



Australian Government

The Board of Taxation

REVIEW OF THE TAX ISSUES ENTRY SYSTEM

A report to the Assistant Treasurer

the **board** of **taxation**
www.taxboard.gov.au

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FOREWORD

The Board of Taxation is pleased to submit this report to the Assistant Treasurer following its review of the Tax Issues Entry System (TIES).

The Board appointed a Working Group of its members comprising Mr Keith James (Chairman), Mr Dick Warburton AO, Mr Peter Quiggin PSM and Mr Curt Rendall to oversee this review.

The *ex officio* members of the Board – the Secretary to the Treasury, Dr Ken Henry AC, the Commissioner of Taxation, Mr Michael D’Ascenzo AO, and the First Parliamentary Counsel, Mr Peter Quiggin PSM – reserved their final views on the issues canvassed in this report for advice to Government.

On behalf of the Board, it is with great pleasure that we submit this report to the Assistant Treasurer.

Richard F E Warburton AO
Chairman, Board of Taxation

Keith James
Chairman of Working Group

EXECUTIVE SUMMARY

The Board of Taxation has undertaken a review of the Tax Issues Entry System (TIES). The main findings from the Board's review are:

- there is very limited awareness of TIES within tax practitioners and the community at large;
- while current arrangements to process TIES issues are adequate, there is scope for significantly improved communication and timeliness of the responses being provided by TIES;
- there is also scope for improved consultation and feedback provided to submitters of TIES issues;
- care and maintenance issues continue to be raised and addressed through other processes rather than TIES which defeats the objective of TIES being a single entry point for those issues; and
- the scope of TIES is not widely understood amongst those who have interacted with the system.

To address the above findings the Board has recommended a number of measures, including:

- pursuing further initiatives aimed at raising the awareness of TIES, including suggested initiatives in collaboration with the tax publishing houses and the professional bodies and active promotion by the Board;
- providing stakeholders with an identified point of contact that has the capacity and authority to follow up, clarify as needed and provide timely feedback on the issues raised and for the TIES working group and the Government to commit to definite timelines for their resolution;
- providing more detailed feedback to submitters on the reasoning behind the assessment of a TIES issue, particularly when it is assessed as out of scope;
- considering further development of the TIES website to enable taxpayers to comment on issues raised in TIES;
- ensuring TIES functions as a single entry point for all technical corrections; and

- providing further clarification on the TIES website on the type of issues that would be considered within and out of scope.

CHAPTER 1: INTRODUCTION

1.1 On 20 November 2008, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, launched the Tax Issues Entry System (TIES) and indicated that the Board of Taxation would review its operation after 12 months.

1.2 As the Minister indicated, with the launching of TIES the Government was delivering on one of the recommendations from the April 2008 Tax Design Review Panel's report *Better Tax Design and Implementation*.

SCOPE OF THE REVIEW

Background

1.3 Recommendation 17 of the Tax Design Review Panel's report was that the Government pilot TIES to identify legislative and administrative issues relating to the care and maintenance of the tax system and that the Board review its operation after 12 months. In making that recommendation the Review Panel agreed with a proposal made by the Board in 2007 for a pilot TIES system.

1.4 As part of its February 2007 report on *Improving Australia's Tax Consultation System*, the Board had recommended that Treasury and the ATO proceed with a TIES pilot for identifying / analysing / prioritising / providing feedback on minor tax system issues requiring administrative change or legislative amendment, recognising that the resources to address these issues have to be considered in conjunction with other legislative and administrative priorities.

1.5 The Board found that, key to dealing with minor policy and technical amendments, was that consultation play a primary role in reaching a shared view on the need for change and the relative priority of the issues. The Board concluded that there was a need to create a transparent pathway for issues to be identified, analysed and prioritised and for feedback to those who identified the issues.

1.6 The Board anticipated that TIES, by consolidating analysis of the key issues of concern, and facilitating dialogue on the prioritisation of them, should assist in building long-standing relationships and trust between stakeholders and government and result in less controversy regarding minor amendments to existing legislation.

1.7 The key features of TIES proposed by the Board and summarised in the Tax Design Review Panel's report, are:

- joint ownership by Treasury and the ATO to provide a single point for the community to raise minor policy and administrative issues;
- accessible arrangements for raising issues, including via phone or email; and
- a focus on providing feedback on progress and final outcome of issues raised.

1.8 The Tax Design Review Panel also noted that as part of the pilot, new collaborative tools could be explored to assist in sharing, testing and refining issues raised under TIES.

Scope of the review

1.9 While no detailed terms of reference have been received for this review, the Board has conducted the review of TIES against its key anticipated features summarised in paragraphs 1.5 to 1.8 above. The review will examine the extent to which TIES has provided:

- a single entry point for the community to raise minor policy and administrative issues;
- accessible arrangements for raising issues;
- feedback on progress and final outcome of issues raised by the community; and
- a framework in which consultation has played a primary role in reaching a shared view on the need for change and the prioritisation of the issues.

THE REVIEW TEAM

1.10 The Board appointed a Working Group of its members comprising Mr Keith James (Chairman), Mr Dick Warburton AO, Mr Peter Quiggin PSM and Mr Curt Rendall to oversee this review.

1.11 The Board engaged two consultants, Mr Michael Evans in Sydney and Mr Peter Riley in Melbourne, to assist with the review and the promotion of TIES. It also invited one of its Advisory Panel members, Mr Michael Hay, to join the Working Group.

REVIEW PROCESS

1.12 On 14 April 2010 the Board invited stakeholders to provide feedback on the awareness and operation of TIES, including any suggestions for improvements. Submissions were requested by 31 May 2010. Submissions were received from

Greenwoods & Freehills, the Group of 100 Inc, the Law Council of Australia and Pitcher Partners.

1.13 The Board also asked the consultants, Messrs Evans and Riley, to hold an initial round of consultations with stakeholders to receive their feedback on TIES. Meetings were held with tax partners from Clayton Utz, Deloitte, KPMG, Pitcher Partners, PKF and with representatives from two professional bodies, CPA Australia and the Institute of Chartered Accountants in Australia.

