



Australian Government

The Board of Taxation

IMPROVING AUSTRALIA'S TAX CONSULTATION SYSTEM

A Report to the Treasurer

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

The Board of Taxation
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the **board** of **taxation**

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FOREWORD

The Board of Taxation has an ongoing role under its Charter to provide advice to the Treasurer on community consultation arrangements in relation to taxation matters. In fulfilling that role, in March 2002 the Board provided the Treasurer with a range of recommendations to improve the effectiveness of taxation consultation arrangements in its report on *Government Consultation with the Community on the Development of Taxation Legislation*. The Government accepted in principle all of the Board's recommendations, and taxation consultation arrangements have improved significantly since that time.

Given the key role of consultation in improving the quality of tax legislation and the operation of the tax system more generally, it is important to strive for continuous improvement in the arrangements. The Board therefore welcomed the opportunity for a further review with Treasury of taxation consultation arrangements that arose from the Government's acceptance in December 2004 of recommendation 7.1 of the Review of Aspects of Income Tax Self Assessment. That recommendation tasked the Board, in conjunction with Treasury, with reviewing international consultation processes with a view to identifying any improvements to the Australian tax consultation system, especially in respect of non-controversial minor policy or technical amendments, and reporting to government.

The Board and Treasury established a joint Working Party, chaired by Mr Keith James from the Board, in 2005 to conduct the review. The Working Party's intention in undertaking the review was to provide the Government with a set of recommendations on which there is already broad agreement, within and outside Government, in the tax consultation system. The Working Party has worked very closely with all participants and substantial progress has been made in gaining acceptance of the recommendations and, in some cases, in implementing responses to the recommendations.

The Working Party drew on two key sources of information in conducting the review: international approaches to tax consultation arrangements and the views of external stakeholders within the Australian system.

The Working Party considered information on tax consultation practices from Canada, France, Germany, Ireland, Korea, the Netherlands, Norway, Sweden, the United Kingdom, New Zealand and the United States. Much of this information was obtained through responses to a questionnaire along with some follow-up in relation to particular issues. In addition, representatives of the Working Party visited New

Zealand as it was identified as a best practice model on several occasions, and one representative met with officials in the United Kingdom.

In addition, the Working Party met with a wide range of stakeholders in the Australian system to understand better the current tax consultation processes and to gather information on whether international practice might be relevant to Australia. In particular, the Working Party met with peak industry groups, tax expert groups, regulatory bodies, officials from the Treasury and the Australian Taxation Office and state government treasury and revenue departments.

The Working Party was assisted in the information gathering process by consultation, facilitation and executive assistant consultancy services provided by Mr Don McKenzie and Mr David Ragg.

Using this information, the Working Party developed a model for sustainable community consultation on which the recommendations in the report are based.

The Working Party would like to thank all of those who so readily contributed information and time to assist in conducting the review. In particular, the Working Party would like to thank the range of stakeholders within the New Zealand tax consultation system who provided a frank and open account of the background to and operation of their system. The Working Party was encouraged by the strong commitment of all participants in tax consultation processes to work together to improve the current arrangements for the benefit of the tax system as a whole.

From the Board's perspective, we would like to express our appreciation to the Treasury members on the Working Party. The recommendations in the report reflect an agreed position between the Board and Treasury and the Board would like to thank the Treasury officials for their cooperative approach to reaching those outcomes.

On behalf of the Working Party, it is with great pleasure that I submit this report to the Treasurer. The Working Party believes, if implemented, the recommendations in the report will further improve Australia's tax consultation arrangements, resulting in better tax system outcomes.

Richard F E Warburton AO
Chairman

EXECUTIVE SUMMARY

INTRODUCTION

The Board of Taxation, in conjunction with Treasury, was tasked to review international consultation processes with a view to identifying any improvements to the Australian tax consultation system, especially in respect of non-controversial minor policy or technical amendments, and report to government.

Existing arrangements, announced by the Government in May 2002, are consistent with international practice, generally functioning well and have community support. As a result, the review has made recommendations for evolutionary change to the tax consultation system, within the broad framework of the existing arrangements.

KEY FINDINGS

The high-level objective of the tax consultation system is to improve tax system outcomes by ensuring government makes decisions on taxation matters fully informed about the range of options and the benefits, costs and risks associated with those options. It is also important that the resources devoted to consultation are used effectively and efficiently.

Consultation takes place in an environment where government is responsible for policy decisions. There is not always unanimity of view amongst stakeholders and it may not always be appropriate to consult on particular measures (for example, certain anti-avoidance issues) or it may not occur in some cases (for example, election announcements).

Consultation can occur at different points as a proposal moves from the policy development stage to the implementation stage. Although consultation may not take place prior to the policy decision (including for the reasons outlined above), it can provide valuable input on the most effective way to implement government's policy intent. In particular, consultation can assist in minimising compliance and administration costs and avoiding unintended consequences. Consultation at this stage can be especially relevant where implementation of a government policy decision requires consideration of complex legislative design issues.

Consultation can be conducted in a variety of ways. Whatever the approach, the consultation process should involve early engagement between officials and relevant external stakeholders and/or experts.

Sustainable, effective and efficient consultation requires a very clear distinction between consultation and any other activities external stakeholders undertake, for example lobbying or advocacy on policy matters.

Several factors make consultation on tax matters more challenging in Australia than in some other countries. In particular, there are the large number of peak bodies representing external stakeholders, little interchange of personnel between the public and private sectors, a high level of public and media interest in taxation matters and a tendency by some stakeholders to focus on differences of view rather than areas of agreement. While unlikely to change quickly, some of these factors can be influenced over time.

The review has identified four foundations for sustainable community consultation (clear scope and objectives, identifying stakeholders, transparency of information and process, and open and timely feedback), and four elements that support a sustainable process (maintaining confidentiality where required, early access and input, appropriate resources, and sufficient time).

The recommendations outlined below and explained in more detail in Chapter 4 identify opportunities for all of the key stakeholders to improve the effectiveness and efficiency of the tax consultation arrangements and ultimately improve tax system outcomes.

The recommendations would lead to an environment where:

- government, being responsible for policy decisions, clearly outlines its policy intent, and provides the opportunity and resources for early consultation wherever possible;
- officials use the opportunity to engage proactively with external sources of advice, provide open and timely feedback, and manage the consultation process efficiently;
- external stakeholders and experts commit to seek the most effective implementation options that are consistent with government policy intent, engage in consultation effectively and efficiently, maintain confidentiality where required, and clearly separate consultation from activities that may conflict, such as lobbying; and
- the Board of Taxation takes a more proactive approach, within its Charter, to seeking better outcomes from the consultation process through facilitation and monitoring of consultation.

All stakeholders see higher levels of trust as important to improving the operation of the tax consultation system. However, higher levels of trust cannot be imposed and will only come, over time, from all participants committing to seeking tax system

outcomes that will improve the wellbeing of Australia when engaging in the consultation process. Discussions with key stakeholders indicate an environment of openness and trust is attainable.

RECOMMENDATIONS

Recommendation 1

External stakeholders should develop an environment, structures and processes for consultation that support tax system outcomes that are in the best interests of Australia.

The Board of Taxation should take a proactive approach to encouraging continuous improvement in the tax consultation system by liaising with stakeholders about possible improvements to consultation arrangements consistent with the Government's framework.

Recommendation 2

Government should continue to ensure that policy intent is clearly described in initial consultation documents.

Government should continue to specify the policy intent at a high level wherever possible in order to enable consideration of a broad range of implementation options.

When appropriate, external stakeholders should be used to assist with clarifying how they might be best able to input into the consultation.

Recommendation 3

Government, officials and external stakeholders should place more emphasis on ensuring that relevant skills and experience are available in consultation processes by identifying the:

- expertise, including any paid external advisers, commercial experience and officials, required for a successful consultation; and
- external stakeholders who are best able to contribute to the consultation process. Expert external advice can be sought on who should be consulted.

Recommendation 4

External stakeholders should continue to work towards forming into a single group or at least fewer groups for the purposes of responding to consultation proposals, to make the consultation process less resource-intensive and to improve the opportunity to build long-standing relationships and trust between stakeholders.

Recommendation 5

Government, officials and external stakeholders should seek improved engagement with sectors currently under-represented in consultations, including considering mechanisms for assistance with resourcing issues wherever possible.

Recommendation 6

Treasury should as far as possible use technology-based tools to improve the provision of information and facilitate dialogue, thereby assisting transparency and efficiency.

Recommendation 7

Treasury should where possible provide appropriate feedback more consistently to participants in consultation processes by:

- acknowledging contributions as they are received;
- providing written summaries of points raised in discussions to participants to check that they have been heard correctly;
- keeping participants in consultations informed of developments relating to the process of consultation; and
- advising participants when decisions are announced or legislation is introduced. On some occasions, this may also provide an opportunity to give additional feedback that could not be given earlier.

Recommendation 8

Government should use public consultation processes for significant measures wherever appropriate to ensure that the community has maximum opportunity to participate in consultation processes.

Where consultations are confidential, all participants should respect that confidentiality. Where appropriate, confidentiality deeds should continue to be used.

The ground rules for consultations should be established clearly at the start of each consultation, indicating the behaviour expected of all stakeholders and the implications of any departure from the rules.

Recommendation 9

Government should provide external stakeholders with access and input to the consultation process in developing detail in relation to policy decisions, unless there are compelling reasons for not doing so (including for anti-avoidance measures). Government should also consider whether consultation may be appropriate prior to the policy decision.

Recommendation 10

Government, officials and external participants should ensure that consultation processes are appropriately resourced by involving resources and expertise from both the public and private sector. All stakeholders should also be aware of the value of input in consultation processes from those with commercial experience. Examples of how this could be developed include through secondments between the public and private sector and hiring in such expertise for specific projects. It will be important to ensure that there is appropriate funding for any such arrangements.

Treasury and the Tax Office should ensure their respective roles are clear to external stakeholders during community consultation to minimise demands on the resources of external stakeholders.

Treasury, the Tax Office and external stakeholders should as far as possible ensure that there is continuity of key staff in particular consultation processes.

Recommendation 11

Government should allow at least a six-week period for external stakeholders to provide input into consultations on significant measures, to ensure the community has maximum opportunity to participate, unless government considers the resulting delay in introducing legislation would outweigh the benefits of allowing this time.

Recommendation 12

Treasury and the Tax Office should proceed with the proposed pilot of the Tax Issues Entry System 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. The Board should review the operation of the system after 12 months.

