COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

of

PUBLIC ACCOUNTS

(Reference: Review of the Auditor-General's reports 1996-97)

SYDNEY

Monday, 8 July 1996

(OFFICIAL HANSARD REPORT)

WITNESSES

JOINT COMMITTEE OF PUBLIC ACCOUNTS

Review of the Income Tax Assessment Bill 1996 and related legislation

SYDNEY

Monday, 8 July 1996

Present

Committee members

Mr Somlyay (Chair)

Senator Watson	Mr Beddall
	Mr Fitzgibbon
	Mr Griffin
	Mrs Stone

The committee met at 10.40 a.m.

Mr Somlyay took the chair.

CHAIR—I declare open this public hearing of the Joint Public Accounts Committee. The commmittee is reviewing the Income Tax Assessment Bill 1996 and related legislation. Together these bills represent one of the most significant packages of legislation to come before the parliament in recent years. It is rare that we have the opportunity to remake and simplify something as fundamental as our income tax laws.

The current tax act was first put in place 60 years ago and it is possible that the bills we have before us at the moment will last for a similar length of time. I say this just to highlight the point that all of us—parliamentarians, public officials and interested members of the community—need to do our utmost to ensure that the law we are about to make is the best possible outcome from the tax law improvement project.

As you know, the 1995 version of this legislation was referred to the previous Public Accounts Committee, which received submissions and held public hearings in Sydney in January of this year. Unfortunately, that committee did not have the opportunity to complete its inquiry before the general election was called. However, the evidence gathered by that committee will not be wasted and the submissions received and the transcripts of public hearings will be considered by the new committee.

This committee acknowledges that TLIP's mandate is limited to rewriting the words of the current act and does not extend to simplifying tax policy. However, while reviewing the bills before it the committee will also consider how to improve the processes by which the anomalies and inconsistencies in tax law that TLIP's work is highlighting can be brought to the attention of government.

We appreciate that you have all appeared before the JCPA on this topic at least once, and some of you on several occasions. On behalf of the members I thank you for your continuing assistance to the committee.

We will be running this hearing in a round table format with which you will be familiar. The committee will not be swearing or affirming witnesses, but I remind you that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and will be fully protected by parliamentary privilege.

I will begin each session of our program today by inviting you to make brief statements on the topics to be covered in the session. As time is limited, I ask you to keep your statements as brief as possible. I intend to act like the speaker of the House, the present one, and will call you to order after five minutes. Following the opening statements I will ask the committee members whether they have any questions before inviting officials from the improvement project to comment. Finally, each session will conclude with a general discussion period in which everybody is welcome to participate. We would be happy to receive any written material that you would like to present to us. The committee secretariat will be forwarding bound compilations of submissions to you once the closing date of 19 July has

passed.

My final administrative announcement concerns press reporting of today's hearing. I refer any members of the press who are present to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to fairly and accurately report the proceedings of the committee. Copies of the statement are available from the secretariat staff present at this hearing.

[10.45 a.m.]

\DB\WLBBACK, Mr Gavin Alexander, Assistant Commissioner, Tax Law Improvement Project, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2600

BRADSHAW, Mr Michael Ian, Tax Law Improvement Project, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2600

DRODER, Mr Stanley John, Chairman, Tax Law Improvement Project Consultative Committee, c/- Level 3, 111 Harrington Street, Sydney, New South Wales 2000

GAYLARD, Mr Simon James, Private Sector Representative, Tax Law Improvement Project, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2600

HALY, Ms Margaret, Assistant Commissioner, Tax Law Improvement Project, Australian Taxation Office, c/- Amdahl Building, Canberra, Australian Capital Territory 2600

NOLAN, Mr Brian Martin, Project Director, Tax Law Improvement Project, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2600

REID, Mr Thomas Johnston, Second Parliamentary Counsel, Tax Law Improvement Project, Australian Taxation Office, 2 Constitution Avenue, Canberra, Australian Capital Territory 2600

BRYANT, Mr Robert James, Executive Director, Corporate Tax Association, Level 13, 257 Collins Street, Melbourne, Victoria

CAREY, Ms Annamaria, Technical Director, Taxation Institute of Australia, Level 7, 64 Castlereagh Street, Sydney, New South Wales 2000

LANGFORD-BROWN, Mr Ian, Director, Taxation, Institute of Chartered Accountants in Australia, 14th Floor, 37 York Street, Sydney, New South Wales 2000

PETERSSON, Mr Karl Geoffrey, Principal, cgtTAXnet, 71 George Street, Redfern, New South Wales 2000

PHILLIPS, Mr Ian Richard, Taxation Consultant, Corporate Tax Association, Level 13, 257 Collins Street, Melbourne, Victoria

CHAIR—I invite Mr Bryant of the Corporate Tax Association to make the first opening statement. As we have a full program I ask again that opening statements be limited to no more than five minutes.

Mr Bryant—First of all, I would like to thank you and the committee for the opportunity of appearing here today. I have provided to Mr Harrison a copy of a submission which I think will be made available to members and others present. That does detail some of the more precise comments we are looking to present.

The Corporate Tax Association and the Business Council have been pretty actively involved in the whole project. A lot of our work has been conducted through a special tax consultant, Mr Ian Phillips, who is on my right, who is jointly engaged by both the Corporate Tax Association and the Business Council. We collectively appeared at the January hearing and would look to see that, with any of the representations we made there, the committee's response would be fed through into any future report.

With regard to the three bills, the subject of today's review, we would like to make the point that they do contain enhancements to the law but, on the other hand, they are not without error. We are quite disappointed about that. It does say something about what we see as a lack of quality control. We will talk more to that later.

There are some other aspects of the bills that are subject to current disputation. In that regard, we particularly will support the representations being made by the Minerals Council of Australia and the APPEA, representing the petroleum exploration and producers association.

Because of the difficulties that we see in this current law and their undoubted importance and significance in the Australian economy, we make the very clear statement that these bills must not be passed in their present form. More than that, it would be quite improper for them to be given a 1 July 1996 commencement date. We see that that would have a retrospectivity which would be quite unjust because we are concerned that there are some elements of the proposed legislation that could act detrimentally to some taxpayers, especially those with a December year end.

They are already well into their 1996-97 income year. But now that we have already past 1 July 1996, it would be improper to pass this law with that commencement date. We would support the recommendation, at least on this point, of the former joint committee which said, in report 343 of November last year that, whilst they did support progressive implementation, such new law should not commence until the income year following the date of royal assent. The current proposal is not consistent with that and we would like to bring that to your attention.

Secondly, because of the concerns we have got with aspects of the new legislation, we have become increasingly attracted to the proposition that the law should be warehoused. We can explain more of that and there is some background material in our attachment that I have

submitted. There is a need not to rush this law, to give it time to be settled and tested.

Senator WATSON—Could you define the term `warehouse'?

Mr Bryant—Warehousing would be a concept whereby the bills that we have get presented to parliament, made available publicly, whether or not they actually get passed, but they get stored up rather than be given an immediate commencement date. They then become part of a growing pattern of a new body of law. It is not until that new total body is complete that we could then look to implementation and making that effective. We see great concern, let us say for example, in capital allowances areas. There is not enough linkage between the proposed rewritten provisions, for example, on capital gains tax and the like. There is a great level of uncertainty. I believe that with the major companies the difficulties that they have in coping with the current body of law are so significant that there is an enormous anxiety about being made to deal with two bodies of law simultaneously.

There is a possibility of running in this warehousing concept, which does need some better definition—and maybe we could spend some time today just to tease that out a bit further—the proposition that the existing law could remain active with a new body of law equally being active, giving the taxpayer the opportunity to take the best of the two options. It is messy, but any transition is going to be messy. The objective is to ensure that we do not have a new body of law immediately operating to replace the old body of law for fear that there will be slippage or unintended outcomes that could work to the detriment of taxpayers.

Finally, as a third point, we would like to recommend to this committee that it make the representation to government that government in our view must make a very clear and unequivocal commitment to urgent remedy of any technical errors that are found in this law as they come to notice. We feel that a strong commitment must be made by the government to giving us an undertaking that it will correct any problems, because we see that there will be a need for a number of technical corrections as these things are discovered. Just to wrap up, we appreciate this opportunity and look forward to participating here today.

Senator WATSON—Will we have questions now?

CHAIR—After the presentations we will go into discussions. I now welcome Ms Carey from the Taxation Institute of Australia.

Ms Carey—I am the Technical Director of the Taxation Institute of Australia, which represents lawyers and accountants practising in the tax field. I take this opportunity to thank you for the invitation to put this presentation to the committee today. Obviously, a lot of what will be said today will be effectively a repeat of submissions and statements made at the January hearings. Many of the issues are still current. However, there are some additional issues raised in these new bills, issues which have been dealt with in a joint submission which the Taxation Institute is a party to and which has been copied for the members of the committee. The Taxation Institute is a party to this submission, along with the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants and the

Law Council of Australia. I would refer you to both submissions: the earlier submission lodged in January, of which you would all have received a copy, which I am sure you will have read, and the later submission, which sets out the specific issues relating to the new package of bills.

I will keep my introduction brief. I will deal with a couple of overview issues. I would probably reflect what Bob Bryant said in his introductory comments. Certainly, the concept of tax law improvement is something that is to be applauded, and the work that has been done so far by the tax law improvement project is welcomed. However, there are obviously a number of problems with the concept of tax law improvement.

Firstly, regarding the time frame within which the TLIP team has been given to complete the project, three years was seen as extremely optimistic when that announcement was first made. We are obviously now a fair way into that three-year project and, as yet, there are still a number of major issues that have not emerged from that project and that we are still waiting on. Apart from the substantiation rewrite and this major package of bills, we are obviously still waiting on major issues such as the tax treatment of depreciation, and capital gains tax issues. There is some concern that the three-year time frame will not be achieved and that perhaps, when the project was originally announced, greater time should have been taken by the government in determining what a realistic time frame would have been for a rewrite project. That is the first comment that I would make.

Secondly, the terms of reference of the tax law improvement project have already been alluded to. There was always concern, as has been expressed in submissions put in by the Taxation Institute and other bodies, that the terms of reference announced by the government when it originally established the TLIP project were too narrow. We have asked the new government to review those terms of reference. As a minimum—and Bob referred to this in his opening statement—when what we would call policy issues, whether they be small `p' policy issues or otherwise, are identified as part of this exercise, there does need to be some avenue to address those issues.

Already a large number of such issues have been identified in this bill, both in the substantiation provisions and in the capital gains tax provisions which are currently being viewed by the TLIP team. We encourage this committee to ensure that there is some avenue established whereby those issues can be addressed and corrected, as part of an ongoing process.

The other major issue that I will raise here—this was also mentioned by Bob in his introductory comments, and I think we are all in agreement on this issue—is the implementation date of both this package of bills and all other bills coming out of the TLIP team. The Taxation Institute—in its original submission, put to the committee back in January—was supportive of a warehousing concept, and that has been briefly explained by Bob.

The feeling is—because of the sheer magnitude of changes being made and the fact

that, unfortunately, the legislation is coming through in dribs and drabs—that the total package cannot be appreciated by taxpayers at this stage. There may be issues which come to light, as a result of further packages coming out of the TLIP team, which will have an impact on, say, the contents of this current package of bills. So we encourage the committee, very strongly, to consider—or reconsider—the implementation date of these bills.

As I have said, our first preference is for a warehousing implementation date. Certainly, we state here and now—and, again, this is set out in the submission—that the bill should not have the start date of 1 July 1996, which obviously has now passed. It should be a prospective date of operation, because there are some changes to this bill compared to the original packages introduced late last year. On that note, I will leave my introduction; the more specific points I will leave until later on in the proceedings. Thank you.

CHAIR—Thank you. I invite Mr Langford-Brown to speak on behalf of the Institute of Chartered Accountants.

Mr Langford-Brown—I thank you for the opportunity to be here before this committee, and for the opportunity to discuss these issues with you and your colleagues. I would also like to make it clear that, while I am a member of the consultative committee for the tax law improvement project, I am not here in that capacity.

The Institute of Chartered Accountants is a supporter of the tax law improvement project and believes that the project team has made some significant strides in achieving the aims of that project. However, at the outset, it is important to understand that, in general, the ICAA has had—and continues to have—three major concerns.

Firstly, we believe that the exclusion imposed upon the project by its current terms of reference and its inability to address policy issues—especially any small `p' policy issues—is, and will continue to be, inherently a major weakness in the project's operation.We, like others that have given outlines today, urge that the start date be not 1 July 1996. I will expand upon that later. We certainly are endorsing the warehouse concept which is before you today.We are also concerned that the time frame of three years is, and will continue to be, too short. There is no doubt that the evidence of slippage is apparent to us all. Therefore, we believe that the time frame needs to be considered.

The institute's support is visible and continues, in many ways. For the purposes of today's hearing, it is very important to recognise that the institute—in conjunction with bodies such as the TIA—has engaged consultants, such as Mr Geoff Petersson here, to present formal submissions to your committee.

We have continued to support the TLIP process, but I would like to state publicly that we, as an institute, have a slight disappointment that, having been party to a major submission which was made at the January hearing of the prior committee, we have not received any formal response to the various issues raised.

Finally, we are very concerned that no apparent progress has been made in updating tax rulings as to their prospective validity for the remainder of the project. We thank you for being here and we are happy to contribute to the further discussions during the day.

CHAIR—Thank you. I now invite Mr Petersson to address us.

Mr Petersson—Thank you. I have been engaged, as Mr Langford-Brown has said, to prepare a further submission for the joint bodies—the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia, the Law Council of Australia, and the Taxation Institute of Australia.

I would certainly like to congratulate the TLIP for its continued work, and I would also like to thank the committee for the opportunity to be present today. I would certainly support the concerns voiced by previous witnesses this morning.

One thing that perhaps has not been mentioned is the disappointment we felt with the formal responses from the TLIP to the former joint committee. We were somewhat confused because time and time again we looked at the responses, where they were basically rejecting our recommendations out of hand, and then when we came to look at the 1996 bill we found that, in fact, they had been taken up in many instances.

Unfortunately, sometimes there seems to be a somewhat haphazard approach. Sometimes, they have been picked up when they have not been agreed to, and at other times, when our original recommendations were agreed to, the changes have not been picked up. So we have some difficulties there, and perhaps that really comes back to a question of quality control in the drafting and proofing process.

