other legislation rewrites in Australia and the tax laws of Britain, Canada, New Zealand and the United States.⁵

¹ Accounting Bodies, Submission, p. S129 (Vol. 1 of Submissions).

The pyramid structure is only a conceptual model and the 1996 Bill is organised into sections, divisions, parts and chapters, in much the same way as legislation has been traditionally organised.

³ Centre for Plain Legal Language, Submission, p. S34 (Vol. 1 of Submissions). See also Jeremy Low, Transcript, p. 26 (22 January 1996).

⁴ Corporate Tax Association (CTA) & Business Council of Australia, Transcript, p. 24 (22 January 1996) CTA, Submission, p. S320 (Vol. 3 of Submissions); Accounting Bodies, Submission, p. S129 (Vol. 1 of Submissions). See also Small Business Combined Associations of NSW, Transcript, p. 100 (23 January 1996); J B Murray & Associates, Submission, p. S28 (Vol. 1 of Submissions).

⁵ See TLIP, Building the New Tax Law, Information Paper No. 2, April 1995, pp. 6-7.

3.7 Some commentators have suggested that the pyramid structure, while an improvement, is not necessarily the best way to restructure the law.

Alternative Structure: Richard Vann

3.8 One such advocate of an alternative structure is Professor Richard Vann of the University of Sydney. Professor Vann criticises the pyramid structure, on the basis that the distinction between general and specific provisions which the Bill purports to make is, in practice, not clear cut. He notes that Chapter 2 of the 1996 Bill contains rules of general application, but also specialist rules and that Capital Gains Tax will be treated as a specialist topic 'lower down the pyramid', when in fact it has general application. Professor Vann comments that:

In terms of overall structure my own view is that one should have a general calculation provision setting out the basic elements of determining how much tax is payable and then progress from there through the basic concepts around which the income tax is organised⁷

3.9 TLIP argues that the Vann model and the pyramid structure have, in fact, many similarities, although the detail may vary.8 TLIP concludes that:

There is a value judgement necessary in determining how to group the provisions. Many variations are possible. The criteria we applied was what would be of most help to the users. Professor Vann has arrived at a different blend in some areas.⁹

- 3.10 TLIP also notes that some of the changes suggested by Professor Vann, such as the incorporation of capital gains into the normal income provisions, the provision of indexation and a general appointment provision, would require significant policy changes that are beyond TLIP's mandate. 10
- 3.11 The Committee has noted the similarities between Professor Vann's suggested model and TLIP's pyramid structure and accepts that many of the differences reflect value judgements on the best way to make the provisions clearer.

Alternative Structure: Peter Haggstrom

3.12 The Special Tax Adviser to the Commonwealth Ombudsman has suggested another structure. He puts forward the idea of an 'axiomatic' approach to tax legislation:

what I have in mind is the development of a series of fundamental propositions or principles which are agreed as being beyond debate - they are in effect the "axioms" of the tax system. There would then be rules on how to apply these axioms in various contexts. One example should suffice to illustrate the general idea.¹¹

3.13 While this is a plausible alternative structure for the tax legislation, it has not been widely supported and it is not clear to the Committee, that it offers any significant advantages over the pyramid structure.

Committee Comments on Alternative Structures

3.14 Other alternative structures for the income tax law have been suggested, each with their own particular advantages and disadvantages. The pyramid structure also has strengths and possible weaknesses but, in the Committee's view, is at least as good as any of the

Richard Vann, 'Improving Tax Law Improvement: An International Perspective', Australian Tax Forum, Vol. 12(2), 1995, p. 216 (Exhibit No. 1). See also: Accounting Bodies, Submission, p. S129 (Vol. 1 of Submissions); CTA, Submission, p. S320 (Vol. 3 of Submissions).

⁷ Richard Vann, 'Improving Tax Law Improvement', p. 215.

TLIP, Submission, p. S296 (Vol. 2 of Submissions).

TLIP, Submission, p. S296 (Vol. 2 of Submissions).

¹⁰ TLIP, Submission, p. S297 (Vol. 2 of Submissions).

¹¹ Special Tax Adviser to the Commonwealth Ombudsman, Submission, p. S68 (Vol 1. of Submissions).

GENERAL DRAFTING ISSUES

alternatives. The Committee finds the structure of the 1996 Bill clear and well thought out and one that should allow readers to find easily the provisions that apply to them.

3.15 Of course, the ultimate test will be whether the pyramid structure remains adequate in a decade or so, after the 1936 Act has been fully rewritten and the new legislation amended to reflect new tax policy and 'business as usual' changes. On the evidence before it, the Committee believes that the pyramid structure has the flexibility to incorporate changes and still maintain its integrity.

The New Numbering System

- 3.16 As well as using a new structure, the 1996 Bill also uses a new numbering system. One of the major criticisms of the 1936 Act is that, after so many amendments, the traditional numbering system has become unwieldy and led to sections such as the infamous s. 159GZZZZA(2)(b)(iii)(B).
- 3.17 The numbering system for the 1996 Bill replaces the present combinations of numbers and letters with a simple two-number system: the first number for Divisions and the second for sections within Divisions. The numbering system indicates the relationship between the different levels in the Bill and has gaps to allow for future expansion of the Act.
- 3.18 The Centre for Plain Legal Language considers that the new numbering system:

is much easier to use than the existing confused system [and that the new system] should not be difficult for users to pick up and apply. 12

3.19 However, the Accounting Bodies believe the new numbering system may cause some confusion, at least initially, as readers familiar with traditional legislative numbering systems, assume that the numbers are arranged in

a decimal rather than linear order. For example, readers may believe that clauses 43-10 & 43-15 are subclauses of Clause 43-1 rather than separate and later clauses. 13

- 3.20 The Accounting Bodies suggest that a way to avoid this confusion is to start divisions at '-001' instead of '-1'. Therefore, Clause 43-1 would become 43-001 and Clause 43-10 would become 43-010
- 3.21 TLIP responds that familiarity will eliminate any risk of confusion with the new numbering system and that people do not find a decimal numbering system intuitively easier to understand than a linear system. 14 TLIP also argues that the use of a dashes rather than decimal points between clause numbers will further reduce the problem. 15 Furthermore, to maintain the same potential for future expansion within divisions of the 1996 Bill as currently exists, would require a four decimal place numbering system (eg, Clause 165-0001) which would make the clause and part numbering even more cumbersome.
- 3.22 The Committee notes that the principles of TLIP's numbering system are clearly explained in the Explanatory Memorandum and believes that the numbering system is acceptable and an improvement over the current system.

Gaps in the Numbering System

3.23 The 1996 Bill has gaps between clause and division numbers so that additional clauses can be inserted into the Bill without upsetting the overall numerical sequence. ¹⁶ For example, section numbers run in multiples of 5, such as 43-1, 43-5 and 43-10, except in the first section in each division. This will allow old sections of the 1936 Act to be easily slotted in as they are rewritten and also allow some room for future expansion and amendments. This will delay the need to use combinations of numbers and alpha characters as the 1936 Act does.

¹² Centre for Plain Legal Language, Submission, p. S34 (Vol. 1 of Submissions). See also CTA, Submission, p. S320 (Vol. 3 of Submissions); Taxation Institute of Australia, Transcript, p. 174 (8 July 1996); Institute of Chartered Accountants, Transcript, p. 175 (8 July 1996).

¹³ Accounting Bodies, Submission, p. S130 (Vol. 1 of Submissions); Accounting Bodies, Transcript, p. 28, (22 January 1996).

¹⁴ TLIP, Transcript, p. 176 (8 July 1996).

¹⁵ TLIP, Submission, p. S242 (Vol. 2 of Submissions).

¹⁶ See clause 2-30, 1996 Bill and Chapter 3, Explanatory Memorandum.

- 3.24 The Accounting Bodies are concerned that the gaps between sections are not big enough.¹⁷ They point out that the gaps left between sections vary in size, but that even the larger gaps are too small to allow the insertion of a typically sized sub-division.
- 3.25 A balance needs to be struck between leaving room for future expansion and distorting the basic structure of the Bill with large gaps. Not all future amendments will require insertions of sub-division size and the Committee believes that the current gap sizes seem an appropriate compromise.
- 3.26 The Accounting Bodies also argue that there should be explanatory footnotes guiding readers between one clause and the next if the two clauses are separated by a numbering gap. Notes are already included at the end of groups of clauses if they precede an irregular sized gap. The Committee is concerned that adding footnotes back to earlier provisions in the case of regular as well as irregular gaps would add to the length of the Bill, as there may be several earlier links that need documenting.
- 3.27 As with many other issues, a compromise needs to be made between comprehensiveness and brevity. The Committee believes that 'gapping guides' would add to the overall complexity and size of the Bill. The Committee would prefer to rely on readers being able to take advantage of the Bill's pyramid structure to 'retrace their steps' up the pyramid and find the links across gaps in the clause numbering.
- 3.28 The Committee believes that the benefits of the new numbering system over the traditional will become clearer with familiarity and as the numbers 'fill up' as the 1936 Act is progressively rewritten.

Plain Language and Judicial Interpretation

The Potential Imprecision of Plain Language

- 3.29 One of the techniques adopted to improve the readability of the 1996 Bill is the use of short sentences and simple language.²⁰
- 3.30 In most cases, this has resulted in clauses in the 1996 Bill being shorter than the equivalent sections in the 1936 Act. This is not always the case, but those instances where rewritten sections are longer are justified by TLIP on the basis that comprehension is more important than brevity.²¹
- 3.31 However, several commentators have been concerned that the use of plain language, while laudable in itself, has sometimes been at the expense of precision. For example, J B Murray & Associates have argued that words such as 'most', 'sometime', 'work out' and 'some' lack the precision required by fiscal legislation.²² Similarly, the Australian Petroleum Production and Exploration Association (APPEA) commented that:

We find it difficult, though, to accept that clarity and simplicity will necessarily be provided with the use of what is allegedly simple language. The language adopted should be of a nature that is required to succinctly convey the principles behind the law. Law is often complex by its very nature and does not always lend itself to simple, one-line explanations.²³

¹⁷ Accounting Bodies, Submission, pp. S130-31 (Vol 1 of Submissions).

¹⁸ Accounting Bodies, Transcript, p. 28, (22 January 1996); Accounting Bodies, Submission, p. S131 (Vol. 1 of Submissions).

¹⁹ Clause 2-30, 1996 Bill. For example, see the annotation at the end of Division 330.

For an expression of support for the use of simple language see Chairman, TLIP Consultative Committee, Transcript, p. 258 (16 July 1996).

For an example of longer provisions see s. 25(1) 1936 Act compared with Clauses 6-5, 6-10, & 6-15 of the 1936 Bill.

J B Murray & Associates, Submission, p. S31 (Vol. 1 of Submissions). See also Law Society of NSW, Submission, pp. S226-7 (Vol. 2 of Submissions).

²³ Australian Petroleum Production & Exploration Association (APPEA), Transcript, p. 69 (22 January 1996); See also APPEA, Submission, p. S347 (Vol. 3 of Submissions); APPEA, Transcript, p. 210 (16 July 1996).

3.32 The Accounting Bodies also point out that:

what appears to be plain language in a legislative provision may in fact turn out to be anything but that when it comes under the scrutiny of the courts.²⁴

3.33 On the other hand, the Centre for Plain Legal Language notes, that more 'user-friendly' language is being 'used in consumer contracts everywhere, even with banks, and is being generally accepted'25. TLIP responds to concerns about the judicial interpretation of the simpler vocabulary by arguing that such an approach misses the point of the rewrite:

we ought to remember that we are rewriting the law not just for the courts. We should avoid being overwhelmed by questions about, 'Well, what will the judiciary think?'... We are trying to make some breakthroughs in terms of readability and understandability of the law. If you keep on being pushed back to the bogey of uncertainty and of asking what the courts and judges think, then you virtually cement yourself in the past.²⁶

3.34 Members of the Committee appreciate any attempts to ease the complexity of legislation for the sake of those who will use the legislation. The Committee was concerned to hear anecdotal evidence about the number of tax agents that have to rely on private sector tax guides because they cannot understand tax law as it is currently written.²⁷ The Committee believes that the language of the 1996 Bill and, in particular, the core and general provisions should be understandable to all those who need to read it. That means by all tax professionals, from sole tax agents to expert professional advisers.

3.35 It is this sentiment that leads the Committee to fully support the use of plain language in the 1996 Bill, even for describing complex provisions. The Committee is comforted in this view by the inclusion in the 1996 Bill of Clause 1-3 which should ensure that the meaning of sections of the 1936 Act will be preserved in the 1996 Bill.

Differences in Style not to Affect Meaning

- 3.36 Clause 1-3 of the 1996 Bill states that sections in the 1936 Act and their equivalents in the 1996 Bill are not to be taken to be different, just because different forms of words are used.²⁸ The clause is designed to reassure readers that the meaning of a provision will not change simply because it is expressed in a different form.
- 3.37 The purpose of Clause 1-3 is to ensure that case law based on sections of the 1936 Act continues to apply to the 1996 Bill, thus ensuring the continuity of ideas and concepts.²⁹
- 3.38 However, the Accounting Bodies are concerned that this puts the onus on taxpayers to determine whether a difference between the 1936 Act and the 1996 Bill is one of style or, in fact, reflects one of the deliberate changes in policy. Therefore, the Accounting Bodies recommend that every policy change in the 1996 Bill should be annotated.³⁰
- 3.39 In Report 343, the Committee accepted that TLIP's mandate allowed it, with the approval of the Assistant Treasurer, to make 'small p' policy changes, conditional on such changes being acknowledged in the Explanatory Memorandum.³¹

Accounting Bodies, Submission, p. S132 (Vol. 1 of Submissions). See also Accounting Bodies, Submission, p. S139 (Vol. 1 of Submissions); Law Society of NSW, Transcript, p. 27 (22 January 1996).

²⁵ Centre for Plain Legal Language, Transcript, pp. 26-27 (22 January 1996).

²⁶ TLIP, Transcript, p. 21 (22 January 1996).

Chairman, TLIP Consultative Committee, Transcript, p. 259 (16 July 1996); See also Tony Parker, Transcript, p. 263 (16 July 1996).

Clause 1-3 is technically unnecessary as it merely reiterates s. 15AC of the Acts Interpretation Act 1901.

The reliance on Clause 1-3 should decline over time as case law is built up around the 1996 Bill itself (when commenced).

Accounting Bodies, Submission, p. S142 (Vol. 1 of Submissions);
Accounting Bodies, Submission, pp. S456, S464-5, 487 (Vol. 3 of
Submissions); Accounting Bodies, Transcript, p. 31 (22 January
1996). See also: ASCPA (NSW), Transcript, pp. 122-3 (23 January
1996); National Institute of Accountants, Transcript, p. 108
(23 January 1996).

³¹ JCPA, Report 343, p. 7.

3.40 To the Committee's mind, it does not seem necessary to acknowledge policy changes both in the Explanatory Memorandum and in the legislation itself. The 1996 Bill should, as far as possible, stand on its own. Annotations identifying policy changes would link the old and new legislation indefinitely and may prompt readers to constantly refer back to the 1936 Act. Such annotations would also only be of benefit in the short term while readers become familiar with the policy changes. After that, they would be unnecessary and only serve to reduce the clarity of the Bill's layout and presentation.