CHAPTER 1: AUSTRALIA'S TAX CONSULTATION PROCESSES

1.1 Australia has, by international standards, a high level of public and media interest in taxation issues. There is also widespread public debate on taxation matters. This is matched by extensive discussion between government, the business sector and the community on taxation issues. Peak industry, taxation and community representatives contribute to the public debate through published papers outlining their views on taxation issues. There is also intense lobbying involving frequent meetings between these representatives, ministers and senior government officials.

1.2 The Government welcomes community involvement in the taxation debate and gives serious consideration to community suggestions for improvements to the taxation system.

1.3 For example, as part of the policy development process, each year the Treasurer invites the community to submit policy suggestions to be considered in framing the forthcoming Budget.

1.4 Treasury undertakes liaison and consultation on tax policy and legislation on behalf of the Government. The Australian Taxation Office (Tax Office) also conducts consultation on taxation matters. Both Treasury and the Tax Office have an active consultation programme which focuses on the particular areas of responsibility of each agency. The Tax Office is generally included in consultation arrangements undertaken by Treasury.

1.5 The purpose of the liaison undertaken by Treasury is to build and maintain direct relationships with community stakeholders by providing timely access to emerging issues relating to the operation of the tax system. These relationships enable Treasury to gain a deeper understanding of how taxpayers are impacted by the tax and superannuation system-in-use, improving Treasury's ability to adopt a holistic approach in providing tax and superannuation advice to government.

1.6 Particular divisions within the Revenue Group of Treasury also liaise with community stakeholder groups on more specific areas of tax such as excise, superannuation and international tax.

1.7 Although external participants are often specialists in particular tax areas, divisions are also encouraged to build relationships with more diverse stakeholder groups including welfare groups and software developers. This ensures a broader

range of views and enhances Treasury's ability to adopt a more holistic approach to tax design.

Tax Office consultative forums

1.8 The Tax Office convenes a number of consultative forums which give a broad range of stakeholders a voice in how the revenue system is administered. The forums include professional advisory committees, liaison groups, expert panels and industry partnerships. Treasury has observer status at some of these forums which allows it to collect information regarding the tax system in operation. However, there have been some instances where external participants have expressed disappointment that Treasury participants are unable to engage in policy discussion in these forums.

COMMUNITY CONSULTATION ON THE DESIGN AND IMPLEMENTATION OF TAX LEGISLATION

1.9 In August 2000 the Government announced it would establish the Board of Taxation as a non-statutory body to advise the Government on the design and operation of Australia's tax laws, including on issues relating to the integrity and functioning of the tax system. An important role of the Board is to ensure that there is full and effective community consultation in the design and implementation of tax legislation.

1.10 Consistent with this role, in 2001 the Board commenced an evaluation of how community consultation could be made more effective. Responding to the Board's recommendations, the Treasurer announced in May 2002 the in-principle approach the Government would take to the future development of tax measures. The approach is outlined in Box 1.1. The Taskforce on Reducing Regulatory Burdens on Business (Banks Taskforce) regarded this approach as a useful guide in considering a whole-of-government policy on consultation.¹

1.11 The Government recognised that the consultation process should be reviewed periodically to ensure that the expectations of government and external participants are being appropriately managed. Accordingly, the Treasurer asked the Board of Taxation to undertake an ongoing role in monitoring the processes of consultation.

1.12 The Board of Taxation also undertakes consultation on specific topics at the request of the Treasurer.

1 Along with the UK Government's Code of Practice and the International Council of Securities Association's 'Statement on Consultation Practices': Regulation Taskforce, 2006, Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Report to the Prime Minister and the Treasurer, Canberra, page 152.

Box 1.1: In-principle approach to tax consultation

The Government announced in 2002 that during the development of future tax measures it would be working from an in-principle position of:

- consulting on all substantive tax legislation initiatives, except where there is commercial, market, revenue or tax avoidance sensitivity or where the flexibility government requires in managing the timing of policy change limits the extent and form of consultation that can be undertaken;
- seeking early external input in the identification and assessment of high-level policy and implementation options;
- seeking technical and other input from external stakeholders (including the Board of Taxation) in the development of policy and legislative detail;
- thoroughly road-testing draft legislation and related products prior to implementation;
- ensuring policy intent for each new measure is clearly established and described by public announcement;
- announcing for each new substantive tax measure a consultation process, with roles and responsibilities specified;
- releasing an indicative forward programme of tax legislation; and
- providing better feedback to external participants in consultation processes.

Consultation on announced tax measures

1.13 Since the Government's announcement of May 2002 there has been consultation on most significant announced tax measures. Where there has been no consultation, this has been mainly because those measures were of a minor or technical nature or there have been timing restrictions.

1.14 Consultation on announced measures takes one of three forms – open public consultation, targeted public consultation and targeted confidential consultation. Consultation on some measures may include more than one approach.

1.15 Public consultations are open to anyone who is interested. Such consultations may be advertised in newspapers and posted on the Treasury website. For open public consultations, discussion or policy papers or exposure drafts of legislation are generally prepared and made available. Submissions are sought in response to these papers and these are also frequently made public on the website.

1.16 Participants in targeted consultations are generally chosen because they have expertise in the area or because they belong to a group that may be specifically affected by the legislation. Responses can be in the form of discussions at meetings or written submissions.

1.17 In the case of confidential consultations, participants are required to sign an undertaking not to divulge details of the consultation. However, if participants wish to discuss a confidential consultation with someone who is not a party to the consultation they can request that this party also be given the opportunity to sign an undertaking and participate.

1.18 The scope of the consultation process varies from measure to measure. In some cases the government may announce a public review of an area of taxation, invite submissions and conduct consultations to develop a policy position. For example, in the 2005-06 Budget, the Government announced a broad review of the taxation treatment of plantation forestry and called for submissions from interested parties.

1.19 More frequently the government may announce the broad outline of policy intent and task Treasury to conduct consultation on the detail of the policy. For example, in the 2006-07 Budget, the Government announced a plan to simplify and streamline superannuation and sought public reaction to that plan prior to determining the details of the policy.

1.20 In many instances consultation occurs at both the policy development and legislation development stages. For example there were a number of modifications to the consolidation regime enacted in March 2005 where consultation was conducted at both the policy development and legislation stages, including confidential consultation on draft legislation.

1.21 In some cases, particularly where there are market or revenue sensitivities, the specific policy may be quite settled by the time of any public announcement and either there is no consultation or consultation is limited to establishing whether the proposed legislation reflects the policy intent. For example, a measure to remove unintended consequences of the GST laws which would have allowed property developers to gain unintended tax benefits was announced on the introduction of legislation into Parliament in March 2005. Following the introduction of the legislation there was targeted confidential consultation on amendments to the legislation prior to its passage.

1.22 Extensive consultation at the policy development stage has been conducted for a number of major items since May 2002, notably the Review of International Taxation Arrangements, conducted by the Board of Taxation, and the Review of Aspects of Income Tax Self Assessment, conducted by the Treasury.

1.23 Consultation arrangements for announced taxation measures enacted in 2005 are outlined in Box 1.2.

Box 1.2: Consultation on announced tax measures enacted in 2005

During 2005, 125 taxation measures were enacted by legislation. (One of those measures included 276 technical corrections and amendments.)

Consultation was undertaken on 58 of those measures.

Of the 58 measures legislated in 2005 on which consultation took place, there was targeted confidential consultation in relation to 33 measures, a combination of both open public consultation and targeted confidential consultation or targeted public consultation in relation to 18 measures, targeted public consultation in relation to 5 measures and open public consultation in relation to 2 measures.

Of the 58 measures, consultation occurred in relation to both policy and legislation development in 37 cases, consultation on policy development only in 6 cases and legislation development only in 12 cases. Consultation on policy development generally takes place following the announcement of a measure by government; however, there were two cases where there was targeted confidential consultation prior to the announcement of the measure and a further case where the policy change was initiated by industry participants themselves.

There was no consultation on 67 measures either because they were of a minor or technical nature or due to timing restrictions. Of these, 34 were additions to the list of Deductible Gift Recipients.

Evaluation of consultation on announced measures

1.24 Treasury has implemented a system for evaluating its community consultation processes on specific tax measures. Treasury assesses its consultation performance against the expectations outlined in the section 'What can participants expect from Treasury?' in the brochure 'Engaging in Consultation on Tax Design'. This includes obtaining feedback on stakeholder experience of the consultation process, such as opportunity for input, time for consideration of issues, whether participants felt their input was given adequate consideration, and satisfaction with the way the process was conducted. It also gives participants the opportunity to comment on what worked well and what could be improved and to raise any issues or concerns they may have about the consultation process. This information is used to improve consultation performance and a high-level survey is reported regularly to the Board of Taxation.

1.25 Participants have indicated that they are generally satisfied with the consultation processes. However, concerns have been expressed about the time allowed for consultations and the provision of feedback to external participants.

1.26 Other measures Treasury has taken to improve taxation consultation arrangements are outlined in Box 1.3.

Box 1.3: Measures to improve consultations

- Publication of a report 'Treasury's Consultation Processes on Announced Tax Measures' three times a year on the Treasury website. The report provides details of announced tax measures, the consultation strategy for each, the progress of that consultation and the name and contact number of the officer responsible for conducting the consultation to facilitate interested parties making contact.
- Production of the brochure 'Engaging in Consultation on Tax Design' to inform and assist potential participants in community consultation. The brochure includes an explanation of the roles and responsibilities of both Treasury and external participants. Further information on consultation processes and issues is also available on the Treasury website under 'Community Consultation'.
- Ongoing development of internal guidelines on how to plan and conduct consultations.
- Staff training and internal seminars to share learnings from consultation experiences.
- Development of a confidential website to allow for easier exchange of documents involved in confidential consultations.

Consultation timeframes and the legislative process

1.27 As noted above, external participants in consultation processes have expressed some concerns with the timeframes for consultation processes. In some situations managing the timing of policy change limits the extent and form of consultation that can be undertaken.

1.28 Generally a measure cannot be introduced into Parliament any sooner than two months after consultation is concluded. Often more than two months is necessary, depending on the scope and complexity of the measure and whether draft legislation was prepared for the consultation process. The steps that occur following consultation are outlined in Box 1.4.

1.29 While there are examples where these processes have been truncated (for example, where the government has considered the matter to be of sufficient urgency), these examples are exceptional.

Box 1.4: Processes following consultation

- Treasury considers the issues identified in consultation and advises the government concerning the policy options.
- The government decides the policy.
- Draft legislation is prepared. If draft legislation was prepared for consultation, it is updated to reflect any changes arising from consultation.
- A further five weeks is required from the time the draft legislation is completed until it is introduced to allow time for:
 - the Office of Parliamentary Counsel to finalise the Bill;
 - Treasury to finalise the explanatory memorandum for the Bill;
 - the Treasurer or Minister for Revenue and Assistant Treasurer to consider the draft Bill and explanatory memorandum; and
 - the government to clear the draft Bill for introduction into Parliament.