Certainly, warehousing, which was discussed at the January hearing, still seems to be the only reasonable option in our view. We think that the 1996 bill has not yet reached that critical mass whereby it can operate on its own, or at least in conjunction with the 1936 legislation. By all means introduce it and pass it if need be, but to foist it onto the community at this stage would create difficulties. In the climate that we have with a new government which has expressed clear indication that it will be reviewing tax policy issues on a number of fronts, it seems to us that if you on the one hand have a new legislation that people have to familiarise themselves with as operative legislation, but on the other hand and at the same time, we are waiting for new changes which will, presumably, impact on what the new law has already covered, far from reducing compliance costs, it will actually add to compliance costs.

Other witnesses this morning have mentioned the problem with the timing. It is an interesting exercise. I took a few figures that have been quoted in the press. One was that 10 per cent of the law has been rewritten; the other is that the project started in November 1993. We are coming up to the third anniversary so that suggests that we might be looking at 10 times three years at the most, or if we say 2½ years, that is 10 times 2½ years, giving a final year of completion of this exercise of 2018. I am sure I am wrong in that but it does give a measure of the concern. It really comes back to whether a word for word rewrite can really be

achievable in a reasonable time frame and to this whole question of whether you really need to look at the TLIP's charter to see whether it should be responsible for greater policy change to basically achieve some quantum leaps.

It is not a good example, but if you take substantiation, for example, we have got 55 pages of rules about substantiation basically to say that you need a receipt before you can claim a tax deduction. There is a question there whether what we are doing is the right thing, particularly if you look at that time frame.

Senator WATSON—Not necessarily a receipt.

Mr Petersson—Not necessarily a receipt. That is perhaps not the best example. I should leave my comments there, Mr Chairman. Thank you for the opportunity to be present.

CHAIR—Thank you. The representatives of the Business Council are not with us yet. They are arriving late I think, so I will ask the TLIP team to make a statement as well.

Mr Nolan—Australia, New Zealand and now more recently the United Kingdom, are rewriting their tax laws. We have not done that in Australia in 60 years and as a result the 1936 act is shot. There has been enormous growth. It is recognised that it is now an impenetrable mess. The law has an unhelpful structure and confusing language and imposes excessive costs and demands on the community. That wastes time and productivity and tends to alienate the community. The law has itself become an obstacle to debate on wider tax policy matters.

We are very grateful to have the opportunity, once in 60 years, to do some restoration work. Clearer, more understandable law will reduce compliance costs and even a modest reduction—we think it will be very much more than that—will produce major savings and be valuable microeconomic reform. The new law will also bring about more accurate compliance because taxpayers will have a clearer understanding of their rights and obligations. That is not a question of bringing in more or less revenue dollars. It is simply about improving people's ability to comply and with that goes increased trust in the tax system itself.

Self-assessment demands a lot of taxpayers and fairness requires that they be able to understand the law that they are expected to self-determine their liabilities to. A clearer law will also provide a platform for policy reform itself.

We think the rewrite should be done progressively. Ultimately we think that progressive delivery will produce the less painful transition to the new law. There cannot be any absolutely painless way of moving from the present mess to the modern law.

The sheer size of the rewritten act will be just too much, we think, for digestion by the parliament, by the Tax Office, by the business and professional communities and by the wider community. Sequenced delivery avoids also the duplication and inefficiency that would otherwise occur by having a double up on writing business as usual legislation while the

rewrite is progressing. On the subject of correcting errors, progressive delivery will also give us better opportunities to do that quickly.

We are writing for readers and regular users of the law and that is a major departure from previous practice where legislation was usually written more for those instructing on it. We think that busy tax practitioners, corporate advisers and business people are looking for reasonably clear rules, less red tape, so that they can get on with their business activities. We are writing in a way that we hope will assist them to do that. We are also thinking about people who will be coming into tax practice in future years, so we are using plain language of an everyday kind to address our audiences in a commonsense way.

We are doing a lot more, however, than using plain language. We are also taking away commissioner discretions as far as possible. They are incompatible with self-assessment. We are trying to strip away drafting devices of the kind that are unhelpful. We are using direct speech to attract readers' attention better, and we are using a range of layout and design improvements—flow charts, signposts, checklists and so on—and comprehensive definitions of terms used throughout the law. Not only have we done those things, but we are managing a 50 per cent at least reduction in text, and we hope to be able to improve on that.

Some substantial changes are being made along the way—minor policy changes, admittedly. There are clarifications to remove some ambiguities and inconsistencies and to align the law more with commercial practice. These are intended to strip away unnecessary compliance costs. We have been at pains, however, to try to preserve the benefit of case law in areas where the existing law has been ruled on substantially by the courts and, similarly, we are making it clear that tax rulings are preserved, at least to the extent that they are favourable to taxpayers.

As in New Zealand and the United Kingdom, the project is not about undertaking major policy review. Policy review will always be undertaken by governments of the day, but this is a huge task, well worth supporting in its own right, and there are distinct limits on how much the two could be mixed successfully. Mainstream policy review certainly would require a different range of people and skills to those involved in the rewrite task.

However, we have seen in our rewriting of areas like depreciation, which will be coming out shortly in draft form, that clearly written law begins to expose questions about policy content and structure and produces a good platform for more substantial review.

The bills before the committee are essentially the same as those that were introduced into the parliament late last year and which were addressed in public hearings in January. We have made a number of refinements to those. We have benefited from submissions that have been made to the committee and it might also be noticed that the bills are something like 80 pages shorter over all, but that is due to our adoption of some layout standardisations which we think deliver more economically the readability benefits we have been seeking. Other opening statements have made a number of points and I am sure the committee will want to address those later, and I would be happy to respond at those times.

CHAIR—Without going over the opening statements, does anybody on this side of the table want to comment, given what Mr Nolan has said to us? Has he clarified anything which you may have seen as a shortcoming in your opening remarks? Does the TLIP team want to respond to any criticisms from the other side?

Mr Gaylard—I would like to say something, briefly. Geoff Petersson mentioned 10 per cent in his talk. I think that was a reference to something I was quoted as having said last Friday. Let me tell you about another 10 per cent. Another 10 per cent is the minimum figure that I believe the law can be improved by. In other words, the opportunity to reduce compliance costs by at least 10 per cent is an absolutely achievable target of this project. Compliance costs run, so we are told, at $3 billion annually; some people say it is much more than $3 billion annually. So, on the minimum figures which even critics of the project have quoted, there is a prospect of a $300 million a year improvement in compliance costs.

Senator WATSON—Could you identify those areas where we can reduce the compliance cost by 10 per cent, for the committee?

Mr Gaylard—I think it is coming right through the things that have been done, such as clarifying the way some of the rules work in the case of losses and cutting out certain provisions there, improving the substantiation law and giving a better structure to the act so that people can find their way through the law. All of those things are going to come, either now or with time.

Now let me move on to the 10 per cent that Geoff talked about. The 10 per cent that Geoff talked about was in answer to a question of how much law has actually been written now. I think that probably is about the size of what is in that first bill. But, behind that, there are a whole range of other projects going on, such as the rewrite of the depreciation provisions, the general deduction provisions, the general accessable income provisions, and the project to rewrite the capital gains tax law. All of that is in progress. So I think the percentage is a lot more than 10 per cent, given the work that has been done. It is much more than that.

CHAIR—How much do you reckon it is?

Mr Gaylard—I would say that was 30 to 35 per cent of the project. In terms of parliamentary hearings—which are a very important and very necessary part of the process—I estimate that, through the change of government, the number of hearings and the preparation for them, we have lost approximately six to nine months. It is probably nearer to nine months of the work of the project that has been taken up with those sort of issues. They were totally unforeseeable issues at the time the project commenced. I will admit that I still think three years was probably ambitious, but I think a four-year program was certainly within reason.

The difficulty with warehousing implementation dates and rewriting all rulings before the project commences, for example, is that it all has the effect of delaying the introduction of

the law. I think there is a limit to what the public can cope with. I do not think the project could go on much past a five-year period and still be bringing people along with it.

The only other point I would like to make about implementation dates, warehousing and things like that is that it has been absolutely apparent, since this 1996 bill went into parliament, that—for the first time that I can really remember—the professionals in the taxpaying community are really wanting to know what this law is all about. In everything that we have done to date, there has been a reasonable degree of apathy, although not from the Corporate Tax Association and, in recent times, not from the joint bodies that Geoff Petersson represents. For the first time, people now really see this law as having a start-up date in the very near future. I know that in my own firm there are moves under way now, for the first time, to train staff in the new law. People are wanting to know how things work. There is a great surge in interest. That is coming from determining a date for that law to start.

If the law is pushed out to a much later date, with the just-in-time way that the professions work, it is going to mean that none of that intellectual thought will go into the new law. It will go in at the end and this will have the significant consequence that everyone is going to get severe indigestion. The possibility is definitely there that all this work will be done and the new law will not in effect ever get implemented. I believe that harks back to those compliance cost savings that I talked about that the Australian people will not get.

Mr BEDDALL—Perhaps the Chair or the committee secretariat can clarify this for me. The role of this committee is to oversee the tax law implementation project. I understand the guidelines set down by the previous government were that no major policy change could be implemented by the improvement project team. I do not think there is a restriction on this committee for recommending policy change, and I think if that is the case then certainly any ideas that you have, particularly on small `p' policy, should be made to this committee.

The government has already foreshadowed substantial change to the capital gains tax regulations for small business, which I think will actually add to the tax act rather than detract from it when you think about what they are saying. I do not think this government is saying that it will carry forward all the policies that we had as a government, so I think there is a role maybe for this committee. If there is a policy issue that needs to be addressed, this committee when it reports can report on those policy issues rather than the tax implementation project. If that is a definition we can take, then that is a role this committee can take up on behalf of the tax industry.

Mr Bryant—I would like to make one comment in relation to Simon Gaylard's remarks and it goes to the 10 per cent saving in compliance. I just want to challenge the optimistic view that Simon is putting. I am talking now mainly from the top end of the market, but I think it equally applies for business generally, whether small or medium. There is nothing yet that we have seen that would suggest there will be any substantial reduction in compliance cost. The advantages that we see relate to our major problem area and that is gross uncertainty. The law is riddled with gross uncertainty, but we have to take a position under self-assessment on that and we do so.

What the project is starting to do is to sift through some of that uncertainty, but it is not reducing the amount of work we have to do in garnering material, details of activity and the like. Until such time as we get down to areas like capital gains tax and fringe benefits tax, will there be any possibility for that, depending on how far the project can go. But at this stage, I do not believe that we are seeing any real saving in compliance cost.

Senator WATSON—Mr Bryant, I am interested in your approach to warehousing. How long do you think is a reasonable time? Could it be achieved if we split the act into a number of sections? An arbitrary division, for example, could be a separate act for fringe benefits, a separate act for capital gains and revenue items, or maybe one or two more if you would like, say, to put trusts into a separate category. Would that assist?

At the same time, I recognise a problem of amending legislation, because we are going to have to virtually pass two pieces of legislation if we adopt a warehousing approach—the 1936 amendments and the amendments to the tax law improvement, which are already on the table. While we might be able to handle this in a short time frame, I am concerned about the longer term implications, particularly where the court decisions may provide a different interpretation to what we already have. So I have a problem of handling, from a legislative point of view, this concept of warehousing. As I said, we will be passing two lots of bills in relation to any specific amendment that may be required. Firstly, is it possible to split it? How long do you think it will take? I think Mr Petersson's use of statistical chartism, to use a stock exchange phrase, might be an outside figure. I would certainly hope it could be achieved in a tighter time frame because I think there is a lot still in the pipeline.

Mr Bryant—I guess the first point to make is that the transition, in whichever form it takes, is going to be very painful, and I think that has been acknowledged. Whether we go the warehousing road, the big bang approach or the progressive road, it is going to be a very difficult phase.

We began with a view that supported something along the lines of a progressive instalment approach, in the expectation that the project could be completed in a shortish time frame. That is looking less and less likely. With the legislation as drafted, when we saw it last November we raised concerns and criticisms. We have further concerns and criticisms at this stage. We are saying that an immediate introduction of this existing body of the law, especially as of 1 July 1996, would be totally unacceptable and would create intolerable problems. In the midst of all of those dilemmas—

Senator WATSON—There are problems with the mining industry also. This is part of the rewrite, is it not?

Mr Bryant—Sure. There are some obvious errors in the law that need to be fixed. I think there is a problem with some of the drafting. There is slippage on a few things. Just to give an example, and this has been raised, we have a typographical error in section 4-15. We had last year taxable income equals income less deductions and for some reason of slippage we have now got income tax is the result of that formula. That is clearly wrong. That will obviously be acknowledged. We have not raised it through the TLIP team.

We have other problems with a supposed effectiveness about the use of definitions but that which is put forward in the explanatory memorandum has now been acknowledged as being wrong. We have not had a lot of time to do the fine detail work that is necessary. I accept Simon's point that, with the stage we have now reached, there are a greater number of external people starting to focus more readily.

Senator WATSON—Have they had anything before them?

Mr Nolan—Yes, they have.

Mr Bryant—They have. This is starting to threaten as though it is something reasonably imminent.

Mr BEDDALL—But if you do not have a deadline then people will not focus.

Mr Bryant—No, I understand that. But that is to be traded against the unacceptable outcome of being delivered with law that might work to your detriment and there could be quite an injustice in this. We have got enough problems with the existing law, and the difficulties and the uncertainties that arise from that. We do not want to get a new delivery of some new law with a series of unintended consequences. Some of the errors that we have discovered in this undermine our confidence in the quality control of this project. And it is for that reason, essentially, that we have been caused to try and seek some other solution than the immediate implementation of this law. We are saying that we are not satisfied that the bills presently before this parliament are good enough.

Senator WATSON—Could that be overcome by having the advantage of either the old law or the new law, by changing the Acts Interpretation Act?

Mr Bryant—Yes. I am not saying that I have got a definitive position on this. We are saying that in relation to the immediate introduction we have not got a perfect solution on this definition of warehousing that is being bandied around. But we are looking for a bit more comfort than having this thing imposed on us and being caused to deal with what may well be seen as being difficult and defective legislation. Ian might have some further comment.

Mr Phillips—I am retained as a consultant in relation to TLIP matters by the Business Council of Australia and the Corporate Tax Association. If I could just embellish on a couple of these observations. I think we are all agreed that this process should not go on interminably, that there must be some conclusion that is in reasonable foresight of us all. Original time frames of three years, I agree, are inadequate but we now move to periods that are much longer. I suggest that that is really a question of resources. I do not know whether Mr Nolan has made a plea for additional resources.

In any event, it seems to me that there is a problem here that needs to be addressed in just working through this problem of getting over the first hurdle, getting this core provision

settled and then moving forward from there. Whether that is done by acknowledging that this legislation is complete, and putting it into effect, or whether it is done by putting this through parliament and reserving the operative date seems to me to be a lesser issue. I think the more considerable question is ensuring that there is the appropriate input given to get us to the end of the day. Senator Watson referred to the possibility of splitting the act in a number of ways.