3.41 This highlights the different drafting techniques used to draw a distinction between new forms of words that are meant to change policy (the Explanatory Memorandum) and new forms of words that are not meant to change policy (Clause 1-3). Both techniques are, however, used on the assumption that the meaning of sections in the 1936 Act are clear. Difficulties arise when the meaning of sections in the 1936 Act is disputed. The result is then disagreement over whether the new forms of words used in the 1996 Bill preserve or change policy.

Retaining Words from the 1936 Act

3.42 A number of commentators believe that the words of the 1936 Act should be imported directly into the 1996 Bill in cases where the meaning of words in the 1936 Act are disputed. As the Australian Petroleum Production & Exploration Association (APPEA) and the Minerals Council of Australia (MCA) jointly argue:

in situations where a differing interpretation exists as to the meaning of the current legislation, then the existing words should be retained. It is inconsistent with the stated objective of the Project for the current wording of the legislation to be changed to reflect a Tax Office interpretation not shared by industry. This is clearly beyond the mandate of the Project.³²

3.43 The mining industry, in particular, has argued this principle when disputing TLIP's interpretation of clauses in Division 330 of the 1996 Bill.³³ Division 330 deals with specialist liabilities rules for the mining and quarrying industries. In cases like this, the industry argues, the words from the 1936 Act should be transplanted directly into the 1936 Bill, therefore avoiding any risk that TLIP is incorrectly interpreting the Act.

3.44 The industry argues that this should not present a great problem for TLIP because the need to rewrite specialist provisions in the 1936 Act is not as pressing as it is for the general and core provisions. The mining provisions are only of interest to a narrow audience who have a good understanding of the provisions as they are.³⁴

3.45 TLIP argues however, that refusing to rewrite the contentious legislation that might be the subject of litigation would block much law from being rewritten. As they explained:

to say that because there is litigation or potential litigation... the rewrite project should in effect... just maintain the existing language very directly so that any confusion or lack of clarity in the law would have to be left there. I think that is a difficult proposition to accept, given the volume of litigation and potential litigation.³⁵

3.46 As a matter of principle the Committee believes that TLIP should continue to rewrite the 1936 Act, including disputed sections, using plain language.³⁶

³² APPEA and Minerals Council of Australia (MCA), Submission, p. S40.

See: APPEA, Submission, p. S78-9 (Vol. 1 of Submissions); APPEA, Submission, p. S346 (Vol. 3 of Submissions); MCA, Submission, p. S199 (Vol. 1 of Submissions); WA Chamber of Mines, Transcript, p. 84 (22 January 1996); APPEA, Transcript, p. 223-4 (16 July 1996); CTA, Transcript, p. 80 (22 January 1996). See also Australian Retailers' Association, Transcript, p. 247 (16 July 1996).

³⁴ MCA, Transcript, pp. 218-19 (16 July 1996).

³⁵ TLIP, Transcript, p. 76 (22 January 1996). See also TLIP, Submission, pp. S260, S262 (Vol. 2 of Submissions); TLIP Transcript, pp. 220-1 (16 July 1996).

Mining and exploration industry representatives have raised a number of concerns about particular clauses in Division 330. These are addressed separately in Chapter 6.

- 3.47 Certainly, TLIP has a responsibility to ensure that it clarifies the meaning of all sections of the 1936 Act to the greatest extent possible before rewriting them. In particular cases, caution may require a greater retention of the phrases of the 1936 Act than in other cases. To this end, the Committee notes that, in practice, sections of the 1936 Act, around which substantial bodies of case law have developed, have been minimally reworded in the 1996 Bill.³⁷
- 3.48 In the final analysis however, it is Parliament's prerogative to accept, reject or modify TLIP's interpretation of the 1936 Act when that interpretation is presented to Parliament as a Bill. The outcome of Parliament's consideration may be a change of policy or not.
- 3.49 The Committee also notes that the forms of words used in the 1996 Bill will apply prospectively and will not affect the judicial interpretation of the sections of the 1936 Act under dispute.
- 3.50 A related argument put to the Committee is that taxpayers should have the option of using either the 1936 Act or the 1996 Bill (when enacted) during the phase-in period of the rewritten law. This issue is discussed in Chapter 5, which deals with the implementation of the 1996 Bill.
- 3.51 While the structure and contents of the 1996 Bill are important, the clauses of the Bill, when enacted, will not be used or read in isolation. There will be a range of aids to assist to interpret the meaning of the Bill's clauses, and these form the subject of the next chapter.



AIDS TO INTERPRETATION

Introduction

- 4.1 The operative provisions of the 1996 Bill are not read by taxpayers in isolation and there are several aids, both within the Bill and outside it, to assist readers to interpret the meaning of the Bill.
- 4.2 This chapter will concentrate on four of these aids. The first two aids, the dictionary and the use of diagrams and non operative provisions, are contained within the 1996 Bill. The other two, the Explanatory Memorandum and the body of public and private Rulings associated with the 1936 Act, are outside the 1996 Bill.

The Dictionary

Introduction

- 4.3 The 1936 Act contains nearly 5 000 defined terms spread throughout the body of the legislation. Often the terms have specialist meanings and it can be difficult to find appropriate definitions within the Act, or even to know whether the terms have specialist definitions.
- 4.4 To overcome these difficulties, the 1996 Bill contains a dictionary of 'defined terms' located at Clause 995-1.1 Defined terms have specialist meanings in the 1996 Bill. The dictionary either gives the definitions for defined terms or directs the reader to the location of the definitions within the body of the 1996 Bill or in other Acts (usually the 1936 Act).

³⁷ For example, Clause 8-1 (General Deductions) of the 1996 Bill.

Chapter 6 of the Bill also provides rules on how to interpret the 1996 Bill and discusses various concepts about companies.

- 4.5 Definitions within the body of the 1996 Bill are referred to as 'just in time definitions' and are usually at the beginning of divisions or subdivisions where the definitions can aid comprehension of that division or subdivision. The dictionary gives the location of 'just in time' definitions.
- 4.6 The Explanatory Memorandum gives explanations for any differences in definitions between the 1936 Act and the 1996 Bill.² A change in a term's meaning in the 1996 Bill has no effect on the use of the word in a part of the 1936 Act which have not yet been rewritten.

The Use of Asterisks

- 4.7 Most defined terms are identified by an asterisk which appears in front of the term when the term is used. The basic rule is that a defined term is always marked with an asterisk, except if it has previously occurred in the same subclause.³
- 4.8 A number of defined terms that appear frequently, such as 'company', 'income tax' and 'assessable income', are not marked with asterisks at all. However, these terms are all listed early in the Bill in Clause 2-15, along with references to where definitions can be found in the dictionary or in the body of the legislation. These terms are also listed in the dictionary.
- 4.9 Although there is consensus that the Dictionary is a good idea and a marked improvement over the 1936 Act, there has been concern that defined terms are not marked with an asterisk every time they are used.⁴

- 4.10 TLIP replies that there is a danger that asterisks could become overused if employed every time a defined term appears and that readers would be subject to 'a thicket of asterisks'. However, TLIP has acknowledged the need for more asterisks, as they are used more frequently in the 1996 Bill than they were in the 1995 version.
- 4.11 The Committee believes that TLIP has now struck an appropriate compromise between the need for clear signposting to definitions and presentational clarity.

Footer References to Dictionary

- 4.12 Each page of the 1996 Bill will contain the footer '*To find the definition of this term, see the Dictionary, starting at section 995-1.'7 However, not all pages contain a defined term marked by an asterisk and so the footer could become potentially confusing to readers on those pages.8
- 4.13 TLIP argues that this has been done for drafting convenience and to ensure that there is always such a footer on a page with a defined term marked by an asterisk.9
- 4.14 The Committee accepts that the use of the footer, as worded, is potentially confusing on pages where there is no asterisk used. To remove the potential confusion, the Committee suggests that the footer be reworded and, accordingly, makes the following recommendation.

² Explanatory Memorandum, p. 140.

³ See Clause 2-15, 1996 Bill.

⁴ Accounting Bodies, Transcript, pp. 32, 65 (22 January 1996).

⁵ TLIP, Transcript, p.65 (22 January 1996).

Generally marked with an asterisk once in a Division or Subdivision in the 1995 Bill while defined once in every subclause in the 1996 Bill. See Clauses 2-10, 2-15 1996 Bill.

⁷ Explanatory Memorandum, p. 139.

⁸ See Accounting Bodies, Submission, p. S136 (Vol. 1 of Submissions); Accounting Bodies, Submission, pp. S465-66 (Vol. 3 of Submissions); National Institute of Accountants, Transcript, p. 129 (23 January 1996).

⁹ TLIP, Transcript, p. 129 (23 January 1996); Submission, p. S231.

4.15 Recommendation 1

The footnote on each page of the Income Tax Assessment Bill 1996 that states:

"*To find the definition of this term, see the Dictionary, starting at section 995-1."

should be amended to state:

"*To find the definitions of asterished terms, see the Dictionary, starting at section 995-1.".

4.16 The Committee concedes that the phraseology of this recommendation is technically incorrect because not all definitions are defined in the dictionary. For just in time definitions, the dictionary merely tells a reader where to go to find them. However, this phraseology removes any confusion for those reading the footnote on pages where there is no defined term marked with an asterisk. In this case, the Committee believes that a reduction in confusion outweighs the need for technical precision.

Finding Definitions

4.17 A number of commentators are critical that definitions for defined terms are often not found in the dictionary itself. Instead, the dictionary refers the reader back to 'just in time' definitions within the body of the Bill or to definitions in other Acts (usually the 1936 Act).¹⁰

4.18 TLIP concedes that this may be irritating, but argues that the 1996 Bill should contain definitions in one place only, given the number of defined terms. TLIP views the dictionary as a 'safety net' only, as readers should come across the just in time definitions of defined terms, before they need to use them.¹¹

4.19 The Committee accepts this logic. Ultimately, readers will be able to find all definitions somewhere in the 1996 Bill (something by no means guaranteed in the 1936 Act) and there will be clear guideposts to help locate the definition. TLIP has also pointed out that cross references to the 1936 Act will reduce as the Act is progressively rewritten. ¹² Again, a balance has to be found between brevity and comprehensiveness, a balance that the Committee thinks has been appropriately struck.

Diagrams and Non Operative Provisions

Guides

- 4.20 The 1996 Bill contains a number of communication techniques or 'guides' to make it easier to use. These include diagrams, theme statements, tables of contents and other non-operative narrative text. 13 The Bill also contains 'signposts' to help the reader move between relevant clauses.
- 4.21 Guides form part of the Bill, but are separated from the operative provisions and have very limited legal status. Division 950 of the 1996 Bill outlines the ways in which Guides can and cannot be used as an aid to interpretation of the operative provisions.

Is Non-Operative Information Necessary in the Bill?

4.22 J B Murray & Associates argues that the 1996 Bill has been written 'as a textbook' and that the drafters 'forgot that it is actually a piece of fiscal legislation'. Furthermore, it argues that the place for the guides is in the Explanatory Memorandum, not in the Bill itself and that:

See Accounting Bodies, Transcript, p. 62 (22 January 1996); Accounting Bodies, Transcript. p. 192 (8 July 1996); ASCPA, Transcript, p. 140 (23 January 1996); Richard Vann, Transcript, p. 139 (23 January 1996); Accounting Bodies, Submission, p. S135 (Vol. 1 of Submissions); Australasian Tax Teachers' Association, Transcript, p. 140 (23 January 1996).

¹¹ TLIP, Transcript, p. 64 (22 January 1996); TLIP, Transcript, p. 193 (8 July 1996).

¹² TLIP, Transcript, p. 141 (23 January 1996).

¹³ See Chapter 2, Explanatory Memorandum.

¹⁴ J B Murray & Associates, Submission, p. S30 (Vol. 1 of Submissions).

The whole division [2] serves no legal purpose... It is repeated in the Explanatory Memorandum and that is where it should be, an explanation of the Act. 15

- 4.23 The Committee disagrees, TLIP's biggest challenge is reducing the complexity of the 1936 Act and guides such as the likes of those contained in Division 2 of the 1996 Bill, play a central role in this task. Placing guides to interpretation within the legislation, rather than in a separate document means it is both quicker and easier to understand the law.
- 4.24 Nonetheless, while there is general agreement that these aids to comprehension make the provisions easier to understand, there remains concern about how they will be interpreted by the Courts.

Judicial Interpretation of Non Operative Provisions

- 4.25 Several commentators have expressed such concern. The Law Society of NSW points out that 'There is no authority in Australia or the United Kingdom concerning the interpretation to be given to a diagram'. 16
- 4.26 TLIP responds that diagrams should be treated as an overview and are clearly subordinate to the specific provisions of the Bill. TLIP argues that Clause 950-150 of the 1996 Bill and s. 15AD of the Acts Interpretation Act adequately provide advice to the Courts on how to interpret the Guides.¹⁷.
- 4.27 The Committee believes that the non-operative orientation material is a highly desirable feature of the new Bill and accepts TLIP's advice that there is sufficient guidance provided for its interpretation.

The Explanatory Memorandum

Introduction

4.28 The Explanatory Memorandum (EM) associated with the three Bills:

- explains why the 1936 Act is being re-written;
- describes the structure of the 1996 Bill;
- gives an explanation for the policy changes made in the 1996 Bill;
- provides a table that lists clause numbers in the 1996
 Bill and their equivalents in the 1936 Act; and
- explains the operation of the Consequential Amendments Bill and the Transitional Provisions Bill.

The EM does not, however, provide explanations for those clauses that have been rewritten but do not represent changes in meaning.

All Policy Changes Should be Identified

4.29 The Accounting Bodies are concerned that some phrases introduced into clauses in the 1996 Bill have unintended policy consequences that are not acknowledged by TLIP or referred to in the EM. 18 In addition, the Corporate Tax Association (CTA) is concerned that the EM does not clarify cases where phrases may have a defined meaning in the 1936 Act but not in the new Bill. 19

J B Murray & Associates, Submission, p. S29 (Vol. 1 of Submissions).

Law Society of NSW, Submission, p. S224. See also Law Society of NSW, Transcript, p. 14 (22 January 1996); Law Society of NSW, Submission, p. S229 (Vol. 2 of Submissions), CTA, Submission, p. S321 (Vol. 3 of Submissions).

¹⁷ TLIP, Submission, pp. S279, S304-5 (Vol. 2 of Submissions).

Accounting Bodies, Submission, pp. S 139-40 (Vol 1 of Submissions). See also Accounting Bodies, Submission, pp. S475-6, 481-2, 482-4 (Vol. 3 of Submissions).

¹⁹ See: CTA, Submission, pp. S321-2, 427 (Vol. 3 of Submissions).