1.14 Additional feedback on TIES was obtained by the Board at its June 2010 meeting from members of its Advisory Panel and the Inspector-General of Taxation.

BOARD'S REPORT

1.15 The Board has considered the issues raised by stakeholders in their submissions and at consultations. However, the Board's assessment and recommendations reflect its independent judgment.

CHAPTER 2: BACKGROUND ON TIES

RECENT REPORTS ADVISING ON TIES

2.1 Two recent reports advise on TIES, the April 2008 Tax Design Review Panel's report *Better Tax Design and Implementation* and the December 2009 Australia's Future Tax System report (the 'AFTS report').

The Tax Design Review Panel report

2.2 On 22 August 2008 the then Assistant Treasurer and Minister for Competition and Consumer Affairs, the Hon Chris Bowen MP, released the Tax Design Review Panel's report *Better Tax Design and Implementation*, and announced that the Government had accepted in principle all its 26 recommendations.

2.3 The Review Panel made three recommendations in relation to TIES, as part of its consideration of issues related to the setting of priorities, planning, monitoring and review of tax measures.

2.4 The Review Panel found that technical defects, anomalies and unintended outcomes in the tax law were a major source of uncertainty and frustration for taxpayers, which was exacerbated when there were delays in remedying identified problems. In line with this finding, it recommended greater priority be given to the ongoing care and maintenance of the tax system.

2.5 Secondly, the Review Panel concurred with the 2007 Board's finding that there was a need for a transparent and accessible process for identifying, prioritising and providing feedback on minor tax system issues requiring an administrative or legislative change. In line with this finding, the Review Panel endorsed the Board's recommendation that the Government proceed with a pilot of TIES to identify legislative and administrative issues relating to the care and maintenance of the tax system. It also concurred with the Board's recommendation that the Board review the operation of the TIES pilot after 12 months.

2.6 Thirdly, and subject to the volume of issues raised through TIES, the Review Panel also saw a role for the Board (or a sub-committee of the Board) to consult with the community and provide advice to the Government on how issues identified through TIES should be prioritised. In the interests of transparency, the Review Panel recommended that the Board's advice to the Minister should be made public.

2.7 For issues other than care and maintenance, the Review Panel recommended that further thought be given to a system, similar to TIES, which would allow the community to log other policy ideas on a transparent and accessible register.

The Australia's future tax system report

2.8 On 2 May 2010 the Treasurer released the Australia's Future Tax System (AFTS) report. The AFTS report notes (at page 654) that the community can already raise ideas for changes to the tax system in a number of ways, but suggests there needs to be a more transparent approach to dealing with those ideas. It recommended (at recommendation 111) that greater transparency would be achieved by extending the TIES website so that it records community suggestions about substantive tax policy issues, as well as minor policy and administrative issues.

2.9 The AFTS report suggests the proposed extension of the TIES website would offer another easy way for people to raise issues with government, but it would not replace existing avenues. People could continue to write directly to government raising concerns and suggesting ways to redress those concerns, including by making Budget submissions.

2.10 The Government's initial response to the AFTS report, also released on 2 May 2010, notes there are a number of recommendations in the AFTS report, including recommendation 111 relating to TIES, that are not government policy, but on which the Government expects further debate.

OPERATION OF TIES

2.11 TIES is jointly administered by Treasury and the ATO. The main portal for the operation of TIES is its website (www.ties.gov.au), which states that TIES provides an opportunity to raise issues relating to the care and maintenance of the Australian Government's tax and superannuation system.

2.12 Care and maintenance issues are described as those aimed at making sure the existing law operates in the way it is intended, by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. Examples of 'care and maintenance' issues are provided. They could involve minor policy change, though they typically would not have a significant revenue impact. Taxpayers unsure whether their issue is a 'care and maintenance' issue are encouraged to submit their issues.

2.13 The TIES website also provides:

- details about how TIES will process the submitted issues, including communications to be held with submitters;

- instructions about how to contact TIES and how to document the submitted issues; and
- registers of issues under current consideration and of finalised issues, providing for each issue a TIES registration number, date registered, description, updated status and comments.

TIES processes

2.14 An initial assessment of each issue registered on TIES is undertaken by Treasury and the ATO. This is followed by an assessment made by the TIES working group, which is chaired by a member of the Board and includes Treasury, ATO and a panel of private sector members. A response is provided to submitters indicating whether their issues can be dealt with by TIES and how they will be resolved (legislative or administrative change) or whether they are 'outside the scope of TIES' and the reason for this outcome. Where possible, other avenues are suggested for further assistance.

2.15 Issues are classified as within scope if they refer to cases where the law does not operate as intended, there is a need to correct technical or drafting defects, remove anomalies or address unintended outcomes. They are within scope if they can be solved through legislative change or through the use of the Commissioner's general administrative powers. They may involve minor policy changes but should not entail significant revenue cost. In some cases, the issues may be part of a wider long-term amendment program.

2.16 Issues are classified as outside the scope of TIES if they relate to purely administrative issues (such as interactions with forms and information systems administered by the ATO), seek advice on how the tax law applies to individual circumstances, involve a major policy change that requires consideration by Government through other processes, relate to issues administered by agencies other than the ATO or do not imply a departure from the way the tax law is intended to operate. For a summary of the classification of issues refer to Appendix A.

2.17 For certain 'out of scope' issues, submitters are informed that, subject to their consent, their issues could be referred to the ATO for further action, either to the complaints area or for interpretative advice, as applicable. For within scope issues requiring legislative change, submitters are advised both when their issues have been released for public consultation (with links provided to the consultation process and material) and when legislation has passed and received Royal Assent.

TIES Outcomes

2.18 From the start of the operation of TIES until June 2010, 93 issues have been registered in TIES. Of these, 21 have been assessed as within scope (23 per cent),

69 have been assessed as out of scope (74 per cent) and three, recently registered issues, remain with their preliminary assessment pending (3 per cent).¹

2.19 Of the 21 issues assessed as within scope, eight issues had been finalised by the end of June 2010, seven through legislative amendment and one through an administrative change by the ATO:

- *Tax Laws Amendment (2009 Measures No. 4) Act 2009*, which received Royal Assent on 18 September 2009, made a correction to the operation of the CGT small business concessions;
- *Tax Laws Amendment (2010 Measures No. 1) Act 2010*, which received Royal Assent on 3 June 2010, included amendments to the operation of the CGT main residence exemption, the small business CGT retirement exemption, the CGT discount in particular replacement-asset roll-overs, the definition of a 'luxury car' in the GST Act and to the application of PAYG withholding provisions to delayed employment termination payments; and
- *ATO ID 2010/114*, published on 7 May 2010, addressed the capital gains tax implications on the disposal or creation of assets by partners to a wholly-owned company.