Senator WATSON—There is an establishment problem with warehousing.

Mr Phillips—Yes, I understand. A number of suggestions have been raised in this area. The Fringe Benefits Tax Act is probably as confusing a piece of legislation as we have but that is not within the scope of TLIP at the present time; I understand it might be an add-on at the end. I do not support the idea of carving off the capital gains tax legislation into a separate piece of legislation. That might be a convenient way of saying that we have reformed the Income Tax Assessment Act but that we are leaving the CGT provisions standing for another day. I think it is a more appropriate response to consider the integration of these two pieces of legislation because they do impact one on the other. It is much more significant, in my view, to make sure that you have coherent, whole legislation than merely being able to say, `Yes, we have stitched up this bit so let us give it a tick.'

On that theme, the difficulties I see with the position that we would have if this bill were passed in its present form come from the interaction of the 1936 act and the 1996 act. There may be specific deficiencies in this law but, when you have this integration of the two pieces of legislation, they can tend to be multiplied. They are, I think, very hard for people to see until they have to put them into operation. In effect that is perhaps an argument in favour of early implementation. But I think that implicitly you say then, `If those errors have to be corrected, they will have to be corrected retrospectively,' and that in turn is abhorrent to me.

Mr Petersson—In relation to deadlines, it comes back to the question of whose deadline it should be. There is the argument to say that 1 July 1996 is it and that this will force practitioners and taxpayers to focus on the provisions, whether they are ready or not. One way of looking at that is to say that it abdicates responsibility from those who are charged with rewriting so that the pressure is off TLIP and the government for saying, `We brought it in. We have got the main core provisions. We have done something.' By all means have a deadline, but why penalise those you are trying to help?

Mr BEDDALL—I would have thought Senator Watson, following the record of his party in the Senate, would never pass the legislation retrospectively anyway. What we should be talking about is 1 July 1997 as the prospective date of implementation. If this was going to be implemented, it should have been in a parliamentary sitting that did not take place because the parliament was prorogued. I would have thought that we would be talking about a 1 July 1997 date. You do need those targets because—having been on the other side of the fence at the executive level—nothing happens unless you force it.

Mr Petersson—Who are you forcing?

Mr BEDDALL—The people who are writing the stuff—the bureaucracy. It moves in ever-decreasing circles. You think three years is a short term; three years is a lifetime for a government.

CHAIR—Mr Bryant raised one issue. I think this is the first time the cost of compliance savings through the TLIP project has ever been queried. Mr Gaylard is saying 10 per cent is the minimum—

Mr Gaylard—An absolute minimum.

CHAIR—And you have now questioned the reduction in cost of compliance by 10 per cent. That is the first time that that has even been suggested in evidence before this committee. The reduction in the cost of compliance is really the thing that is driving this whole exercise. Does anybody want to comment further on that?

Mr Nolan—The cost of compliance reduction is impossible to measure in advance and, to some extent, there is intuition and experience involved in the thinking. Clearly, New Zealand and the United Kingdom, from what they have been saying publicly, believe too that rewriting their laws is going to reduce compliance costs. It is axiomatic that if you halve the volume of the law and present it in a clearer way and you strip away a lot of excessive requirements in the way that we are doing at the moment, it cannot go any way but in the direction of reducing compliance costs. How much? I am not prepared to say it will be a 10 per cent reduction. It may or it may not be. It might be greater or it might be less, but it will be very substantial.

The first point I would make is that I would certainly put my hand on my heart that there will absolutely be a reduction in compliance costs. They will take some time to gather because there is a transitional period. Somebody said we hope we will build an act for the next 60 years. We have to think in longer term directions, not just shorter term directions.

There is a lot more to producing new law than just rewriting, than saving compliance costs. They will come, but there are a lot of other benefits in terms of allowing the self-assessing taxpayers to get their sums right much more easily than they can under the present law. There are fairness implications in all of that. I do not dwell overly on the compliance savings. They are important, but even if that were not one of the things that you would gain from it, the existing mess of law just cannot continue without being rewritten. The thing would almost grind to a halt. It is harder and harder for the parliament and for the community to cope with constantly amending the existing law as things stand, and it gets worse each year.

You have already heard a lot of basically supporting statements from people here today. They all think that this rewriting of the law is a good thing and that it needs to be done. But everything that you will hear today, despite the questions about whether the time frame is blowing out, is going to do more of exactly that: blow the time frame out. Delaying the commencement by another year will eventually mean that the last bill in the series will also be

a year later. You will be adding another year. Let us just remember that—

Mr GRIFFIN—Why is it necessarily the case? Mr Gaylard and yourself have explained you have got a range of projects under way and that essentially, if you like, this is the tip of the iceberg; other things are going on underneath. So why, by definition, would you need to have a further 12-month delay in terms of the final bill because of holding back the commencement date?

Mr Nolan—Because you will have the same arguments about early balancing companies when the next legislation goes into the parliament. We cannot turn out another bill in a matter of weeks; it is going to take time. By the time that bill is ready, the same arguments will be running that there are early balancing companies, that you have to give them more time, that you have to allow that bill to wait for another year, and it will go on each time that there is a bill in the parliament.

Mr GRIFFIN—On that front, if we were in a situation where this legislation were at this stage, say, in January, as we sort of were in a way, and there had been a session of parliament before which would have allowed it to be passed and it had been passed in, say, March, would the industry then have had a problem with a starting date of 1 July?

Mr Langford-Brown—Not in balance, no, Mr Chairman.

Mr Nolan—That is a good question, because what was coming through at previous hearings—certainly from the mining industry and I thought they were being supported by others—was that that would have been too late also. If they are shifting that, you might need to hear from the mining industry, I suppose, next week.

Senator WATSON—On the time blow-out, does that come back to resources? If so, where is the weakness in resources?

Mr Nolan—I do not think it is a question of resources. We are producing an enormous amount of material with the resources that we have got.

Senator WATSON—But have you got enough resources in the right areas, such as drafting. Where is the critical area? Let us identify it, because—

Mr Nolan—Nobody in the world has got enough drafters. There is a worldwide shortage and that is a fact. If we had twice the number of drafters, that would be a wonderful boon to the project. But there are not enough drafters—I think the Parliamentary Counsel's office is probably having difficulty coping with the amount of work that it is producing for the parliament now. And you cannot grow drafters overnight. I know they are making efforts to train and build up their drafting force, and that is highly commendable. But it does take time and there is nowhere you can just go out and recruit people. Generally, we have got very substantial resources. Especially when you see the way in which the public sector generally is being asked to do more with less, it is not really a good time to be putting up your hand and

saying, 'We want to double ours.' So I do not think that is really terribly viable.

Senator WATSON—This time frame is critical.

Ms Carey—I have a couple of comments on what Simon, Brian and Bob have been saying. Firstly, on the issue of cost of compliance being reduced by 10 per cent, I think having discussions on the extent of cost compliance cuts is like having a discussion on how long is a piece of string. I do not know that anyone could actually adequately calculate that figure. I think we all acknowledge that there have been cuts in the cost of compliance as a result of some of the previous bills. But I would argue, and this then gets back to an earlier comment that we all have been making in relation to the terms of reference to the TLIP, that most of the real cost of compliance cuts have been as a result of small `p' policy changes. I just use the example in the substantiation provisions, the rewrite there, the changes to the substantiation requirements for laundry expenses. Some would argue it was a big `P' policy change, but certainly it was a policy change rather than just a change in the wording of those particular sections. It is really when you get down to those policy issues that you are making the real compliance cuts.

Perhaps if the TLIP team were allowed to review some of those issues in more detail and make some real changes there, then yes, I agree we probably would see some substantial cuts in the cost of compliance. But without those types of policy changes I do not know that we are really going to see the extensive cost of compliance cuts that are being discussed here. That is the first comment I would make. I know historically the TLIP team has looked at those small `p' policy issues but again I am encouraging this committee to ensure that, when those policy type issues are identified which could result in some real compliance cuts, there should be an avenue available for those issues to be reviewed, looked at and followed through.

The other issue that I wanted to comment on—a few other people have raised the same question so it is not just me, thank heavens—is that I am unsure as to how having a prospective date of application on a piece of legislation is going to cause the TLIP project to blow out as you commented, Brian, because obviously the work is being done behind the scenes. You have indicated already the other projects or the other areas that the TLIP team is looking at at the moment. Even though we have not actually seen exposure drafts in those areas there is a lot of work being done. As legislation is drafted, subsequent to exposure drafts being available for comment, and as that legislation and those bills go through the parliamentary process, things are still moving on. It just means that once the bills are passed and once they receive royal assent they will not take effect until a later time period, so I am not quite sure how that is going to slow up the actual work being done by the TLIP team.

Mr BEDDALL—Can I come in on this one with a very important point in terms of when this would be presented and the practical reality of dealing with the parliament rather than the abstract. This bill has been introduced into the House of Representatives, I understand, in the last sitting week. Even if it is passed in the House of Representatives, it will not be passed in the Senate at the next sitting unless there is a special exemption. Under the rules that were provided by the now government when it was in opposition, any bill that is

debated in one session cannot be passed until the next session from one house to the other. I would have thought what we are saying is, 'Let us get this bill before the parliament, pass it and give it an introduction date of 1 July 1997.' No other work should be interrupted. I have got this fundamental problem with a piece of tax legislation that backdates. In this case, it would be nearly a 12-month backdate, so a whole year's taxpayers will be based on—

CHAIR—That is more a matter for consideration by the committee when we look at our report.

Mr BEDDALL—No, the tax law improvement project is opposed to that. I want to know why.

Mr Nolan—This legislation, it is true, was only introduced very recently into the parliament. It is almost the same as legislation that was introduced into the parliament in November last year. It is not substantially different even then from exposure draft legislation that was out in the public domain in various draft bills up to 12 months before that. The substantiation rules that are embedded in it of course have been actually part of the law for over 12 months now. In terms of the fairness of having this come in and catch people by surprise, it really is a nonsense to be implying that.

Mr BEDDALL—Mr Gaylard has said that people are only taking it seriously now because it is coming before the parliament.

Mr Nolan—That is true. That interest would very soon wane again if people said, `Well, hey, you needn't worry now. It is not going to be for another 12 months so you can put it aside again.' It really is only when it is going to come into operation that people get down to it, where there is no doubt that there will be legislation. In each budget, in each economic statement, there are things announced to operate virtually immediately, or maybe from a day not far down the track from that, and people do not see the legislation until well after its commencement date. This is much better, in terms of its public exposure, than those things. We have had this legislation out there, in essentially the same form as this, for many months.

You would think that we were wreaking havoc—that we were bringing in all sorts of dire changes. But I have got a list here of 10 pages of things that are actually favourable to taxpayers and are embodied in this legislation. There are 10 pages of them. None of them are big `p' policy; some of them you might label as small `p' or micro `p' policy. They are favourable things, clearing up the law and taking away some things that had carried unnecessary administrative requirements for people.

On the other side, we are hearing, `You might have unintended consequences. You cannot foist this on the public.' This sort of language is implying that there is a lot of dire stuff in here, but there is not. It is basically a rewrite of some fundamental provisions of the existing law, written in a clear way that people can—on experience with substantiation—work with much more readily. There have been plenty of testimonies to that. All we are saying is, `Let's get on with this process.'

As for what Geoff Petersson would imply, you cannot take seriously the 25 years; the arithmetic does not stand up. We are heading in the general direction of, 'Let's get on with this and get it finished, so that people no longer have to deal with the 1936 act and we will have a new act to work with.' Let us get on with this and get the process moving, instead of interminably being driven back to quests for perfection because somebody has found a word here or a word there—in a huge bill—that is wrong.

Senator WATSON—Mr Nolan, you mentioned that the UK and New Zealand were proceeding to rewrite their acts. How are they going about it? Is there a progressive implementation? What sorts of time frames do each of those other countries have in relation to completing the task? I think that, certainly in relation to the UK, their acts are a little bit bigger than our act.

Mr Nolan—As far as I know, I have not heard the UK say whether they are going to use progressive, big bang, warehousing or whatever else. They have said that they think it will take about five years, if I recall correctly. People can tell me if I am wrong.

The New Zealanders also think that they will take about five years. They are using a form of progressive delivery. They began by reassembling all of their law without actually rewriting it in their first stage. Now they are beginning the task of actually revisiting the language and the provisions themselves. So theirs is a form of progressive delivery. I cannot tell you about the UK.

Senator WATSON—Can you take the UK one on notice and find out, for the benefit of the committee?

Mr Gaylard—The UK discussed the various methods of implementation. They said they really did not know which, and that they wanted to think more about it. They certainly did debate both big bang implementation and progressive implementation.

Mr Langford-Brown—Mr Chairman, I do not want to offer any fundamental words of wisdom, but I would like it to be put on the table that the first bill that we are seeing—the 1996 bill—is fundamental to the whole of the project. I certainly favour warehousing, but let us put that aside for one minute.

I urge the committee not to consider the 1 July 1996 date. We have been able to ascertain the thoughts of some of our members. While I agree with Mr Gaylard that there is a growing awareness, it is still frightening to see the lack of awareness that the smaller practitioners have. We might look at that point and look at another point, which is that right now—at the time we are considering the real debate on this law—is an extremely busy period in the tax calendar. Taxpayers and professionals alike are so swamped with other work that they really have not got time to focus on this key one.

Therefore, I urge that we do need a stronger educational focus on the whole thing, to

bring the awareness to a peak. We have problems with experts such as Mr Petersson and Mr Phillips, who are still grappling with the changes that were made between the 1995 bill and the 1996 bill. That is without putting in people such as myself, who are still trying to come to grips with it. I accept what the project team is saying—that change overall is not great—but I wish to urge people to accept that 1 July 1997 should be the minimal operating date for this particular piece of legislation.

Mr Bryant—I am always comforted to hear the optimistic view of the world as presented by Brian, and I would not suggest for one moment that the task that he and his team have got is an easy one. I want to make two points. Firstly, back to the 10 per cent: all we are saying is that there might be some optimism in what the whole thing might deliver, but at this stage we are not seeing that 10 per cent saving.

And secondly, is it is all very well to say, `Let us put a toe in the water and really get started.' What we are saying is that if parliament goes with the 1 July 1996 commencement date, you will be causing taxpayers to be looking over their shoulders. It will be retroactive. It would be unfair, not just because there is this diabolical plot to make life difficult—quite the contrary; there are enhancements in the new law—but it is difficult to cope with and to expect taxpayers to be able to cope quickly with dealing with objections. They are going to have four acts. They have got the old act, the new one, the two consequential acts, and transitional provisions. This is an enormous task.