4.30 The Committee believes that the EM should identify all policy changes and changed definitions. In this regard, the Committee notes TLIP's undertaking to amend the EM if such changes have been unrecorded.²⁰

Extent of Explanations

- 4.31 Several commentators believe that the EM should provide an explanation of all clauses in the 1996 Bill and not just those that represent a change in policy. They note the importance that tax practitioners place on explanatory memoranda for explanations of tax legislation. Accordingly, they are concerned that there will be not be a single, comprehensive EM.²¹
- 4.32 TLIP responds that the need for a comprehensive EM is greatly lessened because much of the information traditionally included in explanatory memoranda will be contained in the 1996 Bill as non-operative provisions. ²² TLIP also argues that an EM explaining all rewritten clauses would produce a huge document and that it would be an 'unnecessary distraction to re-explain law that is unchanged, save for its expression in clearer language'. ²³
- 4.33 The Committee accepts TLIP's arguments and believes that the non-operative material within the 1996 Bill will provide an adequate explanation to those unfamiliar with the legislation. Indeed, in the Committee's judgement, TLIP will have failed its task if an EM is needed to understand the fully rewritten tax law on an ongoing basis once the 1936 Act is completely rewritten.

Rewriting Public Rulings

The need to Rewrite Public Rulings

- 4.34 Case law is not the only external aid used for interpretation of the 1936 Act. The Commissioner of Taxation provides taxation Rulings that are official interpretations of tax law that, once issued, become legally binding on the Commissioner.²⁴
- 4.35 Given the complexity of the 1936 Act, Rulings are often the only way that taxpayers can understand their tax obligations. For this reason, tax practitioners are concerned that the application of Public Rulings made under the 1936 Act to the 1996 Bill is made explicit.²⁵
- 4.36 Provisions in the Consequential Amendments Bill make it clear that Rulings made under the 1936 Act will apply to the equivalent rewritten clauses in the 1996 Bill, where there have been no policy changes. However, old Rulings will not be valid for clauses in the 1996 Bill that do reflect policy changes. These Rulings will need to be redrafted.
- 4.37 TLIP estimates that the content of approximately 90 per cent of existing Rulings will be unaffected by the new legislation.²⁷ However, there will ultimately be a need to amend all Rulings, if only to reflect the new numbering system of the 1996 Bill.

²⁰ TLIP, Transcript, p. 197 (8 July 1996).

Accounting Bodies, Submission, p. S195 (Vol. 1 of Submissions); Accounting Bodies, Submission, pp. S457, 472 (Vol. 3 of Submissions); Accounting Bodies, Transcript, pp. 195-6 (8 July 1996); Institute of Chartered Accountants, Transcript, pp. 197-8 (8 July 1996).

²² TLIP, Transcript, pp. 194-5 (8 July 1996).

²³ TLIP, Submission, p. S245 (Vol. 2 of Submissions).

There are three types of Rulings issued by the Commissioner of Taxation. They are Public Rulings, Private Rulings and Determinations. Public Rulings and Determinations will be need to be rewritten as a consequence of the 1996 Bill. References to Public Rulings within this report also apply to Determinations.

²⁵ Accounting Bodies, Transcript, p. 102 (23 January 1996); ASCPA (NSW), Transcript, p. 103 (23 January 1996).

See Items 3 & 4, Schedule 2, Income Tax (Consequential Amendments) Bill 1996.

²⁷ TLIP, Transcript, p. 104, (23 January 1996). In fact a need to substantially rewrite a Ruling would indicate, prima facie, that a section has been misinterpreted in the rewrite.

- 4.38 TLIP's mandate is to rewrite only the 1936 Act. The Commissioner has responsibility for issuing Rulings and rewriting the Rulings that will be affected by the new legislation. However, the Committee believes it should comment on the process for rewriting Rulings, given their current importance for assessing tax liabilities.
- 1.39 There have been two concerns raised about the impact of the 1996 Bill on existing Rulings. The first is that the existing Rulings will not be rewritten by the Commissioner quickly enough.²⁸ The second is that the there needs to be greater certainty that existing Rulings will remain valid unless there is an explicit statement to the contrary.²⁹

A Timetable for Rewriting Rulings

4.40 TLIP has advised that the Australian Taxation Office (ATO) is considering how to review Public Rulings affected by the 1996 Bill. This will be done in consultation with the National Taxation Liaison Group, a joint ATO and tax industry panel.³⁰ TLIP has noted that any timetable for reviewing Rulings will have to take into account the need for the ATO to simultaneously devote resources to writing new Rulings on currently contentious issues.³¹

4.41 The Committee is heartened to see that the ATO is now considering how best to rewrite Public Rulings affected by the 1996 Bill. However, the Committee wishes to impart a sense of urgency to this process, not just for the 1996 Bill. but also for subsequent legislation drafted by TLIP. Accordingly, the Committee makes the following recommendation.

4.42 Recommendation 2

The Commissioner of Taxation and the major tax bodies (through the National Tax Liaison Group) should agree, as a matter of urgency, to a process and timetable for rewriting existing Public Rulings affected by the Income Tax Assessment Bill 1996 and subsequent legislation. The process and priority to be given to rewriting individual Rulings should be determined by the end of 1996 and be made publicly available. The public statement should also include a completion date for the process of rewriting the Rulings.

- 1.13 The ASCPA (NSW) argues that the ATO should not wait until the 1996 Bill receives Royal Assent before starting to rewrite Rulings.³² The Committee agrees that the ATO should start redrafting high priority Rulings as soon as the National Tax Liaison Group has determined which Rulings need to be rewritten first.
- 4.44 However, given that few Public Rulings are likely to have been rewritten by the time the 1996 Bill is enacted, it is important that taxpayers have certainty that existing Rulings will remain binding in the interim.

Continuing Application of Existing Rulings

- Amendments Bill amend sections 14ZAAM and 147AXA of the Taxation Administration Act 1953 to ensure that Public and Private Rulings made under the 1936 Act (the 'old law') remain valid under the rewritten law (the 'new law'). However, the Rulings remain valid 'only so far as the new law expresses the same ideas as the old law'.
- 4.46 The Corporate Tax Association believes that greater security could be provided to taxpayers if the emphasis in these clauses is switched so that Rulings are taken to be about the new law, except to the extent that the new law is *intended* to express different ideas from the old law.³³

Accounting Bodies, Submission, pp. S151-2 (Vol. 1 of Submissions);
Accounting Bodies, Submission, pp. S457-9, S474 (Vol. 3 of
Submissions); Accounting Bodies, Transcript, pp. 102-3 (23 January
1996); ASCPA (NSW), Transcript, p. 255-6 (16 July 1996); CTA,
Transcript, p. 170 (8 July 1996); Institute of Chartered Accountants,
Transcript, p. 153 (8 July 1996).

²⁹ ASCPA, Transcript, p. 103 (23 January 1996).

Industry is represented by the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants, the National Institute of Accountants, the Australian Taxpayers' Association, the Taxation Institute of Australia and the Law Council of Australia.

³¹ TLIP, Submission, p. S246 (Vol. 2 of Submissions); TLIP, Transcript, pp. 171-2 (8 July 1996).

³² ASCPA (NSW), Transcript, p. 105 (Sydney, 23 January 1996).

³³ CTA, Submission, pp. S415-16 (Vol. 3 of Submissions). Emphasis added.

- 4.47 The difficulty with this suggestion is that provisions concerning the continuation of existing Rulings need to be consistent with those governing the continuation of existing laws. Thus, Items 3 and 4 of Schedule 2 of the Consequential Amendments Bill need to be consistent with Clause 1-3 of the 1996 Bill and hence s. 15AC of the Acts Interpretation Act, neither of which have an intention test. The addition of an intention test in the Consequential Amendments Bill would be inconsistent with the principles of statutory interpretation.
- 4.48 The Committee acknowledges the importance of preserving existing Rulings until they are rewritten. However, the Committee accepts TLIP's drafting advice that Items 3 and 4 of Schedule 2 of the Consequential Amendments Bill are sufficient to ensure that continuity.
- 4.49 So far, the contents and structure of the 1996 Bill and the adequacy of the associated aids for its interpretation have been reviewed. While the 1996 Bill itself is of interest to tax professionals, there is a practical issue of equal significance: that is, how and when should the new law be introduced? This issue is the subject of the next chapter.



IMPLEMENTATION

Introduction

- 5.1 TLIP considers that the 1936 Act is too large and complex to replace and enact in a single stage, or 'big bang' and has decided to enact components of the rewritten law in instalments. The 1996 Bill is the major bill of the first instalment and has a commencement date of 1 July 1996.
- 5.2 There is considerable concern about the commencement date of the 1996 Bill and the plan to stagger the introduction of the other tranches of legislation both issues are addressed in this chapter.

Commencement Date of the 1996 Bill

Retrospectivity of the 1996 Bill

- 5.3 Clause 1-2 of the 1996 Bill states that the Income Tax Assessment Act 1996 will commence on 1 July 1996. Similarly, Clause 4-1 of the Transitional Provisions Bill states that the 1996 Bill, when enacted, will apply to assessments for the 1996-97 income year and later years.
- 5.4 It concerns Members of the Committee, and nearly all the individuals and organisations that have given evidence, that these clauses ensure that the operation of the 1996 Bill will be retrospective.¹

CTA, Transcript, p. 149 (8 July 1996); Taxation Institute of Australia, Transcript, p. 152 (8 July 1996); Institute of Chartered Accountants, Transcript, pp. 166-7 (8 July 1996); Business Council of Australia, Transcript, p. 179 (8 July 1996); APPEA, Transcript, p. 209 (16 July 1996); MCA, Transcript, p. 212 (16 July 1996); AMEC, Transcript, p. 215 (16 July 1996); Chairman, TLIP

- 5.5 The Committee is aware of arguments that, in practical terms, the 1996 Bill is not retrospective because it is only rewriting existing law and not creating 'new' law. The Committee is also aware of arguments that the 1996 Bill should commence as soon as possible since no taxpayer will be disadvantaged by the 1996 Bill and because its benefits cannot be realised until commencement.²
- 5.6 Nonetheless, the Committee has an in-principle objection to retrospective legislation.
- instalment of the new tax law should commence in the income year after Royal Assent.³ Many witnesses have suggested that the 1996 Bill should be amended to commence from 1 July 1997, instead of 1 July 1996. Such an amendment, however, leaves open the possibility, that the Bill would again become retrospective if not enacted in the next two parliamentary sessions. The Committee recommends accordingly.

5.8 Recommendation 3

Clause 1-4 of the Income Tax Assessment Bill 1996 should be amended to state that commencement of the Act begins on 1 July following Royal Assent. The Income Tax (Transitional Provisions) Bill 1996 should be amended accordingly. Furthermore, the commencement dates for subsequent legislation rewriting parts of the Income Tax Assessment Act 1936 should be written in similar terms.

Entities with Substituted Accounting Periods

5.9 The Commissioner of Taxation has approved some entities to use substituted accounting periods (SAPs). Entities with SAPs use an income year, for taxation purposes, that does not start on 1 July. Those with income years commencing

before 1 July have 'early balancing' SAPs, while those with income years beginning after 1 July have 'late balancing' SAPs.

- 5.10 There is some risk that entities with early balancing SAPs will find the 1996 Bill retrospective, regardless of which 1 July the Bill commences on.⁴
- allowances should be made for entities with early balancing SAPs.⁵ Such entities seek SAPs, aware that by being out of sequence with most other taxpayers, they may be advantaged or disadvantaged by provisions designed for those using a standard income year. By convention, neither Budgets nor other tax law amendments make allowances for entities with SAPs and the Committee does not believe the 1996 Bill should set a precedent.⁶

Authorisation for SAPs Preserved

- 5.12 The Accounting Bodies are concerned that the Transitional Provisions Bill does not contain a clause to preserve entities' authorisations to use SAPs.⁷
- 5.13 However, s. 18 of the 1936 Act, which authorises the Commissioner of Taxation to grant SAPs, has not been rewritten in the 1996 Bill. Authorisations for SAPs will thus remain valid until s. 18 of the 1936 Act is redrafted. TLIP has

Consultative Committee, Transcript, p. 260 (16 July 1996); Small Business Combined Association of NSW, Submission, p. S407 (Vol. 3 of Submissions); Accounting Bodies, Submission, p. S449-450 (Vol. 3 of Submissions).

² TLIP, Transcript, pp. 183-4 (8 July 1996)

³ JCPA, Report 343, p. 19.

For example, if the Bill receives assent between January and 30 June. See AMEC, Submission, p. S429 (Vol. 3 of Submissions). See also Accounting Bodies, Submission, p. S150 (Vol. 1 of Submissions).

Except if Recommendation 3 is rejected by the Government and the 1996 Bill commences from 1 July 1996. In this case, it is possible that companies with early balancing SAPs would find the Bill retrospective for more than one income year.

⁶ See TLIP, Submission, p. S240 (Vol. 2 of Submissions); TLIP, Transcript, p. 168 (8 July 1996); TLIP, Transcript, p. 216 (16 July 1996).

⁷ Accounting Bodies, Submission, pp. S150-1 (Vol. 1 of Submissions); Accounting Bodies, Submission, p. S473 (Vol. 3 of Submissions); Accounting Bodies, Transcript, pp. 101-2 (23 January 1996).

indicated that, when this occurs, a specific transition provision to preserve existing SAPs will be provided, along the lines of s. 18(2) of the 1936 Act.⁸

5.14 Nonetheless, additional security that SAPs will be preserved under the 1996 Bill could be provided by an amendment to s. 18(1) of the 1936 Act. Accordingly, the Committee makes the following recommendation.

5.15 Recommendation 4

Item 5 of Schedule 1 of the Income Tax (Consequential Amendments) Bill 1996 be amended by inserting:

5A Subsection 18(1)

Omit "His" and substitute "For the purposes of this Act, the person's".

- 5.16 The critical phrase of this recommendation is 'For the purposes of this Act'. Item 1 of Schedule 1 of the Consequential Amendments Bill inserts a definition in the 1936 Act of 'this Act' which includes the 1996 Bill. Therefore, the inclusion of a reference in s. 18(1) of the 1936 Act to 'this Act' will extend the authority to maintain SAPs into the 1996 Bill.
- 5.17 While there has been specific concern about the commencement date of the 1996 Bill, there has been wider debate about the best way to phase in the 1996 Bill and other blocks of legislation in the rewrite.

A 'Big Bang', Progressive Replacement or Warehousing?

Introduction

- 5.18 As mentioned, TLIP believes the 1936 Act is too large and complex to replace in a single Bill, or 'big bang' and hopes to introduce the new law in instalments ('progressive replacement').9
- 5.19 The JCPA canvassed debate on the most appropriate delivery option for the new law in *Report 343*, and supported TLIP's plan to progressively commence the tax law rewrite packages. ¹⁰
- 5.20 However, a number of parties now support a third implementation option, known as 'warehousing' or the 'modified big bang' approach.¹¹ This approach distinguishes between the enactment date of the legislation by Parliament and the commencement date. Warehousing envisages progressive enactment of the replacement Bills, but a simultaneous commencement date for all the Bills.

Warehousing: For and Against

5.21 Warehousing, it is argued, would allow all interested parties to consider the new law in manageable sized Bills and at the same time to view the complete product before commencement. This would enable technical errors and unintended consequences in the early blocks of legislation to

⁸ TLIP, Transcript, p. 103, (23 January 1996). See also TLIP, Submission, p. S243 (Vol. 2 of Submissions).

See TLIP, Building the New Tax Law, Information Paper No. 2, April 1995, pp. 25-31; Explanatory Memorandum, p. 18. See also APPEA, Submission, pp. S80-1.