2.20 The above legislative amendments apply, as a general rule, from the day of Royal Assent. Treasury has noted that it is only in cases where it is clear that a minor amendment makes the law operate in a way that was originally intended, such as in the case of the replacement-asset roll-overs and the CGT retirement exemption, that the amendment would apply retrospectively.

2.21 Of the 13 within scope issues still pending at the end of June 2010, three remain outstanding for more than 18 months (having been raised in late 2008). Two of them correspond to long term projects requiring legislative change, one in the area of refunds for Fringe Benefits Tax and the other one related to the payment of GST on large one-off capital purchases. The third issue, also requiring legislative change, relates to foreign source capital gains distributed to temporary residents.

2.22 Another five within scope issues that require legislative amendment have been outstanding for more than 12 months at the end of June 2010. The TIES website notes that, typically, changes to legislation could be expected to take between 6 and 12 months, depending on the nature of the issue raised. However, Treasury notes that addressing minor policy issues through legislative amendments can, on occasions, require longer time frames in order to clarify the issues and address potentially

1 This breakdown between within scope and out of scope issues differs from what could be inferred from the TIES website, as it includes the outcome of preliminary assessments made by Treasury and ATO.

complex interactions within the tax law. A flow chart indicating the processes involved in a legislative amendment is at Appendix B.

2.23 In the first eight months of the operation of TIES, from November 2008 to June 2009, 68 issues were registered in TIES (an average of 8.5 issues per month). However in the subsequent twelve months, from July 2009 to June 2010, only 25 issues were registered (an average of two issues per month).

2.24 Of the 93 issues submitted until June 2010, the majority (57 per cent) were submitted by individuals who made only one contribution. Only two individuals made more than five contributions each (6 or 7) representing 15 per cent of the issues submitted. Only nine contributions were made on behalf of the professional bodies. The three areas of the law that received the most contributions were superannuation (20 per cent), capital gains tax (17 per cent) and GST (11 per cent).

2.25 To June 2010, the TIES working group, which includes private sector input into the review of TIES issues, has met three times in face to face meetings or through teleconference with Treasury and the ATO, and on a fourth occasion by correspondence. The working group is chaired by a member of the Board, Keith James, and comprises Gordon Cooper, Teresa Dyson, Michael Hay and Ken Spence. A summary table of the meetings held and issues discussed is at Appendix C.

2.26 The TIES working group concurred with the Treasury / ATO preliminary assessment of issues that were out of scope, only differing in 12 per cent of the cases on the reason why the out of scope issues were considered to be out of scope.

CHAPTER 3: ASSESSMENT OF TIES

3.1 This Chapter reports feedback received from stakeholders on several topics related to the operation of TIES, including suggestions for improvements and provides the Board's assessment of those topics.

AWARENESS OF TIES

Views from stakeholders

3.2 A number of stakeholders report very limited awareness of TIES. As the Group of 100 noted in their submission, 'TIES is not widely known'. Greenwoods and Freehills noted that 'the awareness of TIES by tax practitioners is relatively low when compared to other forms of tax policy, tax interpretation or tax development forums'.

3.3 Tax partners at the accounting and law firms interviewed by the consultants reiterated that there is very limited awareness of TIES and that TIES would be best promoted by communicating its demonstrated success. They suggest that the professional bodies could be encouraged to promote TIES through their newsletters, technical committees, conventions and links in their websites and that reference to the success of TIES could be made through the second reading speeches by Ministers introducing the corresponding legislative amendments.

3.4 Greenwoods and Freehills suggest the tax publishing houses could be encouraged to note when a new item has been added to the TIES database or an existing item has been dealt with in a particular way. The expectation is that the wider dissemination of information about topics addressed and resolved through TIES would result in a heightened awareness of TIES and generate further TIES registrations. In addition, Greenwoods and Freehills suggest the TIES website could provide a subscription service where subscribers would be notified of any changes to the website, in particular when new issues are raised.

3.5 Treasury and the ATO note that currently the explanatory memorandum accompanying legislative amendments indicate when the corresponding issues have been raised through TIES. Treasury and the ATO are supportive of further initiatives aimed at raising the awareness of TIES but note that consideration would need to be given to any resource implications required to implement them, including putting in place appropriate information technology systems.

Board's consideration

3.6 The Board's assessment is that there is very limited awareness of TIES, concurs with the view from stakeholders that the best promotion of TIES is by communicating its demonstrated success and supports further initiatives aimed at raising the awareness of TIES.

3.7 As noted earlier, the Board has recently engaged consultants to assist in the review of TIES, but also in its promotion, and members of the Board are seeking to heighten the awareness of TIES when participating in industry and other forums. The Board recommends that it continue to promote the use of TIES over the next two to three years ensuring awareness and use of TIES is well established within the community.

Recommendation 1

The Board recommends that the Government supports further initiatives aimed at raising the awareness of TIES. These include:

- encouraging the tax publishing houses to note when a new item has been added to the TIES database or an existing item has been dealt with in a particular way;
- encouraging the professional bodies to promote the use of TIES through their newsletters, technical committees, conventions and links in their websites;
- considering whether a subscription service could be included in the TIES website where subscribers would be notified of any changes to the website, in particular when new issues are raised or current issues are finalised, and provide appropriate resources for this purpose; and
- for the Board, to continue to promote the use of TIES over the next two to three years ensuring awareness and use of TIES is well established within the community.