It is true that awareness has now been created, and I think that will continue. In fact, if this were to be moved forward with the 1 July 1997 commencement date, a lot of practitioners out there would sigh a sigh of relief having been given a brief reprieve. But they will not miss the opportunity to commit to that future date.

CHAIR—I think that point has been made very clear. Our job is to review the legislation, to report and recommend to government. But in the final analysis, what the government does and whether it accepts those recommendations is a matter of government policy.

We jumped ahead on the agenda of what we agreed to talk about. We are really covering matters now that we were to cover at 2 o'clock. We might as well cover the rest of the topic. We have covered retrospectivity of the legislation for taxpayers and companies using substituted accounting periods and—

Mr Nolan—We could come back to substituted accounting periods because I do not know that that has been addressed.

CHAIR—Should we continue and cover that whole topic now, and come back to the drafting provisions of it later? If we continue with that topic now, we might talk about the substituted accounting periods, and also the timetable for rewriting public and private rulings. Would you like to speak on that, Brian?

Mr Nolan—On the rulings?

CHAIR—No. The substituted accounting periods.

Mr Nolan—Next week, I understand, the committee will be talking with the mining industry present, and I know that that is an issue that they will have something to say about. But I just wanted to make this point: the issue here is about early balancing companies whose year might start, say, on 1 January instead of 1 July. These provisions will apply to them six months earlier than they will for the rest of the corporate sector and the community generally. It has been suggested that there is some additional unfairness for them if that is the case.

I make two points: firstly, overwhelmingly the material in the bills either makes no substantive change or makes positive changes. I wonder whether companies who knew about the positive changes and thought these things through would really want to miss the extra six months.

The other thing is that, generally, early balancing companies—and late balancing companies for that matter—are caught by the swings and roundabouts of tax law changes. If you take just the very fundamental thing of a change in the company tax rate: if the company tax rate goes up, then an early balancing company pays earlier; a late balancing company gets the benefit. The thing is reversed if the tax rate goes down. But they are not the sorts of things that are normally taken into account in tax law. It is understood that a 1 July year is the standard year and, for those who balance early or late, then things that come along and change the law on an income year basis can sometimes benefit them, can sometimes go in the other direction. But it is just part and parcel of being a non-standard balancer. So I just thought that was a point worth recording. But essentially these changes are positive and they ought to be thanking us for them.

Mr Bryant—Just to respond to that, the concern is that they are not necessarily all positive. And there is a uniqueness about this. It is not fair to try to compare this and use the analogy of a corporate rate change or even some new policy initiative of government. This is not about those things; this is about simply rewriting. But there is the concern that there might be some slippage or even the potential to slightly change interpretations or loss of precedence, and it would just seem inappropriate for that to apply retrospectively.

Mr Petersson—There was a further issue that we raised in the original joint submission. It was recommendation 25 in relation to entities with a substitute accounting period. That was that we thought that there was a defect in the bill that did not allow existing entities with substitute accounting periods to retain that status under the new legislation. The TLIP's response to that did not actually address that issue so, to us, that is an issue which still needs to be addressed in the 1996 bill.

ACTING CHAIR (Mr Griffin)—Does anyone else want to comment on that at this stage?

Senator WATSON—An issue of quality assurance was raised by Mr Ian Langford-Brown and also taken up by Mr Geoff Petersson. What was the reason that there was no formal response to the Institute of Chartered Accountants submission? It was in January, I think?

Mr Langford-Brown—Yes, it was the joint submission from the four bodies.

Senator WATSON—You indicated some issues had been taken up, others ignored.

Mr Nolan—There are a couple of points in that. The previous submissions were to a previous committee. When the parliament was prorogued, as you know, that business terminated but we understood the position to be that material that we had provided to the previous committee through the secretariat was effectively covered by the privileges of the parliament and that we could not make our responses publicly available until they had been formally received in a hearing of the committee. That is the advice that we had and that is the way in which we have acted.

It was not in any sense a desire on our part to not communicate our views and in fact our submissions have now all been made available because this committee having been reconstituted has received that evidence and it has now been published and distributed, so there was no discourtesy or lack of action on our part. We did respond to all those submissions but I guess we were just caught in that hiatus period.

The other suggestion that came through from what Mr Petersson said was that somehow we have lacked quality control because, whilst our initial responses suggested that we were not going to take up some of the points that they made, in fact, on reflection, we have taken up rather more of them. Well, I do not know that I can say much more than that I would have thought that we would be fairly open to criticism if, having said we would take up some points, we had declined to do so but to still get criticised for taking up more of them is perhaps just a bit of an overstatement.

Mr Petersson—Mr Chairman, can I respond to that because I certainly did make the point that the initial responses were dismissive of a number of our suggestions. I suppose the comment on that is that, basically, the recommendations we made were designed to say that we thought there was an uncertainty in a particular area and we were suggesting that perhaps it needed to be looked at in terms of making it clearer in the rewrite. So for the initial responses to be almost uniformally rejecting our suggestions suggested to us that there was a certain mind-set at play that did not seem to be particularly productive.

My comment about quality control, however, was that, in instances where recommendations that we had made had been agreed to, not all of those had been picked up in the 1996 bill. So that obviously is a quality control issue rather than the first point.

CHAIR—I think that point is made. Can we get on to the timetable for rewriting public and private rulings. It is a matter that we discussed in private here before the public

meeting and the members of the committee expressed some concerns so I am keen to hear what the private sector says.

Mr Phillips—I have a special case to plead in this regard as far as I wear another hat in holding an appointment from the commissioner to a public rulings panel. So I am aware of some of the indigestion that is caused in actually rewriting these rulings. However, at the time of self-assessment, there was an understanding generally afoot that the income tax rulings which did not have binding effect would be rewritten so as to have binding effect for the protection of taxpayers. That process has been in train now for four years, I think. I could not exactly provide the percentage of completion but, let us say, if it is 60 per cent complete, there is probably 40 per cent to go. Certainly, the bulk of the old rulings that have no binding effect other than the goodwill of the commissioner are substantial in quantity and the scope of their operation.

From that perspective then, I think that a regimen of rewriting all of the rulings, which now run to three volumes or four volumes or something of that sort, into the format of the new law is something that is not going to be quickly achieved; it is going to be a very protracted operation indeed. To that extent, I endorse the inclusion in the Consequential Amendments Bill, I think it is, of amendments to the Taxation Administration Act to preserve the operation of binding rulings under the prior law in their operation in the next law.

Just how that will work in practice is unclear, it being hard to point to examples where you can say, `Well, here is a ruling that is going to work perfectly well' or `Here is a ruling that is going to work less satisfactorily.' There will, in fact, be some difficulties in that transition but I think the proposition that is put in the amendments is a sound interim solution. Nevertheless, the embarking on progressive rewriting of the rulings is a project that must be undertaken, I think, by the ATO once this becomes law. As to the time frame, I doubt that I will live to see its completion.

Senator WATSON—That would be all right, provided that you used the previous suggestion that taxpayers had the benefit in the event of any inconsistency between the old law and the new law; but we do not have that. We have an internal inconsistency that once the first tranche is legislated, it becomes the law and the previous act does not apply; whereas the previous rulings relating to the old act still apply, but in relation now to the new act. I see an internal inconsistency, but I recognise that it may be necessary. If you are going to adopt that approach, I must say I am attracted by the concept that, if there is an internal inconsistency, the taxpayers have the benefit of the old act until the job is completed. If you did that, questions of warehousing for too long could be overcome.

Mr Phillips—Are you saying expressly the benefit of the old act, as distinct from rulings under the old act, Senator Watson?

Senator WATSON—This has highlighted a new problem. Instead of indefinitely extending your warehousing concept, what if taxpayers had the benefit, in the event of an inconsistency between the old act and the new act, of picking up the advantage of using either,

until the self-assessment project is completed? That would obviously overcome one of your time problems, which is one of the central features that we are looking at today.

Mr Phillips—By way of response, I would have to say that that certainly places a discipline upon the TLIP team to ensure that the rewrite is as precise and accurate as it may be. Applying that to the ruling matter, however, it seems to me that if you have an existing ruling under the 1936 act that says black is white and that taxpayers have, if you like, the benefit of a gloss on the legislation—and there are very few of those—then it would seem to me that the taxpayer under the 1996 act should continue to have the benefit of that interpretation. If, conversely, there is a ruling that takes a stringent view of the 1936 act, potentially adverse to the taxpayer, then it seems to me that the taxpayer under the 1996 act is in no worse position: because, if that ruling is in fact contrary to law, it is not binding on him to that extent.

Mr Back—I would just like to talk generally about the timetable for rulings. Shortly after this project started—which was, by the way, in July 1994 and not in November 1993; we have only been going two years—I was given the statistic that there were one million words in the Income Tax Assessment Act and one million words of ruling on the legislation. So it became quite clear that the rewriting of the rulings, a very important project, was not something that could be embraced within our project resources.

We have always been conscious of the absolute need to ensure that those rulings be rewritten as quickly as possible after the introduction of the legislation, so that taxpayers have the confidence of knowing what their position is. We have had discussions with the tax office, and they are in the process of setting up a process and a team to review those rulings. I understand that in September they will be taking a proposal to what we call our tax liaison group, which is the interface between the tax office and the professionals. It is also proposed that there be a timetable agreed for the rewriting of the rulings, within the process to be proposed in September, and that the timetable be agreed by December—which of course assumes some sort of passage of the legislation by December. Of course, one cannot enter into a timetable.

Mr Beddall, I see that you are shaking your head. I would just like to raise a point with you. You said that, since the legislation was introduced into the House of Representatives in the last sittings, it could not be passed by the Senate in the next sitting.

Mr BEDDALL—I said `until'. It could go through in December, but there is no guarantee.

Mr Back—No; there is never any guarantee. I am sorry: I thought you were excluding the possibility of the legislation—

Mr BEDDALL—No.

Mr Back—As long as it gets to the Senate two-thirds of the way through the next

sitting—

Mr BEDDALL—That is why the government introduced it in the last week of sitting.

Mr Back—That is right. To summarise, in September a process for rewriting the rulings will be given to the tax liaison group, with agreement on a timetable by December, assuming passage.

Mr Langford-Brown—I am delighted to hear that, because at the last meeting of the TLG we were told there was no such project coming forward, so I am absolutely delighted to hear that. From my point of view, the operative word is one that Mr Phillips referred to. The worst thing we can live with is uncertainty; the best thing today, given the constraints, is some form of positive transition. Therefore, it is critical to all our taxpayers who live and work under a self-assessment system, with reasonably arguable positions being the key words which are being introduced—and this is my only plea—to ensure that there is some more positive scheme than we have heard of before. What we have just heard may well be a positive answer, and I sincerely hope so, but I do urge that we ensure that something is in place, because every single word that you change—and I am not having a crack at the team, because I understand the problems—does put a new gloss on every piece of legislation we get.

Mr Back—I would emphasise that underpinning the process of rewriting rulings is the need for the tax office and the industry to agree on the relative priorities between rewriting the existing rulings and the need for the commissioner to provide new interpretations of existing and new law.

Senator WATSON—It does seem that the tax office is being a little tardy in bringing the rulings system up to date in light of the work that has been done by the tax law improvement project. There does appear to have been—in the past, certainly—a lack of liaison between the TLIP and the rulings process, otherwise we would have the two working in tandem—or certainly in parallel, I would hope, in the future.

Mr Nolan—I could not agree with the suggestion that the rulings program has been tardy. Perhaps Mr Phillips could express a view about that, since he is involved in it; but at various times I have heard people more protesting that they are drowning in rulings rather than lacking them. I hope we can do something about that.

Mr Petersson—Yes. In terms of the TLIP's formal response to this committee, I was quite heartened by its positive nature, in terms of setting up that process, quite distinct from the rejection of that suggestion at the January hearing. It may well be that the process is likely to fall down in practice in that, whilst there is an intention to rewrite and to indicate which rulings should continue to operate and which ones need to be rewritten to be given the support and binding force by the commissioner, the process tends to have a very low priority: whilst the rewrite is moving forward, the review process for existing rulings will tend not to move forward.

CHAIR—I will ask a question now. I have been a believer that the *Tax Pack* should come out before the financial year, not after it, so that people can properly plan their tax affairs. Having said that, what effect will this TLIP project have on people who use the *Tax Pack*?

Mr Nolan—Last year, of course, the main change that we produced was to rewrite the substantiation rules, and they were reflected in the Tax Pack. I am sure that, having clearer rules in the law made the preparation of that part of the Tax Pack material easier to prepare. I hope that was recognised as an improvement, both for those preparing Tax Pack and for those who receive it and use it.

Tax Pack is mainly about salary and wage earners with modest amounts of investment income who choose to prepare their own tax returns. They are very much a minority in the community. I hope that minority will start to grow a little as the law becomes easier for them to use, but I suppose some of it is to do with the way in which you want to spend your leisure hours as well.

Much of what we are doing and will do over the next couple of years will not really bear on Tax Pack. The international tax rules, the company Tax rewrites, and so on, will not have anything to do with that but there are other areas—rewrite of the superannuation rules, for example—where there will be an impact. But, by and large, what we are doing will improve the lot of tax agents, tax advisers and business a good deal more than it will those who use Tax Pack.

CHAIR—Thank you. In the period between now and lunch, we will go back to the pre-lunch agenda and general drafting issues. On the ease of using the new numbering system, for example: are the gaps between division and clause numbers adequate? Will the numbering system cope over time? Does anyone want to start that discussion?

Senator WATSON—What about the introduction of a decimal system?

Mr Petersson—Can I just make a general comment?

CHAIR—Yes.

Mr Petersson—With the new numbering system, although it has got some familiarity problems—we do not know whether to call it section `26 dash 30' or `26-30' and those sorts of issues—there is no doubt that it is a vast improvement over what we currently have. In going through the 1996 bill we notice that a new provision was added—which, incidentally, was not referred to in the new explanatory memorandum. In fact, the section number is wrong. There are two section 900-10s, for example, whereas it should in fact be 900-12, going by a later footnote to another provision. That suggests that that is a quality control issue rather than a problem with the new numbering, but it certainly illustrates how you can slot in new sections, if you get the right numbering, with some ease.

CHAIR—Can you quote a page number for me in the bill?

Mr Phillips—Pages 314 and 315.

Mr Petersson—You can see we have got two section 900-10s.

CHAIR—Was this picked up by the TLIP team or is this the first you have heard of it?

Mr Nolan—We had known that, Mr Chairman. It would be corrected by a clerk's amendment, I understand.

CHAIR—Right. Does anyone else wish to comment on the ease of the new numbering system?

