COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE

of

PUBLIC ACCOUNTS

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

SYDNEY

Tuesday, 16 July 1996

(OFFICIAL HANSARD REPORT)

CANBERRA

WITNESSES

JOINT COMMITTEE OF PUBLIC ACCOUNTS

Review of the Income Tax Assessment Bill 1996 and related legislation

SYDNEY

Tuesday, 16 July 1996

Present

Committee members

Mr Somlyay (Chair)

Senator Watson

Mr Beddall
Mr Laurie Ferguson
Mr Fitzgibbon
Mr Griffin
Mrs Stone

The committee met at 9.01 a.m.

Mr Somlyay took the chair.

DUNNE, Mr Ian, Member, Tax Legislation Committee, Australian Petroleum Production and Exploration Association, Level 3, 24 Marcus Clarke Street, Canberra, Australian Capital Territory 2600

TILLMAN, Mr Ross, Member, Tax Legislation Committee, Australian Petroleum Production and Exploration Association, Level 3, 24 Marcus Clarke Street, Canberra, Australian Capital Territory 2600

VINE, Mr John, Member, Tax Legislation Committee, Australian Petroleum Production and Exploration Association, Level 3, 24 Marcus Clarke Street, Canberra, Australian Capital Territory 2600

WELLS, Mr Dick, Executive Director, Australian Petroleum Production and Exploration Association, Level 3, 24 Marcus Clarke Street, Canberra, Australian Capital Territory 2600

MORRIS, Mr Peter, Assistant Director, Minerals Council of Australia, PO Box 363, Dickson, Australian Capital Territory 2602

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TIELEMAN, Mr Walter John, Chairman, Taxation Committee, Association of Mining and Exploration Companies Inc., Level 3, 33 Ord Street, West Perth, 6005

WRIGHT, Mrs Adrienne Louise, Executive Officer—Economics, Association of Mining and Exploration Companies Inc., Level 3, 33 Ord Street, West Perth, 6005

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

CHAIR—I declare the meeting open. I will read a brief opening statement and hope my voice lasts throughout the morning. If it doesn't I will just hand it over to somebody else. I now open the public hearing on the Income Tax Assessment Bill 1996, the Income Tax Transitional Provisions Bill 1996 and the Income Tax Consequential Amendments Bill 1996. 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 an opportunity to remake and simplify something as fundamental as our income tax laws. I say this just to highlight the point that all of us need to do our utmost to ensure that the law the parliament is 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 January this year. Unfortunately, that committee did not have an opportunity to complete its inquiry before the general election was called. However, evidence gathered by that committee is not wasted and the submissions received and the transcript of the public hearings will all be considered by the new committee.

This committee acknowledges that TLIP's mandate is limited to rewriting the words of the current act; it is not to make new 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 the tax law that TLIP's work is highlighting can be brought to the attention of the government.

The public hearing will begin today with a consideration of issues of particular concern to the mining, exploration and quarrying industries. We appreciate that most of you appeared before the JCPA in January this year on the same issues. On behalf of the members I thank you for your continuing assistance to the committee.

Now to the business at hand. We will be running this hearing as a round table format, which most of you will be familiar with. 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 in 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.

The day's proceedings will be conducted in the following way. I will begin by inviting each organisation to make an opening statement on the topics of concern to them. 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 and will call you to order after five minutes or so. Following the opening statements I will ask committee members whether they have any questions before inviting

officials from the tax law improvement project to comment. We shall then discuss the topics you have raised on an issue by issue basis.

In anticipation, I propose that the first issue we cover, after the opening statements, will be the implementation timetable for the new bills. As the hearings are being recorded by *Hansard* I ask that you direct your comments and questions strictly through the chair. We would be happy to receive any written material you would like to present to us. The committee secretariat will be forwarding bound compilations of the submissions to you once the closing date of 19 July has passed.

To start the proceedings I will invite representatives of the Australian Petroleum Production Exploration Association to make the first opening statement. As we have a full program I again ask that opening statements be limited to no more than 10 minutes. For the benefit of *Hansard* I ask that before each person speaks for the first time they identify themselves and the organisation they represent.

Mr Wells—Thank you again for the opportunity to appear before this committee. The petroleum industry values it very much. It is a vital stage, we believe, of this project. We lodged a detailed submission with the committee in January and we alluded to appearing before the committee. We will be lodging a supplementary submission later today covering some of the comments we will address.

As the mining and petroleum provisions of concern remain unchanged in our view in the reintroduced legislation, I would like to draw on some of the comments that were made in our earlier submission and also make a number of general comments about the project and the implementation timetable, which should flow on to the next agenda item.

By way of introduction, APPEA's members encompass about 50 of the companies that actually undertake exploration and production of oil and gas in Australia, as well as nearly 100 companies that service that type of industry. Our membership covers both large and small companies—producers, explorers and service companies. We see the role of this committee as very important to the success of the tax law improvement project. The committee, we believe, provides a forum for taxpayers to discuss their support and concerns with respect to the project. It also provides a quality control mechanism to ensure that the program achieves better tax law.

From the outset I would like to make it clear that APPEA supports the project's primary objective of making the law easier to understand. We have appreciated the dialogue that has been established with the project team. We are certainly of the view that the dialogue between the industry and the team has substantially improved the bill we are discussing today. Indeed, many issues have been agreed between the parties over the period. However, it must be acknowledged that there remains a number of areas of difference.

It is our understanding that the intention of the project, as you said, was not to change tax policy. However, we acknowledge that, where there seems to be sensible improvements to

be effected that have the agreement of both taxpayers and governments, the opportunity should not be lost. We do see merit in a more fundamental examination of the income tax system, although we are concerned that it should not be confused with the current exercise.

The comments and advice that were provided to the tax law improvement project team by APPEA during the course of discussions have been made on the basis that it was not the intention of the project to address issues of policy. This was done so as not to confuse what we consider are fundamentally different processes. APPEA recognises that there are many petroleum mining and quarrying provisions that can both be simplified as well as consolidated under a single division in the legislation. It needs to be recognised, however, that the petroleum industry is technically different from the mining and quarrying industries in many respects, and we believe this difference should be recognised and understood both by taxation administrators and policy advisers.

APPEA's submission discusses both the general and specific elements of the rewrite. I would like to make a number of comments in relation to the more general aspects of the project. My colleagues are better able to discuss some of the specific matters.

Firstly, APPEA opposes changes to the legislation that would have the effect of applying new law retrospectively to taxpayers. We call on the committee to recommend against the introduction of the legislation from 1 July 1996. Those taxpayers with substituted accounting periods could be required to comply with the new provisions from 1 January 1996. We consider this to be an unnecessary and inequitable outcome. Indeed, should the introduction of the legislation be delayed until next year, some taxpayers will be affected for two years. In our view, the date of effect cannot be simply decided in the absence of the resolution of key concerns and the availability of other key elements of the rewrite such as the depreciation and capital gains tax provision.

Secondly, APPEA would like to reiterate its concern with the incremental introduction of the legislation. The impact of the proposed implementation will in effect require taxpayers to operate under a hybrid system until such time as the rewrite program is finalised. We are unable to reconcile how this meets with the fundamental objective of the project, which is to provide both clarity of law and reduced administration. The complex interactions between the mining, depreciation and capital gains tax provisions of the legislation also make it difficult for APPEA to provide definitive support for the immediate implementation of the mining provisions. The totality of the package is just as important as the individual details.

Thirdly, APPEA advocates the adoption of a mechanism that will allow the taxpayer to revert to the relevant provisions of the old legislation in those cases where a dispute exists with the tax office over the proposed changes. We are not convinced that the recourse proposed in the new bill by the Acts Interpretation Act provides adequate comfort for taxpayers in areas where changes to the law have been effected without agreement. As I say, I will allow my colleagues to deal with some specific matters.

It is clear from both our discussions with the project team in response to our submission that there are a number of issues where generally differing interpretations of the

current tax laws exist. Let me make it clear that APPEA is not advocating changes to the way the law currently applies. We are advocating an outcome that places the taxpayers in the same position that currently exists. APPEA cannot accept the project team applying its own interpretations on the current wording for issues that are in dispute. We believe that this is clearly beyond the mandate and cooperative nature of the project. We strongly recommend that, for those issues where a genuine difference of opinion exists, it is both sensible and equitable to retain the wording that appears in the old law.

APPEA has not undertaken a survey or analysis of potential savings associated with the introduction of the new mining provisions. However, advice from APPEA member companies indicates that the savings to taxpayers in this area are likely to be minimal, if any. It is acknowledged that there are likely to be savings in other aspects of the project.

I would conclude by making a couple of suggestions about the way in which the project may be enhanced. Firstly, APPEA is aware that a view exists that fewer words provides for clarity and simplicity. It is important that we all recognise that the opposite will apply in some instances; that is, fewer words provide for uncertainty and ambiguity.

It is important that we achieve a balance between brevity and good law. If more words are required to convey complex provisions, then we must simply accept that this is the case. It is fundamentally important that we do not measure the success of the project by the number of words in the legislation. The nation has a substantial investment in the stock of law and this should not be summarily dismissed by a stroke of the pen.

Secondly, APPEA recommends that the committee examine the involvement of industry specific specialists within the project. APPEA has been encouraged by the level of consultation that has taken place with respect to the mining petroleum rewrite. In our view, however, the consultation progress can be strengthened by the involvement of practitioners with day-to-day specialist skills in the rewrite process. This has the benefit of allowing potential areas of difficulty to be identified at an early stage and for many potential conflicts to be short-circuited.

In summary, APPEA would reiterate its support for the project and acknowledge much of the good work that has been done by the project team. It is important, however, that in our haste to simplify the tax laws we do not overlook the fact that the very purpose of the rewrite is to achieve just that, to simplify the law, not change the law. Thank you very much.

CHAIR—Thank you, Mr Wells. I now invite the Minerals Council of Australia to address us, please.

Mr Morris—Thank you, Mr Chairman. The Minerals Council of Australia appreciates the opportunity provided by the committee to appear before you again today. The council is the national body representing the exploration, mining and mineral processing industry in Australia. Members of the council are responsible currently for some 90 per cent of Australian minerals production and a slightly higher percentage of our mineral exports.

The minerals resource industry is the pre-eminent Australian industry sector, accounting for nearly 50 per cent of Australia's merchandise exports. The minerals sector, a subsector of that mineral resource industry, accounts directly for 30 per cent of Australia's total exports, with oil and gas providing a further five per cent. This puts the contribution to Australia of the minerals sector at nearly twice the value of the total agricultural industry and underpins vitally important supply and demand relationships with the Australian manufacturing and services sectors.

We have provided a brief supplementary submission to the joint committee which summarises our previous submissions provided last December and January.

As the mining provisions in the Income Tax Assessment Bill 1996 remain largely unchanged, we have not changed the substance of our comments on the 1996 bill. We do take the opportunity to raise two new issues, which we will be happy to discuss today. Firstly, the possibility of extension of the TLIP terms of reference and the areas we would recommend that extension ought cover. With this regard, the council supports an extension to the terms of reference to enable some policy issues to be dealt with whilst endeavouring to minimise the impacts on winners and losers.

Our second area of comment which differs from our previous submission goes to the need for an ongoing process of review of the TLIP draft legislation by an independent body.

The council supports the underlying principles behind the tax law improvement project and has provided detailed comments and information to the rewrite team concerning the mining provisions. We wish to again place on record today our appreciation for both the dialogue and consultative process that has been established for the mining rewrite. This has allowed a wide range of issues to be identified and discussed.
These discussions have done much to strengthen the draft legislation, with some 80 per cent of our suggestions taken on board, which we find very encouraging. That includes a number of areas where minor changes have been incorporated to allow the legislation to better reflect contemporary industry practice.

There remain four mining issues where the council disagrees with the rewrite wording. These involve changed outcomes which disadvantage the taxpayer. These cover: plant exclusions; the meaning of 'written down' value; carry-forward of exploration deductions; and the status of elections in respect of excess deductions.These concerns have been discussed previously with the committee and both the TLIP team and the Federal Treasury. We would be pleased to discuss them further today.

There is also a fifth area where we believe there is an opportunity in the rewrite to clarify the operation of section 122A in respect of the tax deductibility of access roads used for mine construction and operation which may also be used in part for mineral transport.

We also raise four general issues in our submission. Firstly, we are very concerned

about the proposed 1 July 1996 commencement date for the act and the retrospective impact this will have on companies. For example, for many mining companies with substituted calendar year accounting periods, the legislation when enacted will have retrospective application for nearly a year. This goes against the first recommendation of the joint committee's report *Tax law improvement: a watching brief* issued in November last year.

Secondly, in relation to the introduction of the rewrite into the law, our concern is that to enact the mining provisions without at the same time enacting other key interrelated provisions—for example, capital gains tax and depreciation provisions—could have serious adverse consequences.

Thirdly, we are of the view that taxpayers should be able to fall back on the old provisions in appropriate circumstances should the taxpayer believe they are being disadvantaged by the new law. This is especially important with any early or piecemeal introduction of the rewrite.

We recommend there should be a regular technical amendments bill to correct any unintended consequences. We further believe that it would be desirable for industry to contribute to the development of these technical amendments.

By way of summary, the Minerals Council wishes to reiterate its support for the project and acknowledge the work that has gone into the mining rewrite. Some 80 per cent of the industry's approximately 100 comments to the rewrite team have been addressed. We are limiting our technical comments today to just four areas where we disagree with the interpretation in the rewrite. The Minerals Council holds to the view that in situations where a differing interpretation exists as to the meaning of the current legislation, then the existing words should be retained.

CHAIR—Thank you. We will now hear from the Association of Mining and Exploration Companies.

Mrs Wright—AMEC welcomes the opportunity of making verbal and written representations on the Income Tax Assessment Bill 1996. We have participated in discussion and deliberation on its predecessor, the Income Tax Assessment Bill 1995, and look forward to open and frank discussion on the 1996 bill and further bills which will follow.

AMEC represents some 230 mineral exploration and mining companies, businesses which supply goods to the mining industry and individuals—mainly prospectors, geologists and the like. Our members range in size from the smaller resource based companies to those which are major players in the industry. Of common interest to all our members, as you will appreciate, is an environment which is conducive to the wellbeing of the mining industry generally.

The increasing complexity of tax law has been a major concern to our members, who are expected to deal with a rapidly growing web of legislation and regulations in all areas of

their business, be it mining law, native title law, fringe benefits tax, state revenue, environmental law, safety and health—and the list goes on.

We therefore appreciate any initiatives to clarify and simplify and thus, hopefully, reduce the compliance burden under which our members operate. Taxation must be certain in its application so that its incidence is readily understood by those on whom it is imposed. Unfortunately, this certainty of application has diminished over time.It is in this context that we appreciate and support the initiative of the previous government, followed through by the present government, to reduce the compliance burden on our members.

AMEC is of the view that this stage of the tax law simplification process must, however, be seen as the first step in overall simplification of tax law. It is our view that this process involves two defined steps. Firstly, reintroducing simplicity in the structure and language of the act and, secondly, what we see as the more important and probably more problematic process, namely, simplification in the system of taxation itself.

TLIP addresses only the first stage of this process itself, as it should. We recognise that TLIP's brief extends only to simplifying the act, not changing the policy of tax law. However, we point out that many people see this current process as one which will deliver on the simplification of the system of taxation itself and will, therefore, be disappointed in the results of this process.

We mention this because in AMEC's view the process of simplification will, in the minds of its members, not be complete until the system of taxation is itself greatly simplified. We include in this FBT and CGT, sales taxes, methods of collections of taxes such as PPS, laws relating to the taxation of income derived overseas et cetera. We recognise that the process of tax reform towards a simpler taxation system will be a lot easier if the 1936 act is whipped into good shape.

Turning back to the current simplification process, we reiterate our support of the principle behind this process. We do not, however, subscribe to the view that simply changing the form and manner in which the law is expressed will in itself have a significant impact on compliance costs. Indeed, in AMEC's view, compliance costs in the short term are likely to increase as industry and its advisers come to terms with the structure and wording of the new provisions.