ACCOUNTABILITY OF TIES

Views from stakeholders

3.8 Stakeholders have indicated the need for enhanced accountability of TIES. The Law Council of Australia support a continuing oversight role for the Board but note that the main responsibility for managing TIES and providing feedback to submitters must lie with the Treasury in close liaison with the ATO. It also noted that Treasury should ensure there are sufficient resources and a clear line of authority to manage TIES and that contact details should be provided on the TIES website. Pitcher Partners suggest there should be definite timelines within which agreed 'small' tax policy issues raised under TIES are legislatively fixed.

3.9 Treasury notes that joint responsibility with the ATO encourages participation by all parties to the TIES process and is required because TIES extends to administrative as well as legislative changes. It also notes that by having the ATO jointly responsible for TIES, appropriate referral and priority is given to issues, such as referral to the ATO's complaints business line for further consideration of issues that are out of scope of TIES, where appropriate.

3.10 Treasury and the ATO note that once the Government has agreed to legislative amendments for TIES issues, their timely resolution is also subject to the Government's other legislative priorities.

Board's consideration

3.11 The Board considers that current arrangements ensure close collaboration between Treasury and the ATO, but there is scope for significantly improved communication and timeliness of the responses being provided by TIES.

3.12 From a transparency and accountability perspective, it is crucial that stakeholders have an identified contact that has the capacity and authority to follow up and provide feedback on the issues raised. Timeliness is also critical to the accountability of TIES. Submitters should be informed promptly of when their issues will be considered by TIES together with an indication of likely timing for a considered response. This initial contact should be preferably by phone and provide an opportunity, when appropriate, for submitters to clarify the issues that are being raised.

3.13 The Board notes the recent decision by the TIES Secretariat to schedule bi-monthly teleconference meetings with the TIES working group and to hold monthly discussions, as required, depending on the number of TIES issues for consideration. The Board recommends that, as a matter of course, monthly meetings be held whenever new TIES issues have been raised or further information is obtained on previously raised issues, as that would assist in enhancing the timeliness of the TIES processes.

3.14 The majority of issues assessed as within the scope of TIES require a legislative amendment, advice on which is the responsibility of Treasury. Enhanced transparency and accountability would ensue if submitters were provided with contact details of the Treasury officer responsible for progressing those legislative amendments. Similarly, for issues that are within the scope of TIES but which require the use of the Commissioner's general administrative powers, or are out of scope issues but are referred to the ATO for further consideration, enhanced transparency and accountability would result if submitters were provided with contact details of the relevant ATO officer.

3.15 The TIES working group (which comprises representatives of Treasury, the ATO and a private sector panel appointed by the Board) could assist timeliness by aiming to

make a determination on whether the issues are within the scope of TIES within two months of the issues being registered in TIES.

3.16 The Government has already committed, as part of its response to the recommendations of the Tax Design Review Panel, to aim to introduce prospective legislative amendments within 12 months of announcement and legislative amendments with retrospective operation within six months of announcement. These could be supplemented with a commitment by the Government, for issues that are assessed as within the scope of TIES and which require legislative amendment, to make a decision on whether legislative amendments would be introduced within set timelines.

3.17 For those issues with a minor revenue impact that need to be considered within established Budgetary processes, the Government could commit to make a decision within the next available Budget. For technical amendments without revenue impact, the Government could commit to make a decision within four months of the issues being assessed within the scope of TIES.

3.18 The above commitments could be supplemented by a commitment by the panel appointed by the Board to assist enhanced accountability by monitoring and following up on the resolution of TIES issues that have been assessed as within scope, including following up that agreed timelines are adhered to.

Recommendation 2

The Board recommends that enhanced transparency and accountability be provided in TIES through the following actions:

- inform submitters promptly of when their issues will be considered by TIES together with an indication of likely timing for a considered response. This initial contact should be preferably by phone and provide an opportunity, when appropriate, for submitters to clarify the issues that are being raised;
- as a matter of course, hold monthly meetings whenever new TIES issues have been raised or further information is obtained on previously raised issues;
- for issues assessed as within the scope of TIES that require legislative amendments, provide to the submitter the contact details of the Treasury officer responsible for progressing those amendments;
- for issues assessed as within the scope of TIES that require the exercise of the Commissioner's general administrative powers, or for out of scope issues that are referred to the ATO for further consideration, provide to the submitter the contact details of the ATO officer responsible for progressing those matters;
- for the TIES working group to aim to make a determination on whether the issues are within the scope of TIES within 2 months of the issues being registered in TIES;
- for those issues with a minor revenue impact that need to be considered within established Budgetary processes, the Government could commit to make a decision within the next available Budget;
- for technical amendments without revenue impact, the Government could commit to make a decision within four months of the issues being assessed within the scope of TIES; and
- for the panel appointed by the Board to assist enhanced accountability by monitoring and following up on the resolution of TIES issues that have been assessed within scope, including following up that agreed timelines are adhered to.

FEEDBACK ON TIES

Views from stakeholders

3.19 A number of stakeholders have made suggestions regarding more interactive consultations with taxpayers. Greenwoods and Freehills suggest investigating the possibility of providing a feature in the website that would allow users to provide comments on TIES issues raised directly onto the website or to a nominated e-mail address for access by the Board and Treasury. The Group of 100 suggest an on-line polling technique that would allow taxpayers to comment and provide feedback on the issues raised, thus providing an indication of their prevalence and significance.

3.20 Stakeholders also suggest an enhanced feedback and engagement with the submitters of issues is required. Pitcher Partners note frustration at the long time frame required to finalise a within scope issue submitted by them (more than 18 months to date) while the only ongoing feedback they have received is generic advice that the required legislative measures are still being considered by Treasury. Other stakeholders have also reported insufficient consultation and feedback on the assessment of their issues, with some expressing a willingness to be involved in the decision making process undertaken by the TIES working group.

3.21 Treasury and the ATO are supportive of initiatives aimed at improving the feedback provided through the TIES website, including the provision of automated alerts.

3.22 Treasury notes that some issues warrant direct contact between Treasury or the ATO with correspondents, for example to seek clarification of the issues raised, and this has been undertaken in relation to a number of TIES issues. With respect to the suggestion the issue contributor be a participant in the meetings of the working group, the ATO notes the subject matter experts from Treasury and the ATO would also need to attend the meetings, which would increase the cost of running TIES and is likely to add to resolution timeframes.