Ms Carey—I would concur with Mr Petersson that the actual numbering style of the new act is far clearer than what we have been used to with the 1936 act. Anything would have been preferable to the present numbering system. It certainly is easier to work with and it is easier to follow the numbering system and the general style. I think most commentators who have expressed a view on TLIP have basically concurred with that view.

CHAIR—You can see this as an improvement but could it be better? That is the real point, is it not?

Mr Petersson—It could be better if the new law were not going to be so bulky. In terms of our mind-set, we are potentially looking at a 4,000-page act. Again, that is extrapolating, perhaps, not too cautiously. If what we are looking at is a 4,000-page act, it is hard to see whether there can be further improvements in that numbering system.

Mr GRIFFIN—Is it the general consensus that, as far as it goes, it is the best numbering system available?

Ms Carey—It is better than what we presently have.

Mr GRIFFIN—I think the general view would be that, given the state of the 1936 act, any rewrite has to improve it. The question is whether it is the best way or whether there are other ways we can do it. Is this the only option you have seen or have you not thought about the question?

Mr Langford-Brown—I have not heard anybody suggest another one. People seem to be reasonably comfortable with what is there.

Mr Phillips—I do not think there is any particular difficulty with the section numbering system. The focus of concern is much more on the words rather than on the numbers. Despite that, I think there are examples where the cross-referencing could be

improved. In general, I think people using the legislation are more accustomed and react better to references to sections rather than to chapters and divisions.

The classical example in the 1936 act is the reference in section 160ZZS to the definition of 'majority underlying interests'. Every time you approach it you have to ferret around to find the section because it is a reference to a subdivision of a division 3 of a part III. If it was a direction to a specific section it would be a good deal easier to focus on. Whilst this legislation, by and large, addresses that sort of problem, on this very page we are looking at, 316, you will find that the direction to finding out about work expenses is in subdivision 900-B which happens to be over the page but perhaps it could be more immediately referenced as section 900-15, whatever. However, that is a very small contribution to the debate. I do not think those issues should impede the passage of the legislation.

Senator WATSON—Has the capitalisation improved the quality of the cross-referencing?

Mr Petersson—I am sorry?

Senator WATSON—Would applying, say, a three-digit decimal approach improve it?

Mr Petersson—There is, in fact, a three-digit decimal approach. For example, in the dictionary, there is section 950-100. So there is potentially one million sections before you start to get into letters if the gaps are big enough.

Mr Nolan—I think it is worth noting that one of the reasons for using the system that we have with dashes rather than decimal points is to make it clear that it really is not a decimal system, that we are leaving the flexibility, the capacity for inserting additional material in unspecified amounts. This system allows that in a way that perhaps is not quite as conveniently done with a decimal system.

Senator WATSON—With respect, a table of the sections 900-5, under the system that I have just proposed, would read 900-005. So there is no fundamental change.

Mr BEDDALL—What if it was 900-05 rather than two zero and then five?

Mr Reid—There has been quite a lot of work done in Parliamentary Counsel over the last 10 years or so, exploring different numbering systems that are used in other parts of the world. The legislation of a number of the Canadian provinces—and, possibly, some federal legislation there—uses a decimal numbering system for insertions, to do the job that we currently do with letter insertions. If you had to insert a section between, say, sections 10 and 11, in certain parts of Canada you would call it section 10.5 rather than section 10A.

That has merit to it, but it is really addressing a different issue from the one that we are looking at here. It is an issue that is relevant to this system. But the other thing that came out of the work that we did on that was that people's familiarity with the actual decimal ordering is

not as great as you would expect. In other words, it is not obvious to some people that section 9.1 would come ahead of section 9.10, because the ordering is based on a different principle.

The principle that we have used here is simply that of numerical order of sections after the dash. If we got to the point where we had a section 900-10 and a 900-11, we would insert between those a 900-10A. So we would use the same alphabetical system as we currently use. But the point about leaving the gaps is that will not be required for a much longer time. Also, because we have grouped the section numbers by division, you can actually, by inserting a new division, create an arbitrarily large number of section numbers, just for the cost of one extra division number. So the requirement to use those alphabetical numbers, as are common in the present act, will be very much reduced.

CHAIR—Are there any comments on the use of the direct and plain language?

Senator WATSON—The language is plain enough, but the implications are somewhat uncertain for the taxpayer. Let us look at section 900-195, which says:
Not doing something necessary to follow the rules of this Division does not affect your right to a deduction if the nature and quality of the evidence you have to substantiate your claim satisfies the Commissioner.
But section 900-185 says, `if you do not comply with a notice. . . '. All the commissioner does is send you a notice. That really rules out the benefits that you might have in 900-195 because, if the commissioner is at all in doubt, from a practical point of view, he will send you the notice. So 900-195 is not going to help you at all.

The words are quite clear. But it creates, as somebody said, a lot of uncertainty as to where the taxpayer stands. All the commissioner is going to do is issue you with a notice under section 900-185. You think you can rely on 900-195, and say, `Let us go out and look at it. Here is the item of equipment in hand and there is my bank account item.' If the commissioner is not satisfied with it, he just gives you that notice. While the words are very clear, there is still that uncertainty, which we do not have seemed to have resolved in this new rewrite.

Mr Nolan—I would like to make a couple of points. What Senator Watson is phrasing is probably at a different level to your general point about the kind of language being used. It is more a point of substance.

Senator WATSON—I am satisfied with the language.

Mr Nolan—Yes. That is the point I was making. I just mention that this is part of the substantiation rules. This bill is actually just picking up legislation that was enacted by the parliament a year or so ago, so we are not actually changing this. But we were the authors of it in that original legislation, and it is in fact a relieving discretion to take away some of the strictness of the substantiation rules and allow scope for the commissioner to relieve hard cases, if you like, where people for some reason are just unable to comply with the rules. This gives an opportunity for the commissioner to get a just outcome.

Senator WATSON—They have to say that. Why don't we say that?

CHAIR—Good question.

Senator WATSON—Because that is not how I read 900-1-95. I think we raised these sorts of issues during the debate on the substantiation rules.

Mr Back—It was made quite clear at that time that in fact this was a key measure in actually getting the substantiation provisions passed, that this opened up the ability for taxpayers to move beyond the strict letter of the law in circumstances where it was just not reasonable to expect compliance with the black letter, and this was measured—

Senator WATSON—Why don't we say that? Where it is unreasonable there is a fall-back position.

Mr Back—Senator, in fact we went beyond that because—

CHAIR—The heading says, `Commissioner's discretion to review failure to substantiate.'

Mr Back—In fact, this discretion, the change that we made with the substantiation measures was to remove any limitations on actually accessing this provision, so it was not to try and limit people getting in by imposing any sort of test, it was a blanket measure to get in there. The way in which you recast that you might even be limiting its application.

CHAIR—Right. We have got two minutes before we have to stop. Senator Watson, do you want to pursue that?

Senator WATSON—Yes, I do, actually.

Mr Bryant—We got around the evangelist case. Do you remember that one?

Senator WATSON—Yes, I do.

Mr Bryant—He had a fair dinkum claim but he didn't have the piece of paper, so this helps that.

Senator WATSON—Yes.

Mr Petersson—Mr Chairman, there is a question with 900-195 as to whether the relieving of the requirement as to substantiation should of itself be sufficient to give you the deduction, whereas as 900-195 is drafted you have to actually satisfy the commissioner that you are entitled to the deduction as well. I think that, prior to this rewritten version of this provision, the commissioner was empowered to relieve you of the obligation to have substantiation, and once he did that you were basically able to claim the deduction at that point. This is an example where on the face of it it is plain language but it can give rise to

subtle changes in meaning.

Mr Phillips—Just in support of that observation of Mr Petersson's, Mr Chairman, the case of the air hostess who was seeking deductions of various expenses reached the Federal Court—with the support of industry bodies, I believe—and at that point the taxpayer was rather surprised by a challenge from the commissioner's counsel of actually proving that the money had been spent on the stockings, or whatever it was. The judge in the case was able to sidestep the issue. I think the taxpayer probably had reasonably good records, but it is just an illustration of how what I have described in our submission as the mentality of a Victorian petty cashier permeates these substantiation provisions. If one of the objectives is ease of compliance and reduction in compliance costs, some further attention is, I think, warranted to these substantiation issues. It should not be a matter of saying, `Okay, you have satisfied the substantiation provisions—now prove your deduction has occurred so as to be allowable.'

CHAIR—Right. I think we will stop there now and break for lunch. We will start after lunch with Mr Soutter making his statement, as everybody else has done.

Luncheon adjournment

CHAIR—I invite Mr Soutter to give his introductory remarks.

Mr Soutter—I will be brief because, as has no doubt been explained to the committee, the Business Council works very closely in conjunction with the Corporate Tax Association on this issue. I expect that many of the views that I would like to present to you have probably already been covered in their introductory remarks. Firstly, our thanks for giving the Business Council the opportunity to participate in this review of the Income Tax Assessment Bill 1996.

From our point of view, in an overall sense the most important issue that surrounds the whole TLIP is the ability of the process to maintain the confidence of taxpayers in its outcome, both in the terms of the quality of its work and also in its fairness. In this regard, I would just like to raise a couple of issues.

From the point of view of the business council, given the delays that appear to have occurred in bringing legislation before parliament, it is apparent to us that the operative date for the legislation cannot be 1 July 1996 but must be, at a minimum, 1 July 1997. It would be quite wrong for legislation of this nature to be brought in with any sort of retrospective impact. It is not legislation designed to catch up with some massive tax rort; this is legislation designed to improve the operation of the tax law for the benefit of all Australians. Therefore, we believe that any suggestion—no matter how well intended—that the law should have retrospective impact is just not acceptable.

Equally we believe that the TLIP should give due weight to the prospect of any other unintended consequences that might arise as a result of its work. We would suggest, for instance, that one way of guarding against this would be that for a period the 1936 act could operate in parallel with the new law, at least in terms of taxpayers having access to both. I open that up more as a point that I believe it is important in this process that taxpayer confidence be maintained.

One of the issues which I think has been traversed this morning before I arrived is the starting date. From a Business Council point of view, it certainly cannot be 1 July 1996; it should, at a minimum, be 1 July 1997. That in turn, therefore throws open for some question whether the starting dates for the legislation as a whole should be deferred and it should all be brought in—if you like—in one big bang or possibly in a couple of major tranches rather than in successive tranches.

CHAIR—Does anybody from the TLIP team want to comment on Mr Soutter's statement?

Mr Nolan—The points that Mr Soutter made have been pretty much discussed this morning.

Senator WATSON—I have a question, Mr Soutter. There are obviously major problems with the one big bang approach because of the sequential nature of the delivery of the tax law improvement process in terms of putting the legislation forward. You have major difficulties in a legislative sense of having an awful lot of duplication. If we adopt the 1 July 1997 approach, why would there be the necessity to give taxpayers the benefit of working either under the old act or the new act? Surely by that time we would have ironed out all the potential problems.

Mr Soutter—I suspect not, Senator. My experience, at least with some of my members, is that they tend not to focus on the realities of a law until such time as they are faced with strictly complying with it. In other words, while you could have the law enacted and warehoused, for argument's sake, for some considerable period, any problems with the law, or a number of problems, would probably not come to be sighted until such time as people actually tried to apply the law to their particular circumstances. At that point they may then discover that there is a distinction between how it will apply under the new law and how it would apply under the 1936 act.

I am not necessarily suggesting entirely that I am convinced that the two should be run in parallel, but what I am saying is that the process should give considerable weight to how unintended consequences are dealt with, and dealt with expeditiously and in a way which gives the taxpayer total confidence that they will be dealt with so the taxpayer will be no worse off than they were under the 1936 law.

Senator WATSON—Maybe the Business Council has the responsibility to go out and educate its members about the need to get to grips with the new law rather than, as you say, waiting until they have to come to a real life situation, otherwise they will just put it off and off. We do need deadlines to expedite the implementation of this whole program.

Mr Bryant—Can I just make one comment in response to that, Senator. Martin, Ian and I, with varying degrees of effort, have been endeavouring to do exactly that—to lift the profile on the business side—with significant difficulty.

Mr Nolan—Could I support that, Mr Chairman. The Corporate Tax Association has run a number of seminars and conferences where the tax law improvement project has been featured and I think we should acknowledge that. I would like to ask Martin Soutter a little about this option to choose between the 1936 act and the 1996 act as it is developing, because that is something of a new slant on the discussion this morning.

I wonder whether that option had been thought through in any detail. For example, would it be a choice that people would have to make across the board so that they would use either the 1936 act or the 1996 act, to the extent that they cover the same ground, or would it be an option where you would pick and choose between provisions, some that you thought were favourable under the one and some under the other? I am just trying to get a sense of what is implied in this.

Mr Phillips—It seems to me that really what happens is that you have got a taxpayer who is determining his taxable income to be X and in order to support that, he has to point to a trail whereby he identifies particular items as assessable income or allowable deductions. If it happens to be that expense A is allowable only under the 1996 act, he takes that track to justify that particular outcome, and if it happens to be that expense B is allowable under the 1936 act, or a better outcome is available under the 1936 act, he would be allowed to follow that trail through.

That is not really such a radical proposal when you consider that that is not very far away from what is happening now. If, indeed, you have got a taxpayer who has incurred a bad debt, if the bill is passed in its present form there is a choice, if you like, between a deduction available under section 8-1 for the ordinary business outgoing or under section 63 of the 1936 act, because it either gives you a deduction for your bad debt, wearing different hats if you like, and it is a matter of the taxpayer then, in terms of section 8-10, picking that section that is the most appropriate to avoid the double deduction. The parallel operation perhaps contemplates little more than some liberality in terms of the exercise of the choice as to which section is to be used as the basis of the claim.

Senator WATSON—I accept that, Mr Chairman, if you had your implementation date 1 July 1996. But if you are going to push out your implementation date to 1997 I think, perhaps, the so-called unintended consequences and problems of definition should have been resolved by that stage. That is why I said you might have to go back to your members to flush out some of these issues. Mr Soutter, can you put on the table some of these unintended consequences that you are talking about so that we can try and address them?

Mr Soutter—In relation to the second part of your question, the unintended consequences to a certain extent will only be discovered with the effluxion of time. But to take a step back, it is human nature, in my experience in business, that no matter how hard we try to convince our members that they should look at these issues—and, indeed, we may well in this process flush out a number of important issues that need to be addressed—the fact is that it is only when you start to apply them to real life tax circumstances that some of the

unintended consequences will spring up. I hope that if the whole job has been done properly these will not be severe. They will be unintended consequences capable of being addressed relatively easily. But, nonetheless, they tend to only appear when you have to apply them in real circumstances. I am afraid to say in the pressures of business today people just simply do not have that much time, if you like, to game plan two different tax returns until they are actually confronted with the situation of having to prepare and file a return for a particular year.