Australia has developed a vast body of law which has precedent value and which, as a result of this rewrite, will be valueless. For example, this may occur because the context in which a word or phrase is used has changed or because a word or phrase has itself been changed, such as `bona fide prospector' to `genuine prospector'. Precedent law is of particular importance and in many cases we will have to go back to scratch. It is impossible to estimate at this stage the impact of these changes on the value of precedent law and we know that the ATO and taxpayers are both in the same position. As a general comment, however, whilst recognising that it is inevitable that words, phrases and their context will change in the rewrite, we would prefer these to be kept to a minimum to ensure current precedents remain useful.

We note this in the context of clarity of law and compliance costs.

It is probably inevitable in this period of change that mistakes or differences in interpretation will occur, and we would not want to see our members subjected to penalties as a result. In our previous submission we expressed some concern with the manner in which the law is being introduced, that is, on a piecemeal basis. These concerns remain. Whilst our preference was to see the piecemeal introduction of such legislation, we would prefer to see the enactment of such legislation being deferred until such time as the complete legislative rewrite has been introduced into parliament.

We have difficulty with the concept of having two different tax acts in vogue at the same time, and this in itself is guaranteed to lead to increased compliance costs. Both acts will have completely different structures and wording and inevitably this will lead to significant interpretational difficulties. For example, many transactions that a mining company will engage in have CGT implications in addition to the normal income tax position. We will be applying the 1996 act to determine the position under the mining provisions and the 1936 act to consider the CGT provisions. We anticipate that this will lead to problems in achieving a seamless transition to the 1996 act.

We favour having the proposed legislation introduced in a staged manner as it will allow our members to absorb and understand the changes as they come through. In AMEC's opinion there should be a no-disadvantage test which would state that if the taxpayer is disadvantaged because of the application of the new law, then the old law will apply. This will, in our view, greatly enhance our members' acceptance of the new legislation.

We have a concern with the commencement date of the new legislation being 1 July 1996. As pointed out in our previous submission and by the other industry bodies, a number of companies operate on the 31 December year end and their 1996-97 year commenced over six months ago, that is 1 January 1996. It is unfair to ask them to comply with legislation which is introduced half way through their financial year. Indeed in AMEC's view it is unfair to ask the same of those companies whose year commences 1 July 1996.

The body of new law is substantial—some 365 pages. Therefore, further time should be given to industry to allow it to absorb the changes before they become law. We see no reason for undue haste, particularly in view of the assurance that the changes will be revenue neutral. We have a number of specific concerns with the 1996 bill, most of which were set out in our previous submission. Some of these concerns are unique to our membership base, for example the issues we have raised with respect to genuine prospectors. Others are common concerns which we share with APPEA and MCA. We understand that it will be possible to discuss these individual concerns in the course of the following discussions.

AMEC asked the committee to note that until such time as we have the entire package of rewritten legislation we will not be able to finally comment on the rewrite of the mining provisions due to the fact that certain changes in other areas may impinge on the mining

provisions. Accordingly, we ask that there be a willingness in the attitude of the legislators to make subsequent changes to correct anomalies as and when they become apparent. We congratulate the tax law improvement project team on the work they have carried out to date and trust this will continue.

Mr Nolan—Last week we had the opportunity to make some general observations to the committee about the aims of the project and the way we have been working so I will not go over that ground again. I would like to make a few brief remarks about the mining rewrite and also the relationships between the project team and the mining industry groups represented here today. It was gratifying to hear each of them speaking positively about the dialogue that has existed between the project team and the industry. It has been an outstanding example of how industry and the project team can work together to produce a better product for the parliament. One of the comments recorded is that something like 80 per cent of suggestions that were made by the industry in the course of dialogue had been reflected in the rewritten provisions. So I am grateful for that acknowledgment.

We have made a large number of changes to the law relating to mining that are essentially favourable for the industry. We have provided the secretariat with a list of changes that have been made generally in the rewrite contained in the 1996 bill. A section there deals with the changes favourable to the mining industry. Perhaps I will not take up your time by going through those now but it is worth recording that they are numerous. None of them in themselves are huge changes but the sum total is in a very positive direction for the industry.

We addressed the committee on the question of the commencement date of 1 July 1996 for the legislation last week also. A major concern of the mining industry appears to be based on the fact that a number of mining industry companies have early balancing tax years commencing on 1 January, so that these new provisions commence some six months earlier than for standard balancing companies.

Last time I pointed out that generally with tax law changes the common position is that a swings and roundabouts attitude is taken to non-standard balancing companies—some balance early, some balance late. At times the changes will give them an early benefit. Sometimes it goes in reverse. But normally it is not the case that tax law changes are built around the fact that some companies balance early or late.

The particular changes that we have reflected in the bill—the rewrite of the mining provisions—have been out in the public domain for a very long time now. There is certainly no haste about their implementation. The early drafts were out well over a year ago—probably 18 months ago in about May last year as an exposure draft rewrite which is not materially different to what is in the bills at the moment—for public comment. The predecessor of the present bill was introduced into the parliament at the end of last calendar year and the bills have now been re-instated in the parliament.

The actual amount of exposure in advance of these rewrites has been very long and very open compared with what you would typically find in legislation. I wanted to remind the

committee that I had made those sorts of observations before.

We will, during the morning, get down to those small number of differences between the mining industry and ourselves. I will not go into those now, but on each of those we have already presented material which is recorded in the previous submissions. That is enough for the time being, Mr Chairman.

CHAIR—Thank you, Mr Nolan. I propose that we examine general issues first and then specialist issues. That is the second time that we have heard that the compliance costs associated with the TLIP project may increase in the short term. Presumably that means the savings will come through in the longer term. That was also put to us last week in the hearing in this building by the tax professionals.

We have been acting on the assumption that there will be major compliance cost savings across the board with this rewrite. I presume that these positives for the mining industry that Mr Nolan spoke about are still revenue neutral and that the benefits will come from compliance cost savings?

Mr Nolan—Yes, by and large the changes made are revenue neutral. Some of them are revenue neutral only because there has been no really close examination of what has actually happened in tax returns in the past. By that, I am referring to the fact that some of the loosening up of provisions may accord with how returns have been lodged. But they have probably been strictly not quite in accordance with the law in some respects. We are tidying up that position so that certainly for the future the law and the practice accord with one another.

So it is largely in compliance costs savings that we expect benefits here. As to the provisions themselves, somebody suggested that we should not be concerned only about the length of the law, that brevity is not the guiding rule, and it certainly is not for us. I think we have made clear before that what we are trying to do is address readers and users of the law in the best way. Sometimes that means adding additional material, and there are a number of examples where that has been the case. We have been able to collapse these provisions down, largely by bringing different regimes together into one.

It is obvious that to move from the existing law—which is acknowledged to be quite a mess and a long and detailed set of provisions that are very hard to work with—to a new set of provisions is going to take some relearning, and the education and the work involved in that does impose short-term costs, not just for the mining industry, not just for the tax office, but for the whole of the tax community. That is really a question of breaking the eggs in order to have the omelette down the track. You really cannot get to that better world without moving over the hump that is involved in coming to terms with the new law. So yes, we have always acknowledged that there will be short-term inconvenience, short-term increases in costs, but the alternative to that does not bear thinking about, and that is to stay with the existing mess which gets worse year by year.

Mr GRIFFIN—Mr Nolan, that first point you made, you seem to be suggesting that there in fact may be some—evasion is the wrong word—avoidance occurring around the

current application of the law because it is too complex or something? I did not quite get that.

Mr Nolan—I was suggesting that the present law is not perfectly understood and that some of the practices that have emerged over a number of years—for example, to do with the way in which practices in the industry have changed over time with the use of more contract labour and so on. Some of the existing law did not well reflect present practices, but I think the tax position probably has sometimes ignored the fact that the law had stood still at a particular point and returns are being prepared on the basis of commercial practice.

For example, there is the fact that housing and welfare expenditure previously did not extend to facilities provided for employees of contractors; they extended to employees of the mining companies themselves. I am not sure if you have really looked into whether the tax return position would have made the sharp distinction there. What we are saying is, for the future, the employees of the contractors are going to be treated, in this respect at least, the same as the employees of the mining companies.

Now we do not want to go back and look into the past, but when we say there is no revenue impact there, what I am saying is that we would believe that there is no revenue cost because the practice has really followed the actual industry developments rather than the strict letter of the law. There are a number of examples of that kind.

Mr Robinson—Can I make a comment at this point, to amplify the point made by Mr Alan Griffin? It is perhaps helpful to draw another illustration, and that is in the area of exploration. The changes that have occurred in the definition of eligible exploration were made to bring the rewritten legislation more directly in line with the policy position which the Australian Taxation Office has adopted in conjunction with the industry over many years—a policy position which was reflected in the official rulings issued by the Australian Taxation Office. I am referring more particularly to work conducted in the area of feasibility of mines where the existing definition in the legislation is somewhat deficient. But as a matter of agreed policy, in my recollection for at least 20 years, the position has been that feasibility activity has been regarded as part of exploration. That now has explicit statutory recognition in the rewrite, and I see that as a very favourable outcome.

So we are not talking about avoidance here; we are simply talking about bringing the rewritten legislation into line with, in most instances, agreed administrative policy and practice. That is something that has been discussed between the industry and the tax office over many years.

Mr Morris—Could I add some comments on two issues? Firstly, on the commencement date, Mr Nolan is suggesting that the law should not be amended around early or late balancing companies. I suppose the issue we are putting forward is that we are concerned about the retrospectivity of the law from 1 July. By way of illustration, many of the mining companies do actually have other than financial year basis balancing. That was really just to underline the point that by the time this bill is enacted and has royal assent it is quite

potentially almost the end of the calendar year. But the point is that it will be retrospective irrespective, because it does begin from 1 July.

Secondly, we are also pointing out that there are a number of key areas of interaction with other areas of the law to do with depreciation provisions and capital gains which we have not yet had the opportunity to look through. I believe the depreciation provisions were released last week, but there is a way to go there, obviously, as there is with capital gains. I believe the capital gains exposure draft is expected to be available by the end of the year. But in both cases they do have key inter-reactions. We are suggesting that a starting point of next year would be more sensible and more equitable.

On the point of compliance costs, the Minerals Council does not believe that there will be a great benefit in terms of compliance with the tax act. We are talking here about a very specialist area of the tax law. Basically, the average tax accountant in Moonee Ponds or wherever does not really need to have an understanding of the mining provisions. It is really only a very specialist area. Perhaps in retrospect it is a pity that mining provisions were early on in the process, but we understand why that is the case. As we have acknowledged, it has worked well in terms of the consultative process.

But the compliance benefits that will flow from the minimal changes that have been made to reflect contemporary practice will not be very significant. We are not complaining about that because any compliance reduction is welcomed. Indeed, there is some simplification in the act.

CHAIR—Thank you. You are actually covering the general issues that we intended to cover: the implementation of the timetable—the big bang versus the phased introduction process; the retrospectivity of the bill; the possibility of retaining the words in the 1936 act where their meaning is disputed and currently before the courts; and the need for a speedy process for correcting unintended consequences of the new legislation. Does anybody want to comment on those issues?

Mr Morris—Could I suggest that we take them one at a time?

CHAIR—I think we have covered the timetable. With regard to the retrospectivity, I think your point is well made there. The possibility of retaining the words of the 1936 act where their meaning is disputed and currently before the courts was an issue which I think you all expressed concern about.

Mr Tillman—There are two issues that are disputed. I would like to deal with one of them. The issue is whether a miner should be allowed a deduction for the full cost of his stock. Where a miner buys a known deposit the price paid for land will generally reflect the value of the minerals in the ground. As the deposit is worked the value of the land falls. When the deposit is exhausted sale of the land will usually produce a loss. For that reason mines are usually referred to as wasting assets.

In 1950 a parliamentary committee recognised that the cost of land was, for a miner, a cost of obtaining stock and recommended that depreciation deductions be allowed over the life of the mine. When the relevant legislation was introduced the deduction was not over the life of the mine but by way of a balancing adjustment at the end of the project. The relevant provisions of the act, sections 122K and 124AM, allow a balancing adjustment for 'the total capital expenditure in respect to the property'. We believe that this calculation takes into account the cost of land and allows a deduction if that cost is not recouped when the land is disposed of.

The ATO say that the balancing adjustment is limited to amounts that are otherwise deductible under the mining provisions. Their interpretation relies on words that do not appear in the statute. In the rewrite the ATO are curing what they must regard as a defect by adding the necessary words. This section will now read: 'Your total expenditure (of a kind that qualifies as a deduction under this division)'. As you mentioned, Mr Chairman, this matter is being litigated. The case is due to be heard in the Federal Court in November and we request the current wording be left unchanged until that case is resolved.

We believe that the ATO will not be prejudiced or precluded from clarifying the law. If they are correct there is no need for the change and once the court has heard the case the law will then be clear. Of course, if they are wrong then they are making a major policy change under the guise of the rewrite and we believe that they should be precluded from doing so.

Ms Haly—In response to that point, the TLIP position is that it is an important underlying principle of the tax law that deductions are not allowable unless there is some legislative authority for that within the legislation itself. We believe that the clarification of the law simply reflects the current position under the act, and that underlying principle. We believe that the sections rewritten as section 330-495 refer only to capital expenditure allowable under the Income Tax Assessment Act itself. Our change will, in fact, secure that position.

The position argued for by industry would allow an indirect deduction by way of a balancing adjustment of expenditure which parliament has expressly stated should not be deductible. We believe that that would be an anomalous situation. We do acknowledge that there is a court case with a tentative hearing date in November of this year which raises this particular issue among four others and that that hearing, if it goes ahead, will give a judicial interpretation of the point. The parties to that particular case will not lose the benefit of their decision as a result of the rewrite and clarification of the law in this respect. The rewrite operates from the date of operation of the law. There has been some dispute this morning as to whether that is prospective or not. The litigants will have the benefit of their decision.I think that is the main point.

There is a very fundamental and important principle at stake underlying this particular case. We have, in fact, checked the position of Treasury on the matter to ensure that we are reflecting policy and the current law. They support our position on this point and have concerns about an interpretation which would basically allow a deduction indirectly which was not expressly authorised under the act and might indeed be expressly prohibited.

Mr GRIFFIN—Isn't that a question for the courts to decide, given it has been taken to the courts?

Mr Nolan—Mr Tillman was suggesting that there should never be a rewriting of words if those words were in dispute. I think he put it in terms of that being at the level of the court, but others have suggested that if there is ever any difference of opinion about words, then they should be left alone. As a general proposition taken at that more extreme end of the argument, there is always going to be someone or other who will have a different view about what particular words mean. The project would really be hamstrung if there were to be any general proposition that if somebody puts their hand up somewhere and says, `I don't agree with those words,' you have to leave the existing words there. That would give us a patchwork quilt outcome.

I think what we have got here, though, is a somewhat more specialised case where particular words are in fact possibly going to be examined by the court. That is an area where the argument is somewhat different. When we were rewriting that legislation I do not think the fact that there was the likelihood of a court ruling in the area was in our consciousness. We don't think there is a great deal of risk as to whether the words that are rewritten make it very clear that the balancing adjustment at the end of the mining period looks only at deductions that are allowable under the act and not at other expenditures which are clearly outside the act.

We think that proposition is highly likely to be what the courts would find under the old legislation. So we do not think that this particular point of whether we stick with the old words or with the new words is going to make a great deal of practical difference because, I suppose, we think it highly unlikely that the court—looking at the mining provisions as a whole—would say that despite the fact that the parliament has allowed only certain capital expenditures to be deductible over the life of the mine, at the end of the day we are going to give them everything else. We think that is a proposition that would not be sustained. We are a bit ambivalent, really, as to whether we stay with the old words or the new in the particular case. We do believe that the new words reflect that policy intention, but we think the old words do as well.

Mr LAURIE FERGUSON—On the way through there was reference to an explicit statement by parliament. Was that on a specific point or on the tax law proposition in general?

Ms Haly—There are some capital expenditures which are expressly excluded from deductibility and those amounts under that particular interpretation would be deductible by way of balancing adjustment.

Mr Tillman—The ATO point out later amendments to the act which are inconsistent with the view we hold. It is a fundamental point of statutory interpretation and it is recognised by the ATO. Their fairly recent tax ruling, TR95/003, paragraph 119 states:

It is not permissible to read a statement made at a later point of time (when the legislation was being amended) in order to discern the intention of the legislature when the original statute was passed.