Board's consideration

3.23 The Board considers that current arrangements whereby the TIES working group includes private sector input into the analysis and assessment of the submitted issues is appropriate and consistent with the tripartite approach recommended by the Tax Design Review Panel for the consideration of tax changes.

3.24 While the Board does not see the need to involve submitters in the discussion of the issues, it is of the view that appropriate feedback should be provided to submitters on the reasoning behind the assessment of a particular issue, particularly when it is assessed as out of scope. Regular feedback should also be provided on the progress of issues assessed as within the scope of TIES.

3.25 The Board supports the use of technology-based tools to enable taxpayers to comment on issues raised in TIES, as that would assist in gaining an indication of their prevalence and significance.

3.26 The Board also recommends that to enable an improved interaction with TIES, a significantly better description of the TIES issues being registered needs to be provided and issues submitted should be promptly registered and published in the TIES website.

Recommendation 3

The Board recommends that existing consultations and feedback arrangements for TIES issues be further enhanced by providing:

- more detailed feedback to submitters on the reasoning behind the assessment of a TIES issue, particularly when it is assessed as out of scope;
- regular feedback to submitters on the progress of issues assessed as within the scope of TIES;
- further development of the TIES website to enable taxpayers to comment on issues raised in TIES and provide appropriate resources for this purpose; and
- a significantly better description and prompt register of issues submitted in the TIES website.

SINGLE ENTRY POINT

Views from stakeholders

3.27 Tax partners from the accounting and legal firms interviewed by the consultants indicate that other avenues continue to be used by tax practitioners to raise TIES type issues, partly because of a lack of awareness of TIES, but also in some instances because of a perception that an effective resolution of those issues could be better obtained through those other processes. These avenues include direct approaches to Treasury and ATO officials and participation in consultative forums, such as subcommittees of the National Tax Liaison Group (NTLG) convened by the ATO.

3.28 The Law Council of Australia suggests it would aid transparency and assist tax consultation if all issues that relate to minor policy or technical corrections, including those raised by the profession or taxpayers in other forums and those discovered by the ATO in its administration of the tax law, were logged on the TIES website.

3.29 The ATO concurs with the above suggestion, as long as it is confined to 'technical corrections' and does not extend to large policy issues identified by the ATO as this would capture advice to Government on areas of revenue improvement or loss, integrity issues and the operation of schemes.

Board's consideration

3.30 The Board considers that if TIES is to be a single and transparent entry point for the community to raise issues relating to the care and maintenance of the tax and superannuation system, then all technical corrections raised by the public with Treasury or the ATO should be required to be registered in TIES. While the Board understands there are standing procedures for lists of care and maintenance issues

raised in consultative forums, such as at subcommittees of the NTLG, to be registered with TIES, the Board has seen only limited evidence of this happening as expected.

3.31 In addition, the Board believes that there would be benefits in listing all identified technical corrections on the TIES website, including those from the ATO and Treasury, as that would assist in making TIES a central and transparent register of all technical corrections.

3.32 Issues identified by Treasury and the ATO would continue to be addressed through current processes, but would be published in the TIES website, identified and grouped under a separate heading following their agreement by the Government, distinguishing them from those raised by the public. It is not intended that the TIES working group would take action or review these issues, but publishing them in the TIES website would assist, as noted, in making TIES a central and transparent register of all technical corrections. The Board notes that there is currently no transparency in these existing processes.

3.33 To assist transparency and enhance accountability, the Board further recommends that the TIES website provide links to the lists of all issues that are being raised and considered in consultative forums, such as at subcommittees of the NTLG.

3.34 The Board acknowledges that the suggested extension and other improvements of the TIES website would require further development of information technology infrastructure to appropriately manage the different flows of information. Against this background, it could be appropriate to allocate the responsibility for administering the TIES website to Treasury, with input from the ATO. Appropriate resources should be provided.

Recommendation 4

To further assist transparency the Board recommends that:

- all technical corrections raised by the public with Treasury or the ATO, including those raised in subcommittees of the National Tax Liaison Group, be registered in TIES, and for this to be actively monitored by Treasury and the ATO;
- technical corrections identified by Treasury and the ATO continue to be addressed through current processes, not required to be reviewed by the TIES working group, but for transparency being published in the TIES website, identified and grouped under a separate heading, following their agreement by the Government; and
- the TIES website provide links to the lists of all issues that are being raised and considered in consultative forums, such as at subcommittees of the NTLG and responsibility for administering the TIES website be allocated to Treasury, with input from the ATO. Appropriate resources should be provided.

RETROSPECTIVITY**Views from stakeholders**

3.35 Feedback obtained by the consultants through their interviews with tax partners indicates that in some cases stakeholders are reluctant to submit an issue through TIES, particularly when a position has been taken on an issue which would be jeopardized if the amendment is not made retrospective. To address these instances, it has been suggested that retrospectivity should be the general rule when the amendments favour taxpayers.

3.36 Treasury supports retrospectivity (ie that the application date of the amendment be the date of effect of the primary legislative provisions) only in cases where it is clear that a technical amendment makes the law operate in a way that was originally intended (ie in line with the original policy intent). In all other cases, where alignment with the original policy intent is not clear and might involve a minor policy change, amendments could be pursued through TIES but with the date of effect being usually the date of Royal Assent.

Board's consideration

3.37 The Board is aware that there are practical issues with the retrospective application of legislative amendments. These include the compliance costs for taxpayers and the ATO in dealing with amended assessments caused by the retrospective amendment. Further, the Board concurs with the approach by Treasury that retrospectivity should apply where it is clear that a technical amendment makes the law operate in a way that was originally intended (ie in line with the original policy intent).

3.38 However, the Board considers that in addition to the above cases, to promote confidence in the fairness of the tax system, it is necessary for some amendments that benefit taxpayers and that would arguably have been within the policy intent, but relate to fact situations that were not clearly contemplated by either the law or the accompanying explanatory memorandum, that retrospectivity be actively considered, unless other policy considerations mitigate against it.

3.39 During consultations it was suggested that in those circumstances, if retrospectivity was not provided, an appropriate policy outcome might be the amending legislation including a provision preventing the Commissioner from amending assessments which were made before the issues were registered in TIES.