Mr Petersson—I think there may be an example of the kind of unintended consequence that Martin Soutter is talking about in 6-5(4) that talks about the concept of derivation. That section was recast and repositioned from the 1995 bill, but it now talks about, if you like, a new concept that you are taken to have received the amount as soon as it is applied or dealt with in any way on your behalf or as you direct.

It seems to be contemplating that derivation involves receipt. Under the current law that is not clearly the requirement for derivation of income, but this is an example of where recasting a provision in a different way and creating, if you like, a concept of derivation requiring receipt could give rise to a problem in practice.

Mr Reid—In fact the reason that we recast it was precisely because receipt is not the only mode of derivation and the rule is only to apply to the extent that receipt is the mode of derivation.

Mr Phillips—I would be in support of the change that was made from 6-5(2) of the previous bill, both in where it is located within the legislation and with the emphasis that is now placed on the concept of derivation in the context of receipt. However, whilst I am speaking I cannot help but have a grumble and that is that the comparable provision in 6-10, the next section, which deals with statutory income, has not been the subject of those beneficial changes or what I see as beneficial changes.

Mr Reid—I would submit that the effect of 6-10(3) is exactly the same because it talks about an amount that would be statutory income, apart from the fact that you have not received it. So, in other words, if receipt is the only thing that is missing from turning it into statutory income, then this provision applies. But if the basis of it becoming statutory income is something other than receipt then the subsection has no operation.

Mr Bryant—Mr Chairman, I will just make a comment because when these blokes start around this, they will go on for days. I have been privy to that. It really goes to the heart of the point we are trying to make. In essence, this has relevance in a fairly significant area of disputation of salary sacrifice and people taking perhaps part of their remuneration in superannuation form—a major dispute. Yet in the midst of that, before that is adequately resolved, we have a change in the form of words. As you will hear next week, we have the same sort of thing in some of the mining areas. The point is when these guys get together it is very difficult to know precisely what it is that we have got on our plate.

What we are really saying to you, Senator, is that the two points that you make are different, that you must give people the opportunity to prepare for this in advance, even in

terms of getting their compliance systems and the like. It is not acceptable to be doing this with this concept of looking back over your shoulder. That is just dealing with the things that we are uncertain about at the moment that we have identified. The secondary point is to run them in tandem with those things that we are not even aware of yet—and they will be there.

Senator WATSON—How long do you want it to be run in tandem? What sort of time period are you looking at?

Mr Bryant—We are talking about, say, a further three years, leaving aside Geoff's 25—and I will not be around for that, probably, because he is a lot younger than me. That would not be an unreasonable time frame.

Mr Petersson—Do you mean by that until such time as the task is completed?

Mr Bryant—Essentially.

Mr Nolan—We have all acknowledged that busy people do not really get down to tors on new legislation until it is about to affect them. If you keep on stacking up until some time still several years away the point where the new act is going to bear on people—and I will say `so-called' advisedly because the points raised, we would say, are not in that category, but we acknowledge that they can happen—people are not going to start to search for so-called unintended or real unintended consequences until that point further down the track and then you are going to have to have amendments and corrections after that date. You are really going to postpone the—

Mr Bryant—Mr Chairman, that is not quite the way it unfolds. People do not sit there looking for unintended consequences so much as looking to see what the law means. If—taking your own words earlier today—there are enhancements and opportunities being offered by this, people will invest time and effort to look for them. We are all a bit single-minded when it comes to this. But they will look for those and, if there are going to be some advantages, they will take them, but they want a fail-safe at the same time. I think through that process the unintended will emerge.

Mr Gaylard—If we have a situation where by far the majority of changes are favourable, people should, you would think, want to get those changes in as quickly as possible. But just in case there are one or two things that are unintentional and work adversely, which will be fixed anyway, we are prepared to go through that enormous disadvantage. I know we spent a lot of time talking about implementation at the last hearing; to delay is going to prolong the use of two acts. We really have got to stand up and grasp the point. What do we do about the public company tracing rules? Do we delay those till 1 July 1997? People might want to see that law in operation earlier. You have just got to, I think, get to a situation where we say, `Enough is enough; let's get into it.'

The other thing that I find we are doing is that we are going back and changing positions. I know you would say that maybe that is because of quality control issues and things

like that. But you have been a supporter, Bob—and I think Martin was a supporter previously—of progressive implementation. The start date issue was not an issue there. But you were a supporter of that and you are now no longer a supporter. Ian Langford-Brown has certainly always been against progressive implementation. He has never changed his position. We have spent so much time debating all of these issues that I think we are going around in a circle. Most of the changes, albeit for four mining issues, are largely in the taxpayers' favour. There will be one or two unintended consequences, and people are going to worry about them and all that sort of thing. If these benefits are wrapped up in the new law, why not take them now? Why not go for it? Why not make that quantum leap and say, `Let's get into it'?

Mr Bryant—The benefits that you talk about, Simon, are not overly dramatic in the sense of reducing my taxable income and that sort of thing. It might help me get an answer a bit more readily. But, in the main, they are of that type and they do go to removing uncertainty rather than being a major saving in compliance costs. Another question about changing our view partly comes about because of recent developments. As we are getting closer to implementation, some of our confidence has been a little dented.

Mr Nolan—Basically, you are talking about the fear of the unknown. We can produce 10 pages of favourable changes that are in the law at the moment. You are saying that they are all very well and good but they are not going to change the world. There might be something that will, in the other direction. You have not found anything like that, and I suspect that you will not.

Mr Bryant—That is unfair. I think we have.

Mr Nolan—Even if you do, they will be corrected.

Mr Soutter—The Business Council of Australia was certainly in favour of the progressive implementation of the changes. To the extent that we have changed our position is just simply that we are not opposed to the retrospective implementation of the changes. I forgot to bring my copy of the prints with me. Machiavelli had a few words to say about change. When you implement change, the things remembered will be the things that went wrong, not the things that went right.

The Business Council of Australia wants to see taxpayer confidence maintained in this process. The reality is that, for every 10 things you get right, if you get one thing wrong, they will remember the one thing that went wrong. Therefore, it is important that, where things do go wrong—and they will—a process be in place to ensure that the taxpayer can get very speedy redress. Hence, running the two acts in parallel would give a degree, for a limited period, of taxpayer confidence.

Senator WATSON—Are you asking us to have this parallel system? Are you asking for 1 July 1997 implementation?

Mr Soutter—At this stage, I would have to say that I have not run through our

people exactly how long. We do not know exactly when the new changes are going to be implemented. We are talking about a bit of a vacuum. The two should be related, in a sense.

CHAIR—How feasible would it be to have both acts running in tandem for a time?

Mr Nolan—We have not really thought that through in detail. I was asked whether we would have to produce two copies of the Tax Pack each year. I am not sure. I would hate to think that that would be the outcome. You would need to think through the implications of that. We will try to give it some thought.

Mr GRIFFIN—How would you remedy any problems that might exist? Has anyone given any thought to what sort of process might be used? Would some subset from the Australian Taxation Office take up any queries when they were raised and endeavour to resolve them? Has anyone thought about how that might be done in order to ensure confidence in the circumstances?

Mr Bryant—We would be looking for a strong commitment from the government of the day that it would be very alert to that possibility. There is a role, maybe for a committee such as this. There needs to be some referral point to flag these things so that nothing can come adrift in some interregnum period before it gets addressed.

Mr Langford-Brown—Mr Griffin's point is very valid. Already in existence is a whole compendium of issues that have been identified and need to be addressed in working with the TLIP team and the externals. Senator Short is thinking through possible ways of addressing that. It is becoming very obvious that it is a critical part of the process which must come into play very quickly.

One thing that is concerning me a little—I am not quite sure how it will come into play—is the two acts running in parallel. We have certain issues in the 1996 bill relating to company losses. Mr Gaylard has already referred to the public company tracing provisions, which is a very worthwhile proposition. It could be that that is a perfect example of why you may need to have two bills running in parallel until the totality of company losses is put on the table and everybody has had an opportunity to make sure that they dovetail properly.

CHAIR—I think the committee gets the point that there is a problem. As MPs, we all know that very few people are ringing up to say they have no problems.

Senator WATSON—I would like Mr Soutter or Mr Phillips to indicate to the committee the areas where small `p' policy issues could be addressed by the committee with a view to reducing some of the compliance costs. If we pick this issue up, at the end of the day we might have to consider some sort of trade-off between your fear of one or two minor unintended consequences plus some very real advances in terms of some small policy issues that will obviously work in your favour. You might like to take that on notice.

Mr Phillips—Let us deal with it now. Page 118 and the following six pages of the bill

set out the various bases on which Australian taxpayers write off capital outlays over the useful life of those assets. The reason for each of these headings is that there are subtle differences to be found in each of these categories. A grapevine is written off in a different way to land degradation. You would appreciate that a silo considered as an item of plant would be written off somewhat differently from the way you would write off a silo if it were situated somewhere else.

Senator WATSON—You would write off an apple tree over a longer period than a grapevine?

Mr Phillips—Precisely. The underlying principle is that the capital cost should be allowed as the deduction over the useful life of that asset to the taxpayer. That is almost a summation of the principle. It may be appropriate, in the wisdom of parliament, to allow particular concessions as an incentive for investment in particular areas, but that is a discrete decision. There are nuances over whether a balancing charge arises when the asset changes hands. It is a demonstration of the capacity of the parliamentary draftsman to be an original thinker. That is one example.

Page 160 or thereabouts is a catalogue of the circumstances in which various building are permitted to be written off. You will find a great deal of detailed legislation there. Some of it refers to something called industrial activities, which you will find referred to on pages 164 and 165.

Again, a great deal of—and I was going to say `nitpicking precision', but Mr Bryant does not like the word `nitpicking', so we will not use that—agony has to be put in by the taxpayer to decide whether or not they are actually conducting an industrial activity, and so it goes forward. So there are two examples, I suggest, from the existing legislation.

It is fair to say that one of the great attributes of this piece of legislation that is here in our hands is that it does highlight those sorts of issues. It brings these things together in a place where you can see them and it is then competent for parliament to say, `Goodness, look what we have here.' And when you look at the depreciation provisions that are still coming, that will be even more apparent.

Mr Nolan—Those points demonstrate very well the point I was making earlier this morning about how, when you rewrite the law and set it out well, policy differences and distinctions emerge in a way that cannot be seen in the existing law. Then governments can make judgments about whether they want to remove some of the inconsistencies or differences of treatment. Almost inevitably in all of the cases where you have these sorts of tables, they reflect policy decisions, economic decisions, taken over many years with different approaches being taken. Many of them are in fact concessional things. A lot of the complexity of the law is in fact because concessional rates of write-off or other things of that kind have been given.

When we talk about how you can streamline and make the law more consistent, that can go in two ways. Simon often makes this point that when there is ever a proposition that will go in the direction of extending a concession to make two things the same, there will be

almost unanimous acceptance of that but there will be a revenue cost. If it goes in the other direction, there will be a stout resistance by those who are being brought back into line where they have got a more favourable position. I understand what Ian is saying exactly, but to get consensus about who is to give away and who is to take, is going to be a very difficult task. What we are doing, however, makes all of those distinctions stand out more starkly.

Ms Carey—I think that is where it does become important. Everyone has acknowledged that those problem areas—those small `p' policy issues—are being identified but there does seem to be some process put in place so that as well as identifying them, something is actually done. They are actually progressed. And I know that the Taxation Institute and the other bodies, particularly at the last hearing of the previous committee which debated the 1995 bills, put forward the proposition that it should be this committee that take on that role.

Senator WATSON—Would it be useful if the Taxation Institute and its associated bodies which made this presentation gave us a list of the so-called small `p' policy areas and whether you could put a dollar amount on potential revenue loss, because that is the question that the government always asks.

Ms Carey—We could certainly endeavour to do that. Solely in relation to this bill?

Senator WATSON—Yes.

Ms Carey—Because, obviously, there will be similar exercises, say, in relation to the capital gains tax.

Mr BEDDALL—That is the point I was making at the start and perhaps because the improvement project team is not empowered to do that, this committee can recommend to government.

Senator WATSON—But there are going to have to be some trade-offs, I think, at the end of the day if we go down that line.

Ms Carey—We would be happy to do that. When do you need that by?

Senator WATSON—They do not want to delay the evaluation process too long.

CHAIR—How long will it take?

Mr Gaylard—About three weeks.

Ms Carey—We have already identified a number of issues.

Mr Back—There are certainly issues that can be readily identified.

Mr Gaylard—It is fair to say that that is a process that is fine as far as we are concerned. In every rewrite subproject there is a list of policy issues that are felt to be outside the scope of the project and they are being assiduously maintained. It is very hard to put revenue estimates on them. I wish Geoff all the best of good luck.

Ms Carey—Just out of curiosity, what happens to those lists?

Mr Gaylard—I am not sure, physically. They are being kept aside for dealing with. Gavin can answer that from an administrative point of view better than I can.

Mr Back—With only one completed project, substantiation of car expenses, we will prepare a compendium of all the issues that were raised with the project. It will be an explanation of our views, whether they are within or outside our terms of reference and whether we viewed them from a technical point of view. It is quite an exhaustive document and we have made it available to our consultative committee. We have referred that to those people who have responsibility for looking at policy review—that is, the tax office, in terms of administrative policy, and the Treasury, in terms of wider policy issues. It is for them to factor into their policy review processes and timetables.

Mr Gaylard—With capital gains tax, there is a very long list of policy issues some of which I hope we will pick up and others of which will be put aside. The comment has already been made that it is a great number of pages long. Those documents will be available.

Senator WATSON—We want two, one in relation to the bills before us and one in relation to bills yet to come. Mr Petersson, with the sorts of worries that you have, in terms of the uncertainties, perhaps I could be a devil's advocate, and suggest that the sorts of problems that you are worried about in the new bill were there in the old bill. It is just that the new bill has highlighted them and brought them to your attention.

Mr Petersson—To some extent, I think that is right. But I suppose, whenever you rewrite a provision, there are always unintended consequences. I think there are quite a few recent cases in the courts, and Guy's case is a good example. That was a decision in the Federal Court over the cheap tax treatment for CGT purposes of a forfeited deposit on a house purchase. The view of the tax office was that that was very clearly taxable and the full Federal Court, for its own reasons, came to the view that it was not taxable.