And you cite a case, Federal Commissioner of Taxation v. Bill Wissler (Agencies) Pty Ltd. That is a fundamental principle of statutory interpretation. It is recognised by the ATO but they are not taking into account their discussions with you here today.

CHAIR—Would you like to form a response?

Mr Nolan—Just briefly. The rewrite is trying to capture in more modern language and style the meaning and intent of the existing law. To do that we go back over the legislative history, the statements made at that time. We also look at how the law is currently being applied and interpreted. I suppose in the end we are just trying to get the right outcome. We are saying, `What is intended by these particular sets of words? Can they be expressed better?' In areas of doubt we sometimes will need to go back to the government of the day and say, `There is some ambiguity here. Please tell us what you think should be in the bill that we put back into the parliament.' We will do that from time to time. We are not hidebound, I suppose, by what can sometimes be narrow rules of statutory interpretation. We are not strictly on a statutory interpretation exercise.

Mr Robinson—As I recall, the particular provision that is being debated is extremely clear in its wording and very economical in its wording. The revision, I recall, uses more words and in fact also adds an interpretation. In the circumstances it seems that neither of those is necessary. For my part, I believe that the existing wording should be allowed to form the basis for the judicial review in the particular case that has been cited. I agree that the hearing of that case and the outcome in that particular case would be based on the existing wording. However, it would have no precedent value and, if the case were to be heard and judgment reached in favour of the taxpayer, it would simply emphasise that what we have here is a change in interpretation which is being imposed as part of the revised wording.

Again, as I recall, the mining provisions in talking about allowable capital expenditure simply say that certain types of expenditures are allowable capital and therefore deductible over the life of a mine, or 10 years, as the case may be. The particular provision 122K in the mining context, and its equivalent in the petroleum context, simply says that where an amount has been allowed or is allowable as a deduction then, in the relevant circumstances, the total expenditure in respect of the particular property shall be taken into account in the balancing charge calculation. I believe that that correctly summarises the essential argument and the implication of the legislation as it stands. I am not at all certain that there is an express prohibition. I think the legislation is couched in the way in which I have just expressed it.

This committee perhaps also should be aware that in many other jurisdictions, the United States and others, there is an express statutory recognition of depletion in respect of expenditures which may not be deductible during the course of operation of the mine but are in fact taken into account as deductions on a depletion or on an abandonment basis. So we are not talking here about something that is foreign to tax legislation and to understanding of tax legislators. The current provisions, we believe, provide a deduction essentially on abandonment or on disposal. The committee perhaps should also be aware that this is not something that is particular to one company. This is a matter of principle.

The industry as a whole, both the minerals industry and the petroleum industry, see the current court litigation as something which will deliver a precedent in respect of the correct interpretation of the current provision.

Mr Gaylard—I am to a large extent bound by cabinet solidarity in these issues. But I think Brian Nolan has given a fairly clear indication of the fact that, while not resiling from the position that is in the law and as being a position that is reasonable, there are some circumstances which I personally believe could see the law rewritten in its current form. I do not necessarily hold sway on this issue, I can assure you, but there is a bigger principle at stake, that is, whether we are, as Brian said, hogtied every time we come up with a possible different interpretation.

The mining industry is a large industry with generally large players in it. But if you take the same argument, say, with the loss rewrite provisions, and you have got one small change, of which we have made many in that part of the legislation, if you have got one person who might be affected because he has got an interpretation, however unreasonable, then you are obviously going to get nowhere. I think there are a number of other instances where stances that have been taken, albeit that not everyone is totally happy with them, are sensible improvements to the law. In this area, as I say, Brian has given an indication that the project team does have at least some sympathy. I would like to think you would take that on board.

Mr GRIFFIN—What you are saying is: it is a case by case basis and there is not a bad case in this particular case?

Mr Gaylard—That is what I am saying.

Mr FITZGIBBON—For my own benefit, can I attempt to clarify what I think is being said here? We have a challenge as to the 1936 act. The Minerals Council and others are suggesting that the act not be rewritten until the judiciary has passed its judgment on that. If it is the role of the judiciary to pass judgment on or interpret what the legislature was trying to do at the time of the writing of the 1936 act, surely it is also the prerogative of the legislature to at any time redefine that act and rewrite it. Surely, you are not suggesting that all of those things be deferred every time there is a judicial review pending.

Mr Tillman—No, certainly not at all. What we are suggesting is that this matter has to be resolved by a court to determine whether we are in fact making a change. If we are right, we are making a substantial change and it should not be swept through under the guise of the TLIP. It should have a separate consideration of parliament.

Mr FITZGIBBON—Any rewriting of this act will not affect the judicial review currently under—

Mr Tillman—Certainly not.

Mr FITZGIBBON—I still do not see the point, I am sorry.

Mr Tillman—When a taxpayer decides to litigate a case, he also takes into account the future benefit of the precedent he is going to create. Certainly, in our case, we will lose any benefit.

Mr Dunne—Perhaps the point has been sufficiently made by Mr Tillman, but this is germane to the specific technical issues that we may discuss in the balance of the hearing. The terms of reference of the TLIP project include clarifying existing law. I think we have got a confusion in terms here between clarification and change.

Clarification exists where the parties agree about the outcome of some rewritten provisions. You then get clarification of what everybody was working by or understands the old law to be. Where you have a disagreement, which gets back to interpretative issues which may go before the courts in respect of praise and under the guise of the TLIP project, you rewrite the words. Then if, from one party's point of view, you have a change in outcome, that is not clarification. It is potentially a change in outcome and goes beyond the terms of reference of the project.

Now if as a community we are going to talk about what ought to be policy issues and what the law should provide as outcomes, then let us do it. Let us fully embrace it. Let us not do it in bits and pieces and selectively under the terms of reference of the project and bring the project to clarification. I think there is a real confusion of terms here and that applies to all of the technical issues that we may well debate on technical grounds.

CHAIR—That point has been well made by everybody now. The next item is the speedy process for correcting unintended consequences. Does anyone want to comment on that?

Mr Vine—Before we get to that, can I just raise one other issue which is similar in nature to the one we have discussed and that is in relation to plant expenditure. I represent APPEA. We believe that, in respect of plant expenditure, there has been a fundamental change to the deductibility of expenditure in the old law versus the new law. I will just briefly read some words:

The current act says that expenditure on property, being plant or articles for the purposes of section 54—

which are the depreciation provisions—

is not allowable capital expenditure for the purposes of this division.

The proposed act says:

. . . expenditure on or in relation to plant—

and these are the crucial words—

whether or not depreciation is allowable under the Income Tax Assessment Act 1936, is not allowable capital expenditure.

Back in 1988, when the provision under the current act was introduced into the legislation, the explanatory memorandum said:

By new subsection 124AA(2A), expenditure on plant or articles for the purposes of section 54 of the principal act—

and again we believe these are the crucial words—

that is plant or articles as defined in that section which are owned by a taxpayer and used or installed ready for use for producing assessable income, will cease to be allowable capital expenditure under division 10AA.

Industry believes that those words mean that, where an item of plant is not depreciable under the depreciation provisions, then it is deductible as allowable capital expenditure under the mining or petroleum provisions. Whereas the proposed act says that it does not matter whether it is depreciable or not, the expenditure, if it is on plant, is not deductible.

In a letter dated 5 February 1996, to the JCPA, Brian Nolan made the following comment:

TLIP has reviewed the legislative history of the provisions and concluded that the rewritten law is an accurate reflection of the existing law and its policy intent.

We would argue that it clearly does not provide an accurate reflection of the existing law and that the addition of the words `and its policy intent' is something which is outside the scope of the TLIP. Further on in that same letter, Brian commented:

In practice, we do not believe that much turns on this point. Industry view is that the 1988 explanatory memorandum is specific as to the expenditure which is considered to be outside the mining or petroleum divisions of the act and that is, expenditure which is deductible under depreciation provisions.

Again we would go back and say it is similar issue to the one Mr Tillman talked about before, where there has been a clear change in words in the new act versus the old act. We believe that changes the interpretation of what is deductible as allowable capital expenditure and/or depreciation.

Mr FITZGIBBON—Can I ask what your answer is to all that?

Mr Vine—The answer is that we leave the words exactly as they are today and the words today say:

. . . being plant or articles for the purposes of section 54.

We believe that those words mean—as evidenced by the explanatory memorandum—that

where an item of plant is not depreciable under section 54 it is deductible as allowable capital expenditure under the mining or petroleum provisions. We believe that the change in words clearly changes the interpretation of that.

Mr BEDDALL—What do you think would be the overall cost to the industry?

Mr Vine—It is one of those things that is impossible to determine. In talking to the tax law improvement project people we talked about one specific example—which is mentioned in the explanatory memorandum—of a dry development well. If in the petroleum industry we drilled a dry development well, they are saying that that is depreciable under section 54, albeit that it has not gone into use. My own view is that the courts may interpret that somewhat differently on the basis of the words in the act. If the words in the act are clear then the court does not go to the explanatory memorandum where TLIP has suggested that it would be deductible. There probably are numerous issues which we could think of where expenditure may not be deductible today where it was yesterday. In terms of costs, it is one of those things we certainly have not tried to put any figure on and it probably depends on projects as they go forward.

Mr Dunne—Picking up the same point as Mr Vine, I have become very confused as to where the TLIP team actually stands on this point after reading their response to the joint committee dated 5 February. By way of cross-reference I think it is handy to refer back to my comments at the hearing on 22 January which, on the document I am looking at, is on the foot of page PA86. I think part of this response in the TLIP team's letter of 5 February refers to those comments. It says:

Another situation involves dry wells and is referred to in APPEA's submission. The plant exclusion rule does **not** apply to dry wells because they are not *plant or articles*. TLIP has made this plain in the Explanatory Memorandum—see page 93.

Presumably they are not plant or articles because the well has not been completed for production. The reservoir—or what was hoped to be a reservoir—perhaps being nonexistent.

However, in confining its comments in the Explanatory Memorandum to the plant exclusion rule issue, TLIP has not gone as far as industry would like. We have not stated that dry wells **are** deductible under the mining provisions. We have merely said that they **may** be deductible under those provisions.

In fact, the explanatory memorandum says it could be. I do not know that there is any difference in the meaning of those two phrases.

We do not propose to make such a statement.

I do not know what that means. I would be grateful for clarification. What does `maybe' and what does `we do not propose to make such a statement' mean? But, in any event, if there is any chance by way of administrative practice or whatever for expenditure on a dry well to be allowable capital expenditure and, therefore, for there to be tax relief in respect of that expenditure, one is not going to achieve it in terms of the way the proposed rewrite has been

written. I will not take you through it, but it just cannot be achieved, so where are we in this whole issue? Terribly confused—that is the whole point.

Mr Robinson—I do agree that it is probably important for Mr Nolan to comment in response, but it is perhaps equally important for the Minerals Council to say that the council is also very concerned by this point. We share the concern and we agree with the comments that have already been made, particularly in relation to plant which, for whatever reason, does not actually get to the point of completion or does not come into use as part of the production facilities. There is also a more general point, I think, and that is that, under the legislation as it currently stands, it might also affect plant in the form of plant fixtures on land which is owned by another person other than the crown.

We do not believe, in the context of the mining provisions and the way in which they are intended to operate beneficially for mining companies, which typically operate on land which is not their own—they operate on leased land, whether it is crown land or a private lease—that, when the changes were made in 1988, it was ever intended that there should be created expenditures on plant which were permanently non-deductible, where that situation did not apply before, because it was possible to claim all plant expenditure under the mining provisions with an election at the taxpayer's option to convert the deduction to a depreciation provision in respect of plant. Obviously, under those original provisions, where any of the particular problem areas that we are now highlighting would have occurred, the taxpayer would not ever have voluntarily made that election at that time. So he would have been entitled to a deduction under the division 10 provisions or the equivalent petroleum 10AA provisions.

CHAIR—Were all these points taken up in the consultative process during the redraft?

Mr Robinson—Yes.

CHAIR—What has happened? Why is it that we have a disagreement now between the industry and the TLIP?

Mr Nolan—We have provided evidence on these matters and some of that has been referred to. From the project team's point of view, we are not attempting to change the law, merely to make it clearer. We have gone back into the legislation files from 1988. We have also conferred with Treasury to see whether they agreed with our view as to what the intention was. As it happens, they do agree.

CHAIR—Have they informed the industry—

Mr BEDDALL—That is because they would lose revenue if they did not do so. Treasury will always agree if it means they get more revenue!

Mr Nolan—Actually, I was coming to that very point because we think this is very

much more a hypothetical than a real argument here. We really do not see that there are any cases where plant will miss out, will fall into a gap between the mining provisions and the depreciation provisions. Dry wells was an example talked about. We believe that dry wells are just not plant, anyway, so the exclusion of plant does not affect dry wells.

CHAIR—Is that in dispute in the industry?

Mr Robinson—Yes.

CHAIR—And you have never accepted that in the consultative process?

Mr Nolan—No, we have not.

Mr GRIFFIN—Is that not almost directly in contradiction to what you were saying was the way that TLIP had suggested that matter would be treated earlier?

Mr Vine—Yes.

Mr Nolan—What we have done in the rewrite is to put in some words of emphasis to make clear what we think the position was intended to be—that once something was plant, it did not get dealt with under the mining provisions. The additional words that we have added are being argued. I accept the force and the earnestness with which it is being argued, that we have actually changed something there. There was no intention on our part to do that. I accept that there is an area of disagreement over what the right outcome is. All I am saying from the project team is that we think the matter is one that does not have any major revenue implications. We think there would be very little, if anything, that would fall into this particular hole. If the words were as they are in the present law, we do not think there would be any great risk to revenue.

Mr BEDDALL—So in the past a dry well was able to be claimed under this provision. Is that right?

Mr Vine—A dry well would normally have been claimed under the petroleum provisions.

Mr BEDDALL—How is it claimed now? If it is not allowed under this provision because it is not plant, how would that claim be able to be made now?

Ms Haly—It would fall for consideration under the mining provisions. We cannot think of any situation where it would not be deductible under those provisions. Mr Dunne read a paragraph from the second volume of submissions to the committee which says that, in the view of TLIP, dry wells do not constitute plant and are, therefore, not affected by the exclusion rule. In our view, they then fall to be considered under the mining provisions.

The next paragraph, in which elucidation was supported, arose because it was

suggested at the January hearings that the TLIP should have stated expressly in the explanatory memorandum that dry wells are deductible under the mining provisions. We have not said that they are or they are not. We have simply said that they are not plant. We did not take the extra step of stating something that we believe is the case—that dry wells are deductible—because what we were dealing with in the EM was a statement about a plant exclusion rule.

Mr BEDDALL—But if it is a tax law simplification, why not simplify it? Why leave it unsaid? Why not say it if you think it is deductible?

Mr Dunne—Please excuse the repetition. The important point here, if I understand what is being said, is that dry holes or dry wells—which are but one example; they are probably a minor example in terms of monetary considerations as to what might arise in this area—would fall for consideration to be eligible under the rewritten mining provisions as being possibly an outcome. As I said before, the way those provisions have been rewritten, the answer is a clear no. I am not referring to the words of the explanatory memorandum; I am referring to the words of the draft legislation. They just do not allow it.

CHAIR—Let me get it right. Irrespective of which way it is interpreted, there is no cost to revenue?

Senator WATSON—There is a tiny bit.

CHAIR—No, I think they are saying there is a cost to revenue.

Mr Vine—Yes.

CHAIR—Mr Nolan said it is not a cost to revenue.

Senator WATSON—Well, not in the long term. In this particular use there must be because there is a difference between the write-off under the mining provisions and what item you might claim under depreciable plant.

Mr Robinson—In relation to the point that Senator Watson has made, our real concern is that there is a permanent rather than a timing difference. The point is whether a particular expenditure that formerly was quite clearly deductible under the mining provisions will now be deductible at all in terms of the way in which the rewrite provision is couched.

It is helpful to take a very simple example, perhaps one from the mining context where a piece of plant is partly constructed on a mining site but then no further work is performed because of changes in the way in which the mining plan emerges or for whatever reason. The question to put to the TLIP team is: what is the status of that particular item? Is it plant? If it is plant, the outcome under the rewritten provisions surely is that there will be no deduction for the expenditure incurred. If it is not plant, clearly a deduction will continue to be available under the mining provisions. I would be very interested in the comments that Brian might have

on that point.