Feedback and Treasury's role as a confidential adviser to government

1.30 Treasury's role as a confidential adviser to government imposes some limits on the type of feedback it can provide to external participants in consultation processes. Treasury conducts community consultation on behalf of the government. Treasury is not a decision making body and its role in the consultation process is to listen to the views of participants, provide advice to government as to what those views are and advise the government on how to deal with issues raised during the consultation process.

1.31 Treasury's policy advice to government, including advice on issues raised during consultations, is provided in confidence. The decision on how to deal with those issues rests with the government. Consequently, it is not generally possible for Treasury to give participants feedback on policy issues which are under consideration by government.

Processes for minor policy and technical amendments

1.32 The main mechanism by which suggestions on technical issues are collected is through the Technical Issues Management Subcommittee (TIMS) of the Tax Office's National Tax Liaison Group (NTLG). Such issues may be dealt with either

administratively or legislatively. TIMS consists of representatives of the major tax, law and accounting professional associations and officers of the Tax Office and Treasury.

1.33 Under the TIMS process external stakeholders (including other NTLG subcommittees) identify areas of the tax law where they consider the compliance regimes are unnecessarily difficult or where the tax legislation does not fully reflect the policy intent, and propose solutions to these issues. Where possible, the Tax Office attempts to deal with the issue by implementing an administrative solution or simpler compliance regime without the need for legislative amendment. If it is considered, in consultation with Treasury, that the issue identified is a result of the relevant legislation not fully reflecting the policy intent and the proposed solution is consistent with the policy intent, the NTLG refers the issue to government for consideration as a possible technical amendment to the law.

1.34 While minor policy changes are outside the TIMS charter, in practice issues raised often turn out to be proposals for minor policy changes rather than technical amendments. In the process of determining whether an issue would require a policy change or a technical amendment, issues are generally raised with the relevant policy area of the Treasury so that it becomes aware of the proposals (if it is not already). Should external stakeholders wish to pursue a minor policy change they are advised to raise the issue with the Government. If the Government agrees to the policy change, the measure will be subject to the normal consultation processes.

1.35 There are a number of other NTLG subcommittees on specific areas of tax which also provide a conduit for raising technical issues and, informally, minor policy issues. In appropriate cases, technical issues are referred to TIMS to be examined. Nevertheless, participants in the TIMS process have from time to time expressed frustration that TIMS does not provide a formal channel for progressing proposals for minor policy amendments.

1.36 All changes to tax legislation, including minor policy and technical amendments, are subject to approval by the Government. In the case of major policy changes, approval from the Cabinet is required. In the case of minor policy changes or technical amendments, approval may be obtained by correspondence between the relevant Minister (generally the Treasurer or the Minister for Revenue and Assistant Treasurer) and the Prime Minister. Technical corrections may be approved by the Minister for Revenue and Assistant Treasurer.

1.37 In 2005 some 276 technical corrections and amendments were enacted in Schedule 10 of *Tax Laws Amendment (2004 Measures No. 7) Act 2005*.

CHAPTER 2: TAX CONSULTATION PROCESSES IN OTHER COUNTRIES

2.1 International approaches to tax consultation can provide a useful guide and offer an insight into what might be desirable and achievable in Australia. However, countries have different histories, political processes, norms of behaviour, systems and capacities. Therefore, a particular system of consultation may work well in another country, but not be fully transferable to Australia.

2.2 Overall, the evidence from overseas suggests that Australia's tax consultation arrangements are performing well relative to most other comparable countries. Nevertheless, some elements of tax consultation arrangements in other countries may point to directions in which the Australian system could be improved.

2.3 The review considered information on tax consultation practices from Canada, France, Germany, Ireland, Korea, the Netherlands, Norway, Sweden, the United Kingdom (UK), New Zealand and the United States (US). The Australian Treasury also provided similar information on Australia.

2.4 In addition, representatives of the review visited New Zealand as it was identified as a best practice model on several occasions, and one representative met with officials in the UK. Further information on tax consultation arrangements in New Zealand is in Box 2.1 at the end of this chapter.

2.5 The review also researched the websites and documentation of those countries most like Australia from the perspective of their legal system and values.

2.6 Drawing on this information, the key components of a sustainable system of community consultation on tax matters are identified below.

KEY COMPONENTS OF TAX CONSULTATION PROCESSES IN OTHER COUNTRIES

Leadership and management of the process

2.7 Leadership and management of consultation is not often mentioned on public websites or in publications, yet the evidence, particularly from New Zealand, strongly indicates that these factors are critical to an effective and efficient system of consultation. Without a mandate and pressure from leaders to ensure best practice is

aimed for and then maintained, opportunities for improvement may not be taken up and sufficient priority and resources may not be given to consultation.

The scoping of issues and the clarity of objectives

2.8 There is very strong international evidence of the importance of having thought through what the consultation process is aiming to achieve. It is best if the scope and objectives for the consultation are clear and concise. This may require input from external advisers (in confidence if necessary) to clarify and focus an idea into a workable concept prior to public consultation.

2.9 New Zealand, Germany, Sweden and Norway use external expertise in different forms and structures quite early in the policy development process. They believe this assists government and officials to get a better view of what needs to be achieved and how government decisions may be implemented.

Stakeholder spread and interaction

2.10 A priority for good consultation is to identify the stakeholder groups best suited to the scope and objectives of the consultation. The aim is to involve a suitable spread of qualified people with backgrounds and experience who, collectively, understand the issues being consulted on. These will tend to be people with specific expertise in policy implementation, legislation, tax administration, and commercial and other experience in the general community.

2.11 Peak industry bodies can be a very useful way to harness relevant experience and knowledge. International experience suggests that minority groups, particularly small and medium enterprises (SMEs) and not-for-profit organisations, have difficulty participating in consultation processes.

2.12 It is essential that databases of stakeholders who have the qualifications, experience, motivation and time available are developed and maintained, including through regular review of their contribution and currency. Different projects are likely to require selection of a different set of external stakeholders that will provide a 'best fit' to fulfil the scope and objectives.

2.13 It is important that key personnel in each stakeholder group be regularly engaged in order to build relationships, trust and motivation for the consultation processes.

Transparency of information and process

2.14 Transparency requires the transfer of information and the system to be open to all participants in a way that develops trust, sharing and open dialogue.

2.15 The key factors influencing transparency are the accessibility and type of information made available, the degree of openness and trust in the process and the perceived sincerity of the process. Trust is engendered by an absence of hidden agendas and all stakeholders being open and honest.

2.16 Effective consultation systems aim to build an ongoing relationship that affords government access to reliable information and advice on political, economic and technical issues to avoid unexpected responses and unintended consequences after government takes decisions. Those open relationships also lead to external stakeholders placing value on having the confidence of government and being able to assist in a meaningful way to achieve better outcomes for the taxation system.

2.17 Some other countries (particularly New Zealand) have shown that given the right conditions, stakeholders are prepared to place a higher priority on national or community interests than on their own self or sectional interests.

2.18 Swedish and German consultation models appear to be quite transparent and seem to be achieving this through public structured enquiry processes. In contrast, New Zealand has achieved transparency using trusted advisers and closely networked key stakeholder groups working with officials who advise government. The New Zealand model seems closer to what currently generally occurs in Australia.

Feedback to external stakeholders

2.19 All effective consultation processes require regular and timely feedback to maintain engagement and to concentrate energy to efficiently develop solutions. The importance of the feedback loop is mentioned in all international comments considered by the review on best practice in consultation. Feedback can take various forms and can be handled very efficiently with technology.

2.20 Effective feedback requires a relationship of openness, transparency and trust to be developed between all stakeholders. This requires government and officials to be open to providing transparent and timely feedback, for example on how submissions were evaluated and the process for taking decisions. Something more than just letting stakeholders know their submission was received is generally required, particularly where significant time and resources have been devoted to preparing the submission. What is required is sufficient feedback to indicate to stakeholders that their efforts were worthwhile.

2.21 There are many methods for providing effective feedback and not all need be formal. The key is for there to be sufficient trust and freedom within the system to allow officials to provide the feedback most suitable to a particular situation and stakeholder.

Early access to the process

2.22 The evidence from overseas is that being able to access the consultation process at an early stage motivates external stakeholders to engage in the process and improves its effectiveness and efficiency.

2.23 There is a trend in New Zealand (in particular), Ireland, the UK, Sweden, Norway and Germany to move to consultation as early as possible in the policy development process. This has the potential to improve the quality and clarity of the policy and its implementation, particularly where complex issues are involved. In these countries it is a given that consultation will take place at the implementation stage and the emphasis appears to be on achieving appropriate involvement also at the policy development stage.

Sufficient time and resources

2.24 A balance needs to be struck between ensuring that changes to the tax system are implemented in a timely and efficient manner and that stakeholders' views are sought to ensure that they are implemented effectively. Allocating sufficient time and resources (technical, interpersonal and project management) to participate in consultation within the constraints of time and budget is important to achieving this balance. Project management techniques are used in other countries to ensure that projects are delivered on time and to the required standards.

2.25 In several countries considered, periods of between one and three years were not uncommon to complete the consultation and various parliamentary committee processes. For complex issues this is not surprising and is similar to experience in Australia. The commitment of time in these countries suggests they believe the consultation process is beneficial and is time well spent in terms of improving tax system outcomes.

Monitoring the effectiveness of the process and its outcomes

2.26 As with most evolving systems and processes, monitoring the effectiveness and efficiency of tax consultation processes and whether they are achieving the desired result should be an important part of the process of improvement. Results can be monitored in both formal and informal ways.

2.27 Several countries (the UK, Ireland and New Zealand) regarded monitoring as an important part of the consultation process, although the methods used are different in each country. New Zealand obtains feedback using informal methods, but is moving toward a more formal approach. European countries do not generally engage in monitoring or seeking feedback on effectiveness.

Minor policy and technical amendments

2.28 International evidence indicates that all of the key components of effective tax consultation processes apply equally to minor policy and technical amendments. In addition, evidence from New Zealand in particular suggests that clarity and simplicity of process, appropriate resourcing and political and community support for addressing such issues are vital. In New Zealand the Inland Revenue Department has a standing mandate to identify, consult on, analyse and prioritise issues for government decision. There is a commitment, within available resources, to address issues and such amendments are not politically contentious. Processes are also assisted by the small number of tax professional bodies in New Zealand.

2.29 There can be a tendency for such measures to be given a lower priority when compared with new initiatives. However, the care and maintenance of existing provisions has a significant impact on the overall credibility of the tax system.