I suppose it comes back to basic issues of law that there will always be differences of opinion. We have talked about running parallel acts, which is what is being proposed with the 1996 bill operating with reference back to the 1936 act. I suppose what we have said is that, if there are intended to be changes, they be identified either in the explanatory memorandum or in a footnote to the new legislation. With that, we at least know that the government, through the TLIP, has intended to change the law. In the absence of a footnote or other commentary in the explanatory memorandum, we can at least proceed on the assumption that there is no intended change.

Senator WATSON—Mr Chair, you would appreciate that a major amendment bill has not gone through the parliament and it has not been necessary—within the space of two years—to pick up the unintended consequences. Parliament has shown a readiness to address the unintended—

Mr Petersson—A selective readiness. They tend to very readily pick up errors that adversely impact on revenue, but tend to be somewhat slower in relation to other technical deficiencies. We have seen that in the context of this process with issues in relation to the substantiation provisions. The response from TLIP was, `That's legislation which has recently been passed by the parliament. We don't need to revisit that even though concerns are being raised by it.' That is why you are hearing from the external witnesses that there is lack of confidence in the willingness to make changes where deficiencies have been identified. We have a process of technical correction, which is in place for capital gains tax and other tax issues, but that tends to get a very low priority in terms of legislative programs. It is a question of confidence as to how much you can take on faith that where there are changes—unintended consequences—they will be corrected.

Ms Carey—To get back to the earlier point, if we were to put together a list of small `p' policy issues or areas where the bodies represented here, and others, had identified inconsistencies and problems with the substantiation bill and the present bill, we could refer those to you for your review and that would take the process one step further.

CHAIR—Certainly.

Mr Bryant—Just one quick comment, Mr Chairman. In response to the senator's question, I think one of the benefits of the project is that it has identified some of those unworkable features of the law. Our response to that is to say that it makes no sense to repeat in a rewrite that which does not already work. This question of legislation going before the House, being passed and then finding within two years it needs to be amended has only been something in my experience—which goes back a fair way—in more recent years. It says something about the quality of the drafting and the formulation of policy issues in recent times.

The final thing on this question of fixing up the law is that we are dealing with a fairly tough—and understandably tough—tax administration. We are seeing increasingly, in a number of cases right on the table at the moment, where uncertainties in the law have been administered in a certain way with a fairly benign, workable outcome—I am talking of transfer of tax losses and the like. There has been a propensity in the tax administration to fall back on the literal application of the law, making life a lot more difficult. It is for that reason we are having to put up our hand to get the law put back to where it should have been.

CHAIR—Mr Bryant, are there any remaining doubts about the constitutionality of the legislation?

Mr Bryant—No, not in my view.

Mr Petersson—Mr Chairman, the program refers to capital gains tax. I am not sure whether you want to look at that issue today, but I make the point that that issue was not looked at by the committee back in January. The advice provided by Dennis Rose QC looked simply at the argument that had been raised at the time in relation to the current bill and not in relation to the question of whether or not you needed a separate act for capital gains tax. We think that there is certainly a far more substantial argument in relation to capital gains tax and we would seek to cover that in our written submission.

Mr Nolan—Chairman, the opinion given by Dennis Rose QC at the hearings in January was probably the most unequivocal opinion I have ever seen from a QC. I do not think he was limiting himself in the way that might be implied from what Geoff said. I think there are two issues here. One is whether there is any risk of these provisions being found in breach of section 55 of the constitution and, as to that, I can only say that the opinion that we have had from Mr Rose, and which was supported by the Attorney-General's Department, leaves no room for doubt.

But I really think where Geoff is coming from is a preference, not so much on constitutional grounds, for having capital gains tax as a separate act. That is a different question. It is one that we do not really need to resolve in the context of these bills which do not rewrite capital gains tax, but I would like to record however that in the consultative committee processes there has been absolutely no support for the idea that there be a separate act for capital gains tax.

Mr Phillips—Mr Chairman, you will be relieved to hear that I do not really have anything to say about constitutionality as such. I defer on that matter to others who are more expert. There is an allied issued raised by Professor Vann in his paper, which I have only seen as of this morning, where he is speaking about the interaction between this bill and Australia's double tax treaties. That is a parallel question that perhaps the committee might care to address. But I am not prepared, having only seen that in the course of the morning, to comment further.

We have now progressed to the second point on the second page of the program but I would not like to by-pass the question of the dictionary, if you would not mind, Mr Chairman. My position is that the dictionary is a useful tool to bring together in the one place all of the definitions that appear throughout the legislation and, so far as is possible, to adopt a common definition for a particular term and, where that is not possible, to identify the distinctions that are apparent.

However, there are a couple of issues that come out of that that stem from the interaction of the 1996 bill with the 1936 act that are worthy of at least passing reference. The first is that, in the 1996 act there is, of course, no asterisk attached to those terms that are defined in the 1936 act. It may be that that was because it was thought that they had no application. But when you come to look closely at the consequential amendments bill you will find that the 1936 legislation has been amended to, if you will, embrace the 1996 act within it and, as a consequence, those terms that are defined in the 1936 act are also defined for the

purposes of the 1996 act. That is as it should be, given the interacting operation of the two pieces of legislation. But the statement appearing on top of page 140 of the explanatory memorandum where the statement is made that the bill will omit a number of definitions that are unnecessary because their ordinary meaning can be relied upon seems to me to be an oversweeping statement.

Take the word 'agreement', which is the first there on the list and—I did not count it but the computer did—which appears over 1,200 times in the 1936 act. It has different meanings depending upon the section in which it appears, and not all of those are meanings that would be accommodated within the ordinary meaning. For example, in section 100A, the meaning excludes agreements that are put in place for ordinary family or business dealings. So, if you were to adopt an ordinary meaning of the word `agreement', by not defining it you are markedly expanding the operation of that provision.

So there are two points I am making. Firstly, the 1936 act does impact on the bill that is before you, in terms of the definition of words—and the word `paid' is an example of that. Secondly, the statement that has been made that a number of definitions are unnecessary is correct only if those terms, when they are translated, pick up the particular nuance of the definition in that section. That is another matter, and I am not sure that it would not be easier, in fact, to include definitions of these words with respect to the specific section under consideration.

CHAIR—Does anyone want to add anything?

Mr Langford-Brown—My recollection is that at one of the consultative committee meetings we talked about the possibility of having both a dictionary at the back and the definitions applicable to specific sections within those sections, as well. I certainly support the dictionary; it is great. I also believe that it would be beneficial to users, in the ultimate, to have two lots of definitions, not withstanding the sheer volume which it would embrace.

Senator WATSON—We have had private discussions on that.

Mr Nolan—Very briefly, the answer was that there is a trade-off between the additional length and accessibility. It would eventually amount to, perhaps, as much as a couple of hundred pages if definitions were repeated in the dictionary and in the `just in time' place where they first appear.

Mr Langford-Brown—Feedback from our members indicates that they would certainly prefer to have them in both places. I would just like that to be noted.

Senator WATSON—There is not a lot of support for a decimal type index, is there?

CHAIR—No. We were not talking about that. The index I think you referred to was—

Senator WATSON—I see. Yes.

CHAIR—It was the one that was produced by the private sector.

Mr Nolan—For it to be effective, we wanted the definition in the back of the dictionary to be fully comprehensive, but that would have been at the risk of a lot of duplication.

Mr Petersson—There is an issue which is related to finding definitions, and that is something which we raised in the earlier joint submission. In the bill at the bottom of just about every page, there is a standard note which says, `To find the definition of this term, see the dictionary starting at section 995-1.'

Senator WATSON—That occurs dozens of times.

Mr Petersson—That is right. Regardless of whether there is this defined term, it seems that, in the 1996 bill, it is not being consistent. On some occasions, it has been taken out, and at other times, it is still there.

But there is a more fundamental issue. There is, if you like, a compliance issue as to finding a definition. If you have got to go to the back of the bill, it is easy enough when it is only the first instalment. But when you have got the complete bill, it is going to be probably a little bit difficult. But if you have to go to the back of the bill to find the definition, to then be told that it is, in fact, the page before or page following the page that you are on, that is an unnecessary frustration and somewhat a waste of time. So there is a suggestion that one way to overcome that is that where the definition is not actually contained in the dictionary, that the note at the bottom of the page, if it is referring to a defined term, actually indicates where that defined term is, if it is not in the dictionary.

Mr Reid—Mr Chairman, I can deal with that point and also with the ones that Ian was making earlier. At one stage in the evolution of the bill we were doing exactly what Geoff has just described and putting what we call direct signposts to the just in time definitions, in other words the ones that were not contained in the dictionary, and we were finding that was adding very considerably to the length of the bill because everywhere where a provision was used, on every page where it was used, we were having to include an extra note. And so, on balance, we decided it was better to adopt a uniform system simply using the asterisk, which has the benefits of simplicity.

The point that Geoff has made about the inconvenience to readers is certainly true, but I think it is mitigated to a large extent by the fact that, where you are reading an area that contains a just in time definition, very often the just in time definition occurs quite early in that sequence of provisions, and very deliberately so because it is an essential building block for those provisions. So in most instances, or certainly in a very large number of instances, the reader will have absorbed the fact that there is a definition and will not actually be looking to find it in the dictionary anyway. The dictionary is like a safety net. If they happen to overlook

it they can look to the dictionary and find a cross-reference that will get them there. So the emphasis, I guess, has been on making sure that the reader finds what they need. In the course of doing that, and in the interests of economy, we may have sacrificed a certain amount of convenience, but overall we believe that the balance is in favour of the reader.

CHAIR—Are you happy with that on the subject of the dictionary?

Mr Phillips—That was not really a point of concern that I had, although I would challenge what Mr Reid said in terms of the reader being put in a much better position. For example, if you take the definition of Australian source, the definition there is along the lines that ordinary income has an Australian source if it is derived from a source in Australia for the purposes of the Income Tax Assessment Act 1936. But the person who needs to know, for the purposes of section 6-5(3), whether they have income from an Australian source has got a good deal of ground to cover before he finds out, I would suggest.

Short adjournment

CHAIR—Just on a housekeeping matter, is it the wish of the committee that the submission from the Corporate Tax Association dated 5 July 1996 be accepted as evidence and authorised for publication? There being no objection, it is so ordered.

At this stage on the program we had listed issues chapter by chapter, but the consensus of opinion seems to be that we have covered most issues in general discussion. So, if I could suggest that we limit ourselves to a quick look at each chapter and perhaps identify issues where there have been changes or where there are differences between the TLIP team and the other people here, we identify those for the sake of the committee. Basically, I cannot think of anything that we have not really covered in some form or other today. So, given that the hour is late, I will start with chapter 1. Does anyone have any comments on chapter 1 on the core provisions?

Senator WATSON—My question relates right across the spectrum in relation to the explanatory memorandum. I draw your attention to the executive summary of the joint submission, and also to page 73 of the joint submission. I think perhaps there are a couple of valid points that really need teasing out. As part of the explanatory memorandum, the arrangement of topics in the explanatory memorandum does not follow precisely the same order as those in the bill, and therefore it makes it difficult to locate the relevant discussion. I think that is a relevant point, which I would like somebody to comment on.

Also associated with the explanatory memorandum, also arising from page 73, is the second point that there is a need for detailed explanation of the rewritten law. What the explanatory memorandum does is just indicate that there is no need to restate the effect of the rewritten law. If people are looking at the explanatory memorandum five years down the track, they will not want to know what the 1936 act said, but what the law is that is explained in the memorandum. I think there is a deficiency in the memorandum's not explaining what the current law is. I do not think it is good enough that they merely state that it is a restatement of

what is in the previous law.So they are two questions that perhaps somebody from the tax law improvement team might like to take on board.

Mr Back—I would be happy to reply to those points. Senator Watson, the aim of the explanatory memorandum was actually to go through the bills in the same order in which the provisions appeared, so if I have got something out of order, I am sorry about that. The overall design was to have the chapters covering the major areas—like core, and losses and mining and capital works and substantiation of car expenses—proceeding in the relevant order.

Those chapters are in two parts. One is a summary. The idea was that the summary would proceed through in basically the way in which the legislation is set out. The second part of each chapter is about changes, because the EM purports to identify all the changes that we are making. That does go in clause order. So we really have tried very hard to have that confidence that you can find your provision just by going through it in order. Have you got some examples of where we have actually left it out?

Senator WATSON—I was speaking from the explanatory memorandum, which I would like to leave with you. That is the first point. The second is the need to explain the provisions rather than merely state that there is no need to state the effect of the rewritten law. I think perhaps there is a need to state the effect of the rewritten law because, after all, that is the purpose of most explanatory memorandums.

Mr Back—Okay, if I can take that second question. When I joined the tax office the rule was that you have to have two pages of explanatory memorandum for every page of law, but I think that the two pages that we produced required some editing. In my estimate, about 40 per cent of the bill you have before you is explanatory material: how the legislation is set up, comprehensive lists of income that is assessable, deductions that are allowable, items of exempt income, notes and examples. It is really comprehensive. That is the sort of stuff that was traditionally found in explanatory memorandum. It would, of course, bulk up an explanatory memorandum if we had not included it in the law but in the explanatory memorandum itself.

I think we should recognise that there is an exhaustive amount of explanatory material there. I believe the role of the explanatory memorandum is to explain the changes that the parliament is being asked to make to particular law. That is certainly the focus that our explanatory memorandums take.

To attempt to restate the law is doomed to failure. I did it once with the sales tax rewrite, I wrote an explanatory memorandum that tried to do both. It was four to five times the size of the legislation itself. That was criticised. I understand the commercial publishing houses do not even bother to reprint the explanatory memorandum because of its length.

If a 200-page sales tax rewrite can give rise to 600, 700 or 800 pages of explanatory memorandum, what we have in front of us is potentially enormous documentation. It will add

a couple of years onto the life of the project just to get that sort of documentation made.

Mr Nolan—We believe that the effort should be in making the law speak for itself to the maximum extent possible. After all, it is the legislation that keeps being carried on into the future, that is the ongoing document. The explanatory memorandum is written at a particular point in time and from that time on starts to get out of date.

It is because of the sheer volume. I think people would have been rather surprised—taking Gavin's two for one example—if basically in rewriting the existing law, we finished up with an explanatory memorandum two or more times the size of the bill itself.

Mr BEDDALL—The whole process would be a failure if that were the case?

Mr Nolan—That was our judgement, yes.

CHAIR—Are you happy with that, Senator Watson?

Senator WATSON—Can we have a comment from the people who put the idea forward?

Mr Petersson—The suggestion was directed not so much to now but, as Senator Watson said, say, five, 10 or 15 years in the future when it will be extremely difficult to trace any coherent explanation of a provision. Especially if we are looking at a progressive implementation, it will be very difficult to find out what section 85, for example, was intended to deal with.