Mrs STONE—Mr Nolan, you said a minute ago that there was not much in this whole business. But APPEA and the Minerals Council are saying that this is significant to future revenue impacts and so on. So there seems to be a dispute there, too.

Mr Morris—It is not the revenue issue; it is the principle we would like to talk about first.

Mrs STONE—It is the principle you are more concerned about?

Mr Morris—Because we are concerned that there will be a loss of deductibility under the rewrite which goes beyond the terms of reference of the rewrite, and that that loss of deductibility, as Mr Robinson pointed out, could be total. In other words, there would be the creation of a non-deductible business expenditure for legitimate business expenditure on plant.

Mr Gaylard—The comments that I made on the first point I make equally on the second point. Again, it is possible to discern a change in position.

Senator WATSON—If you construct a plant around what turns out to be a dry well, what is the status according to the 1936 law? What is the status of that so-called plant that you have erected and have not used because at some point in time the well was either dry or not up to expectation, and you abandoned it, you walked away?

Mr Vine—There are two issues that come out of that, Senator Watson. One is, if it is dry in the first place, it is not expenditure on plant or articles for the purposes of section 54, so it never goes into the depreciation provisions of the act; for petroleum purposes it remains under division 10AA and is deductible over the life of the field. Or, if it never goes into use, then it is deductible when it is abandoned.

In the second instance, if it went into use at some point in time, then it would be deductible under depreciation provisions. When the well went dry, then the balance of the deduction would be deductible under the balancing charge provisions of the depreciation section.

Senator WATSON—So at the moment you have a little each way? Initially, you write it off under the mining provisions, and then when the well goes dry—

Mr Vine—No. If the well never goes into use, it would be deductible under the mining provisions. If the well goes into use and is subsequently found to be dry, then it would be fully deductible under the depreciation and balancing charge provisions. So, in either instance, currently we are entitled to a full deduction for the total expenditure on that well, whereas under the rewrite provisions, potentially, we are not entitled to any deduction.

CHAIR—We have to move on from that issue now. We have given it a fair hearing.

Senator WATSON—Just a moment, it is a fairly big issue, Mr Chairman. Could we stay with it a little while. In a sense, there is a real demarcation problem between mining expenditure and plant, is there not?

Mr Vine—Potentially, in that situation.

Senator WATSON—In many cases, it must be very hard to distinguish between items that are essentially mining and items that are plant. In a sense, would it not be better to get all your plant under the mining provisions, for simplicity, if we are trying to simplify the act?

Mr Dunne—Historically, both industries, general mining and petroleum, had that regime in place prior to May 1988 and it was changed.

Senator WATSON—Why was it changed?

Mr Dunne—I agree with your sentiments, or what I take as your sentiments, that we should go back to that regime. It would make life a lot easier.

Mr Nolan—Mr Chairman, I do not particularly want to canvass the policy of which is better. But in 1988 there was a deliberate review of the depreciation provisions and their application to the mining industry. Whilst the mining industry generally is allowed capital expenditures on the basis of remoteness of location and particular factors pertinent to that industry and get a range of deductions that others do not for those particular factors, the government at the time decided that plant was in a somewhat different category and that the mining industry position should be the same as for other industries in relation to plant, that all plant should be written off as plant under the depreciation regime. That is not what the law was before 1988 when the mining industry instead of taking depreciation could instead elect to write it off on a life of mine basis. But there was a deliberate change in 1988. So we are talking here about whether you should go back to the pre-1988 change, which was not accidental.

Mr FITZGIBBON—Mr Chairman, that is exactly what I was just about to say. Right now he is talking about policy issues. At the risk of oversimplifying this, I thought we were talking about a rewrite of an act in such a way as to ensure that there were no policy implications.

Senator WATSON—That is just a waste of everybody's time.

Mr FITZGIBBON—I find this whole process rather extraordinary. We are onto the second draft bill; we have had a second reading speech on the 1996 bill; we have got the industry arguing that there are significant changes to policy; we have got the team arguing otherwise. Surely this thing needs to be resolved before this bill proceeds and, if so, how does it all get resolved?

CHAIR—That is what we are here for.

Mr Dunne—There is an important point here. If the 1988 changes did not mean to bring about the potential to create black holes—I think we all understand what I mean by that: a permanent difference, expenditure not being deductible for income tax purposes, commonly called a black hole, and there are numerous of them in our system—if the 1988 changes did not intend to bring about the potential for black holes—

Senator WATSON—What about using terminology which everybody can understand? A black hole in the sense that you have used it means a loss of deductibility. A black hole in normal parlance is probably a minus on the budget deficit.

Mr GRIFFIN—Or rather an excuse for major budget cuts that are unnecessary.

Mr Dunne—I do not want to dabble in budgetary matters so I will rephrase that. If the 1988 amendments were not intended to bring about non-deductibility of expenditure that was previously deductible, and if we are limiting this TLIP to clarification and not policy, then the rewrite of this particular provision needs to be revisited and very clear words put in to ensure that there will not be non-deductibility where either you do not sufficiently progress a project to the state of getting an item of plant that is ready for use and held in reserve or put into use—in other words, where you do not get to the stage of having ordinary tax depreciation—or where, for some reason, an item in any conceptual sense is not plant, either embryonic plant or completed plant. I think that is it in a nutshell. If there has been no intention over all these years to create non-deductibility, then we need to revisit the way a particular provision in question has been rewritten for the sake of clarification.

Mr Robinson—Just to finish that point and not to prolong it, the further area relates to plant expenditures incurred by mining companies on land which is not owned by them and which is not crown land. In quite a number of instances—again, as I said before, because of the nature of the industry—mining companies find that they incur plant which are fixtures to land in those situations, and we do not believe that it was ever intended that the mining provisions be altered in a way which effectively deny depreciation or a deduction under the mining provisions for such expenditures. I will leave the point at that, I think.

CHAIR—This is not about native title, is it?

Mr Robinson—This is not about native title.

Senator WATSON—Can I get a clarification from the tax law improvement team about these items, as to how they intend to tax them?

Ms Haly—Mr Robinson has raised two issues: the first one concerned plant which was never completed. He asked for clarification as to how that would be treated. The second point is pipelines over leased or privately owned land. In our responses to the mining industry submissions we have dealt with five examples raised by the mining industry and stated our

positions. The previous reference that I referred to is dealt with at S265 of the second volume of submissions, and the second place where these matters are dealt with is at page S269. I do not wish to unnecessarily prolong the discussion because the answers to those questions are dealt with there.

Senator WATSON—Could you summarise it briefly for us for the *Hansard* record?

Ms Haly—The TLIP position is that when plant is never completed, it is not plant. It is not plant until it is completed and, therefore, is unaffected by the plant exclusion rule and would fall to be considered as expenditure under the mining regime. With respect to pipelines over leased or privately owned land, we believe that is dealt with in section 54AA of the current act, which will be rewritten in the same way in the rewrite, and there is no loss of deductibility as a result of that.

On the point which Mr Fitzgibbon raised, I would like to clarify that our project is designed to rewrite the law so as not to change policy. In the case of the eight instances which are favourable to industry which are referred to in our response to the mining industry's provisions, we have made small policy changes. We have sought to avoid any major policy change, but in order to determine whether our rewrite is going to change policy in any way, we have to establish what the policy was. So when we speak in our responses or orally here today about having referred to legislation folders, or having made other research attempts, that is to establish what the policy is so that we can then, knowingly, if it is in a small point, change it, and otherwise avoid a change. The point at issue here is that the mining industry feels that we have changed policy. We feel, having undertaken our research, that we have simply clarified what that policy was.

Mr FITZGIBBON—We have the industry representatives saying they believe that the wording has changed the policy; we have the team saying they do not believe it has. If this bill is adopted in its present form and somewhere down the track we are looking for a ruling on a particular division, what account, if any, does the person making the ruling take of *Hansard*, from these proceedings, for example? Surely, if enough evidence can be gathered to show that there was not any intention to change the policy, isn't it likely that the ruling would be favourable to the industry, or is that simplifying it?

Mr Nolan—I think the industry is saying that there are clear words in the rewrite which were not in the old law which have affected a change. To that extent, although it is not within my authority to change legislation, I think it is an area where we hear the views of the industry. If there was general agreement that the old words should be restored, or rather some words deleted, to get back to what is in the existing law in this particular case, I think that would not be a bad outcome, given that I still believe there is very little revenue implication in this.

Mr GRIFFIN—I have two points on that. One that you do not have to respond to is that I am a little bit annoyed that we are here at a public hearing, so far down the track, about some issues on which there is some dispute, and finding out that, in fact, there is no real

dispute in the end. The other point is that, if there are any other issues which have been listed which are allegedly in some dispute between the industry and TLIP that we have not discussed so far, could we quickly go to those, and can you tell me if you still have a problem with those issues or whether you are going to agree with the industry on those ones also.

Mr Nolan—No. I strictly do not agree with the industry on their points. I do accept that they have a different view from mine. All I am saying is that there is not a lot of revenue in that last point.

Mr GRIFFIN—What I have got so far is that, on at least two issues today where there has been a bit of a long running debate between the industry and yourselves about whether the wording should or should not be changed, there has been a concession from TLIP that you will consider very seriously those issues in terms of a redrafting of those sections. I accept that and I think that is a very sensible thing to do in the circumstances, and the industry welcomes that. I think that is great. All I am saying is I do not know why we are doing it now and why it was not done months ago.

Given the time, and the situation we are in with time in terms of these hearings; and given there were several other issues that, I think, were of concern to the industry and that have the same status of those earlier issues before today, I would like to know whether TLIP is prepared to reconsider their views on any of those issues as well so that we can try to work out what we are actually arguing about today or whether in fact there is no argument to have.

Mr Nolan—These are the only two where I believe that, from the project's point of view, there is room to get a different outcome to what is in the bill. On the other points that the industry has raised—you may not want to go into the details of those again right now—we believe that we have reviewed the position carefully. We would maintain very firmly the advice that we have previously given that the bill should not be changed.

CHAIR—Mr Dunne, I think this will have to be the final word on this issue.

Mr Dunne—I was going to move on to another issue.

CHAIR—Jolly good show.

Mr Dunne—I might take the lead from Mr Griffin. I do not want to take up a lot of the committee's time on this point, but I think you were giving the entree before to moving on to the other issues. There is a limit as to the detail in which we talk about specific issues. I think it is best done in another place, particularly because this is the issue to do with excess deductions.

Very briefly for your benefit, this situation involves deductions for expenditure for allowable capital expenditure and exploration expenditure which would ordinarily go off and what I call `wait in the wings' until the taxpayer has sufficient assessable income to absorb those deductions. The taxpayer, by election, can change that regime so that the excess amount

of the allowable capital expenditure or exploration expenditure can be an immediate deduction rather than it waiting in the wings until better days or days of more assessable income. That is what we conveniently call excess deductions.

There was no debate at the committee hearing on 22 January on this point, as evidenced in the *Hansard* record. Since then—and in the TLIP team's letter or further submission of 5 February—there has been quite a bit of attention given to the point which, admittedly, is in response to written submissions by the two industry associations. I think we should spend a very few minutes in making a few comments. I could make a lot more comments, but I will limit them. Because there has been a response we should not let pass our further response on that.

The TLIP team on this particular point has not unearthed—and, I believe, has failed to unearth or show the industry associations—any documentary extrinsic material to support their position. Furthermore, in the industry associations' respective submissions—I think AMEC lodged a submission on this point which was identical to APPEA's submission—the Taxation Office's response per medium of the gentleman in the Adelaide branch who actually drafted a draft taxation ruling on the current provisions, not the rewritten provisions, was that, `Yes, I agree that this is the way that the provisions read.' This is an ordinary reading of the provisions and this is the way they read. But, `We, the tax office, don't believe that that was ever the intention.' So I think they are staying with their draft rulings, which have never been finalised, by the way, which is a very important point. There is still no official Taxation Office ruling on this issue. It seems to have been subsumed into the tax law improvement project.

There has been no production of any documentary evidence of a contrary intention in the outcome. The particular issue here is that, if one has gone along for a number of years without making these elections so that the excess expenditure goes off and waits in the wings and is welling up—excuse the pun—in the petroleum sense, and then in a later year one makes one of these elections, the issue is: does all of the amount that in the previous years has been welling up become a deduction in relation to the year in which one has made one of these elections, or is a limited amount deduction? We are talking about a timing issue here, but it could be a very significant timing issue because of the amounts of expenditure involved in any particular year and the delay in making one of these elections.

One critical issue is that there has been no production of any documentary evidence to support the position of the TLIP on the point. We are getting back to the issue of interpretation. If I could just make one or two other comments in relation to the further submission of the TLIP in the 5 February letter.

Senator WATSON—Could you explain to the committee the effect of the elections and where the deduction can be claimed? Is there any difference in deductibility as far as you are concerned depending on who might be the ultimate beneficiary of that election?

Mr Dunne—I am not sure that I fully understand your question.

Senator WATSON—Is your problem in relation to group losses or is your problem in relation to the subsequent sale and acquisition of that site by another company? Where is the area of contention?

Mr Dunne—It could be either of those outcomes.

Senator WATSON—That is what we want to know.

Mr Dunne—The point is: let the law, as it currently reads, run its course. If it is going to be changed—we have debated this today—let it not be changed under the guise of a project that is limited to clarifying the law.

Senator WATSON—Do you believe you have lost some excess deductions down the track by whoever happens to be the beneficiary of that claim for the excess distributions by a former company?

Mr Dunne—The rewrite brings about a different outcome in this respect and the terms of reference are not about to bring different outcomes; they are about clarifying the law.

Senator WATSON—What is the difference in outcome? Is it loss of deductibility, is it a timing difference? What is the nature of it?

Mr Dunne—Yes, being able to access lesser deductions now than would otherwise be the case involves a timing difference.

Senator WATSON—But you get them over time under the new rewritten law, do you?

Mr Dunne—Yes, but perhaps significantly delayed.

Senator WATSON—So you are talking about a timing difference spilling over to how many additional years? I am just trying to quantify the extent of the problem that you have raised.

Mr Dunne—It could be as many as 10.

Mr Robinson—Maybe forever, if you do not have income.

Mr Dunne—Maybe forever, yes.

Mr BEDDALL—Which can affect the viability of the whole project.

Senator WATSON—If you do not claim it, there are no losses there.

Mrs STONE—Is there a sunset clause on the period within which you must claim

these deductions?

Mr Dunne—No.

Mrs STONE—It just goes on and on until you have a period of time when it would make good sense for you in terms of accounting practices to claim.

Mr Dunne—If perhaps trapped in one particular legal entity, one particular taxpayer may not produce any tax deduction at all for different reasons. Mr Robinson just alluded to one of them. If I could quickly make two more points. There are some comments on page S266 and S267 that tend to say that it would be an odd result for a different treatment to prevail. I can think of some very good reasons why the existing provisions are different as between elections for exploration expenditure and allowable capital expenditure. The argument here is in respect of elections for allowable capital expenditures. There is no problem with exploration expenditure. The industry agrees that there is a limited amount thrown out by way of making a loss election.

One good reason why I think originally one had a different regime for exploration expenditure was that the legislature might have been concerned about trafficking in loss companies, because if a taxpayer is a mere explorer and has not gone beyond that to the development stage it is going to be pregnant with tax deductions. I can identify a good reason why originally one got a lesser amount by making one of these elections in respect of exploration expenditure. The converse of that is that there are good reasons for getting a greater amount if you are in a development phase.

Senator WATSON—That argument would not be relevant within the group.

Mr Reid—I think the point made at page 266 to justify the approach taken in the rewrite is spurious. There are reasons why we believe there was originally a different intent.

CHAIR—I am going to have to cut that off. We are speaking again at lunchtime and we can discuss the detail of it so that the committee has more information on it.

Mr Reid—That is fine but there are further points.

CHAIR—We will get a response from TLIP later. There is one issue that I think AMEC wants to raise.

Mr Tieleman—This gets to a different area of the mining industry completely. We are talking about prospectors here and the rewrite of the bona fide prospector exemption. This is an exemption which has been around since the 1920s; it is something that has been encouraged by government, to encourage those prospectors who basically go out there and find new ground.