¹⁰ JCPA, Report 343, pp. 16-19.

See Accounting Bodies, Transcript, p. 15 (22 January 1996);
Accounting Bodies, Transcript, pp. 153-4 (8 July 1996); ASCPA
(NSW), Transcript, p. 109 (23 January 1996); ASCPA (NSW),
Transcript, pp. 244-5 (16 July 1996); Institute of Chartered
Accountants, Transcript, p. 152 (8 July 1996); APPEA, Transcript,
p. 209 (16 July 1996); MCA, Transcript, p. 212 (16 July 1996);
AMEC, Transcript, p. 214 (16 July 1996); Transcript, p. 244 (16 July 1996); CTA, Submission, pp 327-8 (Vol. 3 of Submissions);
Accounting Bodies, Transcript, pp. S447-9 (Vol. 3 of Submissions).

be identified and corrected before being used. It would also allow readers to check the integration of the different stages of legislation. In addition, warehousing would obviate the need to use the 1936 Act and the new law together. 12

- 5.22 On the other hand, the Committee has heard evidence that the tax industry takes a 'just in time' approach to absorbing the impact of new legislation. ¹³ It is, therefore, unlikely that tax practitioners would take advantage of the hiatus afforded by the warehousing option to become familiar with the new legislation before it commenced. Practitioners would then face the disadvantage of the 'big bang' approach; namely, absorbing all the rewritten legislation in one year.
- 5.23 Progressive replacement also allows technical corrections to be made in the subsequent consequential amendments Bills and staggers the task of rewriting Rulings. Another disadvantage of warehousing is that it would require 'business as usual' corrections to be duplicated: once in the 1936 Act and again in the enacted but inoperative legislation.
- 5.24 Witnesses at the public hearings held by the Committee indicated that TLIP's private sector Consultative Committee remained, on balance, in favour of the current staged implementation project, or at least equally divided on whether there should be a phased introduction or warehousing approach to the commencement of the law.¹⁴

The Committee's Conclusions

- 5.25 The Committee has accepted that there are advantages and disadvantages with the staged implementation, the 'big bang' and the warehousing delivery options. However, the Committee does not believe that the 'big bang' or warehousing options are practical alternatives.
- 5.26 In the case of the warehousing option, the Committee considers that both the House of Representatives and the Senate would be reluctant to pass legislation in the knowledge that it might not commence operation for several years. Furthermore, because of the pressures on Parliament's time, it is unlikely that legislation with no immediacy would receive enough priority to be scheduled for debate.
- 5.27 The Committee acknowledges that any implementation process is going to be difficult, for taxpayers, tax professionals and the Australian Taxation Office (ATO) alike.
- 5.28 What has reinforced the Committee's support for phased introduction is that the transition will be easier for smaller tax practitioners and businesses than if the new legislation commenced all at once ('big bang' or warehousing). The Committee has heard evidence from the Small Business Combined Association of NSW, the Institute of Chartered Accountants, and a sole rural practitioner on TLIP's Consultative Committee suggesting that small businesses and tax agencies would have great difficulty coping with a one off implementation of the new law. 15 For this practical reason, the Committee confirms its support for a phased introduction of the rewritten law.

Retaining a 'Fall Back' Option

5.29 A number of commentators advocate that taxpayers be allowed to 'fall back' to the provisions of the 1936 Act if they believe they will be disadvantaged by the rewritten

¹² See APPEA, Submission, pp. S354-5 (Vol. 3 of Submissions).

TLIP, Transcript, p. 157 (8 July 1996); Business Council of Australia, Transcript, p. 180 (8 July 1996); Tony Parker, Transcript, p. 262 (16 July 1996).

^{See Simon Gaylard, Transcript, p. 106, (23 January 1996); Simon Gaylard, Transcript, pp 183-4 (8 July 1996). See also Stan Droder, Transcript, pp. 94-5 (23 January 1996); Stan Droder, Transcript, pp. 259, 267 (16 July 1996); Tony Parker, Transcript, p. 263 (16 July 1996). For an alternative view, see Joycelyn Morton, Transcript, p. 109 (23 January 1996); Bob Bryant, Submission, p. S327 (Vol. 3 of Submissions); Ian Langford-Brown, Transcript, p. 152 (8 July 1996).}

¹⁵ Small Business Combined Association of NSW, Submission, p. S407 (Vol. 3 of Submissions); Tony Parker, Transcript, p. 262 (16 July 1996); Institute of Chartered Accountants, Transcript, p. 167 (8 July 1996). See also Accounting Bodies, Submission, pp. 459-60 (Vol. 3 of Submissions).

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equivalents in the 1996 Bill. 16 Some supporters believe a fall back option could exist in perpetuity, while others believe its use should be limited to the phase in period of the rewritten law.

Act and 1996 Bill are deemed to have the same meaning, then it should not matter which version is used. The fall back option therefore protects taxpayers against any unintended policy changes in the new law. Such an option would also quickly highlight any unintended differences in meaning between the two versions of the law. The Corporate Tax Association (CTA) sees the inclusion of a fall back option in the 1996 Bill as satisfactory way of obtaining the advantages of the warehousing option. 18

5.31 The CTA also points out that a form of fall back option already exists under the 1936 Act. Taxpayers (and the Commissioner) have always had the freedom to choose which provisions in the Act they will rely on to determine their taxable income and tax liabilities. 19

5.32 On the other hand, TLIP argues that allowing a fallback option would increase compliance and administrative costs. Taxpayers (or their agents) would need to work out and compare their liabilities under both sets of law; Rulings may need to be written for both sets of law; the ATO would have to administer both laws; and Parliament would have to consider two versions of all 'business as usual' amendments that affected the rewritten parts of the law.²⁰

The Committee's Conclusions

5.33 The Committee does not support having a fall back option. A fall back option will lead to unnecessary confusion for taxpayers preparing their own tax returns and will have a particularly heavy impact on small businesses and tax agents who will have to prepare and weigh up two potential returns before sending one in.

5.34 Tax law is complex enough with one income tax assessment Act. Having two Acts to contend with would be even worse and, ultimately, only delay the transition to the new law.

Conclusion

5.35 In the final analysis, the implementation process will inevitably be complex, time consuming and lead to a short term increase in compliance costs.

5.36 As is reflected through this chapter, the Committee is particularly concerned about the impact of the implementation process on small businesses and small tax agencies. Large companies, major accounting firms and professional bodies will have the resources to adequately and quickly train tax advisers converting over to the 1996 Bill. It will not be so easy for others.

5.37 The Australian Taxation Office will also have to train its staff in relation to the 1996 Bill, a process which involves producing transition training manuals. The Committee believes that these manuals will be a valuable resource and versions of the manuals should be made available, at cost, to the public generally and tax agents in particular. Accordingly, the Committee makes the following recommendation.

Business Council of Australia, Transcript, p. 179 (8 July 1996); CTA, Transcript, pp. 150, 181 (8 July 1996); AMEC, Transcript, p. 214 (16 July 1996); MCA, Transcript, p. 70 (22 January 1996); APPEA & MCA, Submission, p. S40 (Vol. 1 of Submissions); APPEA, Submission, pp. S78-9 (Vol. 1 of Submissions); CTA, Submission, p. S413 (Vol. 3 of Submissions); Accounting Bodies, Submission, p. S457 (Vol. 3 of Submissions).

¹⁷ This argument would, of course, not apply to the intended policy changes in the 1996 Bill.

¹⁸ CTA, Submission, p. S415 (Vol. 3 of Submissions).

¹⁹ CTA, Submission, p. S413-14 (Vol. 3 of Submissions).

TLIP, Submission, p. S331-2 (Vol. 3 of Submissions).

This is already being considered by TLIP. See TLIP, Transcript, p. 268 (16 July 1996). See also Accounting Bodies, Submission, pp. 459-60 (Vol. 3 of Submissions).

5.38 Recommendation 5

Versions of training material prepared by the Australian Taxation Office for its staff to convert from the Income Tax Assessment Act 1936 to the Income Tax Assessment Act 1996 should be made available for purchase by the public.

In the next chapter, the report addresses some of the concerns about individual clauses in the 1996 Bill. The following chapter, Chapter 7, goes on to acknowledge the need for an improved process to address some of the policy anomalies that the rewrite project is highlighting.



COMMENTS ON INDIVIDUAL CLAUSES

Introduction

- 6.1 In Chapter One of this report, the Committee expressed its reluctance to arbitrate between TLIP and its critics on nuances of tax law interpretation.
- 6.2 However, the Committee believes it is important to acknowledge the criticisms of the 1996 Bill that the inquiry has highlighted. Therefore, Appendix V lists the clause by clause criticisms of the 1996 Bill. The Committee asked TLIP to respond to each criticism and references to these responses are also listed in Appendix V.
- 6.3 The Committee is pleased to note that a number of complaints about the 1995 version of the Bills have been addressed in the 1996 version as a result of this process.¹
- 6.4 There, of course, remain a number of criticisms of individual clauses in the 1996 Bill. The Committee is conscious that many of the criticisms, and TLIP's responses, rely on subtleties of interpretation and precedent. TLIP has consulted widely with tax professionals and others, through its private sector consultative committee and via discussion papers, and exposure drafts, as part of the drafting process. The Committee is prepared to place its faith in these consultative processes and accept that TLIP has taken into account the range of views expressed on various issues and clauses. Accordingly, unless it has commented specifically, the Committee is prepared to accept that TLIP's interpretation of the 1936 Act is, on balance, the most appropriate.

See TLIP, Transcript, p. 156 (8 July 1996). For example, see differences between Item 5, Schedule 1 of the 1995 and 1996 versions of the Consequential Amendments Bill and CTA, Submission, pp. 215-16 (Vol. 2 of Submissions).

- 6.5 However, there are several clauses on which the Committee is prepared to comment. The most contentious of these is Clause 1-2 of the 1996 Bill, dealing with the commencement date of the new legislation, which was considered in Chapter 5.
- 6.6 There are three other clauses that the Committee will comment on individually, principally because there is acceptance by both critics and TLIP that amendments are appropriate.

Individual Clauses

Clause 6-5

- 6.7 Clause 6-5 defines assessable income as including income according to ordinary concepts, or 'ordinary income'. A number of commentators have been concerned that the various sub-clauses in this clause do not make a clear distinction between the assessable income of one year and the next.²
- earlier references in Division 4 to taxable income being for an income year, obviates the need to also explicitly state that the linked concept of assessable income also refers to an income year. However, TLIP accepts that reference to assessable income 'during the income year' in Clause 6-5 may reduce any uncertainty held by readers. Accordingly, the Committee makes the following recommendation.

6.9 Recommendation 6

Clause 6-5(2) of the Income Tax Assessment Bill 1996 should be amended by inserting the phrase "during the income year" after the word "Australia".

Clause 6-5(3)(a) of the Income Tax Assessment Bill 1996 should be amended by inserting the phrase "during the income year" after the phrase "Australian sources".

Clause 6-5(3)(b) of the Income Tax Assessment Bill 1996 should be amended by inserting the phrase "for the income year" after the phrase "assessable income".

Clause 330-95

- 6.10 Clause 330-95 deals with plant exclusions from allowable capital expenditure. The Association of Mining & Exploration Companies (AMEC), APPEA and the MCA all dispute TLIP's interpretation of the 1936 Act regarding the eligibility for deduction of certain capital items.⁴
- 6.11 TLIP is not convinced by arguments put forward by the mining and exploration industry in regard to Clause 330-95 and has told the Committee that 'in practice, we do not believe that much turns on this point'. TLIP, however, concedes that the clarification sought by industry would 'not have any major revenue implications' and has indicated that it will accept the industry argument. The Committee, accordingly makes the following recommendation.

CTA, Submission, p. S205 (Vol. 1 of Submissions); Australian Retailers' Association, *Transcript*, p. 252 (16 July 1996); ASCPA (NSW), *Transcript*, pp. 253-4 (16 July 1996).

TLIP, Submission, p. S255 (Vol. 2 of Submissions).

AMEC, Submission, p S309 (Vol. 2 of Submissions); APPEA, Submission, pp. S83-4 (Vol. 1 of Submissions); MCA, Submission, pp. S198-9 (Vol. 1 of Submissions); APPEA, Transcript, pp. 224-7 (16 July 1996).

⁵ TLIP, Submission, p. S237 (Vol. 2 of Submissions).

⁶ TLIP, Transcript, pp. 228, 234 (16 July 1996).

6.12 Recommendation 7

Clause 330-95 (1)(a) of the Income Tax Assessment Bill 1996 which states:

"*plant (whether or not depreciation is allowable under the Income Tax Assessment Act 1936);"

should be omitted and replaced with:

"*plant;".

Clause 330-495

- 6.13 Clause 330-495 describes the meaning of the phrase 'written down value' and its effect on balancing adjustment provisions. The industry argues that the 1996 Bill introduces a qualification on the 1936 Act, by limiting the balancing adjustment to expenditures 'of a kind that qualifies for a deduction under this Division'. The mining industry believes that this phrase should be deleted.
- 6.14 TLIP has argued the details of the industry case, but admits to being 'ambivalent' about whether to use the old or new words. Given the industry's concern and TLIP's 'ambivalence', the Committee believes that it is appropriate, in this case, for Clause 330-495 to be amended.
- 6.15 Accordingly, the Committee makes the following recommendation.

6.16 Recommendation 8

Clause 330-495(1) of the Income Tax Assessment Bill 1996 should be amended by omitting:

"(of a kind that qualifies for a deduction under this Division, or qualified for a deduction under a corresponding previous law)".

As a consequence, the associated Note 1 at Clause 330-495, page 288 (lines 29 & 30) should be omitted.

As a further consequence, Clause 330-65(3) of the Income Tax (Transitional Provisions) Bill 1996 should be omitted and replaced with:

"(3) Second:

- (a) the total capital expenditure of the transferor in relation to the property; or
- (b) if there have been 2 or more prior applications of the old roll-over provisions the total capital expenditure of the prior transferors in relation to the property;

is taken to have been capital expenditure of the transferee in relation to the property.".

Technical Errors in the Legislation

- 6.17 The Committee acknowledges the concern that rewritten clauses in the 1996 Bill may have unintended policy changes and technical errors. This, in turn, will lead to uncertainty about potential future tax liabilities. The Committee suspects that such concern and uncertainty will remain until the 1996 Bill has been in force for several years.
- 6.18 Although Clause 1-3 should provide a large measure of security about the continuity of tax law, there does exist the risk that the 1996 Bill will have unintended consequences or technical errors that are revealed only after the legislation has commenced. In this sense, unintended consequences and technical errors refer to drafting changes that are recognised

⁷ APPEA, Submission, pp. S87-8 (Vol. 1 of Submissions); MCA, Submission, p. S201 (Vol. 1 of Submissions); AMEC, Submission, p. S310 (Vol. 2 of Submissions); APPEA, Transcript, pp. 73-5 (22 January 1996); APPEA, Transcript, pp. 219-20.

⁸ TLIP, Transcript, p. S221 (16 July 1996). See also: TLIP Submission, pp. S239, S267-8 (Vol. 2 of Submissions).

as necessary by both the Australian Taxation Office (ATO) and the tax industry. They do not refer to policy changes.