RELEVANCE OF THE INTERNATIONAL PROCESSES TO AUSTRALIA

2.30 The international consultation processes considered by the review reflect the particular histories, political processes, norms of behaviour and systems and processes of those countries. In particular, New Zealand's tax consultation process reflects many factors that are not evident in Australia including an earlier period of difficult economic and social conditions, a significant concern about a lack of consultation and changes that were constant and often not properly announced and understood, and a much smaller tax community including a very small number of influential external stakeholder groups. Consequently, it is unlikely that its approach could be introduced in its entirety into Australia.

2.31 However, what has emerged from consideration of international arrangements is a set of common themes, and the aims of providing early access to the policy development process, developing trust and relationships and providing transparency (including using technology as an aid to knowledge distribution and process transparency) seem to be equally appropriate to Australia.

Box 2.1: Tax consultation In New Zealand

Background

New Zealand's tax consultation processes and the community attitude to taxation generally are very heavily influenced by economic and social developments since the 1980s.

In very broad terms, the arrangements grew out of a period of significant economic and social upheaval. An economic crisis of the mid to late 1980s was followed by a period of rapid and extensive economic reform from the mid 1980s to the early 1990s. By that time there were growing differences of public opinion (that were reflected within government and the bureaucracy) about the direction and pace of changes which were often unexplained.

A review in 1994 of the then existing structure and processes by which taxation reform was achieved made sweeping recommendations that covered structural as well as process change. The review was critical of a number of aspects of arrangements that existed at that time. These included that the tax policy process was not clear (and neither were accountabilities for the stages of the process) and there was insufficient external consultation.

A key recommendation was to establish a 'Generic Tax Policy Process' (GTPP) with the objectives of:

- encouraging early, explicit consideration of key policy elements and trade-offs;
- providing an opportunity for substantial external input into the policy formation process; and
- clarifying the responsibilities and accountabilities of participants in the process.

Operation of the New Zealand system

The key issues that appear largely to explain the operation of the New Zealand system include:

- a near consensus, particularly amongst people with influence and decision makers who experienced the 1980s and 1990s, that the national interest should have a higher priority than sectional interests;
- a view shared by key officials and external stakeholders that they all need to contribute constructively in the best interests of the New Zealand tax system and economy. This leads to cooperation, assistance and frank dialogue both on parties' contribution to consultation and other processes;

Box 2.1: Tax consultation In New Zealand (continued)

Operation of the New Zealand system (continued)

- senior officials with main responsibility for policy development and implementation having experience spanning government and the commercial sector, and their skills being widely respected by politicians, other officials and external stakeholders. This reflects active recruitment of key personnel with commercial experience when the policy development and implementation division was established. Consequently, ready use is made of external contacts and ideas, and there is a high degree of trust and some interchange between government and the commercial sector (the latter has been facilitated by geographic proximity);
- the small size of the tax community, including a very small number of peak bodies, with the New Zealand Institute of Chartered Accountants being the main participant in the consultation process;
- a predisposition towards public consultation processes, transparency, feedback, and limited if any use of confidentiality deeds (confidentiality is very actively upheld by the private sector as being necessary for effective consultation). The small number of participants partly explains this tendency. However, also important is a view from the public sector that open processes produce better outcomes (this view may partly reflect that tax legislation is often subject to a parliamentary committee process that allows stakeholders to raise issues if they have not been considered or resolved in the consultation process);
- a predisposition to include external stakeholders early in the process, generally before legislation is drafted (via a range of processes ranging from submissions after position papers have been issued by government or officials through to informal white-boarding to scope policy options), and an acknowledgement that stakeholder analysis and timely feedback are important;
- a more positive approach taken by the financial press to tax matters; and
- government remaining able to decide what should be consulted on and the level of consultation. However, government appears to be very comfortable with the consultation process being conducted slightly at arm's length from government by officials. Officials meet very regularly with ministers, with the progress of consultation often high on the agenda. Government indicated the consultations conducted by officials provide them with political, economic and technical tax information, which is useful to their decision making.

CHAPTER 3: EXTERNAL STAKEHOLDER VIEWS OF TAX CONSULTATION PROCESSES

3.1 In addition to reviewing information on overseas tax consultation practices, the review met with a wide range of stakeholders in the Australian tax system to understand better the current tax consultation processes and to gather information on whether international practice may be relevant to Australia.

3.2 The review met with peak industry groups, taxation expert groups, regulatory bodies, Treasury and Tax Office officials and state government treasury and revenue departments (further details are at Appendix B). These meetings were facilitated by an external consultant and produced considerable information on stakeholder views of the current tax consultation processes, and on the drivers for and impediments to any possible improvements.

3.3 Domestic stakeholder feedback on the key components of a sustainable approach to tax consultation was very similar in most instances to the international evidence outlined in Chapter 2.

3.4 The feedback on the current consultation processes undertaken by Treasury (often in conjunction with the Tax Office) on behalf of government was generally positive. There was also widespread recognition that consultation processes and outcomes had improved markedly in recent years.

3.5 The core areas of consultation considered important by external stakeholders to the effective and efficient function of the process are outlined below broadly in order of priority.

VIEWS OF EXTERNAL STAKEHOLDERS

Stakeholder Analysis

3.6 External stakeholders felt greater attention could be given to stakeholder analysis for each consultation rather than in some cases relying on stakeholders who have an existing relationship with Treasury. Certain stakeholders (particularly SMEs and not-for-profit organisations) felt under-represented. There was also a widely held view that larger firms and well-organised groups are disproportionately represented in consultations.

3.7 External stakeholders suggested that in most situations it would be appropriate to share the names of all stakeholders in particular consultations with others in that process and consideration could be given to widening stakeholder representation in some cases, for example to an expert group or a consumer group.

Timely feedback of results

3.8 Most external stakeholders felt that feedback could be improved. There was a perception that Treasury does not feel able to provide specific feedback on submissions as it also has a role as a confidential adviser to government. This can result in a cautious approach and limited feedback. They also perceived gaps in feedback, with some consultations having long periods of little or no feedback on process or substance before there is renewed activity.

3.9 External stakeholders indicated they are more satisfied with a process if feedback makes it clear that their submission was given appropriate consideration, whether or not it was ultimately successful (this seemed to reflect a general recognition that government ultimately makes the decision).

Effective scoping of issues and setting clear objectives

3.10 External stakeholders indicated that scoping the issues that are the subject of consultation and setting objectives for the consultation are important for managing resources and for their decision about whether to be involved in particular consultations. They thought more could be done to improve the clarity and boundaries of consultation so they can make better informed decisions on resource allocation.

3.11 They also indicated that they could provide better input if there was greater clarity regarding scope and objectives.

Early access and input into the process

3.12 External stakeholders considered that opportunities for early access and input would improve the process by providing expert advice at an early stage from experienced practitioners and other stakeholders who are familiar with the needs and requirements of the community.

3.13 They thought this would provide better information to government on the various aspects (for example, political, social, technical and efficiency) of policy or implementation issues. There was a view that, on occasion, entrenched positions had been taken by government and officials and it was difficult to challenge these during consultation processes.

The transparency of the process

3.14 External stakeholders regarded the key elements of transparency as being the sharing of information, the integrity of the process and the trust that exists between the participants in the process. They saw a highly transparent process as one where they have sufficient information to be fully engaged and can provide input that has a material impact on the consultation. They were concerned that at times there are important information gaps and the process can appear designed to gather rather than share information.

Trust in the people and the process

3.15 Most stakeholders view trust in the system, the people and the process as important to the sharing of information and the quality of the input. Trust was not mentioned very often as a stand-alone issue; however, it was seen as valuable and necessary. Trust was seen as developing as other issues are strengthened such as transparency, openness, relationships and a commitment to consult in a two-way manner.

Resource issues

3.16 External stakeholders raised issues regarding both public and private sector resources available for consultation processes.

3.17 External stakeholders saw the key public sector resource issue as the retention of experienced officials with particular technical skills. There was a common view that Treasury staff tend to move frequently across a number of units, which external stakeholders considered results in a need for frequent reskilling on technical issues. They also considered that officials do not always have the necessary confidence or authority, and in those situations it can take the involvement of more senior officers to progress difficult issues. Both issues have the potential to slow the consultation process and make it less effective.

3.18 While external stakeholders also have resource constraints, most indicated a commitment to continue to find resources for each consultation opportunity. As noted, they can be assisted considerably by consultation processes that are properly scoped and have clear objectives.

3.19 External stakeholders also noted that requests for consultation and submissions can be made late in the process, causing even the very large firms to experience resource issues. Smaller organisations and bodies found it difficult to engage in the process when this occurred.

More considered use of confidentiality deeds

3.20 External stakeholders did not raise the use of confidentiality provisions as a significant issue. This was primarily because, where requested, additional external stakeholders have generally been added to consultation forums or provided with information after they complete a confidentiality deed. There was some concern that too much information is treated as confidential which at times slows the process.

Sufficient time

3.21 External stakeholders saw providing sufficient time as a measure of the integrity of the process and the commitment to consultation. Participants commented that on occasion submissions have been requested in late December or with very short response times. Such instances were seen as either poor management of the process or indicating a view that the process was not a high priority.

3.22 There was recognition that on occasion tight timeframes are unavoidable due to government processes, and on other occasions external stakeholders had pushed for tight deadlines, for example to implement a taxpayer-friendly change or improve certainty.

Road-testing

3.23 External stakeholders saw road-testing as providing an opportunity to check the effect of policy decisions before they are passed into law. The Tax Office is involved quite heavily in the testing of tax legislation before it is applied in the community. External stakeholders thought this was working well.

3.24 External stakeholders raised the possibility of road-testing policy to reduce pressure for changes to legislation after it is passed by Parliament. This could be achieved by, for example, increasing external stakeholder input into implementation decisions or drafting instructions, and/or by more use of exposure draft legislation.

Minor policy and technical issues

3.25 Many external stakeholders expressed concern with the current processes for addressing minor policy and technical amendments. This appears to reflect some lack of understanding about the existing TIMS process referred to in Chapter 1. It also seems to stem from issues about the transparency of the process, with external stakeholders not always being clear about the appropriate avenue to raise such issues. In addition, the process was seen by some as being too resource-intensive.

3.26 These factors have resulted in external stakeholders raising issues through several avenues (for example, representation to government, Treasury and the Tax Office), rather than through a single channel. They may also ignore the issue (and be

formally non-compliant with the law) or alter their commercial practices (often at some cost to themselves and/or their clients) to fit in with the letter of the tax law even though they consider the intent of the law was being met by previous practice.

3.27 External stakeholders generally regarded non-controversial minor policy issues as covering issues that are consistent with their view of the policy intent of the law, even though the amendment sought is often beyond the government policy approval on which the law is based. In such cases, officials can be reluctant to engage in substantive dialogue with external stakeholders as this could be seen to foreshadow a possible change in government policy prior to officials raising the issue with ministers.