We have, I suppose, a few concerns. I think in the rewrite there is an opportunity to

clarify the existing law. I think, as pointed out in the TLIP information paper, if the policy is out of step with today's reality, then we should take the opportunity to change that law so that it comes into line with the commercial reality today. These provisions reflect the prospecting activities or the way prospecting was done back in the 1930s. So it is, in our view, completely out of step with current and new prospecting methods. I do not want to spend too much time on this but the rewrite has not addressed some of the issues which we would have liked to have seen addressed in the area of bringing the legislation, if I could say, up to date.

We have a specific issue with respect to whether this exemption applies to partnerships and trusts. This really does get back to a definitional issue. It has been addressed by TLIP. I do not agree with their views and AMEC do not agree with their views. I think we would like to put that on record. We would like to have that addressed again. Our concern is that the prospector exemption may not apply to partnerships and trusts with the current definitions. That would be a radical departure from the existing law. It is something that needs to be looked at.

CHAIR—Did you raise this matter at the previous hearing?

Mr Tieleman—Yes, we did. The other point that I think we would like to raise is that there is a provision in this legislation which goes back to some concessions that were around many decades ago. This concession is no longer available but there was also an anti-avoidance provision in the legislation which has been retained even after the concession has been removed. We see no reason for this anti-avoidance provision to be in its current state. We do not think it is necessary for it to be there. The impact of this provision is very, very significant.

Normally, an anti-avoidance provision is something which is at the discretion of the commissioner. This has no commissioner's discretion. It is a provision that says that, if one of the parties to the sale of a prospect is related to or in some way able to influence the other party to the transaction—the disposal of the prospect—irrespective of whether they have satisfied the bona fide prospect of rules, the exemption just will not apply. The concern that we have is that this provision is stopping a lot of the public capital raisings on prospects where you may have a prospector who wishes to raise capital through a public float. They are not able to sell their prospect into the public vehicle without a significant tax cost. Often this is simply done for shares, so they are not able to sell it into the public vehicle without a tax cost because the provision just simply says that because you are related to the public company you are not entitled to the bona fide prospector exemption.

That is an issue that we would like to see addressed. If it is necessary to include anti-avoidance provisions, those can be included but in a different form.

There is also the insertion of words into the bill which were not there previously. I refer specifically to the words `someone else'. This is a rather technical issue, so I will not get into it. Those words again curtail the situations under which a bona fide prospector can satisfy the tests. So I would like to again put that issue on the record as well.

Senator WATSON—What was the response by the tax law improvement committee to AMEC earlier raising this issue on the status of prospectors extending to link the original intent of the law in its scope? Have we had a response from the tax office on the improvement project?

Mr Nolan—A number of matters are raised here. Basically, there can always be argument about what someone else means and so on. We do not believe that we have changed the meaning of the act by using more modern language.

There was a question about an anti-avoidance provision. We have not done anything in substance to change the existing law there either. Mr Tieleman is saying that there is an anti-avoidance provision that has been in the law for a long time and could you take it out please. That is a different question to whether we have actually changed anything. We have retained an existing provision. We may have modernised the setting of it somewhat, but the essence of it is the same.

Senator WATSON—That is the second point. What about the first point about individuals, partnerships and trusts?

Mr Nolan—Partnerships and trusts do qualify as genuine. Individual partners are eligible to qualify as bona fide prospectors.

CHAIR—I am sorry but I am going to have to wind this up. We will pursue it at lunchtime but only if we need more specific details.

Mr Robinson, you wrote to me a few days ago about another issue: mine access and mineral transport on roads. Can I take that as a submission to the committee? Do you have any objection to that being published?

Mr Robinson—No, I would welcome the opportunity. That submission to you was intended as a formal submission from the Minerals Council of Australia and certainly we would welcome it being included in the record.

Mr Morris—It is attached to our submission as an appendix.

CHAIR—I do not think we are going to have time to discuss it now. We can talk about it over lunch and we have accepted it as a submission to be included in the context of this inquiry.

[11.12 a.m.]

MORTON, Ms Joycelyn Cheryl, Immediate Past President, Australian Society of Chartered Practising Accountants (NSW Division), Level 3, Quay West Building, 111 Harrington Street, The Rocks, Sydney, New South Wales 2000

NENNA, Mr Romano George, Member of Taxation Committee, Australian Retailers Association, 2nd Floor, 20 York Street, Sydney, New South Wales 2000

CHAIR—I welcome Joycelyn Morton from the Australian Society of Chartered Practising Accountants and Mr Romano Nenna from the Australian Retailers Association. I invite you to give us an opening statement of about five minutes or so. We will start with Joycelyn Morton.

Ms Morton—Thank you very much for the opportunity to be able to make a brief presentation today. If I could just briefly introduce my colleague here, Mr Romano Nanna. He is the Group General Manager, Taxation, of Coles Myer Ltd. He is a member of the taxation committee of the Australian Retailers Association, the Law Council of Australia, and the Australian Chamber of Commerce and Industry. He is also an executive committee member of the Corporate Tax Association. I thought that introduction might be helpful to the committee. I know I am well known to the members of the committee, but he may not be known.

I found preparing for this session exceptionally difficult because so much was said at the previous two days of the hearing in January and I do not want to repeat what has been said. However, my concern is that transcripts do not necessarily project the spirit of what was said in many instances. So if I could be forgiven if there are some issues that I re-raise.

CHAIR—I invite you to do so because the membership of the committee is totally different within this parliament to the last parliament.

Ms Morton—Thank you very much.

CHAIR—And, not to mention, the government.

Ms Morton—First of all, I strongly support the concept of rewriting the income tax legislation into plain English. There can be no doubt about the hard work and the dedication of the project team. Although they have received some criticism about limited output to date, to the contrary, I personally have been surprised at the significant output that they have made. From being very close to the process by being involved in the consultative committee I know the incredible amount of work that they have put in to get to where they are today.

A lot of people are just seeing this copy, but at the moment, via the consultative committee, we know all the other drafts that are proceeding at the same time. The complexity of the current income tax law has to be kept in mind. With that in mind, I think it is quite clear that this project will, undoubtedly, take longer than three years. That should be very obvious

to all participants.

Senator WATSON—How long?

Ms Morton—I would think you are looking at a minimum of five years. It may be six, but I think a minimum of five.

I would also like to recognise the amount of work that the consultative committee members have put into this project. Many members have given up considerable hours to make their time available to members of the project team. We all have demanding jobs—that is probably why we were chosen to sit on the consultative committee in the first place. We take this project very seriously and our hope is for better tax laws.

If I say things that are on occasions critical of issues, I want them to be taken in the light of what this is about—to look at it and to critically analyse what has been done, but not detracting from the hard work and the good work that has been done to date. The complexity of the current law leads me to concerns about segments of this rewrite.

Firstly, on the question of policy, I know it was the stated intention of the previous government that policy was not to be addressed. That was to the distress of most people, whether they be within the tax office or whether they be advisers or corporate tax managers. As the project progresses, it is obvious the policy issues are essential, in particular small `p' issues. In a changing business environment and with changing law, for example, some of the issues that were written originally in relation to dividends and companies were prior to grouping of tax losses.

Now that has been introduced, but other issues have not been changed. So in this changing environment the project team needs to be able to address policy issues that maybe have a small revenue effect but are so crucial in being able to allow the project to proceed in a very coherent and productive manner. Without these policy changes we will be left with layers and layers of complexity, written in plain English, but the fundamental problem within the income tax legislation will not be removed.

I think that that clearly comes out in areas such as the capital allowance area where we have had to rewrite the old law and then commence with a new period and a new era. Now if the project team could have been allowed to say, `Alright, everybody can move into the system', that would have saved so much time and effort and would have reduced the complexity of that area quite significantly.

A rewrite of complex and uncohesive law into simpler language will not be achieved if we do not have these policy changes. You can have instances like dividend rebates being lost. When they are passed through a group a subsidiary might have tax losses, and when a subsidiary lower than that declares a dividend up through that company it loses its dividend rebate for no logical reason. Now that is beyond the scope of the project team, but with grouping of losses these days this is an issue that clearly should be addressed because

companies can get around the issue but have to go to an incredible amount of expense to do so. So if that portion of the law is a farce, then why do we persist with it?

Senator WATSON—Is it a farce? For example, ordinary individuals on low income lose the benefit of the imputation credit.

Ms Morton—That is precisely my point, that if the imputation credit or the rebate is lost for no good reason—

Senator WATSON—Why should companies get it, just because they have passed up—

CHAIR—I think we will have questions after the opening statement.

Ms Morton—Similarly, with the loss provisions, where you have a change in ownership the current law requires you to continue precisely the same business that it carried on prior to the change in ownership. Now that is just not practical in a current business environment. Everybody knows that if companies stay still, they die. So is it more important to allow companies to evolve, to keep employing people and to move into new markets to survive rather than to restrict them by saying, `If you earn any more income, or of a different nature, or you if change your business in any way, because you have had a change in ownership you will not get those losses'? There are some issues there that I think need to be addressed.

Then we need, in the big policy issue area, a systematic way for these issues to be collected and forwarded to the government to allow the government to look at them and to balance the pros and cons of the various issues, to fit within their requirements for governing—and the necessary maintenance of revenue, of course. But there undoubtedly is also a concern that big policy issues must be addressed, not just the small. But if the project team could be allowed to deal with small policy issues immediately, and in a very short-term fashion, I think it would help the project considerably.

The second issue that is of major concern is the delivery option: I know that you have probably heard a lot said on this. I would have to say that I was probably the first person to express concerns about the progressive enactment, purely because of the complexity of the new law and being somebody who has to deal with this law and implement it in a company on a day-to-day basis.

I also have grave concerns for smaller practitioners of the Society of CPAs who may not be aware that this law has changed and may still be dealing with the 1936 act merely because they do not know. Even if you asked tax managers of major corporations, a lot of them do not know that this exists yet, do not know that it has been introduced to parliament and do not know that right on this day, on 16 July, they are already effectively operating under this act, even though it has not received royal assent, because of its effective date.

Large companies have the resources to be able to invest in advisers to tell them what they should do and employ people like me or Romano. But smaller companies cannot afford that and smaller practitioners do not have the time to constantly be running around and saying, 'Now, has that provision been moved into the new act, or is that in the old act?' It should be borne in mind that we currently have four volumes of income tax legislation, four volumes of rulings, we now have an income tax assessment bill, a consequential amendments bill, a transitional provisions bill and a further EM, and the requirement that, although I approve of the introduction of section 1-3, in general terms, that necessitates people being able to understand the policy of the 1936 act, which means they have to keep their original volume and their explanatory memorandums for that original act as well. As I said, I have some concerns about section 1-3, but when we go into further detail I will come back to that.

I must say that I am a great supporter of the concept of the dictionary at the back of the act. One of the major problems that readers of the act have had over the years is not being able to know where to find the definitions. Sometimes they are at the beginning of the provision, at the end of the provision, or in some other provision. You can go to a meeting having one volume which you thought was complete and suddenly realise in the middle of the meeting that it refers you to a definition that is in a completely different volume that you did not carry with you. So I commend the project team for this concept, and I strongly support it. But the problem with this bill is that so many of its definitions, if you turn to page 352, are dependent still on the 1936 act. So this in itself is in no way complete, even in its own little provisions, in its own entirety.

The core provisions are absolutely fundamental to every taxpayer. I have grave concerns about the impact of the various change of words to sections 19, 25, 48 and 51, which are absolutely crucial to the operation of the act. In my view, we should not be touching those provisions until the entire act is finished and we see how things hang together and how they interact, to make sure that we understand the operation of the new words, and at that stage we can implement the core provisions.

That does not mean that what has been done is completely wasted, but it should be warehoused. As I said, I am a great supporter of the warehousing concept. I originally called it the modified big bang, because I do not like the idea of it being kept in secret and written and written and written, and then just released. It should be passed out, it should go through consultation, it should go through committees such as this. There should be rigorous analysis to make sure that what we get is good law. Some of the provisions that we are dealing with here have been in place for 60 years. We should not be rushing to change them until we really know the implication of what is being said.

My concerns for the progressive delivery relate to subsequently identified issues—will they get changed? We have so much difficulty in getting even technical corrections through the parliament these days; what about corrections to a brand new bill—will they be palatable? There is the issue of connections and interactions with other major areas that have not been written yet, for example CGT; non-tax specialists using the wrong act—as I said, many tax advisers themselves are not even aware that this bill is in existence today.

There is the issue of the significant compliance costs, especially in the next few years. If this project in fact does go for five years, that is five years of having to deal with two completely distinct forms of legislation. The uncertainty, confusion and scope for error outweigh any gains that can be argued for in saying that this brings immediate benefits to people. The benefits that will arise will be from people having this on their desk and being able to use the two side by side; working with it and, over time, working out where the errors actually exist.

This rewrite must be a rigorous exercise in precision and clarity. It must not be unduly verbose because all that does is increase the scope for uncertainty, especially in the core provisions. As I said, this project undoubtedly will go for more than the three years. There are still fundamental flaws and unresolved difficulties. There are numerous errors that we can go through with you. A typical example is the leaving in of the diagram in 6-1.

When reading the transcript of the previous hearing last night I noticed that I referred to the fact that the previous chairman had extreme difficulty with that diagram, yet he should have been the typical lay person who would be able to read and understand what that diagram meant. I refer to my transcript which was only a draft. The response of the chairman of that committee was:

. . . I think there was some suggestion there should be arrows or something around the diagram.

There seemed to be a lot of discussion about the simplification of process. He went on to say:

What relevance does the tax free threshold have in there? Does that have anything to do with your exempt income period, or something like that?

Clearly, it had nothing to do with that. But if somebody looking at it does not understand that straight away then there is something fundamentally wrong.I would like to conclude my opening statement by saying that these points that I have raised are in fact the views of the Australian Society of CPAs, the Institute of Chartered Accountants in Australia, the Law Council of Australia, the Taxation Institute of Australia, the Corporate Taxpayers Association of Australia, the Australian Retailers Association and, I understand, also the views of the mining people who spoke to you this morning. That is a not insignificant group of organisations.

In my previous statement I said that the Income Tax Assessment Act impacts on every person and entity in Australia. Those non-conversant in tax are reliant on all of us here—the tax law improvement project team, the tax officers and the tax advisers—to do the right thing by them. They are actually looking to us to protect them from any unintended consequences and hopefully to reduce the compliance costs.

We have an important and very serious responsibility here for our fellow practitioners who are not specialists in this area but are relying on us to make sure things are right. These include the ATO staff—so that they can have a better ability to interpret the law and apply the

law properly—people who have to use the law and, most importantly, the community at large.

CHAIR—Mr Nenna, would you like to make an opening statement?

Mr Nenna—Only briefly, to endorse much of what Joycelyn has said, which again reinforces my understanding of the CTA position as well as the position of the joint professional bodies. I would like just to say that the importance of this exercise we are embarking upon should not be understated. I fear, and we all fear, that the complexity of the tax law is going to come crashing down on us in terms of the ability of taxpayers to be able to comply with the law and for the administrators to administer it properly. That has got very, very serious consequences for the Australian economy and the economic environment as a whole.

If people do not understand what their rights and responsibilities are, especially in relation to taxation, then you could have a very serious impact on economic activity and the attractiveness of Australia as a place to invest. As I say, I really fear that sometimes tax for the non-practitioner can sound like a boring subject, but its importance and the importance of this project should not be underestimated. I wish to stress that.

Of course, I endorse what everyone else has said from our side in relation to the exclusion of policy—big `p', little `p', call it what you like. It is necessarily going to diminish the progress that we can make in terms of clarity in the law. But, notwithstanding that, let me say from my perspective and from our association's perspective I still think that there is much that can be done—notwithstanding the exclusion of policy issues—in terms of eliminating redundant provisions, economy of language and reordering and renumbering. All those things can add to the process, but the process has to be rigorous. There has to be extensive quality control and there has to be a certain amount of agreement.