- 6.19 A number of organisations urge that there be a process by which such errata can be corrected with speedy amendments to the 1996 Act. as it will then be.9
- 6.20 TLIP recognises the need to correct technical errors as they emerge and acknowledges that 'the whole integrity and reputation of the project depends on our willingness to quickly deal with errors'.¹⁰

The Technical Review Process

- 6.21 In 1995, the ATO and the National Tax Liaison Group agreed to a process for amending technical errors in all tax legislation. Under this process, the ATO considers the best mechanism (legislative or non-legislative) and priority that should be given to correcting any technical errors identified by the tax industry. The ATO's recommendations are compiled in a register which is regularly referred to the Liaison Group for endorsement or modification. The endorsed register is then referred to the ATO's Legislative Management. Committee (LMC) for consideration as part of the government's wider legislation program. The LMC's role is to prioritise the drafting of all tax legislation.
- 6.22 As part of the strategy for expediting technical corrections, the ATO has listed the first of a planned annual program of technical corrections Bills for consideration in the 1996 Budget sittings of Parliament.¹¹ The drafting of such Bills is in recognition that technical corrections have not received a high legislative priority in the past.
- 6.23 The Committee believes that technical errors found in the 1996 Bill, in particular, need to be addressed as a matter of priority by the ATO and the National Tax Liaison

Group. As the foundation Bill of the rewritten law, it is important that it be technically correct before the following blocks of legislation are integrated into it. The Committee also commends the Government for introducing the first annual technical corrections Bill. It is important that similar Bills become the regular vehicle for making technical corrections to tax law. Accordingly, the Committee makes the following recommendation.

6.24 Recommendation 9

Technical errors in the Income Tax Assessment Bill 1996 should be corrected as a matter of priority. The corrections should either be incorporated in future instalments of the legislation to replace the Income Tax Assessment Act 1936 or be dealt with as part of the technical corrections process recently put in place by the Australian Taxation Office, whichever process is quicker. Furthermore, technical amendments legislation should become the regular vehicle for making technical corrections to tax law.

- 6.25 This, of course, will also require a commitment from governments to quickly introduce technical corrections legislation into Parliament
- 6.26 The Committee notes that TLIP's ability to address technical errors will be made easier by the annual introduction of legislation into Parliament as part of the phased implementation process.
- 6.27 The changes discussed in this chapter have only dealt with amendments to the 1996 Bill that are within TLIP's limited mandate to address. The next chapter discusses the need to simplify tax policy as a whole, something beyond TLIP's mandate.

See CTA, Transcript, p. 150 (8 July 1996); AMEC, Transcript, p. 215 (16 July 1996); MCA & APPEA, Submission, p. S39 (Vol. 1 of Submissions); Small Business Combined Association of NSW, Submission, p. S408 (Vol. 3 of Submissions); Accounting Bodies, Submission, p. S451-4 (Vol. 3 of Submissions).

¹⁰ TLIP, Transcript, pp. 201-2 (8 July 1996).

¹¹ Taxation Laws (Technical Amendments) Bill 1996.

7

CONSIDERATION OF TAX POLICY

A Reduction in Compliance Costs

The Costs of Compliance

- 7.1 The immediate objective of the tax law rewrite is to save the 1936 Act from collapsing under the weight of its own complexity. Simplification of the law should, in turn, lead to a reduction in compliance costs.
- 7.2 There is no accurate estimate of the cost to taxpayers of complying with the requirements of the 1936 Act, although it is considered to be between \$3 and \$6 billion annually.² Such divergent estimates make it very difficult, therefore, to quantify confidently the potential compliance savings to be realised by simplifying the law. However, given the magnitude of these figures, even a modest percentage decrease in compliance costs would be a worthwhile microeconomic reform.
- 7.3 The Committee is aware of several studies which have attempted to measure the magnitude and impact of compliance costs on taxpayers in Australia, one with assistance from the Australian Taxation Office.³

- 7.4 Although calculations of compliance costs are qualified, the studies also register opinions about the costs, and these results will at least provide a qualitative benchmark for future research. In fact, as part of an evaluation of TLIP's activities, the University of Newcastle will be repeating a qualitative survey after the 1996 Bill commences to try and establish its impact on compliance costs.⁴
- 7.5 The Committee believes that it is important that continued efforts be made to quantify the costs of tax compliance. By having empirical data on the scale of these costs, Government and Parliament will be better able to justify expenditure on future tax law improvement projects. Accordingly, the Committee makes the following recommendation.

7.6 Recommendation 10

The Australian Taxation Office should undertake or assist with further research attempting to quantify the costs of tax compliance in Australia.

TLIP and Reducing Compliance Costs

7.7 TLIP's stated goal is 'to improve compliance and reduce compliance costs by making the law easier to use and understand'. TLIP argues that the 1996 Bill 'should achieve a noticeable reduction in compliance costs', not because of any single significant change, but from 'the accumulation and combined impact of many small improvements'.

See: TLIP, Transcript, pp. 154, 162 (8 July 1996). See also Australian Retailers' Association, Transcript, p. 246 (16 July 1996).

TLIP, Transcript, p. 21 (22 January 1995). Pope calculates that compliance costs of Commonwealth taxes amount to 2.1% of Gross Domestic Product. See Jeff Pope, 'The Compliance Costs of Major Taxes in Australia', in C Stanford (ed.), Tax Compliance Costs: Measurement and Policy, Fiscal Publications, England, 1995, pp 103.

Ian Wallschutzky & Michael Muston, Evaluation of the Tax Law Improvement Project Stages 1 & 2 Research, presented at the Taxpayer Compliance Research Conference, 7-8 December 1995, Canberra, Exhibit No. 2; 125; Australian Chamber of Commerce and

Industry, ACCI Review, No. 18, February 1996, pp. 4-5; Jeff Pope, 'The Compliance Costs of Major Taxes in Australia'.

TLIP, Submission, p. S250 (Vol. 2 of Submissions).

^{5 1996} Bill, Explanatory Memorandum, AGPS, Canberra, p. 3.

⁶ Explanatory Memorandum, p. 13.

7.8 Despite the lack of hard data, TLIP estimates that compliance costs will decrease by at least 10 per cent in the long term, although it concedes that costs will rise during the transition between the old and the new legislation.⁷

A Long Term Decrease in Compliance Costs?

- 7.9 Commentators agree that there will be compliance costs associated with the transition from the old to the new law. These short term costs can be borne, however, if commencement of the new law is followed by a long term reduction in compliance costs.⁸
- 7.10 However, a number of industry groups have argued that compliance costs will not be reduced significantly by the 1996 Bill, even in the long term. They argue that it is the complexity of the law itself, rather than the way it is written that is the root cause of high compliance costs. As the Australian Petroleum Production & Exploration Association (APPEA) commented:

APPEA does not consider that the new legislation will reduce the administration and compliance costs from a petroleum industry perspective... Ultimately, only a longer term simplification of tax policy will result in substantial reduction in compliance and associated costs.⁹

7.11 The Special Tax Adviser to the Commonwealth Ombudsman was similarly pessimistic, stating that:

it might be doubted that the new form of presentation would actually cause dramatic and immediate reductions in compliance costs. 10

7.12 The Committee concedes that it will be difficult to quantify any reduction in compliance costs associated with the 1996 Bill. The Committee also acknowledges that substantial reductions in compliance costs will require tax policy changes.

Consideration of Tax Policy

TLIP's Mandate to Consider Policy

- 7.13 The evidence presented to the Committee suggests that any compliance cost savings, whatever their magnitude, could be increased if the underlying policy complexities of the 1936 Act were simplified. It is to the establishment of processes to record and address these policy complexities that the report now turns.
- 7.14 TLIP, with the approval of the Assistant Treasurer, has incorporated some minor content changes that focus on reducing or eliminating unnecessary complexity, making provisions consistent and bringing the law into line with current administrative and commercial practice. These changes are colloquially know as 'small p' policy changes. 'Small p' policy changes are distinguished from 'large p' policy changes which are likely to have a significant impact on revenue.'
- 7.15 Despite the incorporation of these minor changes, there is concern that unclear or unworkable sections of the 1936 Act are being perpetuated in the 1996 Bill because changing them is beyond TLIP's 'small p' policy mandate. 12
- 7.16 The Committee's preferred mechanisms for dealing with policy issues beyond TLIP's mandate are discussed later in the chapter.

⁷ TLIP, Submission. p. S250 (Vol. 2 of Submissions); See also TLIP, Transcript, p. 22 (22 January 1996), TLIP, Transcript, pp 217, 256 (16 July 1996); TLIP, Submission, p. S264 (Vol. 2 of Submissions).

⁸ See Accounting Bodies, Submission, p. S141 (Vol. 1 of Submissions).

⁹ APPEA, Submission, p. S82. See also Building Owners' and Managers' Association, Transcript, p. 130 (23 January 1996); Richard Vann, Transcript, pp. 97, 111 (23 January 1996); AMEC, Transcript, p. 214 (16 July 1996), MCA, Transcript, pp. 218-19 (16 July 1996); Accounting Bodies, Submission, p. S141 (Vol. 1 of Submissions).

¹⁰ Special Tax Adviser, Commonwealth Ombudsman, Submission, p. S67 (Vol. 1 of Submissions).

For an example of debate as to whether a change is a 'micro p', 'small p' or 'big p' policy matter and thus within TLIP's mandate to change, see: *Transcript*, pp. 248-9 (16 July 1996).

¹² See: Chair, TLIP Consultative Committee, Transcript, pp. 260-1 (16 July 1996); CTA, Transcript, p. 13 (22 January 1996); Institute of Chartered Accountants, Transcript, p. 152 (8 July 1996).

The Need to Simplify Policy

7.17 A typical view, as expressed by the Australian Society of Chartered Practising Accountants (NSW Division) was that if policy changes were not addressed:

we will be left with layers and layers of complexity, written in plain English, but the fundamental problem within the income tax legislation will not be removed. 13

- 7.18 Similarly, Professor Vann of the University of Sydney, when commenting on the rewrite of the Capital Gains Tax provisions in the 1936 Act, commented that 'no amount of plain language drafting will make sense of this mishmash'.¹⁴
- 7.19 Areas of tax law that have been rewritten in the 1996 Bill, but which witnesses have advised the Committee require policy simplification or clarification include:
 - the list of capital allowances¹⁵ (Clause 40-30);
 - deductions for capital works ¹⁶ (Division 43);
 - the income tax consequences of changing ownership or control of a company¹⁷ (Division 165);
 - tax losses for companies 18 (Division 175);
 - mine access and mineral transport roads¹⁹ (subdivisions 330-C and 330-H);
 - mining and quarrying excess deductions and balancing adjustments²⁰ (subdivisions 330-F and 330-J);

- the need to continue to quarantine film losses from other losses²¹ (Division 375G); and
- substantiation rules²² (Division 900).²³

7.20 A number of witnesses have argued that provisions, like those listed above, represent gaps or inconsistencies in policy that could be clarified without affecting 'big p' policy. As the Institute of Chartered Accountants explained:

We are here trying not to introduce policy but to get an unworkable series of segments of the [1936] act into a phase that can work.²⁴

7.21 TLIP acknowledges that it is working within limited guidelines, but agrees with the following comments put forward by AMEC that tax law simplification involves rewriting the law and simplifying policy:

[tax law simplification] involves two defined steps. Firstly, reintroducing simplicity in the structure and language of the act and, secondly, what we see as the more important and probably more problematic process, namely simplification in the system of taxation itself. 25

¹³ ASCPA (NSW). Transcript, p. 242 (16 July 1996).

Richard Vann, University of Sydney, Exhibit No. 1, p. 20. See also the Accounting Bodies, Submission, p. S141 (Vol. 1 of Submissions); Accounting Bodies, Submission, p. S 444 (Vol. 3 of Submissions).

¹⁵ CTA, Submission, p. S324 (Vol. 3 of Submissions); CTA, Transcript, p. 186 (8 July 1996).

Building Owners' & Managers' Association, Transcript, p. 130 (23 January 1996).

Accounting Bodies, Submission, pp. S175-6 (Vol. 1 of Submissions); Accounting Bodies, Submission, p. S446 (Vol. 3 of Submissions); ASCPA (NSW), Transcript, p. 243 (16 July 1996).

¹⁸ CTA, *Transcript*, p. 18 (Sydney, 22 January 1996).

¹⁹ MCA, Submission, pp. S336-41 (Vol. 3 of Submissions).

²⁰ APPEA, Submission, p. S359-60 (Vol. 3 of Submissions); APPEA, Transcript, pp. 219-22, 223-4, 235-6 (16 July 1996).

Accounting Bodies, Submission, p. S167 (Vol. 1 of Submission).

²² TIA, Transcript, p. 164 (8 July 1996); CTA, Submission, p. S325 (Vol. 3 of Submissions).

The Accounting Bodies have forwarded a document describing additional examples of unresolved 'small p' policy changes. Although received too late to be considered within the report, the document has been authorised as Submission No. 13 of 1996.

²⁴ Institute of Chartered Accountants, Transcript, p. 56 (22 January 1996). See also Law Society of NSW, Submission, p. S229 (Vol. 2 of Submissions).

²⁵ AMEC, Transcript, p. 213 (16 July 1996). See also TLIP, Transcript, pp. 250-51 (16 July 1996).

Review of Tax Policy

7.22 A number of witnesses consider that one benefit of the rewrite process has been to highlight those sections of the 1936 Act that are impractical, and which might otherwise have remained buried in the existing legislation.²⁶ This point has been well taken by TLIP:

...when you rewrite the law and set it out well, policy differences and distinctions emerge in a way that they cannot be seen in the existing law, then governments can make judgments about whether they want to remove some of the inconsistencies or differences of treatment.²⁷

7.23 Although the basis of an opportunity to review tax policy appears to have presented itself, Richard Vann warns, that 'very little thought is being given to the systemic problems which clearly exist'. He fears that the TLIP process, having brought to light many of the policy issues, 'will be a very temporary bubble in the mire and [the opportunity for a fundamental review] will disappear without trace'.²⁸

How to Address Minor Policy Issues

7.24 Many witnesses have identified the need for an avenue to address policy issues, whether they be 'small p' or otherwise.²⁹ As the Chair of TLIP's private sector consultative committee expressed it:

An issue about which the consultative committee is completely in agreement is the need to establish a process to address the many little 'p' and big 'p' issues flushed out in the process... the process needs to be put in place for policy issues. If the policy issues can be addressed within the time

frame of the project team goals, well and good. If not, we must at least know that they are being or will be addressed.³⁰

7.25 TLIP acknowledges that the parameters of the project were set by the previous government and that the present government could change those parameters if it wished to do so.³¹ However, TLIP advises that it is not appropriately staffed to consider major policy issues and that the rewrite process would become much slower if TLIP had to consider all 'small p' policy.³²

7.26 The Committee is aware that the TLIP process already has difficulties with its original goal of introducing legislation over three years and that there is considerable concern that the timeframe will not be achieved. The Committee considers that to extend TLIP's terms of reference to encompass further policy review would compromise the objective of the project.