3.28 As is the case more generally, issues were also raised about feedback on the progress of minor policy and technical issues that had been raised through the various avenues.

3.29 Several external stakeholders suggested an annual technical corrections Bill as a way of providing impetus to a regular process for minor policy and technical amendments. It was thought that a regular Bill would be treated as business as usual and non-controversial. This issue is discussed in greater detail in Chapter 4.

CHAPTER 4: IMPROVING AUSTRALIA'S TAX CONSULTATION SYSTEM

4.1 The previous chapters of this report outline the existing tax consultation arrangements in Australia, identify key components of tax consultation practices in other countries and summarise the views of stakeholders in the Australian system.

4.2 This chapter makes recommendations for improving the Australian tax consultation system, in the context of a model for sustainable community consultation.

4.3 Consultation processes have improved significantly since the Board's report in 2002 and in general are operating consistently with the in-principle positions outlined in the Treasurer's press release of May 2002. Box 4.1 provides an example of a consultation process that was considered by all parties to the process to have been an effective one.

4.4 The model and the recommendations outlined in this chapter are evolutionary and are consistent with and build on the in-principle positions. As they are taken forward, regard will need to be had to the whole-of-government policy on consultation requirements that has been developed in response to recommendation 7.5 of the Banks Taskforce and included in the recently released *Best Practice Regulation Handbook*.²

4.5 The possible improvements identified take account of the factors that make consultation challenging in Australia, but also take advantage of opportunities that exist or are emerging.

4.6 Several factors make consultation more challenging in Australia than in some other countries. These include a large number of peak bodies representing the tax profession, industry and community generally, at both federal and state levels. External stakeholders are resourced to different degrees – some are well resourced and well connected to the consultation process. Other stakeholders have little or no effective representation. Most senior officials advising government in the legislative design area are located away from major business centres, and there is not a culture of interchange of personnel between the public and private sector or of external 'think tanks' focusing on tax matters. In addition, there is significant media focus on tax and financial issues, and some stakeholders tend to focus on differences of view rather than areas of agreement. These factors are unlikely to change materially, at least in the short term, but some of them can be influenced over time.

2 Regulation Taskforce, page 154.

4.7 There are opportunities to develop incrementally the existing consultation approach, environment and systems to use resources more efficiently and effectively and to build a trusted and high-quality tax system. As noted, the existing consultation system is generally performing well, and provides a strong basis for improvement. The existing arrangements are also still evolving in a desirable direction. Tax professional and industry peak bodies have clearly indicated to the review a commitment to cooperate and commit resources to better consultation arrangements. Furthermore, there appears to be an emerging community consensus that appropriate consultation can improve outcomes, for example by avoiding unnecessary compliance costs.³

4.8 While a model for sustainable community consultation is important, it is first necessary to be clear about the objectives of consultation and the scope and possible processes for consultation, and to have a community commitment to the tax system.

Box 4.1: Consultation process for the Review of Aspects of Income Tax Self Assessment

The Review of Aspects of Income Tax Self Assessment involved extensive public consultation during policy development and consultation continued throughout implementation.

The review, announced by the Treasurer in November 2003, was asked to examine aspects of Australia's self assessment system for income tax to determine whether the right balance had been struck between protecting the rights of individual taxpayers and protecting the revenue for the benefit of the whole Australian community.

The review was conducted in a number of stages, with consultation being a key feature of each:

- To assist in developing a discussion paper, Treasury initially examined published material, held preliminary discussions with representatives of taxpayers and professional associations and sought the views of government agencies with an oversight role in the tax system (such as the Office of the Ombudsman, the Inspector-General of Taxation and the Australian National Audit Office).

3 See for example Regulation Taskforce, pages 150-154.

Box 4.1: Consultation process for the Review of Aspects of Income Tax Self Assessment (continued)

- A discussion paper was released by the Treasurer in March 2004. It covered a range of issues and possible options and invited submissions from the public.
 - Over 30 comprehensive and detailed submissions were received from individuals, professional associations, companies and taxpayer representatives during the eight-week consultation period.
 - All submissions other than those provided in confidence were published on the review website, allowing for a high degree of transparency and debate.
 - All submissions were acknowledged upon receipt and submitters were informed of developments and announcements by email as they occurred.
- The final report of the review, presented to the Government in August 2004, discussed the key issues raised in the submissions and made a number of recommendations for changes to both administrative practices and legislative framework intended to reduce uncertainty and compliance costs for taxpayers, while preserving the Tax Office's capacity to collect legitimate tax liabilities.

In December 2004, the Government adopted the legislative recommendations and announced that the Commissioner of Taxation had indicated he would implement the administrative recommendations.

Legislation to implement a number of these measures has been enacted and again consultation has been a key element of the legislative development process.

- *Taxation Laws Amendment (Improvements to Self Assessment No. 1) Act 2005* included measures to abolish the separate penalty for failing to follow a Tax Office private ruling, to improve the transparency of the process of imposing penalties on taxpayers who understate a tax liability and to introduce new interest arrangements to apply where taxpayers under-assess their income tax. As these issues were uncontroversial and relatively simple in technical terms and the timing was critical (to give taxpayers the benefit of the change at the earliest opportunity), consultation was conducted in a targeted way.
- *Taxation Laws Amendment (Improvements to Self Assessment No. 2) Act 2005* included measures to reduce the periods allowed for the amendment of income tax assessments and to improve the reliability, accessibility, timeliness and accuracy of the framework for the provision of Tax Office advice. As these measures were relatively more complex to implement, and timing was less critical, consultation was conducted publicly through the release of exposure draft legislation.

Box 4.1: Consultation process for the Review of Aspects of Income Tax Self Assessment (continued)

- An exposure draft of Regulations to exclude high-risk categories of taxpayers from the two-year amendment period for income tax assessments was also released for public comment.

A number of further reviews of specific features of the self assessment system recommended by the review are being conducted at present. These reviews generally involve open public consultation at the policy development stage.

The extensive consultation process for the review, characterised by a high degree of transparency and feedback through the use of open public consultation channels, contributed substantially to its success. The consultation process and the consequent results have received favourable feedback in several forums since.

CONSULTATION OBJECTIVES, SCOPE AND PROCESSES

4.9 The high-level objective of the tax consultation system is to ensure that government makes decisions on taxation matters fully informed about the range of options and the benefits, costs and risks associated with those options. This information should lead to better decisions and improve the outcomes of the tax system. However, consultation takes place in an environment where the government is responsible for policy decisions and there is not always unanimity of view among stakeholders.

4.10 It is also important to use the very significant public and private sector resources currently devoted to consultation effectively and efficiently.

4.11 Consultation may occur at all or only some stages in the development of a particular tax measure. As noted in Chapter 1, the key points at which consultation may occur are in developing the policy position, in fleshing out the detail of the policy intent and in developing the legislation.

4.12 Some areas of tax policy are clearly not suitable for consultation prior to the policy decision, or in some cases even in developing detail in relation to the policy, and these are universally recognised to include anti-avoidance measures that require immediate action and have a financial impact. Furthermore, governments take at least some other policy decisions with little or no consultation, particularly in budget and election contexts.

4.13 Although consultation may not take place prior to the policy decision (including for the reasons outlined above), it can provide valuable input on how to implement the Government's policy intent most effectively, for example by minimising compliance

and administration costs and avoiding unintended consequences. Consultation after the announcement of the policy decision can be particularly useful if the policy intent has been expressed at a relatively high level. Consultation at the implementation stage can be most relevant if complex legislative design issues are involved.

4.14 Consultations can be in public and/or on a confidential basis; and can be held with a wide range of stakeholders and/or with selected experts or representatives of external stakeholders. The consultation process should involve early engagement between officials and relevant external stakeholders and/or experts, rather than necessarily having all stakeholders involved on every issue.

4.15 Consultations can seek views and information on issues put to the community (a two-way process) and/or can actively engage the community in developing options (a shared process), with government being responsible for the final decisions.

COMMITMENT TO THE TAX SYSTEM

4.16 Whatever the consultation processes, a commitment from all stakeholders to achieving good tax system outcomes is highly desirable.

4.17 In New Zealand, there is widespread community consensus on most tax matters, and particularly that implementation issues, and minor policy and technical issues, should be resolved in the best interests of New Zealand. Political debate and media coverage are more positive on a range of tax issues. There are many factors that help explain the New Zealand tax system outcomes, and their arrangements cannot be transferred to Australia completely. However, the outcomes in New Zealand point to the potential benefits for Australia if the key stakeholders in Australia commit to seek good tax system outcomes for Australia when engaging in consultation.

4.18 A similar commitment in Australia would encourage excellence by all participants, engender trust as the participants become more familiar with each other and with the consultation process, and enable greater sharing of expertise for the common good.

4.19 To gain such a commitment it is necessary for all to agree on the purpose of consultation. Currently, external stakeholder bodies in Australia can have several roles, including engaging in consultation, lobbying government and representing members' interests. Lobbying and advocacy are not inappropriate; however they can be incompatible with effective consultation.

4.20 It is important for external stakeholders to recognise there may be tension between their roles in representing member interests, being 'advocates for change', and participating in consultation. Consideration should be given to appropriate arrangements (for example, separate arrangements for consultation) to allow bodies to carry out their other roles as well as being trusted participants in the consultation

process. This distinction has been achieved in other areas of public policy, including in relation to the development of accounting standards.

4.21 During the review key external stakeholder representative bodies indicated, without exception, that they are committed to efficient and effective consultation on how to implement government policy intent, and to clearly distinguishing this from any other activities.

ROLE OF THE BOARD OF TAXATION

4.22 The Board's 2002 Report proposed that the Board's main contribution to facilitating consultation would be by ensuring that suitable processes are used to deliver the outcomes sought from consultation, and to engender trust among all parties. This is consistent with the Board's Charter and functions.

4.23 Experience since 2002 and during this review indicates the Board can facilitate improvements to consultation arrangements, without impinging on the role of Treasury and the Tax Office. Board monitoring of the consultation process since 2002 (with the assistance of information from Treasury) has often focused more on the extent of consultation than the effectiveness and efficiency of the consultation system.

4.24 Overall, the recommendations of the review seek to improve further the effectiveness and efficiency of the consultation arrangements, and improve the environment for consultation and therefore trust in the system. Given the Board's role and membership and experience during this review, the Board considers that it should continue to strengthen its monitoring processes and also take a more proactive approach to facilitating improvements to consultation arrangements consistent with the Government's consultation system (for example, by encouraging stakeholder leaders to strive for excellence in their contributions to the consultation system).