The potential misconception in relation to the statement that we will not address policy issues is the assumption that there is general agreement about what the policy is in respect of any particular provision. In this regard, I do not believe that the words of a provision should be changed unless there is general agreement between the tax law improvement project and the tax community as a whole represented by the major representatives. If there is any disagreement about the rewrite provisions, my own view is that the provisions should remain the same and we should let the courts determine what the correct interpretations are. It disturbs me a great deal, in particular some of the changes that were originally made to the core provisions. Although some of those have been fixed in terms of trying to get back to the original wording of those provisions, by and large there was a great deal of unanimity in its interpretation. By changing the words we are breaking what was not broken in the first place. In terms of those general remarks, we might get into some details or questions.

CHAIR—Thank you. Senator Watson, you have a couple of questions.

Senator WATSON—Could you outline what you consider to be redundant provisions that should have been excised from the new bill?

Mr Nenna—One of the first things that struck me is the great opportunity to make a really big impact very quickly. Part of the complexity of this existing law is the amazing repetition in specific areas of quite specific anti-avoidance provisions. This was done at a time when the general anti-avoidance provision—the previous section 260—had been eroded in its impact. That provision was subsequently rewritten and is now contained in part 4A. If part 4A did the job that it was always intended to do, it would immediately make redundant a plethora of specific anti-avoidance provisions that are contained right throughout the act. I would say—I do not purport to have measured this—it would have to be greater than 10 per cent. In relation to this bill you might ask: why do we need those complex current year loss provisions? They are purely there as an anti-avoidance measure. They are bloody hard to apply in practical terms. They are very hard to understand.

The tax law improvement project team has done an excellent job in trying to make them more comprehensible, but they are still not comprehensible because you cannot fix things that need to be as complex as that. But, in terms of redundancy, essentially it is a redundant provision if the general anti-avoidance provision is doing its work. That is a classic area and that would make a huge impact.

Senator WATSON—Could you give us a supplementary submission outlining those areas where you believe there has been a doubling up of the anti-avoidance provisions?

Mr Nenna—Yes.

CHAIR—Does anybody else wish to comment on the opening statement?

Mr BEDDALL—The TLIP certainly lacks the ability to deal with policy issues, but there is no reason this committee cannot make a series of recommendations to the Treasurer, in particular, or to highlight policy areas, particularly small `p' policy areas, that we think should be addressed. So in any sort of process that you want to take, there is opportunity there for this committee to say when it is reporting on the process that these policy issues were raised and should be addressed. We would get that on the record in the parliament with a direct recommendation—not on how each one should be addressed, but on these issues that should be addressed to the Treasurer.

Mr Nenna—We appreciate that.

Ms Morton—That is precisely why we are raising that today—because of our concern.

Mr Gaylard—I know we have spent a fair bit of time on this, but there is a lot of small `p' policy coming through which is technically outside, if you wanted to take a very strong view of it, the terms of reference.

We have come to know—and we said this last week—that people are quite happy with

small ‘p’ policy changes. It has been expressed differently, but at one stage I have expressed it by saying that they are very happy if it goes their way, and they are not happy if it goes the other way. A better way of expressing it is that, if there is general agreement on how it should be changed, then it is changed and, if there is not, then it should not be.

That process, unfortunately, has hamstrung us to a large extent. We have spent a lot of time in the last bit of this hearing discussing that. There is a lot of small ‘p’ policy change going on. Romano’s point on the current year loss provisions is not in that small ‘p’ category; it is a very large ‘p’. We made some very substantial changes in the loss provisions, I firmly believe, getting rid of some provisions which we thought were redundant. We certainly got rid of a lot of anti-avoidance provisions in that legislation which we thought were redundant.

Getting rid of the whole current year loss provisions, that is not a small ‘p’; that is a very big ‘p’. Although that legislation was brought in at the time to stop a specific anti-avoidance practice which was costing hundreds and hundreds of millions of dollars in revenue, it is seen as being a lot wider than that.

The provisions have been stated as clearly as they possibly can. The provisions have been cut down from 48 pages to about 12 or 14. I know that is not the test either, as again we heard today. The provisions now work. They work differently. They can be accessed in a lot more detail and lot more easily than was previously the case. To grapple with some of those sorts of issues would be a major issue with potentially major revenue ramifications.

Every time we come across an anti-avoidance provision, we look at it to see if we can get rid of it. We spent some time yesterday in the leadership group seeing if we could get rid of an anti-avoidance provision in relation to the entertainment provisions, and there is doubt. We wanted to get rid of it. There is doubt whether the existing part 4A will do the work. Part 4A is a provision that no-one, especially the tax office, wants to have to apply on a day-to-day basis. It generally has its genesis in larger or more specific issues. I share Romano’s point on that over all. If we could get rid of a lot of the anti-avoidance provisions, we will try to do so.

Mr Nenna—From what I heard, it sounded to me like there has already been a big `p' policy change in relation to the current year loss provisions; if I heard it correctly. It was originally introduced for a specific anti-avoidance provision. If that were the case, if we adhere to the principles that the TLIP has set itself, it should stick to the policy behind the provision. What we have heard is that although, that was the policy behind the provision, it now is seen to have some nice wider application—let us utilise words that support a purported wider application than it was ever intended to have. This is what is concerning practitioners as well.

In this project the opportunity is being taken to support expansive views, in some cases, of what the provisions are supposed to do. As I say, it is a very fine line. We would say, if you are going to stick to policy, then stick to policy. In this particular case, the original policy, as Simon suggested, was a specific anti-avoidance requirement. Either the general anti-avoidance provision works or it does not, and if it does, it can make real inroads into this project.

Mr Nolan—Mr Chairman, there is a fair lack of logic in what Romano has just been saying. We have not been changing major policy. The parameters of the project were essentially handed to us originally by the previous government. The present government can decide to change those parameters if it wishes to do so. At the moment we are working within a reasonably limited set of guidelines which are essentially about rewriting the law. The policy changes—and they are micro `p', rather than small `p'—that we have made have generally almost entirely been favourable to taxpayers. This morning we heard some differences of view—genuinely held differences of view. The suggestion, however, that we should not make major policy change, yet we should take out the current year loss provisions, does not quite sit with me. We either do not change policy and we leave the current year loss provisions in the law, or we have got an entirely different process.

You heard in the opening remarks a lot of general observations about quality control, the need for rigorous process, that we cannot have too much verbosity, and so on—a lot of unintended consequences—and that there needs to be a lot of consultation. Frankly, this particular project has had more consultation than any other project that I have ever heard of.

If we want to have this rewrite done—and everybody supporting it seems to want it done—then there has to be a limit to how much delay you can build into the system. I suspect we are already on the wrong end of that but then, naturally, I am a bit subjective in that. I want to have—I always have wanted to have—a very open and thorough consultative process. We have had that. We have produced exposure drafts. We have worked with groups of people in industry and the professions in focus groups, we have put out exposure drafts and run seminars and other opportunities for people to consult and report back to us.

The bill has been into the parliament now for the second time. There really has to be some end to all of that if we are going to achieve any final completion within a reasonable time. Romano used the word `fear' two or three times in his opening statement. I am afraid, myself, that is largely where the concerns are coming from, not from identifying particular points of difficulty, unintended consequences or errors.

If there were those errors, you would have heard about them by now. If you have not heard about them by now, after a couple of years of most of this material being around, then where are they? I think what you are really getting is resistance to the notion that words in the existing law should be changed unless there is some absolute guarantee that the substance has not altered. You do not get that, ultimately, until you find the High Court's rule on everything, and you only have to state that to know that that is unreal. We cannot wait for that to happen and there is no way for it to happen.

We just have to get on with rewriting the law, as we are doing with a very open process, taking account of the views of people as we should. But we really do need to get away from quite broad sweeping statements that colour the whole process with a climate that suggests there is gloom and doom about to be visited on the world when the reality is that all we are doing is opening up the law and making it simpler for people to understand and comply

with.

CHAIR—Every criticism so far appears to come from the fact that your terms of reference are broadened. Would you agree and, if so, are you happy with your terms of reference? Should your terms of reference be expanded?

Mr Nolan—As you will understand, that was a question for government. I believe that, if the terms of reference were opened up much more than they are now anyway, then the process would never be completed. We heard this morning just how long it takes to argue through a few relatively minor issues. They might be important in the eyes of the people who are putting them but, in the overall scheme of things, some of those issues we talked about this morning are not very large ones. If you open up a lot of policy questions of that kind, then you just finish up with interminable debate.

I think that rewriting the law is an extremely valuable thing to be doing. It will provide a good policy platform for review of more substantial issues, and I think that that should not be underestimated. I think it is a very valuable thing that, when you have rewritten the law, you can start to see whether there are questions about policy to be asked. The present law does not really allow you to do that because the issues are buried. Just getting on with rewriting the existing law is much more valuable than some people seem to acknowledge or see.

We have made a number of suggestions to government for particular small changes, and they are reflected in the bill. There is a lot more of that to come in the depreciation rewrite, in the capital gains tax rewrite and so on. They are small changes which essentially do not have a lot of revenue consequence, but we believe they make the law fit closer with commercial practice and take away some of the red tape. That is an entirely desirable and useful thing to do, and I think there will be some more of that. Perhaps the proportion of that might increase as we get further into it but, in terms of opening it up much more than it already is, no, I do not think this project team is the appropriate one to be dealing with policy. It was not set up for that. It is not staffed with people whose job it is to do that. I think you would need different participants within the project team, within the consultative committee arrangements and so on. It clearly is for the government to decide how it wants text policy matters to be reviewed and handled, and I think that is a process outside TLIP. I hope that is an adequate, if not over-full answer.

Senator WATSON—I would like Mr Nenna and Ms Morton to actually outline to us in a separate schedule those areas of so-called unintended consequences or where you believe the law has been changed.

Ms Morton—Yes.

Senator WATSON—Obviously you have raised these issues in the other consultative committee on which you sat. You might like to draw on that sort of experience or those minutes to assist you in that process.

Ms Morton—Yes.

Mr Nenna—I have a couple of things to say in response to Brian Nolan. I think that, as far as possible, the TLIP has made an attempt to be very open in terms of its consultation, but my fear—sorry to use that word again—my concern is in the consultative process. I have been involved: not through the consultative committee, but I have attended, as far as I could, a number of the sessions that have been going on. As far as they go they are very useful. What happens though, in my view, is that they are generally loose and unstructured. There could be a lot more use of workshops. Normally consultation occurs in these little groups people are invited to attend. It is normally before the law is rewritten in a particular area to get some feedback, and that is useful to a certain extent. But similar type workshops do not occur on a micro basis after the bill is brought in. For example, we have not had intensive workshops in the various states in relation to these provisions. What happens is that they are left in the public domain, the various taxpayer groups make submissions and the TLIP then goes back to their processes. They pick up on some things; they do not pick up on others.

It concerns me. Let me put some balance into this. I think that this particular document is a tremendous improvement over the first one that came out—if I could just start by saying that—but there are some things that I have difficulty in understanding. I will give you one example: the key core provision in the law. If you are talking about core provisions, section 48 of the existing law succinctly states:

In calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis, and from it there shall be deducted all allowable deductions.

We are talking about the calculation of the taxable income of a taxpayer. In terms of calculating that, the act says that deductions will be taken from the total assessable income derived.

In relation to the schedule referencing the new law to the old law, the new law equivalent provision is supposed to have been section 4-15. In subsection 1, there is an error that I think has already been brought to everyone's attention, but essentially we know what it is intended to say. Proposed section 4-15 says that, in working out your taxable income, you:

Add up your assessable income for the income year.

It misses out on a couple of key and fundamental requirements that are contained in section 48 of the 1936 act. Section 48 says it only includes assessable income which is derived during the year of income. That temporal connection to derivation during the year of income is absolutely fundamental.

As I said, the proposed section say that you `add up all your assessable income for the income year'. That statement does not say anything about derivation, nor does it use the words `derived during the income year'. This is very basic because it applies to all your income, no matter whether you are in the mining industry or you are a personal taxpayer. It is that

fundamental core provision.

Let me be generous: if we were to be comprehensive about it, it is not just section 4-15 that is not comprehensive. I think you also have to go to proposed section 6-5(2) which starts to talk about derivation for the first time. It talks about assessable income and states:

If you are an Australian resident, your assessable income includes the ordinary income you derived directly or indirectly. . .

All of a sudden, in another provision, the concept of derivation springs up. Even if you add those two together we have lost the temporal connection 'during the year of income'. Those words have disappeared. What has been substituted for them? The word 'for'. 'For' is a less precise term. It can mean 'in respect of' or 'in relation to'. It does not have that temporal connection which is so fundamentally important.

I think that Joycelyn, in the previous submission, and the CTA have made exactly the same submission on the same fundamental point. It has never been addressed or corrected. Talking about consultative processes, I am left to wonder why we cannot have such a fundamental and simple thing; we are only asking for the maintenance of a word that appears to be quite clear. There seems to be reluctance. The other point to be made there is: why change a provision which is 2½ lines and scatter it over a number of provisions? That is a simple example but it is such an important example. It is a good example of the general points that we are making about precision of language, economy of language, and not changing where you do not need to change.

CHAIR—How does that compare with the 1936 act?

Mr Nenna—In the 1936 act it is 2½ lines and is absolutely precise and understandable; and there is no disputation about those words—there never has been. Our point is: why change things that are not subject to controversy?

CHAIR—Tom Reid has been sitting very patiently all morning and I am sure he is itching to say a few words.

Mr Reid—On that last point, perhaps I could ask Mr Nenna whether he thinks that there is any possibility under the rewritten version of section 48 that an amount of income that was derived in a year other than the income year could be regarded as caught by 4-15. In other words, is there any serious doubt as to what the effect of the words is?

Mr Nenna—First of all, you make the inquiry as to whether there are any. One example that has been raised has been in relation to a retrospective pay claim. Arguably, a settlement occurs in relation to a dispute over what income is derived in a particular year. There is disputation as to what level of income was earned. That amount is settled upon in a subsequent year but it is in respect of an earlier year. That might be one example where the word `for' or `in respect of' would make the connection. But it certainly is not `during'.

Ms Morton—That was the precise example I gave to the previous hearing, as shown in the draft transcript. It was at page 122. It is a very common occurrence, where you have subsequent wage adjustments, for companies to say to employees, `This is an adjustment for the 1994 or the 1995 year.' They make it clear to the employee that it is not in respect of their current employment; it was a back wages adjustment. Yet it is received, say, in the 1996 financial year.

That is the method that is commonly used with employees as a simple, precise way of saying it was for that year. The current law makes it very clear that even though the word `for' is used in the explanation to the employee, it was not derived during those years, therefore it is taxable in the year in which it was actually physically derived. That is a very clear and well laid down law. I presented this way back in January and said, `This is a common problem.' Justice Hill, in one of his papers said, `If there are different words there I will have no choice but to interpret them in a different fashion.' This is a very fundamental provision. This is an example that was given back in January.

Mr Nenna—Can I also add, Mr Chairman, that implicit in the question was that the word `during' is not a difficult word for the layman to understand. It is a very simple word. It is in the current law. Change things that need to be changed, but the onus should be on those purporting to change to make the case for change. Implicit in the question is that the onus is reversed.

CHAIR—It is not the laymen that we are worried about; it is the judges.

Mr Reid—I will just make one further comment as to why the words were changed. The concept of derivation is used in an inconsistent way in the present law. There are examples of it, as in section 48, where it is applied to assessable income generally when technically its meaning is confined to the situation of what, in the rewrite, is called ordinary income, income according to ordinary concepts. The reason that we have avoided using it in a general provision like 4-15 is that it is not technically precise where you are talking about statutory income where the timing rules are not always based on the concept of derivation. So we have looked for an equivalent which is more general and therefore more suitable to be applied in relation to assessable income as a whole and not just one subset of that.

CHAIR—We are running over time. Can I ask you please just to cover the area of public and private rulings and the timetable for that?

Mr FITZGIBBON—Before you ask them that, Mr Chairman, can I just ask Joycelyn something very quickly? In about your last paragraph you made some reference to a statement by a Justice somebody. I missed that.

Ms Morton—Justice Hill.

Mr FITZGIBBON—What was the context and—

Ms Morton—He was speaking at a seminar and he was talking about the new bill.

The question was raised, ‘If there are different words will you be interpreting them in the same fashion as in the old act or in the fashion of the new act?’ He said—and I am not quoting him—that if there are different words then a judge has an obligation to interpret the words that are before him.