I recognise that the approach is to try to get away from explanatory memorandum. Obviously, we have not quite got to the stage where we do not need them. Doing away with the two for one rule may be the starting point. I would seem to us that, just because clause 13 which tells you to go back to the 36 act has been written in a different way, it does not mean it is different. In 10 or 20 years time, effectively, you will have to go back to the relevant EMs for the 36 bill to find out what a provision in this 1996 bill means. It seems that that is a very inefficient way of going about it.

If you are rewriting the law, you will not be able to deal with everything in the bill itself. With no comprehensive EM for the rewritten law, it is going to be very difficult.

Senator WATSON—I will just ask you to comment about the sales tax EM no longer being reprinted?

Mr Petersson—I am not sure about that. Certainly in the CD version of tax law that I get, I have not noticed it not being there. My impression is that, if anything, explanatory memoranda are very heavily relied on. I would be surprised if it has been discarded.

Mr Back—I am just looking at a note from my office which says they were not going

to be printed because of their length. I would make the point that in 1990 the tax office did a review of the explanatory memoranda. The things people were critical of in relation to explanatory memoranda we have sought to bring to the law itself. People have said that we have added to the explanatory memoranda and that they do not understand why we are doing things. They have said that they need examples and need good cross-referencing. I really would like to emphasise that so much of what you might traditionally expect to see in the explanatory memorandum is now contained in the bill itself.

Mr Petersson—I understand that, but the fact that we have one demonstrates that there is still a role for EMs. The point is basically that we will not have an EM for the rewritten law.

Mr Nolan—I think we would finish up with something like a textbook rather than an explanatory memorandum. It is a matter of judgment. That is where we came down. Maybe the academics who write textbooks will be pleased with us.

CHAIR—We have heard both views. I think the committee will have a look at that.

Senator WATSON—You said we will not have an EM for the rewritten law.

Mr Petersson—Sorry, I should have made that clear. We will not have a comprehensive one.

Mr Back—I think what you would be looking for is every clause and its significance getting a mention.

Mr Petersson—Where there have been new provisions added or where there have been significant changes from the 1995 bill to the 1996 bill, I went to the EM looking for discussion on those changes and tended to find that there was no discussion. I suppose that underlines the point that without the crutch—and perhaps we have been relying on them too much—it is a very big leap to jump into a whole new act without a comprehensive EM.

Mr Back—I believe that TLIP would want to be giving more comprehensive statements of new law which is appearing for the first time in our bills. I would be grateful for any examples where you think that that might not be adequate so that in the future we can ensure that that is the case.

Mr Phillips—Perhaps I could give you an example in the context of the situation with respect to this bill. The concept of taking the word `income', as used in the previous law, and breaking it into a dichotomy between income according to ordinary concepts and so-called statutory income has been adopted for the first time. That means that every time the word `income' is used in the 1936 act, a decision has to be made as to whether it is to be considered as ordinary income or income plus statutory income.

By and large, there has been no guidance offered in the explanatory memorandum—

you might prove me wrong, but I am not conscious of any—as to why the definition of `partnership', which refers to receipt of income jointly, is now defined as the receipt of ordinary income as statutory income. Arguably, you could say, `Well, in 1936 they were only talking about income according to ordinary concepts.' All of those sorts of debates are replicated through the 1996 act because of this decision to break up the word `income'—except in the rewrite of the loss provisions where the word `income' that was used previously was replaced by `assessable income'. Because of this, researchers in the future will ask: why did parliament enact the law that way? And the explanatory memorandum will not provide the guidance.

Mr Langford-Brown—I am not sure where the perception of cutting down the quantum of explanatory memorandum being acceptable to practitioners came from. Being a practitioner at the time, the real detailed explanatory memorandum was a godsend because it helped you to understand. We are in a new act and I believe that part of the education process and the selling of it to the general tax paying population will be enhanced by having an expanded explanatory memorandum. I appreciate the judgment calls. I do not comment on that other than to put that other perspective into the record.

Mr Petersson—Another example of the consequence of not having a comprehensive EM is that some of the changes that have found their way into the 1996 bill from the 1995 bill have not been updated—for example, the section finding table. So the section finding table, as it now stands, is not comprehensive and contains errors. That is a consequence of not seeing the EM as a significant document. But, as Ian said, it is basically a practitioner's friend. That sort of secondary material is an essential tool for a practitioner. With something like a section finding table, if you are using that and you go to it and you find that the provision is not referred to or that the reference back to the 36 act is wrong, you are in serious trouble.

Mr BEDDALL—Was this issue raised with the tax people or the project people itself, or has it just now suddenly emerged?

Mr Nolan—It has been discussed before, including with the consultative committee that advises us.

Mr BEDDALL—What is the overview of the discussions with the consultative committee?

Mr Nolan—There was a minority view that a comprehensive explanatory memorandum would be useful, for the sorts of reasons advanced—the historic tracing at some time down the track. But others accepted our view that we were trying to make the law itself self-explanatory to the maximum extent possible and that the explanatory memorandum was mainly to highlight the changes to the law that were being made by this bill. If we have made some errors or omissions in the finding table, we would be pleased to hear about them. That comes as news to me, but I would be fairly confident that they would not be very comprehensive.

Senator WATSON—One of the issues will be at 950-105, where perhaps the difference between a note and a footnote could be explained through an explanatory memorandum. This was again picked up from page 69 of the joint submission papers. Would the tax office like to comment on that? The difference should be clarified.

Mr Reid—This particular provision incorporates part of what is already in the Acts Interpretation Act on the subject of what does and does not form part of an act. It is generally recognised what footnotes and end notes are. I would be at a loss to give a comprehensive description of them.

Essentially, to give some examples, the footnote with the asterisk that appears at the bottom of each page of the main bill is an example of a footnote. There are not, I think, any end notes in any of the bills.

But in amending bills there would be end notes that listed the number of the principal act being amended and of all the acts that had previously amended it. That is the most common example of an end note. In fact, it is about the only one I can think of.

Senator WATSON—So you are saying there are no end notes in the new bill?

Mr Reid—As it happens there are none in this particular bill; but if there were to be any later on, they would not be part of the act.

Mr Back—On the explanatory memorandums, in a week or so we will be issuing our exposure draft on depreciation. For the first time, we will be issuing with the exposure draft legislation a draft explanatory memorandum. We have not done that in the past and the aim is to get out that document well in advance so it can be looked at during the consultation period and people can tell us whether there are errors in the finding tables, whether there are changes that we have not identified, whether there are areas where we can do a better explanation. So if the issues do not emerge just when the explanatory memoranda goes into the parliament, we feel that that should improve the quality of the overall explanatory memorandum at the end of the day.

CHAIR—I started this discussion on core provisions. Where are we now?

Mr Phillips—I think in the earlier submissions to this committee various points were taken by the parties other than TLIP about the core provisions, some praising, some criticising. I suppose, as Martin Soutter would observe, the ones who were critical were the ones that are remembered. They, I think, are matters that have been the subject of comment from the TLIP in their responses to the committee. The judgment call, I suppose, is whether the various bodies now respond again to the TLIP responses and the TLIP responds again to those and so on ad infinitum, or whether we call it a day. For my own part, there are a couple of things there about which I still feel uncomfortable, but I do not want to prolong proceedings today by beginning one more time a catalogue of all of those things that were discussed back in January. But if you would like me to I can do so.

Mr BEDDALL—We have actually called for submissions to close on the 19th. If there is anything in those previous submissions that people do not think has been addressed, I think what you should do is raise them again so that we know particularly which ones rather than have a hotchpotch around the place.

Mr Phillips—I am very comfortable about that.

CHAIR—And that is not only in core provisions but the other chapters as well.

Mr Petersson—That is what we were proposing to do in our written submission to the committee.

Senator WATSON—Mr Phillips, are you going to give a supplementary submission to the committee?

Mr Phillips—Yes, it will come in at a later time, I suppose. You might just like to set some sort of timetable, Mr Chairman.

CHAIR—We will go for 19 July.

Mr Phillips—We will try to do better than that anyway, but it will really be a matter of revisiting those things that you commented on.

CHAIR—We have to report to parliament by 22 August. Is there anybody on the committee who has any specific questions? I think that covers virtually all of the chapters. I presume any areas of difficulty for anybody will be covered in supplementary submissions.

Senator WATSON—Are we going to get a definition of such things as end notes? We had a good definition given to us today but reading it, it does not include end notes and I was just wondering whether that should be part of the dictionary.

Mr Nolan—Given that there are no end notes in this current bill, I wonder whether it would be satisfactory for us to consider putting a definition in with our next bill when there possibly may be some end note material. It does not seem that that definition causes a great deal of a problem at the moment—or its lack, rather.

Senator WATSON—It is just that the word does appear in 95-105.

Mr GRIFFIN—This is largely rehashing, I think, some of the stuff that occurred earlier today. Maybe I am just stupid, but I got confused there for a while about a couple of points about where it appeared to be up to around resolving some of the concerns. It appeared that there was a major concern around the question of the commencement date in terms of July of next year versus this year. The first question I have from that would be to Mr Nolan and people from the TLIP. My understanding is that the government's position, as expanded

by you, is to push for a 1 July 1996 commencement date. Is that correct?

Mr Nolan—The bill has been reintroduced on that basis and that is the government's position at the moment. But, obviously, the government also, in referring the bills to this committee, was giving a signal that it wanted to hear what this committee had to say, not just on that matter, of course, but on any other matters.

Mr GRIFFIN—In terms of your objection to holding it over for another 12 months, I took it that there were a couple of reasons for that. One was essentially that it needs to be up and running in order to bring some of the concerns to a head because there seemed to be a difficulty until things are really happening before there is a focus to it. The second thing is that you saw that, by holding it over for another 12 months, you would end up in a situation where the overall program of continuing developments and bills around this issue would be delayed indefinitely as a result. Are those the two major concerns and are there any other concerns?

Mr Gaylard—There is one other concern. For that extra year, there would be a double lot of drafting for business as usual. If there were business as usual amendments coming through on a bit of law that had already been rewritten, you would have to update the new law and, because it is still in effect, you would have to rewrite the old law as well. You effectively would have a double handling of the already scarce drafting resource.

Mr GRIFFIN—One issue that came up was the question of possibly having the 1936 bill and the 1996 bill operating in tandem for a period of time. Can you briefly go through why you think that is a good, bad or indifferent idea?

Mr Nolan—That was a subject that emerged for the first time today. I was wanting to leave our position open to some extent on that, although my initial reactions—I would have to confess—were that I was quite troubled by that proposition. That is why I made the reference to the two Tax Packs, for example. Since then some of my colleagues have been a little bit concerned that that proposition might find some favour because they really do have a lot of difficulty with it. I know Tom Reid had some points he was going to make.

CHAIR—It might be a good idea to go away and think about that and get back to us, in writing, specifically on that point.

Mr GRIFFIN—We will do that. I know you have some concerns. There also seemed to be some concern around the question of resolving some of these difficulties and particularly the concern that, once the bill became an act and was in operation, government would need to be in a situation to be able to act quickly to address concerns and issues. I mentioned whether there is a process in place to look at that. We have some comments back from most of the people around the table, but I do not recall getting a comment from you guys.

Mr Nolan—I have said several times publicly, including to the previous committee, that the whole integrity and reputation of the project depends on our willingness to quickly deal with errors. Obviously, errors will emerge. The consultation processes are so wide that

we have minimised the risk, but we cannot eliminate the risk. It is important that those errors be corrected when they emerge. I have said that in public forums; I have said it to ministers. That is the way in which the project team—under me certainly—intends to proceed. Ultimately, it is for the government to introduce amendments, but I would be very surprised if they did not take our advice on that.

Mr GRIFFIN—The feeling that I have got from round the table today is that that question of certainty and of being able to address anomalies and difficulties, as they occur and quickly, is in itself an issue of fairly major concern. As that seems to be one of the major issues with respect to the introduction of, if you like, a new system through new legislation, there needs to be more of a development of that proposal as to how it would actually operate because there seems to be either a lack of understanding of it or a lack of confidence of what is actually is—I do not know which. That is something, I think, you have got to address a bit yourselves but I think it is an essential aspect of what has come out of today, for me anyway.

Mr Nolan—We will address that and try to give you some more comfort on what an appropriate process is, but I would like to make the point that by progressive delivery where there is, at least on an annual basis, legislation coming before the parliament, as distinct from other options where you bring the legislation in later when everything is complete, you get the opportunity to find and deal with errors more promptly.

Mr GRIFFIN—I agree with that but, very briefly, to paraphrase it: the way I see it is that the various parties to the operation of the system are concerned about what changes may occur inadvertently out of the new process. The word from TLIP is that there will be very few of those and, if there are any, they will move to act upon it. The question back is: `Well, that is nice but what does it really mean?' And the question back for you, I think, is a matter of being able to allay those fears in terms of the process so that the circumstances are that the various constituent units that are here today can go away with some confidence that the matter will be resolved quickly and therefore those concerns are not a real concern in terms of their membership.

Mr Nolan—One way that that could perhaps emerge is if in this committee's report back to the parliament it makes that point strongly by way of recommendation, which the government would respond to. I am sure if you had the word of a government minister and if people around the table had that, they would put more store in that than they do on something just coming from the team.

Mr Gaylard—It is fair to say that there is some reasonable scepticism that in business as usual legislation, as I think Ian Langford-Brown said, mistakes are fixed up where they have an impact on revenue but the process is a bit slower where they have an impact on taxpayers. It has also been put to me in this process that you can say that you are going to make technical corrections as soon as they come up but how do you know you can get the Senate, for example, to pass those?

Mr GRIFFIN—That is the sort of stuff I am getting at—a bit obtusely but—

CHAIR—I hope we are not suggesting that this be a double dissolution bill. God help us.

Mr Gaylard—You mean you did not pick that point up?

CHAIR—I think Senator Watson has something in conclusion.

Senator WATSON—With the substantiation provisions again, somebody referred to the savings in the compliance cost by the deletion of not having to vouch for laundry expenses up to $150 but, if my laundry claim comes to $150, does that mean I have to substantiate only $150 or is it $300 plus $150? That is not clear.

Mr Langford-Brown—It is $300, Mr Chairman. The $150 forms part of the $300.

Senator WATSON—It forms part of the $300?

Mr Langford-Brown—Sorry, there are two things: if you claim more than $150 on laundry you have to substantiate it; if you claim more than a total of $300 including the $150 on laundry, you have to substantiate that.

CHAIR—I think we are in conclusion. I would like to thank everybody for coming to participate in this forum today. We will try to get *Hansard* to prepare the transcript and distribute it as quickly as possible for possible correction. As I say, thank you again for the spirit in which we covered this.

Resolved (on motion by Mr Griffin):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 3.45 p.m.