Recommendation 5

The Board recommends that for those legislative amendments that benefit taxpayers and that would arguably have been within the policy intent, but relate to fact situations that were not clearly contemplated by either the law or the accompanying explanatory memorandum, that retrospectivity be actively considered, unless other policy considerations mitigate against it.

SCOPE OF TIES

Views from stakeholders

3.40 Two main issues have been reported by stakeholders regarding the scope of TIES: lack of clarity and suggestions to extend the scope of issues that can be raised on TIES.

3.41 As noted in the previous chapter, the scope of TIES is issues relating to the care and maintenance of the Australian Government's tax and superannuation system. Care and maintenance issues are those aimed at making sure the existing law operates in the way it is intended in accordance with current policy parameters, by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. They could involve minor policy change, though they typically would not have a significant revenue impact.

3.42 A number of stakeholders have indicated there is a lack of clarity around the scope of TIES and suggested that its scope needs to be explained better. Lack of clarity is, in part, evidenced by the high proportion of submitted issues that are assessed as out of scope. The Law Council of Australia submits that it is not clear if systemic administrative issues, such as the process for logging client names in different ATO systems, are out of scope. It has requested clarification and that if those issues are out of scope, that a clear pathway for their submission to the ATO be identified and publicised.

3.43 Stakeholders have also suggested an extension of the TIES website, similar to the recommendation by the AFTS review, to include larger or substantive tax policy issues of interest to the community. The Group of 100 notes that the rejection in TIES of substantive policy issues ignores an opportunity to collect information on issues that are potentially significant to taxpayers. It has suggested an extension in the use of the TIES website, inviting taxpayers to comment on policy issues through a simple on-line polling technique which could, as mentioned before, also be used to provide feedback on issues that are within the scope of TIES.

Board's consideration

3.44 The Board acknowledges that there is a need to provide greater clarity on the scope of TIES. An area that in particular requires further clarification is the extent to which issues that require the use of the Commissioner's general administrative powers, as distinct from purely systemic administrative issues, are within the scope of TIES. Some practical examples of care and maintenance issues are included in the TIES website, but they do not cover the case of issues that are within the scope of TIES and require resolution by the ATO. The Board further notes that out of the 21 issues assessed as within the scope of TIES up to June 2010, only one issue has been identified as requiring, for its resolution, the use of the Commissioner's powers.

3.45 The extent to which care and maintenance issues can involve minor policy changes also needs to be clarified. It needs to be made clearer that these are issues which are broadly consistent with the overall thrust of the original policy intent and typically would not have a significant revenue impact. Again, clear examples drawing on finalised issues should be of assistance to taxpayers.

3.46 In addition to providing on the TIES website further examples of care and maintenance issues and issues that have been assessed as out of scope under the different categories (refer to Appendix A), consideration could be given to providing a point of contact in the TIES Secretariat to discuss potential issues with interested stakeholders prior to their submission.

Recommendation 6

The Board recommends that:

- further clarification be provided on the TIES website on the type of issues that would be considered within and out of scope; and
- consideration be given to providing a point of contact in the TIES Secretariat for discussing with interested stakeholders potential issues prior to their eventual submission and provide appropriate resources for this purpose.

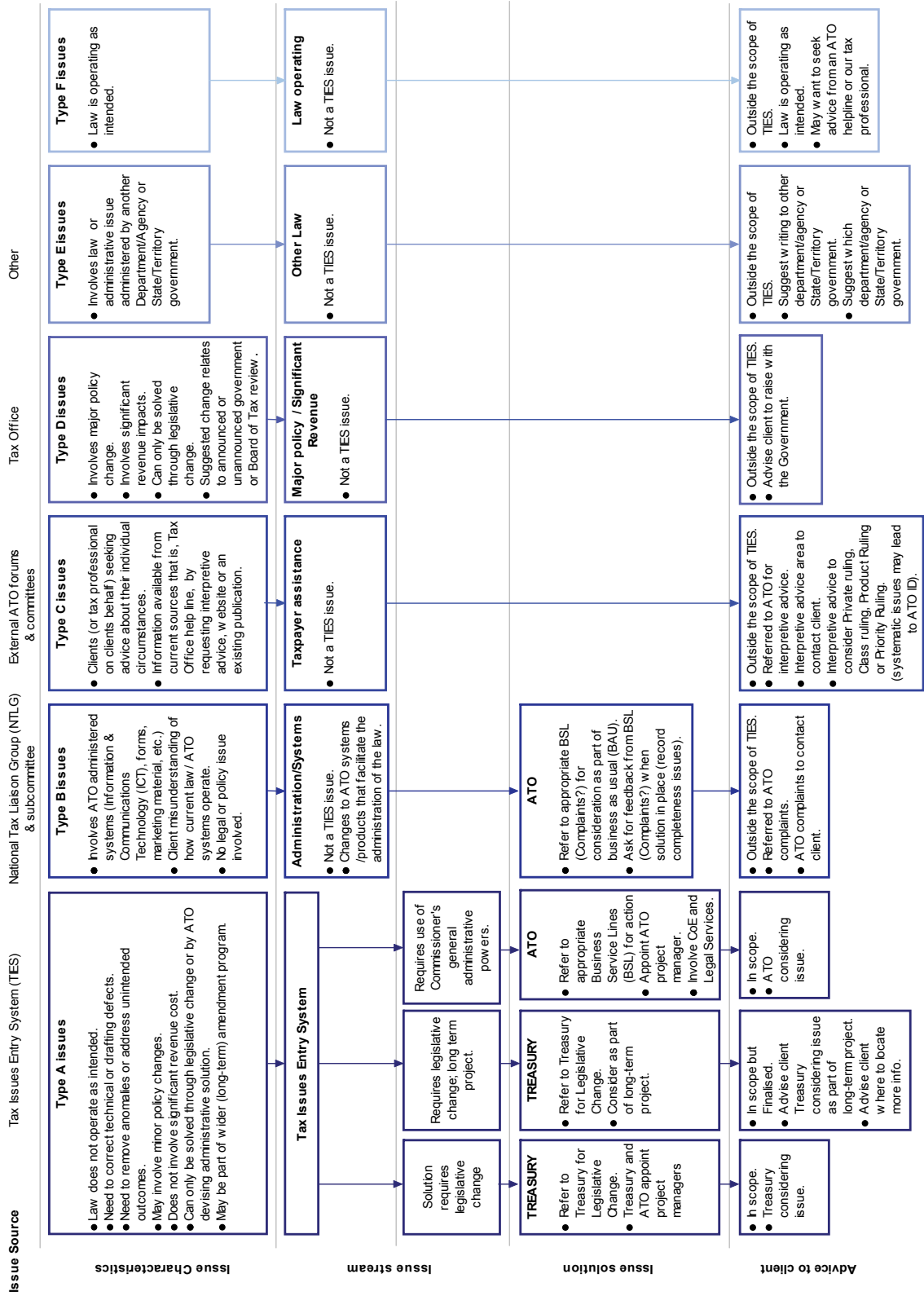
3.47 The Board supports the suggested extension of the TIES website as recommended by the AFTS review and endorsed by stakeholders, but in a way that would preserve the distinction between care and maintenance issues (for which TIES would continue to constitute a single entry point) and larger or more substantive policy issues of interest to the community (which, as recommended by AFTS, could continue to be raised through other avenues and for which the key attribute would be their enhanced transparency and scope for consultations).