Recommendation 1

External stakeholders should develop an environment, structures and processes for consultation that support tax system outcomes that are in the best interests of Australia.

The Board of Taxation should take a proactive approach to encouraging continuous improvement in the tax consultation system by liaising with stakeholders about possible improvements to consultation arrangements consistent with the Government's framework.

A MODEL FOR SUSTAINABLE COMMUNITY CONSULTATION

4.25 Four foundations for community consultation have emerged from the international evidence and domestic stakeholder input:

- clearly defined and stated scope and objectives of the consultation;
- identifying stakeholders;
- transparency of information and process; and
- open and timely feedback of results.

4.26 Four supporting elements that are important to the effectiveness and efficiency of the consultation process are also evident:

- maintaining confidentiality where required;
- early access and input;
- appropriate resources; and
- sufficient time.

4.27 The supporting elements build from the four foundations to form a sustainable system of community consultation.

Clear scope and objectives

4.28 Clearly outlining the scope and objectives of a consultation provides the foundation for identifying the right stakeholders, outlining the boundaries of their task, setting their objectives, and managing the resources of internal and external stakeholders. The last issue can be particularly important for under-resourced stakeholders.

4.29 Government clearly describing the policy intent in initial consultation documents greatly assists consultation processes, as well as design of the tax law and administration processes. Clearly defining the intent assists the consultation process to develop further detail, for government consideration, that will best meet the policy intent in practice.

4.30 Consultation allows government to consider information on how its policy may be received and implemented, before it decides lower level policy and implementation issues. That opportunity, and the role of earlier input from external stakeholders, are reduced if the initial policy announcement reduces the scope for policy fine-tuning following consultations. Outlining the policy intent at a high level wherever possible allows for consultation on a broader range of implementation options.

4.31 There can be advantages in involving external stakeholders in identifying the scope and objectives for the consultations as they may have other perspectives, including regarding the commercial impact of implementation options.

Recommendation 2

Government should continue to ensure that policy intent is clearly described in initial consultation documents.

Government should continue to specify the policy intent at a high level wherever possible in order to enable consideration of a broad range of implementation options.

When appropriate, external stakeholders should be used to assist with clarifying how they might be best able to input into the consultation.

Identifying stakeholders

Selecting stakeholders

4.32 Treasury officials currently meet with a significant number of stakeholders, identified from a range of databases and the Tax Office. There is an understandable tendency to focus on stakeholders who have an existing relationship with officials, who are familiar with the processes, have proven reliable (for example, in terms of expertise and protecting confidential information), and who value the relationship. However, it can mean that the appropriate breadth and quality of external stakeholders to meet the objectives of the consultation is not always accessed and can leave other groups feeling disengaged from the process.

4.33 It is important to identify strategically the stakeholders that should be in the group and that can be expected to make the best contribution. This may require early discussions with some trusted external advisers to identify the best mix of stakeholders.

4.34 Stakeholder selection should seek a balance between obtaining the best expertise, representing the community groups most affected and a mix of skills, experience and commercial application most likely to provide all relevant perspectives. It is also important to involve officials with appropriate experience and authority so they can engage with confidence and assurance with external experts and community representatives.

Recommendation 3

Government, officials and external stakeholders should place more emphasis on ensuring that relevant skills and experience are available in consultation processes by identifying the:

- expertise, including any paid external advisers, commercial experience and officials, required for a successful consultation; and
- external stakeholders who are best able to contribute to the consultation process. Expert external advice can be sought on who should be consulted.

Number of stakeholder groups

4.35 New Zealand has a very small number of key stakeholder groups for the purpose of taxation consultation compared to Australia. The number of groups creates challenges in Australia.

4.36 Where there are many stakeholders, it can be extremely resource-intensive and difficult for government and officials to engage on a regular basis with stakeholders and to form trusting ongoing relationships. There can be a lack of cooperation or competition between organisations, and officials can be required to assess and advise government on more submissions than may be necessary. Organisations can feel they need to attend a large number of consultations and/or make many submissions (although there is a trend to more joint submissions).

4.37 The tax professional bodies have indicated that they see considerable merit, both for themselves and for the tax system more broadly, in joining forces in tax consultation processes, and are well advanced in discussing ways in which this might occur.

Recommendation 4

External stakeholders should continue to work towards forming into a single group or at least fewer groups for the purposes of responding to consultation proposals, to make the consultation process less resource-intensive and to improve the opportunity to build long-standing relationships and trust between stakeholders.

Stakeholders who are currently under-represented

4.38 Governments, both internationally and in Australia, have found it difficult to involve some stakeholders in consultation processes, including SMEs and not-for-profit organisations.

4.39 It is difficult to involve SMEs in consultation processes due to their limited resources and the lack of a cohesive industry body to represent their views. In part, this is as a result of the diversity within the sector. However, SMEs are numerous and are disproportionately affected by the fixed element of compliance costs (that could in turn be influenced by how policy decisions are implemented).

4.40 Not-for-profit organisations cover a very wide range of activities and are becoming increasingly important to the Australian economy as a result of: increased outsourcing of services previously provided by government; the growth in commercial

operations as they have sought to diversify and increase their revenue to build sustainability (over half of the income of the not-for-profit sector now comes from commercial activities); and new government initiatives to encourage philanthropy. The rapid growth and restructuring in the sector is drawing out a range of taxation issues that are challenging the sector. At present the Tax Office and Treasury have a liaison process with a representative forum, the Charities Consultative Committee, although this does not cover the entire not-for-profit sector.

4.41 Both SMEs and the not-for-profit sector may not have the resources (both time and financial) to engage in consultation processes and may need encouragement and assistance to participate.

4.42 In New Zealand SMEs seem to be represented, in practice, by the (single) peak tax practitioner body, and the Inland Revenue Department recently employed a high-level person as a full-time bridge to SMEs in order to understand better their specific issues.

4.43 In some countries, there is a stronger culture than in Australia of 'think tanks' contributing to consideration of tax matters. A business-funded body, associated with a university, is being established in the UK. There may also be opportunities for similar bodies in Australia, as is the case in some other areas of research. In particular, such a body could have a mandate to consider taxation issues from the perspective of the not-for-profit and/or SME sectors.

4.44 If consultation processes could be run more efficiently in Australia, for example with fewer external stakeholder representatives in some consultations, existing resources may be able to be refocused towards representing bodies that have been difficult to engage.

4.45 The Board of Taxation should work with government, academia and the not-for-profit sector to explore whether there is sufficient research capacity in relation to not-for-profit taxation issues or whether an additional research resource similar to those used internationally could assist the sector in participating in tax consultation processes.

4.46 In addition, the Government is broadening the scope of the www.business.gov.au website to add a business consultation sub-site which will include new and upcoming changes to regulation and links to current and past consultation processes and enable registration of relevant stakeholders and information on the Government's public consultation objectives and processes. This will be particularly useful for enabling SMEs to become aware of consultation processes in areas of interest to them.⁴

4 The development of the sub-site follows the Government's response to recommendation 7.7 of the Banks Taskforce, Regulation Taskforce, page 154.

Recommendation 5

Government, officials and external stakeholders should seek improved engagement with sectors currently under-represented in consultations, including considering mechanisms for assistance with resourcing issues wherever possible.

Transparency of information and process

4.47 Transparency ensures that all the necessary information is available to stakeholders in the most efficient and timely manner possible.

4.48 Transparency improves the efficiency and effectiveness of the consultation by ensuring that information is available at the appropriate time and ensuring there are no unexplained gaps in the provision of information. Transparent processes also assist dialogue between stakeholders, avoid frustrating stakeholders and reduce inefficient practices (such as incorrect assumptions and second-guessing). Stakeholders are then better motivated and trust can be built.

4.49 A transparent process can also act as an incentive to maintain confidentiality where required. Participants who can be relied on to maintain confidentiality are more likely to be included in a process and provided with information. If confidentiality is not maintained they may be excluded from the process. In addition, the willingness to be transparent can be quickly undermined if information is misused, including if information provided in a consultation is used for any other purpose.

4.50 Transparency also assists with providing sufficient time for good-quality consultation.

4.51 The confidential website is a good start and consideration could be given to the potential use of web-based techniques for transmitting information and facilitating real-time dialogue such as scheduled web meetings and question and answer forums.

Recommendation 6

Treasury should as far as possible use technology-based tools to improve the provision of information and facilitate dialogue, thereby assisting transparency and efficiency.

Open and timely feedback

4.52 Open and timely feedback has the potential to improve relationships and cooperation. New Zealand has significant open feedback both formally and informally which, when combined with other aspects of its arrangements and situation, has encouraged sectional interests to raise the standard of their input and put the national interest to the fore.

4.53 Feedback also encourages external stakeholders to take a greater interest in the consultation process, as they have a better view of how their input was treated and how their submission influenced government decisions.

4.54 As Treasury conducts community consultation on behalf of government, there are some inherent limitations on the feedback it can provide. Treasury's advice to government, including advice on issues raised during consultations, is provided in confidence. It is not generally possible for Treasury to give participants feedback on issues that have not been decided by government. Further, while infrequent, any misuse of feedback obviously discourages further feedback.

4.55 However, stakeholders can generally be informed of progress on a regular basis thus improving the quality of advice and the inclusiveness of the process. Furthermore, having a project management philosophy that establishes stages and benchmarks for a consultation and makes public (or at least transparent to the participating stakeholders) the progress of agreed actions and why any delays are occurring improves feedback and trust in the process.

4.56 As consultations often involve multiple stakeholders over a considerable period, officials should continue to improve their use of project management techniques (for example, techniques to establish and communicate objectives, milestones and time lines, and to ensure and communicate progress).

Recommendation 7

Treasury should where possible provide appropriate feedback more consistently to participants in consultation processes by:

- acknowledging contributions as they are received;
- providing written summaries of points raised in discussions to participants so they can check they have been heard correctly;
- keeping participants in consultations informed of developments relating to the process of consultation; and
- advising participants when decisions are announced or legislation is introduced. On some occasions, this may also provide an opportunity to give additional feedback that could not be given earlier.

Supporting elements

4.57 The elements outlined below are important to support a sustainable system of community consultation.

Maintaining confidentiality where required

4.58 Maintaining confidentiality of information, including feedback, provided on a confidential basis is critical to building trust between stakeholders.

4.59 In recent years a significant proportion of consultations have been conducted as targeted confidential consultations, as distinct from public consultations. While this is appropriate in some cases, there are substantial advantages in public consultations wherever possible. Public consultation ensures that everyone in the community has the maximum opportunity to provide information for government consideration. This potentially improves the quality of the information available to government.

4.60 Where confidential consultations are used, all parties need to respect the confidentiality of the process. If a breach of confidentiality occurs, it can severely undermine trust and lead to government and officials being cautious about whom they consult with and how much information they provide.