Mr Nolan—If you take that to its end, however, and I would very much doubt whether Mr Justice Hill would have intended this, then you do not rewrite anything because if you change one word then the judge will say, `I've got to look to see whether something is intended.' We have tried to address this. Joycelyn mentioned it in section 1-3 which gives an indication to the judiciary and to others interpreting the law that where we are rewriting for the purpose of greater clarity, that is not to be taken to have intended any change in the outcome. I am not sure that you can go very much further than that.

I do not know the context of Mr Justice Hill's remarks—I have not seen them or heard of them—but I doubt that they would have been intended to be taken quite to the extreme of saying, `Well, whenever the words are changed, I'm going to look to find a different meaning.'

Ms Morton—Can I just put this into perspective? There are certain provisions of the act where practitioners generally would not have concerns with different words being there. That is probably so regarding the depreciation provisions. I can say, having seen the new depreciation provisions, they are a marked improvement on what we currently have and I think that everybody will be very pleased when they see what finally comes out.

Regarding some of the capital allowance provisions and in lots of other areas a different word in those provisions is not as crucial as a different word in the core provisions. The core provisions are fundamental to how the income tax act works. So when we sound as though we are being pedantic about specific words in these provisions, we do so with very good cause because they are crucial to the operation of the act: they impact on every taxpayer.

That is our concern with this bill being introduced as it currently is. There are still fundamental flaws and still unresolved difficulties. I could go through now and on just about every page in the core provisions I could express concerns to you, in detail, about each provision—and I did so back at the previous hearing. We did so, also, on a number of points in the joint submission. Most of those have not been addressed. Please do not take our comments about pedantic words as being relevant to the whole act; it is of major concern in relation to the core provisions.

Mr Chairman, you started to ask me a question about rulings. The rulings area is of major concern to me. Back in January I made my point clear that, although policy is not on the agenda in the current act, there are areas where there have been policy changes and the rulings are instrumental for taxpayers' understanding of how the commissioner views the law and how he feels it should be implemented.

I asked whether resources were going to be put in place to immediately start rewriting the rulings or correcting the rulings, even just for simple things like section references, to

make sure that the taxpayer is not left out in the cold once this new law is in place. It is my belief that in a very limited time after the new law is in place the rulings should all have been corrected—and that must be no more than say six months—and they should be up to date in terms of the new act. So if significant resources are not being currently applied to that area we have a problem, because this already, supposedly, could be law.

In terms of private rulings, I think there are even greater consequences there. I have seen precisely that impact with the rewrite of the sales tax legislation where that caused major difficulties with private rulings. The tax office just did not have the resources to correct and update them in time for the new law.

CHAIR—Right.

Mr Gaylard—I normally come in at this point of the hearings. Joycelyn uses words like `fundamental errors' and things like that. To put it mildly, it is an exaggeration. There are some differences of view and people are entitled to those differences of view. I will use `fundamental' just to really rev the thing up as well. There are some fundamental cost savings to be passed on to the tax community, which desperately needs those savings.

None of this is going to be easy—whether we delay commencement to the end, whether we have warehousing, whether we have progressive delivery. Everyone has got to realise that the road ahead will not be easy for the next three or four years. People are going to be put to hardships. We have admitted in our earlier documentation—our first documentation—that compliance costs are actually going to go up for a time. We talked about that today. But at the end of the day, I firmly believe—and a lot of people who are putting a lot of time and effort into this project also believe—that there will be substantial cost savings to be passed on to the community.

In the previous hearing I tried to quantify those. I am not going to quantify them today, but they are absolutely substantial cost savings. They are not to be achieved immediately, but they are there. Everyone has had a very good chance to comment on the provisions. We have been through hearing after hearing. I know the committee is largely a new committee, but we have now got to say, `Let's get on. Let's all try to positively present this in its best light.' Let's appreciate that there are some difficulties, that people are going to have problems, but all of these problems are going to be sorted out and the winners at the end of the day, I honestly believe, are going to be taxpayers as a whole in lower compliance costs and people understanding their obligations in a way that it has not been possible to date.

I think that we have really got to pick up the ball now and try to take this thing to the next stage. We can always find difficulties. There are difficulties with all of it. We are not putting our position because we are trying to annoy people. We are putting it because they are firmly held views that we are trying to approach in the best way. I think we are in the best position really at the end of the day to judge that.

Ms Morton—The reason these issues are coming over and over again is that they

have not been corrected the first time. Simon just said that at the end of the day there will be substantial gains to be made. Nobody is denying that. I would not be devoting my time to it if I did not believe that there were fantastic gains to be derived at the end of the project. But these gains will not be made by implementing it in a staged process. That, I think, is what everybody is saying. The first point then is that we have raised these matters many times and we have concerns that they have not been implemented or justifiably answered. Secondly, the gains will be there, but not by implementing it in a phased in manner.

CHAIR—I will have to call it a day on that. I thank you very much for attending today. If there are any points you might have after this meeting, you can send them to us in writing. I am sure the committee will consider that as part of its deliberations.

Senator WATSON—Mr Chairman, can the team outline all those benefits that they are talking about, because I think it would be useful if they could? I would like it on the written record in a supplementary.

CHAIR—Can we get it from the tax office in writing? Can you put it as a submission for our consideration?

Mr Nolan—Yes.

CHAIR—Thank you.

[12.13 p.m.]

DRODER, Mr Stanley John, Chairman, TLIP Consultative Committee, C/- Level 3, 111 Harrington Street, Sydney, New South Wales

PARKER, Mr Anthony Joseph, Member of the Public Practice Committee of the ACT Division of the Australian Society of Certified Practising Accountants, C/- T.L. Parker & Co., 64-66 Comur Street, Yass, New South Wales 2582

CHAIR—I am sorry we are running late, but it cannot be helped. These are an important series of bills and I find it very difficult to cut off such interesting conversations. I invite you all please to address the committee on your concerns before we go into general discussion.

Mr Droder—I am the New South Wales Director of the Australian Society of CPAs as well as acting as the Chairman of the Tax Law Improvement Project Consultative Committee. I was a little bit incensed at some of the words I heard at the hearing the previous week, so I am going to be a bit formal and try to cover everything I feel about this particular project. Thank you for the second opportunity to speak to you on this project.

I was relatively quiet last week, because I did not anticipate the contribution by others that covers what I thought was very old ground and on which you received a view that might be described as from the big end of town. That view is not shared by everyone, certainly not everyone on the consultative committee and not many of the public practitioners that I come into contact with regularly.

Tony Parker and I share some views, but when he gets the chance to speak you will understand that there is no way I can claim to speak for him. It is however important that you hear from him because he is a small practitioner with a great reputation and an enormous network of practitioners in and around New South Wales.

The things that I want to cover are plain language and structure, warehousing of the bill, compliance issues and savings, effective date, the consultation process, policy issues—both little `p' and big `p'—quality control and flexible legislation.

On plain language, Brian Nolan speaks for himself but the team has had the wisdom of many experts. Brian has spoken about the team from Carnegie Mellon that came to Australia. They have had visits from other countries. They have had English language and structure experts from the private sector and the rewrite is the result of all that effort. I think it reads much more easily than the existing law and I know many others feel the same way.

Your predecessor committee heard generally favourable evidence from Jeremy Loh of the University of Sydney, a language expert. Jeremy is not a tax professional, but he is the son of a CPA based on the North Shore who runs a tax practice so he is familiar with the trials and tribulations of a tax agent in practice.

Warehousing of the bill is a modification of the big bang approach with all its problems, plus a few more. It is seductive in that if it could all be delivered from go-to-whoa in a short space of time, we would all be happy. The problem is that it just cannot be done. It is too big to handle within the necessary short space of time.

Handling the whole thing has two sides. One is the practical side from the government that Mr Nolan outlined on Monday last and supports the TLIP team's decision to phase in the legislation. The other side is that of the tax agents who battle now to absorb and understand the constant flow of tax law, which is continuing down the path of complexity.

These people are calling for support now to enable them to keep in the race. Their job and their practices now mean that compliance work is almost 52 weeks a year. Where will they get the time to absorb a new act—even if it is the same words made easier, in one wild blow? Some say this is an advantage of warehousing. Some say that practitioners will happily co-exist, that they will take the opportunity to learn gradually. I say that is a possibility, but I am not at all confident it will be a possibility but for a small few of the 25,000-plus tax agents out there in the community.

At previous hearings, some educators put the need for regular instalments of the new law. They do not want to teach old law and when they and their students know the new is just around the corner they must lecture or teach the new. Skilled tax practitioners do not come straight out of the university. They need a wide range of skills developed through education and practical learning in not only tax but also business, accounting and other areas such as commercial law. If the educators wait for the big bang, or warehousing, I do not think anyone will benefit. There will be a gap in the steady flow of skilled practitioners.

There are reputed to be at least 25,000 registered tax agents in Australia of which, I guess, at least 80 per cent-plus would be sole practitioners. Of these, a large number—and not my friend here, Tony Parker—rely almost 100 per cent on the CCH Master Tax Guide or equivalent to interpret the law and apply it to their clients' tax issue. The basic reason for this is sometimes laziness, but I think in most cases it is a combination of self-protection and an inability to confidently assess and understand the law as currently written.

I have friends who have given away a lifetime in tax because it is too hard and too risky for them. Perhaps the big end of town does not have that problem. Perhaps they have the resources to employ the experts, but that, unfortunately, is not the position of a large number of advisers who are left with enormous compliance loads, high exposure to personal liability and, under the self-assessment concept, a very real risk of doing the wrong thing for their clients—and they are suffering badly. These people need an act that they can understand and interpret instead of relying on the master tax guide, other commercial publications and ATO rulings, which are not always correct, as we found in the frequent flyer case and other cases.

There is a live example out there—the substantiation provisions. While there are undoubtedly problems in the main, I have not heard any general outcry of opinion saying that

these rules are wrong or hard to understand.

The date the act should come into effect came up at the last hearing—and this is an interesting argument. I understand the talent that has been here before says it should be changed to 1 July 1997. I do not argue with that, although I do know that it has been a live bill for over six months and there would be very few organisations which have not had the opportunity to prepare for the introduction. The fact that they have not done so—as shown by Bob Bryant's evidence—is more support for the problems with warehousing or the big bang approach. Joycelyn Morton just said the same thing.

This committee, in its hearing first thing last week, generally asked the question: if the rewrite is just a rewrite of existing legislation, why are we or the taxpayers so worried about it? I think we need to ask: will the implementation date change or fix those worries or just bury them for another year?

Mr John Prescott, two weekends ago, called for the government to make decisions and provide a framework in which business can make decisions with some certainty as to the government's position or requirements—at least that is how I read the newspaper reports. I think this view should be strongly considered by this committee as being relative to this bill. Nobody at present can say now that they can interpret the law as it is written confidently. It should also be remembered that section 1-3 in the bill attempts to protect any wording areas between the old and the new act.

With the substantiation provisions, of course, the bill was introduced and for one year provided taxpayers with the option of being taxed under the new or the old act. That seemed to work okay, although some practitioners did complain that the onus went on them if the new or the old act had different consequences to the particular taxpayer or client. In practice, I have heard no complaints on this particular issue.

The TLIP team has to be commended for their efforts to consult and communicate with the community on their work. They have established numerous focus groups, have circulated their drafts widely and produced comprehensive notes of the feedback they have received. There is always a level that is either too much or too little. However, I feel that they have done a good job in this regard. The problem seems to be that out of this consultation process they have been given many little `p' and big `p' issues that are recorded and, because of their policy tag, have not been addressed. In addition to the dissatisfaction this generates, not every proposal for items that are not policy changes is taken up and this too disappoints people. I do not know how this can be overcome.

Quality control is a complicated process and there is no answer to the essential need to get it right or, as the TQM people say, to get it right first time. All I can say is that the team worked hard to get the technical content process right and perhaps they need a bit more effort to dot their i's and cross their t's and get their words correct.

An issue about which the consultative committee is completely in agreement is the

need to establish a process to address the many little 'p' and big 'p' issues flushed out in the process. Naturally, we all, including the TLIP team, would be terribly disappointed if they ended up in the Canberra vaults with no consideration or action.

The view has been put that these issues should be addressed as part of the process, and the reasons for that are very clear. My problem, however, is that it takes an enormous amount of time to come to a conclusion on policy changes, and in any case history has not indicated that we are seeing flexibility on these issues from either the tax office or Treasury. Of course, sometimes a lot of little 'p's make a big 'p' and considering each event in isolation may not provide the perfect answer. The other consideration is that it is not included in the project's objectives. We cannot and should not criticise the team for that or use it as an excuse to bury the project.

All this does not alter the fact that the process needs to be put in place for policy issues. If the policy issues can be addressed within the time frame of the project team goals, well and good. If not, we must at least know that they are being or will be addressed.

In my last appearance I put forward a view in regard to rulings in the new legislation. I put the view that if the ATO believes a ruling needs to alter it is prima facie evidence that the rewrite has misinterpreted the old law and that should be addressed and fixed.

At the January hearing, the mining industry put the position that the rewrite was reinforcing an interpretation by the tax office which was not shared by the industry and which was before the courts. The question was: what would happen to the new law if the court takes the view put forward by the mining industry? The problem, as I said earlier, is that the tax office does not get it right all the time—as has been shown by the frequent flyer case. If it did we would not have so many cases.

In my view, these are not policy issues and we must have a process that allows for a fair and equitable resolution or consideration of these faults and a process that is outside the realms and decision making powers of Treasury or the ATO. Mr Griffin made a point earlier—and I agree with him—that the Joint Committee of Public Accounts is not the place to fix it.

In conclusion, Mr Chairman, I thank you for the opportunity to speak to you. While part of my career was once in taxation, I serve on the consultative committee as a community representative, and I freely admit my technical skills in taxation are lacking due, if nothing else, to the passage of time. I have tried in the presentation to take a balanced view from an involved person. I hope you understand that on structure, wording, implementation and some other matters, I disagree with my colleagues who presented evidence to you last week and earlier today. However, we do not disagree on my major concern for a process that fairly and equitably considers any unintended consequence of the rewrite and for the rewritten legislation to be amended to what it should be.

CHAIR—Mr Parker, would you like to add to those comments?

Mr Parker—As Stan has mentioned, I am a sole practitioner from Yass. I run a small practice with a staff of about 12 and I am a member of the Society of Public Practice Committee, the Canberra Tax Liaison Committee and, for the past 12 months, the Consultative Committee of the Tax Law Improvement Project. For some of my other sins, I also presented a number of tax seminars both in the city and country of New South Wales and interstate.

Are we going to deliver a result to the country by the year 2000? Are we going to beat the Olympic Games home? I think we have to get on with it. It will be a challenge, whether it be progressive or the big bang—and I have some strong views about that. As for the concept, there is no doubt about the concept and the need to attack the issue and to attack the rewrite.

In terms of the big bang—warehousing progressive—my personal view strongly is that it should be a progressive implementation. I am a sole practitioner. I feel at times I am struggling to handle the law now. I look at my professional colleagues, and I think to myself, `Where would I be if I were not on the various committees I am on? How would I handle the pace of change?' We are, as a profession, going backwards at a rate of knots. If we delay the implementation of this, then who will be the accountants in the year 1998 or 2000 to handle a 3,500-page new act? And who will have the capability of doing that on 1 July in the year 2000? I just wonder.

As a profession we have not faced the issue to date and most of my colleagues at seminars, when I raise the issue, say, `Oh, Tony, show that to me when it is law. It is not there, it's only being talked about. Don't worry me just for the moment.' I bring up some controversial issues, one on trading stock, and I suddenly have their attention. We are getting their attention more and more. We as a profession, like all other professions, need to face deadlines—no different to politicians. If we cannot handle 476 pages in 1996, how will we handle 3,500 pages in the year 2000 or thereabouts? Should it be 1 July 1996 or 1 July 1997 in relation to this bill if we have progressive implementation? There is no doubt that the project has lost a period of time as a result of the election. I suspect on this occasion the more appropriate date would be 1 July 1997, but no later.