3.48 The Board acknowledges that the suggested further extension of the TIES website would shift the focus of TIES issues towards more substantive policy issues and potentially result in a significantly larger volume of issues to be handled. As noted above, this would require the further development of information technology infrastructure to appropriately manage the different flows of information. Against this background, the Board reiterates its recommendation to allocate the responsibility for administering the TIES website to Treasury, with input from the ATO as appropriate.

Recommendation 7

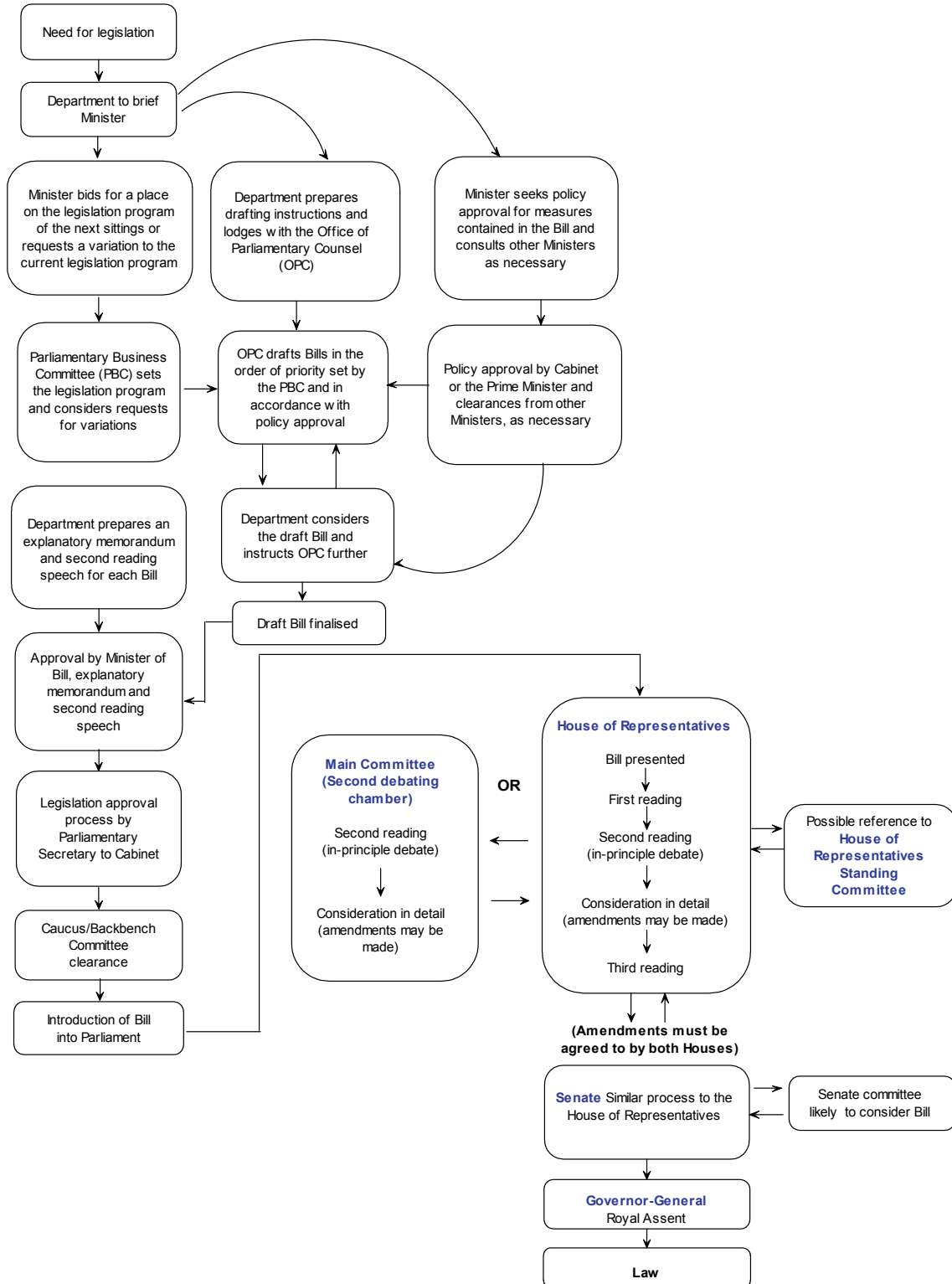
The Board recommends the extension of the TIES website as recommended by the AFTS review, but in a way that preserves the distinction between care and maintenance issues and larger or more substantive policy issues of interest to the community. Against this background, the Board reiterates its recommendation to allocate the responsibility for administering the TIES website to Treasury, with input from the ATO as appropriate.