4.61 The use of confidentiality deeds is clearly warranted in some cases, for example, where information is commercially or otherwise sensitive. In such cases, confidentiality deeds can facilitate more consultation than would otherwise occur.

Recommendation 8

Government should use public consultation processes for significant measures wherever appropriate to ensure that the community has maximum opportunity to participate in consultation processes.

Where consultations are confidential, all participants should respect that confidentiality. Where appropriate, confidentiality deeds should continue to be used.

The ground rules for consultations should be established clearly at the start of each consultation indicating the behaviour expected of all stakeholders and the implications of any departure from the rules.

Earlier access and input

4.62 While in many cases, access and input prior to the taking of a high-level policy decision by government may not be appropriate, there may still be opportunities to consult in the further development of a policy position. There will be certain policy decisions where consultation may still be limited at this stage (for example, certain anti-avoidance measures) or usually does not occur (for example, election announcements).

4.63 Aside from these situations, while government is the ultimate decision maker, a predisposition towards access and input into policy development following policy decisions (with appropriate confidentiality conditions if necessary) can reduce the likelihood of developing inappropriate implementation options and increase

acceptance of the policy. It can also improve the ease of application of the legislation, and build support for the consultation process, by allowing key stakeholders (or representatives of key stakeholder groups) to put their view at an earlier stage.

4.64 This is consistent with the finding of the Banks Taskforce that there needs to be effective consultation at all stages of the regulatory cycle, at the early stage when policy options and approaches are being considered and later when the detailed design features are being bedded down.⁵

4.65 Early access and input has to be matched with a commitment from external stakeholders to shared objectives (at least as far as the scope of the consultation extends), an acceptance that government will decide issues and then the process must move on in an efficient manner, and an absolute commitment to confidentiality. If these behaviours are absent, earlier consultation is unlikely to occur.

Recommendation 9

Government should provide external stakeholders with access and input to the consultation process in developing detail in relation to policy decisions, unless there are compelling reasons for not doing so (including for anti-avoidance measures). Government should also consider whether consultation may be appropriate prior to the policy decision.

Appropriate resources

4.66 Consultation processes should draw on the appropriate resources (for example, from internal and external stakeholders, hired experts, and any independent sources of information) in order to inform the consultation as much as possible.

4.67 Treasury leads consultations on announced tax measures. It is important to ensure there is an appropriate mix of internal and external expertise involved in the consultation and that more information is exchanged at earlier stages in the process.

4.68 In New Zealand and certain other countries there is a culture of personnel moving between the private and public sectors. This is facilitated by the seat of federal government being in a major commercial centre. The position is rather different in Australia. Further secondments between the public and private sectors and additional use of contracted external expertise are options that may improve consultation outcomes by improving access to information and commercial experience.

4.69 As noted, in some other countries 'think tanks' contribute to the consideration of tax matters. The involvement of such bodies in Australia has the potential to improve consultation outcomes.

5 Regulation Taskforce, page 147.

4.70 The Treasury and the Tax Office work very closely together. However, the relationship is not well understood by all external stakeholders due to confusion about the differing roles of the organisations. It is not always clear to external stakeholders which organisation they should approach on a particular issue.

4.71 Furthermore, the Tax Office consults widely and meets groups who are not well represented through industry organisations, reflecting its role as the tax administrator and the need to have close relationships with end users. Further use of information gained through these Tax Office processes could enhance the consultation processes undertaken by Treasury.

4.72 As a central policy agency Treasury is expected to bring a broad economic perspective to its policy and implementation advice to government, including in relation to taxation matters. This enables it to ensure that its advice is framed in the broader economic context and that relevant linkages, interconnections and impacts are identified. Equally, particularly in implementing complex policy decisions, Treasury needs to bring a depth of knowledge to specific areas of policy and law. Without this depth, policy decisions may not be implemented in a practical and workable way and unintended consequences may emerge.

4.73 The management challenge for Treasury is to achieve the appropriate mix of staff at any one time to strike the right balance between breadth and depth of knowledge and experience in providing policy and implementation advice. There will be occasions where achieving this balance will result in staff being moved within the department, while on other occasions it will involve maintaining or building up particular knowledge or expertise. There is no hard and fast rule, with much depending on the policy priorities of government and the existing staff profile.

4.74 Where staff do move within the organisation it is important to ensure that as far as possible sufficient continuity is maintained on particular projects. Maintaining continuity for the life of a project is equally important for external stakeholders. Where staff move or an external stakeholder joins the consultation process it can take time to build trusted relationships which are very important for an effective consultation process. It can also take time to achieve sufficient common skills and experience between external stakeholders and officials. Where officials are new to an area, external stakeholders can feel they have initially to educate officers before moving onto the substance of the issue.

Recommendation 10

Government, officials and external participants should ensure that consultation processes are appropriately resourced by involving resources and expertise from both the public and private sector. All stakeholders should also be aware of the value of input in consultation processes from those with commercial experience. Examples of how this could be developed include through secondments between the public and

private sector and hiring in such expertise for specific projects. It will be important to ensure that there is appropriate funding for any such arrangements.

Treasury and the Tax Office should ensure their respective roles are clear to external stakeholders during community consultation to minimise demands on the resources of external stakeholders.

Treasury, the Tax Office and external stakeholders should as far as possible ensure that there is continuity of key staff in particular consultation processes.

Sufficient time

4.75 Sufficient time for consultation increases trust in the process (by avoiding a feeling of 'ticking the box') and provides the opportunity for broader stakeholder coverage, higher quality responses from external stakeholders, and fuller analysis of the issues before advice is provided to government.

4.76 The time available will be influenced by the complexity of the issue, the stakeholders involved and the priorities of government. Sometimes, government priorities and/or resource limitations may limit the period for consultation.

Recommendation 11

Government should allow at least a six-week period for external stakeholders to provide input into consultations on significant measures to ensure the community has maximum opportunity to participate, unless government considers the resulting delay in introducing legislation would outweigh the benefits of allowing this time.

TRUST IN THE CONSULTATION SYSTEM

4.77 Improving trust is seen by all stakeholders as important to improving the operation of the tax consultation system. Higher levels of trust would have significant benefits for the consultation process, including by encouraging sharing of information, feedback, cooperation and effective and efficient use of resources. However, trust cannot be imposed, but rather is an outcome of applying the foundations and supporting elements of a sustainable consultation system wherever possible.

4.78 It also requires all stakeholders to enhance their contribution to consultation processes and to seek tax system outcomes that will improve the wellbeing of Australia when engaging in the consultation process.

4.79 There is a view from government that the current system of advocacy and sectional focus of some industry bodies and professional organisations are detrimental to achieving the best tax system outcome for all Australians. The Board agrees with this view and it is acknowledged by some external stakeholders.

4.80 Where advocacy spills over into point scoring or the airing of complaints or dissatisfaction in an inappropriate manner, particularly if it uses information from consultations, it can be extremely damaging to building the trust and relationship between external stakeholders and government and officials needed for a sustainable consultation system.

MINOR POLICY AND TECHNICAL AMENDMENTS

4.81 That minor policy and technical issues arise is not surprising given the complexity of tax and other law, the economy, and society generally. Issues can and do arise that were not, and in some cases could not be, anticipated when the policy was developed and the legislation drafted. This is not a reflection on the capabilities of the stakeholders in the system – it mainly reflects complexity built up over decades.

4.82 However, while such issues will arise, if they are not addressed in an effective manner, unintended expenses, complexity and compliance and/or difficult tax administration issues can arise. This can reduce community support for the tax system. That said, it is not realistic or appropriate to expect that all of these issues can be addressed. Ultimately it is a question of priorities and weighing the costs (including opportunity costs) and benefits of making particular changes.

4.83 As noted in Chapter 3, several external stakeholders suggested an annual technical corrections Bill as a way of providing impetus for addressing minor issues concerning the operation of the tax system.

4.84 Internationally there are a variety of approaches adopted to address similar issues. The US uses an annual Bill entitled 'Tax Technical Corrections Act of 200#', although it is also common for technical corrections to be included with other tax Bills that are moving through the legislative process. New Zealand has a well-developed practice of including at the end of most revenue Bills provisions under the general heading 'Remedial Measures'. This legislative outcome is supported by a process in which the changes are identified, prioritised and subject to feedback to those raising the issue.

4.85 Which is the most appropriate legislative mechanism depends upon the complex balance of resources, priorities and space within the parliamentary calendar. In the US, responsibility for the annual Bill rests with the independent office of the Joint Committee on Taxation.⁶ This body is heavily resourced and has an extensive public hearing committee system available to it. This review believes that this process, together with the considerable resources that support it, would be extremely difficult

6 The Joint Committee was established under the Revenue Act of 1926 and is composed of five Members of the House Committee on Ways and Means and five Members of the Senate Committee on Finance. These two Committees have Federal jurisdiction over tax matters.

to replicate in the Australian context. In contrast, in the New Zealand process issues are prioritised within the existing structures of government and external stakeholders.

4.86 The review believes that the key issue is not the parliamentary process for legislative changes, but the adoption of a structural framework in which consultation plays a primary role in achieving the objective of reaching a shared view on the need for change and the prioritisation of issues. That is, the process needs to create a pathway for issues to be identified, analysed and prioritised and for feedback and transparency to be provided to those who identified the issue.

4.87 The review considers that in the Australian legislative context much could be gained by establishing a clearer pathway in each of these respects in relation to minor tax system issues requiring administrative change or legislative amendment.

4.88 A pilot of a new 'Tax Issues Entry System' (TIES) is proposed to provide a transparent and accessible process aimed at improving each of these elements. It is expected that TIES would replace the Technical Issues Management Subcommittee (TIMS) of the Commissioner's National Tax Liaison Group.

4.89 TIES will differ from TIMS in a number of important respects:

- TIES will be jointly supported by Treasury and the Tax Office to enable a single entry point for issues, including minor issues involving legislative amendment and requiring consideration by government; this will avoid the need for those raising issues to determine which organisation deals with a particular issue;
- it will be more accessible with issues able to be raised directly via phone or email; and
- it will involve an increased focus on providing feedback on the progress and final outcome of issues raised.

4.90 The review believes that this will create a clearer pathway for identifying and providing feedback on issues in particular.

4.91 One of the objectives of recommendation 4 is to improve the opportunity to build long-standing relationships and trust between stakeholders and government by bringing external stakeholders together. In the context of TIES this should assist the process by consolidating analysis of the key issues of concern and facilitating dialogue on the prioritisation of them. In addition, there will be improved channels to provide feedback on the progress of issues.

4.92 The review also believes that TIES should result in there being less controversy regarding minor amendments to existing legislation.