What about the users? Who are the users of this product and the professionals and people involved? First of all, we have the TLIP team. If we are going to have the big bang or the warehousing approach, then I fear that the specialist teams—ones that have been developed in the mining rewrite and depreciation—when they have done that project they are on to another aspect of that. If there are errors because the law is not tested in the workplace in the real world, then who is going to fix it up in the year 2000? You are going to have to reassemble a team then, which is not the same team that dealt with the project in 1995 or 1996. They will not have the same background experience. Will the Corporate Tax Association then come forward in the year 2000—and they have been brilliant to date in their contribution—and try and fix up those issues at that time? We have reversed work flow practices at that time.

Certainly in my view the TLIP team needs a progressive implementation. What about

the tax office? Are they more brilliant than the professional person? Will they be able to handle at the grassroots level of inquiry in the year 2000 or 1998, 3,500 pages of new law on that day and be able to apply it across the board? The answer is no. They are struggling now, but that is no excuse for not moving it ahead. What about the tax professionals? Yes, well what about us. There are 28,000 registered tax agents in Australia, only one-half of whom are members of professional bodies.

So the government of the day is writing a law for all tax users, not just the members of our professional body. Those 14,000 odd who are not members of any professional body are struggling even more than my professional colleagues. If you are worried about that, let me give a practical example. The ATO at the moment is undergoing what are called PPRs—pre-processing reviews. They are reviewing some 1,500 tax agents in Australia to look at the quality and the accuracy of their work relating to claims of their clients. In the Canberra region this year 50 were selected for 1995, 23 of those 50 are getting a second review process for 1996 because their standard in the eyes of the tax office was not up to scratch. I am not suggesting they were guilty of fraud, evasion or anything else. Maybe they did not understand the law. Maybe they had a bit of a try and thought they would not be caught, I do not know, that does not matter. But there is an education process required on the present law and that is not an excuse for not moving ahead.

As for taxpayers at large, the government has to cater for people of all nationalities in the country. There is a need to simplify the law and deliver those tax products now. By the year 2000 future students will not realise the joys we had dealing with the 1936 act; it will be gone, hopefully.

What about a time frame? It was three years from 1 July 1994. That has come and gone and I think it is four or five years. But this project needs to be on target, on track with defined terms of reference. When we get to the big policy issues that is probably outside this project. I believe strongly that we need to develop and advertise an acceptable time line for the delivery of each package of legislation. We need to tell the people out there in the real world, both professional advisers and the taxpaying community, that there is a progressive implementation. There is a time line that will work and will incorporate a proper procedure for technical corrections so that they are done efficiently and there is a follow-up procedure.

There is no act that has been implemented in Australia to date which is, to my knowledge, error free. It will not be in the future. We all make mistakes. The quicker we identify those areas, face up to them and then correct them in an efficient manner, the better the project will be and the better the outcome will be in the year 2000.

What about the ruling system? It was implemented on 1 July 1992. It was going to be over four years, and we are now four years down the track of a rewrite of the commissioner's guidelines as they were in the IT system into binding rulings. Probably 40 or 50 per cent of those have not yet been rewritten.

The commissioner is struggling. He is struggling today. I evidence Guy's case, heard in

the Federal Court in June this year, where the commissioner's representative ignored his public ruling on TR95/35 on compensation which created, for the benefit of a technical point, the use of an underlying asset approach for CGT. The relevant representative said that it is not in the present law. Therefore, the commissioner was not bound to follow it—well they were his thoughts.

In the rewrite of the CGT proposals I understand there will be strong attention given to this concept of, and a practical approach to, the underlying asset approach. We have a problem with the ruling system now: firstly, they have not brought them up to date; and, secondly, not every officer or representative of the tax office in hearings will follow those rulings in the deliberations of the court.

There is a need to rewrite or review those rulings under the new law. I would suggest to you that in a practical vein it will be easier to review a section of those rulings in 1996, another section in 1997 and so on. How on 1 July 1998 will the commissioner and his team be able to suddenly within six months—they are Joycelyn's words—review all the rulings in 1998 when the warehousing approach gets delivered, say? It just will not happen. If there are problems now, the problems are more insurmountable on the big bang and progressive warehousing.

What about the other pieces of tax law in this country? Why have we not had the same emotive debate on some of them. I evidence two only—the Corporations Law and the simplification. That is being delivered in packages. Have I seen any comment out in the real world that since 9 December 1995, when the first phase came in, people did not want it, that they are not enjoying the concept that you could have a single directive, that you do not have to have company meetings and that you do not have to—for God's sake, thank goodness—comply with the fifth schedule if you are only doing a mum and dad company?

They are enjoying and reaping the rewards of some commonsense approach to legislation. They are looking forward to the next phase. They are looking forward to how you can strike companies off by a more efficient and less costly procedure. Deliver the goods now. They will not all be positive, but a lot of them will be.

What about the SIS legislation 1993-94? Brilliant. It did give—whether you liked it or not—some positive direction to superannuation in Australia. Despite all the fear that appeared in the press in the first instance, people are forming more private self-managed funds in Australia than ever before. It is a positive way to the future.

Let me tell you the poor old ISC could not issue their $200 levies this year to super funds and only issued them five months after they were due; they issued in the first week in July. They do not want the money. You can have the law. There will still always be problems with implementation whether it is under the old law or the new law, but that should not stop delivering some positive measures for this country.

What about policy changes? To date Treasury has not been very concerned about what

we have done at the consultative committee. If you look at the records, its representatives probably appear every four months and more often than not they appear on trading stock issues—and I get into trouble, so be it. But I can guarantee you that, if the big policy issues were on the table, they would be there at every meeting. You had better have a talk to them to see whether that is—

Mr BEDDALL—You would not be meeting at all if you have the big policy issues on.

Mr Parker—No, we would not get a guernsey. I am dealing with them on some other ones: it's good fun. There needs to be another forum for big policy issues. As I said previously, there are some 268 or 258 unresolved issues. That leads me on to the next and probably the third-last point: the consultative process. I think the profession has to be congratulated. The Corporate Tax Association and a number of professionals contribute to a number of these particular issues.

I appeared at two of the CGT workshops that Romano referred to—quite brilliant, the honorary contribution from the people. John Burgan is genuinely trying to do something with CGT. There are constraints. But out of that and out of the rewrite might emerge some of the real underlying problems with the law that can then be addressed and dealt with in the future.

There are insufficient resources for TLIP. If the government of the day on a bipartisan approach wants to deliver real reform in the tax area for Australia, then there will need to be more resources. There were only two professional externals on the TLIP project team: Simon and, formerly, Robert Allerdice. He needs to be replaced, and it needs more resources.

As for compliance costs, it is impossible to measure the degree of compliance cost benefits to date. That does not mean there have not been any, and I do not think it serves any great extent to try to put it at 10, 15 or 18 per cent. But there are further ones. I have offered one on CGT record keeping in deceased estates. I would like to think that will come in in 1997 and 1998, not the year 2000.

Some other quick practical issues: substantiation. It was introduced in 1986, rewritten in 1994 and—would you believe—the commissioner put out some guidelines in the electronic taxation portfolio earlier this year. They were wrong. He withdrew them in May and, on 1 July, we have no guidelines for substantiation in the electronic taxation portfolio. But that is not a reason for not going on with them. The fact that the commissioner is having trouble getting it right at the grassroots level will always be a problem, and we need to face up to that. We thought substantiation was totally behind us, but the commissioner found out at a very senior level that he had to go back and rewrite his guidelines and they are not there yet. That is one practical problem. I have mentioned preprocessing reviews.

Professional negligence of the accounting profession, section 108, for those who do not know it, is loans to shareholders in corporate structures. It has been a sleeper. The law was introduced on 4 June 1987. It took the commissioner from 1990 under self-assessment to

1995 or late 1994 to suddenly realise he had done nothing about it, and now he has identified 80,000 companies in Australia that need to be looked at progressively. What will emerge out of that—and what has already emerged—is that a number of accountants and their advisers are being sued for professional negligence by their clients because they forgot to advise them properly.

There will always be a problem. There is a large number of professional advisers or agents out there who are struggling with the present law. If we do not try to improve it and implement it progressively they will have no hope, unless you want to give them early retirement. They know that in the year 2000—the Olympic Games year—there will be a new tax act, and they must retire in 1999. If that is what you want, great, I will retire too. But assuming we are looking to the long term, we need to deliver it progressively.

Finally, education. I said earlier that, when the government makes a decision, it needs to educate the public and the profession about what the final decision is and what the direction is. It needs to put an appropriate time line in in terms of consultation planning and the drafting of the legislation into parliament. There is a problem there at that point because, to some extent, the time schedule has been so tight for them that, after the team has got it written, it lands in parliament the next day. Then some of the consultants say, `We didn't really want that. We didn't get told what the final outcome was.' There is a need then, at some point, for it to be given back to the JCPA to look at the workings of the final legislation. That might mean another three months—not two years—to look at it, but get that time line and get it there. Let the people of Australia know that you are serious about it. Let's get on with the game plan and make the professional people face up to the issues and we will be a winner before the year 2000 Olympics.

Senator WATSON—We have quite a dilemma, Mr Chairman, because we have had representatives from the same professional body give us conflicting advice as to the timetable and how we should proceed. I would like to ask you, Mr Droder, whether you see that problem as a conflict between the small end of town and the big end of town and, if so, why did members of your profession have different views from what you have just put forward today?

Mr Droder—I do not know the answer to that question. I guess the facts are that there is a whole host of practitioners out there and we all have different views about what ought to be done. I certainly feel that the main arguments I have heard for the big bang approach have come from the big end of town and, frankly, I do not understand why they keep throwing what I think are barriers in front of the progress of the project. I do not think that I have heard some really fundamental problems with the rewrite as it is now. There will be some problems. The mining industry's issue that they raised at the hearing in January was an important problem and needs to be addressed but, until we get down to practically approaching each problem area and disclosing what the problems are in the tax law, I do not think we will ever resolve the issue. Until it gets out there, this will be a problem. I do not know whether I am raving on about it, but it is a very difficult subject. I cannot imagine that practitioners—small practitioners, certainly—are going to be able to handle within a short

space time 3,500 pages of new legislation if it can only get down to that.

The educative program to get them up to speed will be enormous because they just will not do the work. Joycelyn and I have arguments about this problem almost every day. They are not up-to-date now. How in hell they are going to be able to make the big jump from something old to something new is beyond my comprehension.

Mr GRIFFIN—What you are really saying is that the system, if you like, has a perennial hernia and there are three ways to progress with that: we forget all about it and just have the perennial hernia continuing at the present rate; then there is a situation where we can actually have a worse hernia for the next three or four years; or we can have the grandmother of all hernias around the year 2000. We probably need medical practitioners to decide what will be the medical result of those various approaches. But that is the sort of choice you are making.

Mr Droder—It might be a good thing for the society, because if 50 per cent of the practitioners out there are not members of the professional body and they all die in one go, we might increase the business of our so-called professionals.

Mr Parker—In 1991 the society did a survey of society members and the profile was a sole practitioner doing 450 tax returns.

Mr Droder—Which is not much.

Senator WATSON—What seminars are you running for your members on a progressive basis to make sure they have progressively been brought up-to-date in relation to the tax law improvement?

Mr Droder—That is an interesting question. We try to operate things on the rewrite process every time we get an opportunity to get practitioners together. In a practitioners' congress which we run in New South Wales, three a year, we try to put a rewrite or simplification subject on and it gets very, very little attendance. Until they get hit around the head with it, they just do not have a great deal of interest in it.

Mr Gaylard—I think I made the point at the hearing last Monday that my firm had shown very little interest in the 1995 bill, presumably appreciating that there was an election coming up and that the whole thing may well be dealt with differently, depending on the result of that. As soon as the 1996 bill was introduced into parliament there was an enormous program implemented by senior technical people who handle technical matters on a national basis. There is now a training program that is lasting for eight or 10 weeks for an hour or so, one day a week. They are going right through the whole legislation. I have got absolutely no doubt that if the legislation had not taken effect until a much later date, there would not have been any intention whatsoever to try to come to grips with that legislation until the actual point when it was either becoming law or about to become law.

Mrs STONE—You might have told us before, but it escapes me for a minute. Who is going to be responsible for the education of the professional development process when we get to the stage of the big bang or the progressive process or whatever? Is it part of your group's responsibility to propose the education or professional development? Where are we up to with that, and where are the resources coming from?

Mr Nolan—The project team will not be doing the training. Obviously, large firms that have their own in-house resources will do a good deal of that. Within the tax organisation, we are working with the national professional development people so they know what is coming up and then they need to rewrite their training programs on the basis of the new law, and that is under way. What we want to do is to see whether the tax office training materials can actually be prepared in a way that can be distributed more widely and be available as materials for tax agents generally. If we can achieve that, I think it will go a long way towards helping with that sort of process.

It is somewhat ad hoc. We have been concentrating our effort on getting the bills up and in place and, hopefully, passed. Training, naturally, has to come behind that. But we have been setting some of those processes in motion and the tax office needs to put in a lot more effort to make sure that people are trained and in place to deal with it.

CHAIR—Could I extend that question to universities?

Mr Droder—I do not know that universities are great trainers but, certainly, when the market exists, the professional bodies will try to fill that market. The market will not exist until the bill looks like law.

Mrs STONE—Meanwhile, the ATO will be trying to develop some sort of strategies—materials and so on—when there is some demand?

Mr Nolan—We will. We want to work cooperatively with professional bodies and with the universities, and we do in fact keep the universities up to date with what we are doing as well, so there is liaison and contact there. But there needs to be a working partnership between the tax office and the rewrite team which can let people know when things are coming, the timetable and so on, so that those who are involved in training can set their plans to make sure that it happens in a timely way. It is still, to a degree, embryonic, but that is only a factor of us having been in this developmental stage with the legislation still trying to get to the starting gate.

Mr GRIFFIN—This is a question to everybody, and it does not need to be necessarily answered at this moment. It seemed from practically all the evidence that we have taken that everybody is concerned about unintended consequences subject to the actual implementation of the bill. Everyone recognises that an element of that will occur and everyone thinks that we need a process by which those matters are resolved. But I do not recall anyone having suggested exactly what that process should be, given concerns about how quickly parliament

may move and the question of whether it should be a consultative or parliamentary committee. We need, either very quickly now or in addition, to take some written evidence from those people who have been appearing concerning the question of what the process should be in taking care of those unintended consequences.

I think the word fear was used. A lot of people have very genuine concerns about how it is all going to work. The position by TLIP and some people is: it is going to be all right; we are just going to have to work those things through—`Trust me, I'm a doctor.' The alternative view is, `That's nice. I'm not saying you guys, but we have trusted other people before and it has not quite worked out that way.' So the question of a process, a means and a mechanism is absolutely crucial to actually getting confidence in this project and resolving some of these difficulties.

The work that has been done in this area has been very good. All people who have been involved in the process ought to be congratulated on it. But at the same time, it seems that if we have not got that mechanism right, then a lot of goodwill is going to go down the S bend and we will have unintended consequences occurring at a rate which could be very unfortunate in the operation of the tax system. So if not now, then certainly in written submissions to us, I would really appreciate any suggestions about what that process should be.

Mr Droder—I repeat: we should not leave it to the ATO or Treasury officials, because I do not really think that they take a balanced view of the subject. Certainly, on behalf of the society, we would appreciate the opportunity to write some sort of a submission. I suspect that all accounting bodies will be reasonably keen to make a submission on that subject.

CHAIR—Everybody is nodding, may the record show.

Mr Nolan—Under progressive delivery regular bills will come before the parliament which will give us a much better opportunity to implement corrections.

Mr GRIFFIN—I agree. As mentioned, when something has a revenue impact and government and Treasury tend to be a bit slower to react than normal, it needs to be very clearly seen has having that role to play to maximise its likely effectiveness otherwise things can drop off the end of the cart.

CHAIR—Thank you gentlemen for coming to this hearing. It was very interesting to hear you put a different balance on arguments. I offer you the same invitation that I extended to others: that we will take submissions in writing if you think of any other issues.

Is it the wish of the committee that the submissions from the tax law improvement project dated 12 July 1996-97, the Minerals Council dated 12 July 1996 and the Australian Petroleum Production and Exploration Association dated 15 July be accepted as evidence and authorised for publication? There being no objection, it is so ordered.

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.

CHAIR—I declare this public hearing closed.

Committee adjourned at 12.54 p.m.