APPENDIX A: MANAGEMENT OF ISSUES RECEIVED BY TIES



APPENDIX B: LEGISLATIVE AMENDMENT PROCESSES

Legislative process: policy development to enactment



APPENDIX C: TIES WORKING GROUP MEETINGS

Date of meeting	TIES issues numbers considered		Other issues discussed
	New issues	Additional information on issues	
24 March 2009	0001-2008 to 0023-2008 and 0001-2009 to 0016-2009	0002-2008 0008-2009 0012-2009 0014-2009 (provided on 11 May 2009)	TIES processes, including communications with the Working Group and recommendations provided by Treasury and the ATO on the issues to be considered. Additional information was requested on some issues, standard letters for correspondents, classification of issues, updates to the TIES website and, where relevant, referral of out of scope issues to ATO complaints and ATO interpretative assistance (provided on 11 May 2009).
16 September 2009	0017-2009 to 0046-2009	0020-2008 0021-2008 0002-2009 0005-2009 0010-2009 0014-2009 0015-2009 0016-2009	
27 November 2009 (conducted by e-mail)	0047-2009 0048-2009 0049-2009 0050-2009 0051-2009 0054-2009	0004-2009 0005-2009 0014-2009 0020-2009 0023-2009	

Date of meeting	TIES issues numbers considered		Other issues discussed
	New issues	Additional information on issues	
22 June 2010 (by phone)	0052/2009 0053/2009 0055/2009 0056/2009 0057/2009 0058/2009 0059/2009 0060/2009 0001/2010 0002/2010 0003/2010 0004/2010 0005/2010 0008/2010 0009/2010	0003-2009	<p>Information was provided on the finalisation of nine TIES issues, including the passage of legislative amendments to address six issues.</p> <p>It was agreed that future discussions between the Working Group and Treasury and the ATO would be held every two months by telephone conference. In addition, discussions would be held monthly as required depending on the number of TIES issues for consideration.</p>

APPENDIX D: SUBMISSIONS

The following is a list of organisations that made submissions to the Board as part of the review. Submissions can be viewed on the Board's website at www.taxboard.gov.au.

List of organisations providing submissions

Greenwoods & Freehills

Group of 100

Law Council of Australia

Pitcher Partners

APPENDIX E: RECOMMENDATIONS

Recommendation 1

The Board recommends that the Government supports further initiatives aimed at raising the awareness of TIES. These include:

- encouraging the tax publishing houses to note when a new item has been added to the TIES database or an existing item has been dealt with in a particular way;
- encouraging the professional bodies to promote the use of TIES through their newsletters, technical committees, conventions and links in their websites;
- considering whether a subscription service could be included in the TIES website where subscribers would be notified of any changes to the website, in particular when new issues are raised or current issues are finalised, and provide appropriate resources for this purpose; and
- for the Board, to continue to promote the use of TIES over the next two to three years ensuring awareness and use of TIES is well established within the community.

Recommendation 2

The Board recommends that enhanced transparency and accountability be provided in TIES through the following actions:

- inform submitters promptly of when their issues will be considered by TIES together with an indication of likely timing for a considered response. This initial contact should be preferably by phone and provide an opportunity, when appropriate, for submitters to clarify the issues that are being raised;
- as a matter of course, hold monthly meetings whenever new TIES issues have been raised or further information is obtained on previously raised issues;
- for issues assessed as within the scope of TIES that require legislative amendments, provide to the submitter the contact details of the Treasury officer responsible for progressing those amendments;
- for issues assessed as within the scope of TIES that require the exercise of the Commissioner's general administrative powers, or for out of scope issues that are referred to the ATO for further consideration, provide to the submitter the contact details of the ATO officer responsible for progressing those matters;
- for the TIES working group to aim to make a determination on whether the issues are within the scope of TIES within 2 months of the issues being registered in TIES;

- for those issues with a minor revenue impact that need to be considered within established Budgetary processes, the Government could commit to make a decision within the next available Budget;
- for technical amendments without revenue impact, the Government could commit to make a decision within 4 months of the issues being assessed within the scope of TIES; and
- for the panel appointed by the Board to assist enhanced accountability by monitoring and following up on the resolution of TIES issues that have been assessed within scope, including following up that agreed timelines are adhered to.

Recommendation 3

The Board recommends that existing consultations and feedback arrangements for TIES issues be further enhanced by providing:

- more detailed feedback to submitters on the reasoning behind the assessment of a TIES issue, particularly when it is assessed as out of scope;
- regular feedback to submitters on the progress of issues assessed as within the scope of TIES;
- further development of the TIES website to enable taxpayers to comment on issues raised in TIES and provide appropriate resources for this purpose; and
- a significantly better description and prompt register of issues submitted in the TIES website.

Recommendation 4

To further assist transparency the Board recommends that:

- all technical corrections raised by the public with Treasury or the ATO, including those raised in subcommittees of the National Tax Liaison Group, be registered in TIES, and for this to be actively monitored by Treasury and the ATO;
- technical corrections identified by Treasury and the ATO continue to be addressed through current processes, not required to be reviewed by the TIES working group, but for transparency being published in the TIES website, identified and grouped under a separate heading, following their agreement by the Government; and
- the TIES website provide links to the lists of all issues that are being raised and considered in consultative forums, such as at subcommittees of the NTLG and responsibility for administering the TIES website be allocated to Treasury, with input from the ATO. Appropriate resources should be provided.

Recommendation 5

The Board recommends that for those legislative amendments that benefit taxpayers and that would arguably have been within the policy intent, but relate to fact situations

that were not clearly contemplated by either the law or the accompanying explanatory memorandum, that retrospectivity be actively considered, unless other policy considerations mitigate against it.

Recommendation 6

The Board recommends that:

- further clarification be provided on the TIES website on the type of issues that would be considered within and out of scope; and
- consideration be given to providing a point of contact in the TIES Secretariat for discussing with interested stakeholders potential issues prior to their eventual submission and provide appropriate resources for this purpose.

Recommendation 7

The Board recommends the extension of the TIES website as recommended by the AFTS review, but in a way that preserves the distinction between care and maintenance issues and larger or more substantive policy issues of interest to the community. Against this background, the Board reiterates its recommendation to allocate the responsibility for administering the TIES website to Treasury, with input from the ATO as appropriate.