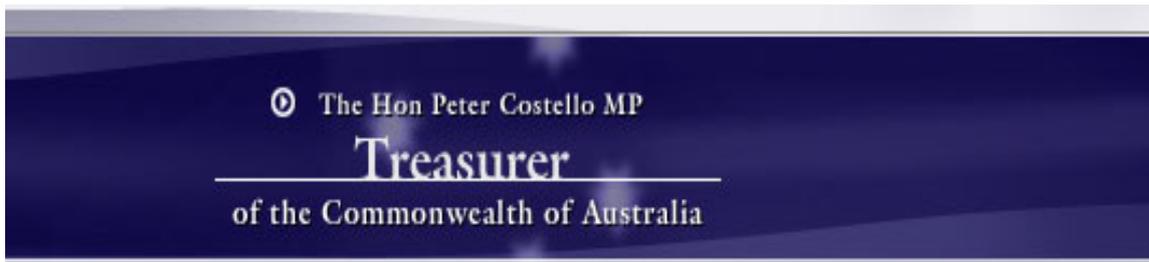
4.93 The review considers that the current approach of attaching minor amendments to Bills that already have parliamentary priority is preferable to an annual technical

corrections Bill. There is a greater risk that an annual technical corrections Bill would not get sufficient priority in the parliamentary process to ensure timely passage of the amendments.

Recommendation 12

Treasury and the Tax Office should proceed with the proposed pilot of the Tax Issues Entry System 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. The Board should review the operation of the system after 12 months.

APPENDIX A: TREASURER'S PRESS RELEASE OF 2 MAY 2002



NO. 022

REFORMS TO COMMUNITY CONSULTATION PROCESSES AND AGENCY ACCOUNTABILITIES IN TAX DESIGN

I am today announcing changes designed to enhance consultation on tax issues, and a change in the accountability for tax legislation design.

In making these changes the Government has taken into account recommendations of its advisory Board of Taxation. As a result of these changes, responsibility for the development of tax legislation and regulations will be transferred from the Australian Taxation Office (ATO) to the Department of the Treasury.

Community Consultation

Consistent with its Charter to advise me on processes for community consultation in the development of tax laws, the Board of Taxation last year commenced an evaluation of how community consultation could be made more effective. After extensive consideration, the Board provided a report to the Government on 13 March 2002.

The Government has decided to largely adopt the Board's recommendations dealing with consultation. The Board itself recognised that processes of community consultation cannot be mandated for each and every change to the tax system, particularly in cases where there is commercial or market sensitivity, or revenue or tax avoidance sensitivity. Also the flexibility government requires in managing the timing of policy change will at times determine the extent and form of consultation that can be undertaken.

However, the Government has pursued a policy of widespread consultation on Business Tax Reform. Including in areas such as debt/equity distinctions, thin capitalisation, capital allowances and consolidation where it found it particularly useful.

In continuing this process, during the development of future tax measures the Government will be working from an in-principle position of:

- consulting on all substantive tax legislation initiatives, except in circumstances as outlined above;
- seeking early external input in the identification and assessment of high-level policy and implementation options;
- seeking technical and other input from external stakeholders (including the Board of Taxation) in the development of policy and legislative detail;
- thoroughly road testing draft legislation and related products prior to implementation;
- ensuring policy intent for each new measure is clearly established and described by public announcement;
- announcing for each new substantive tax measure a consultation process, with roles and responsibilities specified;
- releasing an indicative forward programme of tax legislation; and
- providing better feedback to external participants in consultation processes.

The Government also recognises that the consultation process, and the legislation that results from it, should be reviewed periodically to ensure that the expectations of government and external participants are being appropriately managed. I have asked the Board of Taxation to undertake an ongoing role in monitoring the processes of consultation, and have agreed to the Board conducting post-implementation reviews of major pieces of tax legislation to ensure that government policy intent has been effectively translated consequent upon consultations undertaken. Such reviews could be in addition to, or complement, reviews undertaken within the Treasury and ATO.

Legislation Design Role

From 1 July 2002, responsibility for the design of tax laws and regulations will be relocated from the ATO to the Department of the Treasury. Treasury currently has responsibility for providing tax policy advice. The transfer will bring the accountability for tax policy and legislative design more directly under

Ministerial control. The change in responsibility will also reinforce the need for whole-of-Government perspectives to be taken into account in tax law design processes.

The new arrangements will see policy and legislative development brought together within the Department of the Treasury, providing maximum opportunity for legislation to be developed in a manner consistent with the policy intent set by Government. Working arrangements between the ATO and the Treasury will ensure that the administrative, compliance and interpretive experience of the ATO fully contributes to policy and legislation processes.

I note the ATO's considerable contribution to delivering the Government's tax reform agenda and the new arrangements will provide the ATO with the opportunity to focus even more on its core business of tax administration.

I have asked the Secretary to the Treasury and the Commissioner of Taxation, in consultation with the Office of Parliamentary Counsel as appropriate, to develop arrangements that will give effect to these decisions. As the Board's report emphasises as one of its underlying recommendations, any new working arrangements between the agencies in developing future tax measures should seek to build on progress to date in ensuring a high level of integration across the policy, legislative and administrative aspects of change.

The transfer of the legislation function to the Treasury will take effect from 1 July 2002. Details to give effect to the decisions on community consultation will be implemented over the course of this year in the context of the new structural arrangements.

I take this opportunity to thank the Board of Taxation for its considerable work in preparing what is a very valuable report on community consultation processes. The report will be available on the Board's website at <http://www.taxboard.gov.au>.

CANBERRA, 2 May 2002

APPENDIX B: CONSULTATION MEETINGS

The Board held 16 consultation meetings which were attended by representatives from a range of tax professional, business and community entities and government bodies. Organisations represented included:

ACOSS
AMPAG
Association of Superannuation Funds in Australia
Australia Post
Australian Accounting Standards Board
Australian Bankers' Association
Australian Chamber of Commerce and Industry
Australian Council of Trade Unions
Australian Financial Markets Association
Australian Industry Group
Australian Institute of Company Directors
Australian Petroleum Production & Exploration Association
Australian Prudential Regulation Authority
Australian Securities and Investments Commission
Australian Stock Exchange
Australian Taxation Office
Australian Treasury
Benevolent Society, The
BHP Billiton
Brambles Industries Limited
Business Coalition for Tax Reform
Cancer Council
Corporate Tax Association
CPA Australia
Deloitte Touche Tohmatsu
Ernst & Young
Foster's Group
Inspector-General of Taxation
Institute of Chartered Accountants in Australia
Insurance Council of Australia
Investment and Financial Services Association
KPMG
Land Care Australia
Law Council of Australia

Appendix B: Consultation meetings

Malleson Stephen Jaques
Minerals Council of Australia
Motor Trades Association of Australia
National Australia Bank
National Farmers' Federation
National Institute of Accountants
National Tax and Accountants' Association
NSW Office of Financial Management
NSW Office of State Revenue
NSW Treasury
Origin Energy
PricewaterhouseCoopers
Property Council of Australia
Real Estate Institute of Australia
Rio Tinto
Smith Family, The
St Vincents & Mater Health Sydney
Taxation Institute of Australia
Taxpayers Australia
Ted Noffs Foundation
Victorian State Revenue Office
World Wildlife Fund
YWCA of Sydney

APPENDIX C: MEMBERS AND CHARTER OF THE BOARD OF TAXATION, CONFLICT OF INTEREST DECLARATION

Members

The members of the Board of Taxation are:

Chairman

Mr Richard F E (Dick) Warburton AO

Deputy Chairman

Mr Chris Jordan AO

Members

Mr John Emerson AM (from 15 January 2007)

Mr Brett Heading

Mr Keith James

Mr Eric Mayne

Mr Curt Rendall

Ms Jane Schwager (until 14 January 2007)

Ex officio members

Mr Michael D'Ascenzo (Commissioner of Taxation)

Dr Ken Henry AC (Secretary to the Treasury)

Mr Peter Quiggin (First Parliamentary Counsel)

Secretariat

Members of the Board's Secretariat who contributed to this report were Mr Bruce Paine (Secretary until June 2006), Ms Sue Vroombout (Secretary from June 2006) and Mr Vernon Joice.

Charter

Mission

Recognising the Government's responsibility for determining taxation policy and the statutory roles of the Commissioner of Taxation and the Inspector-General of Taxation, the Board's mission is to contribute a business and broader community perspective to improving the design of taxation laws and their operation.

Membership

The Board of Taxation will consist of up to ten members.

Up to seven members of the Board will be appointed by the Treasurer, for a term of up to three years, on the basis of their personal capacity. It is expected that these members will be appointed from within the business and wider community having regard to their ability to contribute at the highest level to the development of the tax system. The Chairman will be appointed by the Treasurer from among these members of the Board. If the Treasurer decides to appoint a Deputy Chairman, he or she will also be appointed from among these members of the Board. Members may be re-appointed.

The Secretary to the Department of the Treasury, the Commissioner of Taxation and the First Parliamentary Counsel will also be members of the Board. Each may be represented by a delegate.

Function

The Board will provide advice to the Treasurer on:

- the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design;
- improvements to the general integrity and functioning of the taxation system;
- research and other studies commissioned by the Board on topics approved or referred by the Treasurer; and
- other taxation matters referred to the Board by the Treasurer.

Relationship to other boards and bodies

From time to time the Government or the Treasurer may establish other boards or bodies with set terms of reference to advise on particular aspects of the tax law. The Treasurer will advise the Board on a case-by-case basis of its responsibilities, if any, in respect of issues covered by other boards and bodies.

Report

The Chairman of the Board will report to the Treasurer, at least annually, on the operation of the Board during the year.

Secretariat

The Board will be supported by a secretariat provided by the Treasury, but may engage private sector consultants to assist it with its tasks.

Other

Members will meet regularly during the year as determined by the Board's work program and priorities.

Non-government members will receive daily sitting fees and allowances to cover travelling and other expenses, at rates in accordance with Remuneration Tribunal determinations for part-time public offices.

The Government will determine an annual budget allocation for the Board.

Conflict of interest declaration

All members of the Board are taxpayers in various capacities. Some members of the Board derive income from director's fees, company dividends, trust distributions or as a member of a partnership.

The Board's practice is to require members who have a material personal interest in a matter before the Board to disclose the interest to the Board and to absent themselves from the Board's discussion of the matter, including the making of a decision, unless otherwise determined by the Chairman (or if the Chairman has the interest, the other members of the Board).

The Board does not regard a member as having a material personal interest in a matter of tax policy that is before the Board merely because the member's personal interest may, in common with other taxpayers or members of the public, be affected by that tax policy or by any relevant Board recommendations.