The Role of Treasury in Policy Review

7.27 In evidence to the Committee TLIP indicated that each rewrite sub-project had compiled a list of policy issues that were considered to be outside the scope of the project and which were being 'assiduously maintained'. There was an indication that at least some of these would be referred to the Australian Taxation Office (ATO) and Treasury.³³

7.28 In Report 343, the JCPA stated that the Treasury was the appropriate focus of the Government's tax policy development in Australia.³⁴ In that Report, the Committee recommended that Treasury should implement improved consultative processes in relation to the development and consideration of tax policy issues.³⁵

²⁶ CTA, Submission, pp. S324, S325 (Vol. 3 of Submissions); Tony Parker, Transcript, p. 265 (16 July 1996).

²⁷ TLIP, Transcript, pp. 186, 187 (8 July 1996); TLIP, Transcript, pp. 250-1 (16 July 1996).

²⁸ Richard Vann, Transcript, p. 97 (23 January 1996).

²⁹ TIA, Transcript, pp. 151, 164 (8 July 1996); ASCPA (NSW), Transcript, p. 243 (16 July 1996).

³⁰ Chair, TLIP Consultative Committee, Transcript, p. 261 (16 July 1996). See also ASCPA (NSW Division), Transcript, p. 243 (16 July 1996); TIA, Transcript, p. 151 (8 July 1996).

³¹ TLIP, Transcript, p. 249 (16 July 1996).

³² TLIP, Transcript, pp. 156, 251 (16 July 1996).

³³ TLIP, Transcript, p. 188 (Sydney, 8 July 1996)

³⁴ JCPA, Report 343, pp. 24-5.

³⁵ JCPA, Report 343, p. 25.

7.29 Treasury has advised that while the Government has indicated a 'commitment to improving the extent and quality of public consultation in tax policy development', there has been no government decision on what changes may be made to consultative processes. Treasury has indicated that in the absence of a decision, any changes to public consultation on policy issues emerging from the TLIP process are likewise on hold.³⁶

A Further Role for Parliament?

- 7.30 The Committee believes that the Government's own consultative processes could be enhanced if there was a separate forum to gather evidence on 'small p' policy anomalies. This is, in part, a response to a perception that the Treasury, even if not TLIP and the ATO, is unresponsive to these concerns when they are raised.³⁷
- 7.31 The Committee believes it would be desirable for this process to involve Parliament, through its committee system, in order to provide a public forum for discussion and review of tax policy. Indeed, a number of witnesses have supported, a greater level of parliamentary involvement in the review of 'small p' policy complexities 38
- 7.32 The Committee believes that the very process of its inquiries into the 1995 and 1996 versions of the Bill has brought to light criticisms and unintended consequences. Through the submissions to the Committee and the public hearings, TLIP has been able to debate the contents of its legislation directly with those interested in the outcome. Some of the commentators brought valuable insights, simply because they were outside the regular consultative processes.
- 7.33 The outcome will be parliamentarians, tax officials and taxpayers who are better informed about the issues. The end result should be better law.

- 7.34 The Committee considers that there are three alternative committee structures that would provide parliamentarians with a specialist forum to identify and consider small 'p' tax policy matters of concern to the private sector. The task could be undertaken by a sectional committee of the JCPA; by a joint standing committee with a broad mandate to review all revenue matters; or by a joint select committee with a mandate limited to reviewing the 'small p' policy concerns highlighted by TLIP.
- 7.35 The Committee favours the first option, whereby the JCPA undertakes the task. There are two principal reasons for this conclusion: firstly, the committee already exists and has a long standing interest in tax law and its administration and, secondly, the JCPA's broad investigative powers would allow it to review all areas of tax law and revenue collection.
- 7.36 However, while there is nothing in the Committee's charter which would prevent it from assuming such a role, to take on these additional responsibilities without additional resources would jeopardise the Committee's ability to undertake its existing broad ranging statutory responsibilities.
- 7.37 Accordingly, the Committee could take on these additional responsibilities and perform them adequately only if it received additional funding appropriate to the task.
- 7.38 The advantage of establishing a standing committee on revenue or a select committee with a more limited mandate is that committee members and staff could specialise in tax policy issues. The disadvantage of creating either form of new committee is that they would both cost more to establish and run than it would cost to expand the JCPA.
- 7.39 Accordingly, the Committee makes the following recommendation.

³⁶ The Treasury, Submission, p. S501-2 (Vol. 3 of Submissions).

³⁷ See CTA, Submission, p. S413 (Vol. 3 of Submissions); Accounting Bodies, Transcript, p. 189 (8 July 1996).

See MCA, Submission, p. S335 (Vol. 3 of Submissions); Accounting Bodies, Submission, p. S453 (Vol. 3 of Submissions). See also CTA, Submission, pp. S411-12 (Vol. 3 of Submissions).

INCOME TAX ASSESSMENT BILL 1996

7.40 Recommendation 11

The Government should provide sufficient additional resources to allow either:

- (a) the Joint Committee of Public Accounts to oversight the processes for resolving the minor tax policy simplification issues that are highlighted by the Tax Law Improvement Project and make recommendations to government; or
- (b) the establishment of a Joint Standing Committee on Revenue with terms of reference and powers to review all matters in relation to Commonwealth revenue and to make recommendations to government; or
- (c) the establishment of a joint select committee with terms of reference and powers to assess the minor tax policy simplification issues referred to it by Parliament and to make recommendations to government.
- 7.41 The wider review of tax policy and the administrative procedures that underpin its development and consideration are discussed in Chapter 8.



CONCLUSION

8.1 This report represents the culmination of several years of interest by the JCPA in the administration of tax law and the operations of the Australian Taxation Office. The Committee has taken a particular interest in the need to simplify the 1936 Act and in the activities of TLIP. This interest began with Report 326, An Assessment of Tax in 1993, and included Report 343 Tax Law Improvement: A Watching Brief in 1995. During this time, and particularly in the last 6 months, the Committee has received evidence from a range of peak organisations, tax professionals, academics, government officials and individual tax payers about TLIP's processes and the draft legislation itself.

A Sense of Urgency

- 8.2 The Committee is aware of the frustration felt by those that see TLIP's mandate as being too limited.¹ All witnesses acknowledge that there are fundamental problems in tax law that TLIP cannot address. The extent of debate generated over some clauses in the 1996 Bill however, suggests to the Committee, that the entire rewrite process would have bogged down had TLIP been given a wider mandate.
- 8.3 There is an immediate and pressing need to reduce the complexity of the 1936 Act. This reason alone is sufficient justification for the rewrite project. A long term reduction in compliance costs will be a highly desirable consequence of the rewrite, but of secondary importance to the need for coherent and workable legislation.

For example, see: Accounting Bodies, Submission, pp. S444-5 (Vol. 3 of Submissions).

Challenge to Governments

- 8.4 The underlying complexity of the 1936 Act suggests that tax simplification and a reduction in compliance costs in Australia requires more than just a rewrite of the existing legislation. Tax simplification also requires more than just an improvement in Treasury processes and greater involvement of Parliament in the process. It requires a wide ranging review of tax policy and the administrative procedures that underpin the law.
- 8.5 The need for such a wide ranging review of tax policy at both the Federal and state level is the subject of growing debate in the wider community.² The Committee urges the government to comprehensively review tax policy: both the full body of tax law and the administrative systems underpinning it.
- 8.6 Only after such a review can compliance costs come down significantly. When that occurs, the burden on tax payers and tax administrators should ease and the result lead to a more efficient economy.

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Alex Somlyay MP Chairman 21 August 1996



APPENDIX I - SUBMISSIONS

Submissions on the 1995 Bill (37th Parliament)

Corporate Tax Association

Corporate Tax Association

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(37t)	n Parliament)
1	James Cone
2	National Farmers' Federation
3	Federation of Ethnic Communities' Council of Australia
4	Mr J B Murray and Associates
5	Centre for Plain Legal Language
6	Australian Petroleum Production and Exploration Association and the Minerals Council of Australia
7	Australian Taxation Office
8	Special Tax Adviser to the Commonwealth Ombudsman
9	Australian Petroleum Production and Exploration Association
10	Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia, and the Taxation Institution of Australia
11	Minerals Council of Australia
12	Attorney-General's Department

For example, the 'Tax Summit' being held in October 1996 by the Australian Chamber of Commerce & Industry and the Australian Council of Social Service.

15	Corporate Tax Association
16	The Law Society of New South Wales
17	Tax Law Improvement Project (Australian Taxation Office)
18	Tax Law Improvement Project (Australian Taxation Office)
19	Tax Law Improvement Project (Australian Taxation Office)
20	Tax Law Improvement Project (Australian Taxation Office)
21	Tax Law Improvement Project (Australian Taxation Office)
22	Tax Law Improvement Project (Australian Taxation Office)
23	Tax Law Improvement Project (Australian Taxation Office)
24	Tax Law Improvement Project (Australian Taxation Office)
25	Tax Law Improvement Project (Australian Taxation Office)
26	Tax Law Improvement Project (Australian Taxation Office)
27	Tax Law Improvement Project (Australian Taxation Office)
28	Association of Mining and Exploration Companies
29	Corporate Tax Association
30	Tax Law Improvement Project (Australian Taxation Office)

Submissions on the 1996 Bill (38th Parliament)

1	Cornorate	Tax	Association
т.	Curpurate	lan	rissuciation

- 2 Tax Law Improvement Project (Australian Taxation Office)
- 3 Minerals Council of Australia
- 4 Australian Petroleum Production and Exploration Association
- 5 J B Murray & Associates
- 6 Small Business Combined Association of New South Wales
- 7 Corporate Tax Association
- 8 Association of Mining and Exploration Companies
- 9 Australian Society of Certified Practising Accountants, Institute of Chartered Accountants, Law Council of Australia and Taxation Institute of Australia
- 10 The Treasury
- Tax Law Improvement Project (Australian Taxation Office)
- 12 Minerals Council of Australia
- 13 Taxation Institute of Australia
- 14 Tax Law Improvement Project (Australian Taxation Office)
- 15 Commissioner of Taxation



APPENDIX II - EXHIBITS

- Richard Vann, 'Improving Tax Law Improvement: An International Perspective', Australian Tax Forum, Vol. 12(2), 1995, pp. 193-246.
- 2 'Evaluation of the Tax Law Improvement Project, Stages 1 & 2 Research' by Ian Wallschutzky, University of Newcastle and Michael Muston, TLIP, Australian Taxation Office
- 3 'Income Tax Assessment Bill 1995 and related legislation: Whether inconsistent with section 55 of the Constitution Opinion' by Dennis Rose, QC



APPENDIX III - WITNESSES APPEARING AT PUBLIC HEARINGS

Sydney, Monday 22 January 1996

Australian Petroleum Production and Exploration Association

Mr Dick Wells Executive Director

Mr Ian Dunne Tax Legislation Subcommittee Member

Mr John Vine Chairman, Tax Legislation Subcommittee

Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia, and the Taxation Institute of Australia

Mr Geoff Petersson Consultant

Australian Society of Certified Practising Accountants

Mr Peter Dowling Consultant

Business Council of Australia

Mr Martin Soutter Assistant Director

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Centre for Plain Legal Language

Mr Jeremy Low Plain Language Consultant

Western Australian Chamber of Mines

Mr Eric Brunetti Member

Corporate Tax Association

Mr Bob Bryant Executive Director

Mr Ian Phillips Taxation Consultant

Institute of Chartered Accountants in Australia

Mr Ian Langford-Brown Director of Taxation

Law Society of NSW

Mr Robert Richards
Member Task Force of the Business Law Committee and the
Plain English Committee

Minerals Council of Australia

Mr Roger Gibson Member of Taxation Task Force

Mr Peter Morris Chief Economist

Mr Peter Robinson Member Private Citizen

Mr Geoffrey Lehmann Partner, Price Waterhouse

Taxation Institute of Australia

Ms Annamaria Carey Technical Director

Tax Law Improvement Project Consultative Committee

Mr Stan Droder Chairman

Tax Law Improvement Project

Mr Brian Nolan Project Director

Mr Gavin Back Assistant Commissioner

Mr Michael Bradshaw Technical Officer

Ms Helen Duffy Technical Officer

Mr Simon Gaylard Private Sector Representative

Ms Margaret Haly Assistant Commissioner

Mr Dennis Rose, QC Legal Adviser Sydney, Tuesday 23 January 1996

Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia, and the Taxation Institute of Australia

Mr Geoff Petersson Consultant

Australian Society of Certified Practising Accountants

Ms Joycelyn Morton NSW President

Australasian Tax Teachers Association

Professor Patrick Gallagher President

Building Owners' and Managers' Association

Mr Kieran Pryke National Tax Committee

Mr Stephen Albin National Policy Manager

National Institute of Accountants

Mr Gordon Cooper

Private Citizen

Professor Richard Vann Faculty of Law, University of Sydney Small Business Combined Associations of NSW

Mr Don Lemsing Treasurer

Special Tax Adviser to the Commonwealth Ombudsman

Mr Peter Haggstrom

Tax Law Improvement Project Consultative Committee

Mr Stan Droder Chairman

Tax Law Improvement Project

Mr Brian Nolan Project Director

Mr Robert Allerdice Private Sector Representative

Mr Gavin Back Assistant Commissioner

Mr Michael Bradshaw Technical Officer

Ms Helen Duffy Technical Officer

Mr Simon Gaylard Private Sector Representative

Ms Margaret Haly Assistant Commissioner

WITNESSES

Sydney, Monday 8 July 1996

Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia, and the Taxation Institute of Australia

Mr Geoff Petersson Consultant

Business Council of Australia

Mr Martin Soutter Assistant Director

Corporate Tax Association

Mr Bob Bryant Executive Director

Mr Ian Phillips Taxation Consultant

Institute of Chartered Accountants in Australia

Mr Ian Langford-Brown Director of Taxation

Taxation Institute of Australia

Ms Annamaria Carey Technical Director

Tax Law Improvement Project Consultative Committee

Mr Stan Droder Chairman Tax Law Improvement Project

Mr Brian Nolan Project Director

Mr Gavin Back Assistant Commissioner

Mr Michael Bradshaw Technical Officer

Mr Simon Gaylard Private Sector Representative

Ms Margaret Haly Assistant Commissioner

Mr Tom Reid Second Parliamentary Counsel

Tuesday, 16 July 1996

Association of Mining and Exploration Companies Inc.

Mr Walter Tieleman Chairman

Mrs Adrienne Wright Executive Officer Economics

Australian Petroleum Production and Exploration Association

Mr Dick Wells Executive Director

Mr Ian Dunne Member Tax Legislation Committee

WITNESSES

Mr Ross Tillman Member Tax Legislation Committee

Mr John Vine Member Tax Legislation Committee

Australian Retailers Association

Mr Romano Nenna Member Taxation Committee

Australian Society of Chartered Practising Accountants

Ms Joycelyn Morton Immediate Past President NSW Division

Minerals Council of Australia

Mr Peter Morris Assistant Director

Mr Peter Robinson Member

Mr Brian Sheppard Member

Tax Law Improvement Project Consultative Committee

Mr Stan Droder Chairman

Mr Tony Parker Member Tax Law Improvement Project

Mr Brian Nolan Project Director

Mr Simon Gaylard Private Sector Representative

Ms Margaret Haly Assistant Commissioner

Mr Tom Reid Second Parliamentary Counsel



APPENDIX IV - THE DIFFERENCES BETWEEN THE 1995 AND 1996 PACKAGES OF BILLS

Introduction

As mentioned in Chapter One, the package of legislation being reviewed by the Committee was originally introduced into the 37th Parliament on 30 November 1995.

TLIP made several changes between the 1995 and 1996 packages of the Bills. This appendix lists those changes. Several of these changes take up suggestions made to the Committee through submissions and public hearings

The Core Provisions

- Consistent with self assessment, the Commissioner's discretion has been omitted from the provision preventing double deductions (clause 8-10). The deduction will now be allowed under the most appropriate provision (rather than the Commissioner determining which provision applies).
- The provision which defines the term *ordinary income*, (subclause 6-5(2)), has been clarified to preclude any implication that ordinary income is always assessable on receipt.

THE DIFFERENCES BETWEEN THE 1995 AND 1996 BILLS

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Capital Allowances Generally

 The overview of the capital allowances regimes (Division 40) now consists only of guide material and contains no operative provisions.

Buildings

• The provision which allows a balancing deduction on destruction of a building, (clause 43-250), has been revised so that if the deduction must be apportioned, then the apportionment is done on a reasonable basis.

Substantiation Rules

• Where the Bill authorises provisions to be altered by regulation, the provisions now refer to regulations made under the new Act rather than the existing Act.

Tax Losses of Companies

- Clause 165-13, which sets out the 'same business test' (the alternative test for a company to deduct a tax loss of an earlier year), has been revised. Specifically:
 - (i) it is now clear that the same business test can apply when there has been a disqualifying change of ownership; and
 - (ii) the timing of the same business test where such a change occurs in a period between the loss year and the recoupment year is now certain.
- Three clauses (175-20, 175-25 & 175-30) have been reworded. These contain a provision intended to quantify the amount of disallowed deductions that may be included in a company's carry forward loss. The original provisions may have unintentionally disadvantaged some taxpayers.

THE DIFFERENCES BETWEEN THE 1995 AND 1996 BILLS

 Under the existing law, the same business test refers to income earned from a new business carried on or a new transaction entered into. The term 'income' in the context of the same business test is ambiguous. To provide certainty in the law a more precise term will be used. In the 1995 Bill the phrase 'ordinary income or statutory income' was used and this was an oversight. The correct term is 'assessable income'.

Mining

- The definition of housing and welfare has been changed (clause 330-90). The 1995 Bill left open the possibility of a taxpayer obtaining a deduction for expenditure which was meant to be excluded under the provisions relating to quarrying, transport and rehabilitation.
- Clause 330-480 has been changed, explaining when a
 balancing adjustment is needed to ensure that it accurately
 reflects the current law. The rewrite left open the
 possibility of a taxpayer deferring a balancing adjustment
 for expenditure on exploration or mining property which
 was converted into use for transporting the product.
- A new subclause in clause 330-550 will clarify the entitlements of a transferee on the disposal of certain property, if roll-over relief (the deferral of a balancing adjustment) is available. The new subclause ensures that, as in the current law, the transferee inherits the right to deduct amounts which the transferor has been unable to deduct because of the rules preventing deductions if they would contribute to a tax loss.
- A provision (clause 330-547) will allow a taxpayer to obtain roll-over relief if it had been unable to obtain any deductions because of the rules preventing deductions if they would contribute to a tax loss.

Transitional and Consequential Amendments

- Item 5 of Schedule 1 of the Consequential Amendments Bill 1996 will ensure that for companies there is no gap between the application of the current law and the application of the proposed new law.
- The 1996 version includes a transitional provision to rule out a possible argument that the double deduction provisions in the current and proposed new law do not prevent a taxpayer obtaining two deductions for the same expense, one deduction under the current law and one under the proposed new law.

Defined Terms

• Employer, employee and salary and wages are no longer used as defined terms in reintroduced Bills. These terms will have their ordinary meaning. The defined terms PAYE earner and PAYE earnings will take the extended meanings given to employee and salary or wages respectively in section 221A of the 1936 Act.

Minor Textual Corrections and Improvements

- All textual errors identified in the Bills (eg, incorrect headers and wrongly numbered cross references) have been corrected.
- Some minor wording changes, which do not affect the way the law operates, will make its operation clearer.

Presentation

 There has been a change in the basis for asterisking defined terms to minimise the chance that a reader will overlook the fact that a term is defined. The basic rule is that a defined term is always marked with an asterisk except if it has previously occurred in the same subclause.



APPENDIX V - CLAUSE BY CLAUSE COMMENTS

Introduction

The central column of this appendix provides references to comments, criticisms and proposed amendments to specific clauses of the 1996 Bill and the Consequential Amendments Bill that have been made in submissions and at the public hearings. The Committee asked TLIP to respond to each issue and a reference to their responses is given in the right hand column.

The table reflects the contents of the 1996 Bills. Comments made about clauses of the 1995 Bills that have been superseded are not included.

The following abbreviations are used in the appendix:

- Accounting Bodies the Australian Society of Certified Practicing Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia & the Taxation Institute of Australia;
- AMEC Association of Mining & Exploration Companies;
- APPEA Australian Petroleum Production & Exploration Association;
- ASCPA -Australian Society of Certified Chartered.
- Accountants;
- Commissioner Commissioner for Taxation;
- CPLL Centre for Plain Legal Language;
- CTA Corporate Tax Association
- EM Explanatory Memorandum
- Exhbt Exhibit
- Law Soc. (NSW) Law Society of NSW;
- MCA Minerals Council of Australia;
- Murray J B Murray & Associates;
- Nat Inst Acts National Institute of Accountants;

- Subs Submission: SBCA (NSW) Small Business Combined Associations of NSW
- Trans Transcript; and Vann Professor Richard Vann.

1996 Bill	1996 Bill: Comments	TLIP Response
Clause		
Clause		
1.2	Potential adverse impact for companies	Explanation
1.4	with substituted accounting periods.	Sub, pp. S240,
	CTA, Sub, pp. S208, S313-14	S256; Trans,
	Accounting Bodies, Sub, pp.	p. 17
	S150-51: Trans. pp 101-102	
1-3	Differences in style affect meaning.	Disagree
1-3	Accounting Bodies, Sub, pp. S142,	Sub, pp. S233,
	S464, S487; Trans, pp 31-2	S304
	Margin note gives constructive	Disagree
	legislative force to Rulings issued by	Sub, p. S233
	Commissioner.	
	Murray, Sub, p. S28	
	Phrase 'this Act' includes 1936 Act.	Disagree
2-1	Should be confined to 1996 Bill.	Trans, pp. 61,
	CTA, Sub, p. S208: Trans. p. 60	63- 64
	CTA, Suo, p. 5208, Truis, p. 00	Explanation
2-35	Not clear what are the operative provisions of the Bill or their relative	Sub, p. S279
	standing.	
	Accounting Bodies, Sub, p. S157	Disagree
2-40	Replace 'but are kept separate from the	Sub, p. S279
	operative provisions' with 'do not have	Sizo, p. sait
	general operative effect'.	
	CTA, Sub, p. S208	Explanation
2-45	Does this material have operative effect.	Sub, pp. S275,
	if so, what weight is to be given to it?	S280
Ì	CTA, Sub, p. S208	3200
ļ	Accounting Bodies, Sub, p. S157	Explanation
3-1	Withholding taxes may not be income	Sub, pp. S295
	tax within the meaning of tax treaties	
1	and not covered by treaties.	96
	Vann, Exhbt #1, pp. 5-6; Trans,	
	n 194	
3-5(1)	Not all individuals and companies pay	Explanation
0-0(1)	income tax each year.	Sub, p. S275
Į.	CTA Sub p. S209	
3-5(3)	Should mention the rights of taxpayers	Explanation
3.0(0)	against Commissioner.	Sub, p. S275
1	CTA Sub. n. S209	1_
Į.	Para 7 ignores fact that disputes not	Explanation
	confined to those procedures that stem	Sub, p. S276
1	from a disputed assessment.	
	CTA, Sub, p. S209	1

1996 Bill	1996 Bill: Comments	TLIP Response
Clause		
3-5(2)	Need a definition of 'taxpayer'. Accounting Bodies. Sub, p. S158	Not necessary Sub. p. S158
3-5(3)	Para 7 suggests that the tax law could be expected to contain procedures designed to facilitate disputes. Law Soc. (NSW), Sub. p. S227	Disagree Sub, p. S304
3-10	Omits obligations on taxpayers, such as s. 264 of 1936 Act.	Disagree Sub. p. S276
3-10(2)	Inappropriate to deal with TFNs in this section. Accounting Bodies. Sub, pp. S159, S462, S487-8; Trains pp. 32, 33	Explanation Sub, p. S280; Trans, p. 36
3-15	Amounts required to be deducted may or may not be 'instalments of income tax payable'. Law Soc. (NSW). Sub. p. S226	Disagree Sub, p. S304
4-1	Ignores residency of individual. Murray, Sub, p. S29 Wrong to say income tax is payable by each individual and company. CTA, Sub, Sub, p. S209 Law Soc. (NSW), Sub, p. S226 Murray, Sub, p. S29	Disagree Sub, p. S233 Disagree Sub, pp. S233-34, S276, S304
4-10	Fails to address fact that income must be attributed in the case of ordinary income, by derivation in a particular income year. CTA, Sub, p. S209	Disagree Sub, p. S45; Trans, p. 34
4-10(1)	Need more flexible year end. Accounting Bodies, Sub, pp. S143, S465; Trans, pp. 39, 104-105 ASCPA, Trans, p. 121 Should it read 'You must pay income tax' or 'You must pay tax'? CTA, Sub, p. S210	Sub, p. S243 Explanation Sub, p. S276
4-10(3)	Ignores tax free threshold. Murray, Sub, p. S29	Disagree Sub, p. S234
4-15	'income tax' should be 'taxable income' CTA, Sub, p. S323; Trans, p. 159 Reference should be made to the concept of income 'derived in the income year'.	Disagree Sub, p. S45
	CTA, Sub, pp. S210, S489; ASCPA, Trans, pp. 121-22 Step 3 of the method statement could be misleading. Accounting Bodies, Sub, pp. S488-9	Disagree Sub, p. S526

1996 Bill	1996 Bill: Comments	TLIP Response
Clause		
	<u> </u>	Diagras
6-1	Diagram is confusing. Law Soc. (NSW), Sub, p. S226	Disagree Sub, p. S234;
	ASCPA, Trans, p. 122	Trans, p. 125
	Accounting Bodies, Trans, p. 32; Sub,	174110, p. 120
	p. S456	
	Text confusing.	Disagree
	Murray, Sub, p. S29	Sub, p. S234
	Law Soc. (NSW), Sub, p. S226	
	Vann, Trans, p. 123	
6-1(1) - (4)	Unnecessary repetition in later clauses.	Explanation
	Accounting Bodies, Sub, pp. S489-90	Sub. p. S526
6-5	Would be simpler if combined with cl. 6-	Explanation
	10.	Sub, p. S297
	Vann, Exhbt #1, pp. 15-18	
	CTA, Sub, p. S418	Disagree
6-5(3)	Implies that Australian residents	Sub, p. S235
	working o/seas pay tax. Murray, Sub, p. S30	Dao, p. D200
	Insert words 'during the income year'	Disagree
	after 'derived'.	Sub, p. S255
	CTA, Sub, pp. S205, S418; Trans, p. 30	Agree
		Sub, pp. S503-
		4.
6-5(3)	Need full definition of 'Australian	Explanation
	source'.	Sub, p. S257
	CTA, Sub, p. S217	
6-5(3)(b)	Breach international consensus by	Disagree
	taxing non-residents on income not	Sub, p. S295
	sourced in Australia. Vann, Exhbt #1, p. 5	
6-5(4)	Seems to imply that derivation involves	Disagree
6-5(4)	receipt.	Trans, p. 182
	Accounting Bodies, Sub, pp. S475-6,	- '•
	S490, Trans, p.182	
6-10(3)	Statutory income provision not the	Disagree
	subject of beneficial changes applying to	Trans, p. 182
	ordinary income.	
	CTA, Sub, pp. S323, S419-20; Trans,	ł
l	p. 182	Di
6-10 (3)	No equivalent in the 1936 Act, therefore	Disagree
	need reference in EM.	Sub, p. S46
	CTA, Sub, p. S206 Appears to treat 'received' and derived	Explanation
	as having the same meaning.	Sub, pp. S526-
	Accounting Bodies, Sub, p. S490	7
L	1 Micounting Douces, Date, p. 5-100	

1996 Bill	1996 Bill: Comments	TLIP Response
Clause		
6-10(5)(b)	Breach international consensus by	Disagree
	taxing non-residents on income not	<i>Sub</i> . p. S295
	sourced in Aust.	
	Vann, <i>Exhbt</i> #1, p. 5	
	CTA, Sub. p. S211	
6-15	Unclear whether all income that is not	Explanation
	assessable income is exempt income.	Sub, p. S280
	Accounting Bodies, Sub, p. S161	
6-15(1)	Word 'amount' is confusing.	Disagree
	CTA, Sub, p. S211	Sub, p. S277
6-20(2)	Exempting income by implication	Explanation
	creates loophole.	Sub, p. S280
	Accounting Bodies, Sub, p. S161	
	CTA, Sub, pp. S420-2	Discourse
6-25	Needs to provide that an amount is	Disagree
	assessable income only to the taxpayer	Sub, p. S255
	that is most appropriate.	
	CTA, Sub, pp. S206, S211, S423-4	Disagree
6-25(1)	Phrase 'the calculation of should appear	Sub, pp. S277,
	before words 'your assessable income'.	S281
	CTA, Sub, p. S211	5201
5 5 7 7 7 5	Accounting Bodies, Sub, p. S161	Disagree
6-25(2)	Phrase 'unless the contrary intention appears' should be deleted.	Sub, p. S243
	Accounting Bodies, Sub, p. S144	540, p. 5240
	Vann, Trans, p. 125	ĺ
0.5/0\	No relation with heading.	Disagree
8-5(2)	Murray, Sub, p. S30	Sub, p. S232
8-10	Capacity to deny a deduction claimed in	Disagree
0.10	1994-95 or a prior year doubtful.	Sub, pp. S257
	CTA, Sub, p. S212	
26-55(2)	Clarify by adding 'other' after 'all'.	Disagree
20-33(2)	Accounting Bodies, Sub, p. S281	Sub, p. S281
28-5	Diagram needs changing for greater	Disagree
20-0	clarity.	Sub, p. S232
	CPLL, Sub, p. S35	· ·
28-185	Changes appearing in the 1996 Bill	Explanation
100	should be noted in the EM.	Sub, p. S527
	Accounting Bodies, Sub, pp. S491-2	
36-10	Definitions of 'tax loss' and 'loss year'	Disagree
	confusing.	Sub, p. S281
	Accounting Bodies, Sub, p. S165	1
	CTA, Trans, pp. 40-41	
36-15	Unclear on order in which deductions to	Disagree
	be taken; re tax losses by election.	Sub, p. S235
	APPEA, Sub, pp. S83, S356-7, S360-1	

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1996 Bill Clause	1996 Bill: Comments	TLIP Response
36-15(2)	Should state that deductible amount is only that part of prior year's loss equal to excess. APPEA, Sub. p. S83	Disagree Sub, pp. S235, S265
36-15(3)	Denies benefit of exemption because taxpayer has encountered a loss. CTA, Sub, p. S422	Explanation Trans, p. S527
36-20(3)	List of 'excluded exempt income' should include premiums received by life insurance companies. CTA Sub. p. S423	Explanation Trans, p. S527
36-40	Clause not necessary. Accounting Bodies. Trans. p. 42	Explanation Trans, p. 43
Div 40	Should be amended to allow for the cost of depreciable assets as well as expenditure. CTA, Sub, p. S207	Not necessary Sub, p. S282
40-10	Should be redrafted to remove confusion that there is an option to write off capital expenditure immediately or over a number of years. Accounting Bodies, Sub, p. S167 Although agreed, no change made. Accounting Bodies, Sub, pp. S455,	Agree Sub, p. S294 Agree Sub, p. S527
40-20(1)	S476 Needs rewording as not necessarily the amount of expenditure 'you occurred'. Accounting Bodies. Sub. p. S167	Not necessary Sub, p. S294
40-25(6)	Needs rewriting to make clear that it is not providing definitions. Accounting Bodies, Sub. p. S168	Not necessary Sub, p. S294
40-30	Incorrect reference to section of 1936 Act providing for grapevine write-off. Accounting Bodies, Sub, pp. S455, S476 Section Finding Table has not been updated to reflect the deletion of former provision 43-30.	Agree Sub, p. S528 Agree Sub, p. S528
43-40	Accounting Bodies. Sub. p. S492 Meaning of 'destruction' should be clarified. Accounting Bodies. Sub. p. S169	Not necessary Sub, p. S294

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1996 Bill Clause	1996 Bill: Comments	TLIP Response
43-50	Need to clarify whether building etc under Div. 10C or 10D is treated by as an asset separate from the land (s. 160P(4) of 1936 Act). Accounting Bodies, Sub. p. S282	Agree Sub, p. S282
43-70	Need to clarify construction expenditure & have Transitional measure. Accounting Bodies, Sub, pp. S282, S476-7	Disagree Sub, p. S282
43-75(3)	Should not be confined in its operation to the original purchaser from the speculative builder. Accounting Bodies, Sub. pp. S282, S477-8	Explanation Sub, p. S282
43-170	Need Transition arrangements for the wider definition of 'associate'. Accounting Bodies, Sub, pp. S145, S466	Unnecessary Sub, p. S236
Div 165	Position of companies without a share capital unclear. Accounting Bodies. Sub. p. S145	Disagree Sub, p. S237
165-1	Needs to also state that it is only dealing with income tax consequences. Accounting Bodies. Sub. p. S173	Explanation Sub, p. S283
165-13(3)	Operation of Clause should be clarified. Accounting Bodies. Sub. p. S468	Disagree Sub, p. S528
165-15	EM should identify change from 1936 Act re: ability to control voting power. Accounting Bodies, Sub, p. S146 Position of some bodies which fall within the definition of 'company' in cl 995-1 is not clear.	Not necessary Sub, p. S244 Disagree Sub, p. S283
165-20(1)	Accounting Bodies, Sub, p. S173 Not clear that in some circumstances the whole of the tax, rather than a part, can be deducted. Accounting Bodies, Sub, p. S174	Not necessary Sub, p. S284
165-155	Need to clarify who has rights to more than 50% of any dividends. Accounting Bodies, Sub, pp. S147, S469	Beyond mandate Sub, p. S244
165-165(1)	Needs clarification. Accounting Bodies, Sub, pp. S147, S469	Disagree Sub, pp. S236, S245

1996 Bill Clause	1996 Bill: Comments	TLIP Response
165-205	Needs to cover case where joint owners of shares die.	Beyond mandate Sub, p. S236
	Accounting Bodies, Sub, pp. S147, S470 Meaning of 'legal personal	Explanation
	representative' does not include 'trustee' resulting in a narrower operation of this Clause. Accounting Bodies, Sub, pp. S453, S481	<i>Sub</i> , p. S528
	Fundamentally different concept conveyed by changing 'beneficially owned' in 1936 Act to 'owned' in 1996 Bill.	Agree Sub, p. S528
	Accounting Bodies, Sub, pp. S453, S481.	
165-210	Highlight change in terminology in EM. Accounting Bodies, Sub, pp. S148, S470-1; Trans, pp. 48-49	Disagree Sub, pp. S236- 37
170-35(1)	There should be an express statement of when residency tests must be met. Accounting Bodies, Sub, p. S177	Beyond Mandate Sub, p. 284
170-40(1)	There should be an express statement of when residency tests must be met. Accounting Bodies, Sub, p. S177	Beyond Mandate Sub, p. 284
170-50(2)(b)	Requirement to specify the amount of loss in a company tax loss transfer agreement be deleted. Accounting Bodies, Sub, pp. S462, S493	Explanation Sub, p. S528
Div 175	Current year loss provisions rewritten without regard to their necessity will result in legislative accretions with little value. Accounting Bodies, Sub, p. S444	Explanation Sub, p. S529
175-10(3)	Definition of continuing shareholders be amended to accord with the terms of 80DA(6) or highlight change in EM. Accounting Bodies, Sub, pp. S148, S471, S481	Disagree Sub, p. S237
175-20	Should explicitly state whether circumstances giving rise to the allowable deductions must have occurred before the derivation of assessable income.	Not necessary Sub, p. S285
	Accounting Bodies, Sub, p. S179	1

1996 Bill Clause	1996 Bill: Comments	TLIP Response
75-25	Capital gains tax position of payments should be considered. Accounting Bodies, Sub, p. S177	Agree Sub. p. S284
	Should explicitly state derivation of assessable income must occur before the company incurs the loss that gives	Not necessary Sub, p. S285
	rise to the deduction. Accounting Bodies, Sub, p. S179	
75-35	Section Finding Table in EM should be updated. Accounting Bodies, Sub. p. S493	Disagree Sub, p. S529
330-35	Should in all cases include in parenthesis after the section number, the relevant section heading when referred to in another section. Accounting Bodies, Sub, p. S180	Agree Sub, p. S285
330-40	Need greater details on elections. Accounting Bodies, Sub, p. S149	Agree Sub. p. S237
330-60	Need definition of 'prospecting and development'. AMEC, Sub, pp. S308, S430 Need definition of 'personally'. AMEC, Sub, pp. S308, S430 Need definition of 'field work'. AMEC, Sub, p. S430 EM needs to mention inclusion of 'feasibility studies'. Accounting Bodies, Sub, p. S181	Disagree Sub, p. S317 Disagree Sub, p. S317 Disagree Sub, p. S529 Not necessary Sub, p. S294
330-60(3)(a)	Inclusion of words 'somebody else' changes application of provisions. AMEC, Sub, p. S431	Disagree Sub, p. S529
330-60(4)	Can trusts and partnerships and trusts qualify as 'genuine prospectors'? AMEC, Sub, pp. S308, S430	Yes Sub, p. S317
330-60(5)	No longer relevant AMEC, Sub, pp. S308, S430-1	Disagree Sub. p. S317
330-95	Exclusion of plant from 'allowable capital expenditure'. AMEC, Sub, pp S309, S432 APPEA, Sub, p. S84 MCA, Sub, p. S198	Disagree Sub, pp. S237, S265,
	Exclusion of plant not completed or not installed. MCA, Sub, pp. S198-99, S372.	Disagree Sub, p. S269
	Dry wells as 'plant or articles'? APPEA, Sub, pp. S84, S357-8; Trans, pp. 86-87	Disagree Sub, p. S237 Sub, p. S265

1996 Bill	1996 Bill: Comments	TLIP Response
Clause		
330-85		Beyond mandate
330-95	and mineral product transport roads	Sub, pp. 272-73
000 00	needed.	
	MCA, Sub. p. S202; Trans. p. 87	
330-400	Amendment sought to 'primarily and	Disagree
000-400	principally' test for expenditure on	Sub, p. S530
	mineral transport roads	
	MCA Sub p. S334	
330-240(1)	The definition is now too exclusive.	Disagree
330-240(1)	APPEA Sub. pp. S85, S359	Sub, p. S238
330-240(2)	Why is there a change from 'means' to	Not significant
000-240(2)	'is?	Sub, p. S266
	APPEA, Sub, pp. S85, S359	
330-	Clarify whether the balancing	Not necessary
245(2)(c)	adjustment arising from an earlier	Sub, p. S317
240(2)(C)	tormination of use for qualifying	
	numases (see 330-480) is included in	
	the ACE deduction available to buyer.	
	AMEC, Sub, p. S310	
330-300(3)	Phrase 'it' an oversimplification.	Disagree
000-000(0)	APPEA, Sub, pp. S85, S359	Sub. p. S238
330-305(3)	Use of the word 'it' an	Disagree
000 000(0)	oversimplification.	Sub, p. S238
	APPEA, Sub. pp. S85, S359	7 1 111
330-310(2)	Change in deduction criteria for	Explanation
000 010(2)	evaloration and prospecting	Sub, pp. S270
ļ	expenditures carried forward.	
	AMEC, Sub, pp. S309, S432	
ļ	MCA, Sub, pp. S199, S370	Explanation
	Re single project companies.	Sub, pp. S270
	MCA, Sub, pp. S199, S370	Disagree
1	Requires a balancing adjustment when	Sub, p. S271
1	property is disposed of by explorer.	Sau, p. 52.1
	MCA. Sub. pp. S200, S370	Disagree
330-315	Loss election provisions for ACE and	
	exploration & prospecting expenditures	S266-67
1	excess deductions should remain	5200-01
1	separate.	
	APPEA, Sub, pp. S85-86, S359-60	
1	MCA, Sub, pp. S200-01, S371	1
[AMEC, Sub, pp. S310-311, S433	Agree
	Reference in EM should be to 330-315,	Sub, p S265
	not 330-115.	Date, p 2223
1	APPEA, Sub, p. S84	

1996 Bill Clause	1996 Bill: Comments	TLIP Response
330-320	Unclear as to order deductions are to be taken where a taxpayer company has undeducted prior year's tax losses and elects to create more tax losses out of excess deductions. APPEA, Sub, p. S86	Disagree Sub, p. S267
330-320 330-480	Changes current law such that exploration and prospecting expenditure cannot be carried forward but will convert into normal losses. AMEC, Sub. pp. S432-3	Disagree Sub, p. S530
330-325	Should be deleted in view of cl. 330-270. Accounting Bodies, Sub, p. S184	Disagree Sub, p. S294
330-390	A definition of 'petroleum' is needed.	Disagree Sub. p. S239
330-490	Better explanation of 'termination value' needed. APPEA Sub. pp. S87, S361	Explanation Sub, p. S267
330-495	Definition of 'written down value' be brought into line with s. 122K of the 1936 Act. APPEA, Sub, pp. S87, S361-2, S374-8; Trans, pp. 73-75 MCA, Sub, pp. S201, S373 AMEC, Sub, pp. S310, S433	Disagree Sub, pp. S239, S267-68; Trans, pp. 75-76, 78-79, 81-83
330-520	Should not exclude joint venturers from the 'partial change of ownership' rules. AMEC Sub pp. S311, S434	Disagree EM, pp. 99-100
750-10	PAYE instalments should be listed in cl 750-15. SBCA (NSW). Trans. p. 135	Disagree Trans, p. 136
766-1	May be affected by s. 10(1), Racial Discrimination Act 1975 Accounting Bodies, Sub, p. S187	Disagree Sub, p. S285
766-5	Income Tax (Mining Withholding Tax) Act 1974 should be Income Tax (Mining Withholding Tax) Act 1979. Accounting Bodies, Sub, p. S455	Agree Sub, p. S530
767-1	Update rules relating to bearer debentures. Accounting Bodies, Sub, pp. S149, S472	Not yet Sub, p. S240

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1996 Bill Clause	1996 Bill: Comments	TLIP Response
900-5(2)	Application of the Division to partnerships. Accounting Bodies. Sub, pp. S478-9	Disagree Sub, p. S531
900-10	New provision is incorrectly numbered. Accounting Bodies. Sub, p. S494	Agree Sub, p. S531
900-15(1)(b)	May mislead as it may not be necessary to get written evidence in particular cases. Accounting Bodies. Sub, p. S188	Explanation Sub, p. S286
900-25	Repetition of provisions. Accounting bodies, Sub, pp. S188, S479	Disagree Sub, p. S286
900-25(3)	Need trigger for automatic extension of the retention period. Accounting Bodies. Sub. p. S188	Disagree Sub, p. S286
900-30	Need to clarify whether a loss or outgoing which is incurred only partly in producing salary or wages is a work expense. Accounting Bodies, Sub, p. S188, S479	Disagree Sub, p. S286
900-165	Does not state from when retention period runs. Accounting Bodies, Sub, p. S190	Disagree Sub, p. S287
900- 180(2)(c)	Too onerous and should be omitted. Accounting Bodies, Sub, pp. S190, S479-80	Disagree Sub, p. S287
900-195	Discretion should be confined to the question of whether the evidence is sufficient to satisfy Commissioner that taxpayer incurred the expense. Accounting Bodies, Sub, pp. S191, S480:	Disagree Sub, p. S287
900-205	Provisions of clause are expressed too narrowly. Accounting Bodies. Sub. p. S480	Disagree Sub, p. S531
950	Makes no reference to how to interpret tables/diagrams. Law Soc. (NSW), Sub. p. S224	Explanation Sub, p. S303
950-100	Gives no indication of weight which should be given to material in Bill. Law Soc. (NSW), Sub, p. S227	Explanation Sub, pp. S304- 05
950(100)(2)	Could lead to unexpectedly and inappropriately amended law. Law Soc (NSW), Sub, p. S227	Explanation Sub, p. S305

1996 Bill Clause	Transitional Provisions Bill: Comments	TLIP Response
950-150	Does this suggest a purposive rather than a literal approach to legislation? Law Soc. (NSW), Sub, p. S222	Explanation Sub, p. S303
975-150	Does not cover situation where shares have been mortgaged as part of a finance arrangement. Nat. Inst Acts. Trans, p. 142	Explanation Trans, p. 142
995-1	Uncertainty as to definition of 'Australian source' for non-resident taxpayers. CTA, Sub, pp. S426, S483	Disagree Sub, p.S531
43-100	Terms 'quasi-ownership' and 'apartment building' undefined. Law Soc. (NSW), Sub, p. S228 CTA, Sub, p. S324	Disagree Sub, p. S305
Chapt. 3	Specialist liability rules cannot be specialist. Law Soc. (NSW), Sub, p. S228	Disagree Sub, p. S305
330- 35/40/45/50	No ordering rules for deductions allowable under these provisions. APPEA, Sub, pp. S88, S362	Explanation Sub, p. S268
330-65(3)	The words 'of a kind that qualified for a deduction under Div. 10, 10AAA or 10AA or Part III of the Income Tax Assessment Act 1936' have been added. APPEA, Sub, p. S88	Explanation Sub, p. S268
330-75	Meaning unclear. Law Soc. (NSW), Sub, p. S228	Explanation Sub, p. S306