

Government Consultation with the Community on the Development of Taxation Legislation



the **board** of **taxation**
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A Report to the Treasurer and the Minister for Revenue and Assistant Treasurer

March 2002

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The Board of Taxation

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Executive Summary

The Board believes that more effective community input to the development of tax legislation will result in better tax system outcomes. In particular, effective consultation with the community should improve the quality of tax legislation.

Effective consultation involves bringing together different perspectives to develop more focused policy direction and to generate creative and effective solutions to implementation problems.

In the context of tax policy design and implementation, stakeholders regard consultation as both important and beneficial. There is considerable willingness among external stakeholders to be consulted. However, that willingness is not infinite, and depends on stakeholders continuing to see consultation processes as genuine.

It is generally acknowledged that the Government has recently improved the level and quality of consultation on the development of tax legislation. However, stakeholders still see considerable shortcomings in current legislation development arrangements, including:

- a lack of order and planning around the Government's tax reform agenda;
- an ad hoc approach to consultation, contributing to a perception that the Government is not committed to "genuine consultation" ;
- insufficient external input being obtained at the policy design phase;
- a lack of clarity and transparency about the aims of tax initiatives and the accompanying consultation processes;
- a lack of clear accountability for the tax design process, in particular for ensuring that legislation achieves the Government's policy intent;
- an over-emphasis on compliance in tax legislation and its implementation; and
- an insufficient continuity of technical expertise and experience within government agencies, and not enough government use of external expert advisers.

Improved legislation development arrangements will bring significant benefits for both the Government and the community through better design and implementation of tax legislation.

In the Board's view, the integrated tax design principles that have been endorsed by the Government provide the appropriate framework for the tax design process. Especially important is the focus on a clear and early articulation of the policy intent of tax policy initiatives, and establishing a shared understanding of that intent among stakeholders.

Within the overall tax design process, consultation arrangements should be founded upon a culture of cooperation and trust. The parties must share a goal of achieving outcomes that best serve the national interest. These foundations are presently lacking and will take time to build.

The Government can begin the process by making an explicit commitment to appropriate consultation in relation to all tax initiatives. The goal is an enhanced consultation framework built upon the principles of commitment, transparency, accountability and review, and characterised by the following:

- a commitment by the Government to consult on all substantive tax legislation initiatives, except in exceptional circumstances only;
- a clear explanation of the policy intent of each new tax initiative, and a description of the proposed consultation processes for each initiative;
- an approach of seeking the most effective forms of community input at each phase of the tax design process, including:
 - before any public announcement, obtaining input from external technical experts to assist high level policy development and to identify implementation options; and
 - after the public announcement, further input from external technical experts, combined with sectoral and broader community consultation as appropriate; and
 - “road-testing” of legislation and related products before implementation;
- clear accountability for developing and implementing legislation that delivers the Government’s policy intent;
- open communication and appropriate levels of feedback; and
- sufficient resources of time, personnel and finances being provided for consultation.

The Board sees its role within this framework as one primarily of monitoring and reporting on general arrangements for consultation. The Board also would regularly review consultative processes and the legislative outcomes.

In relation to the institutional arrangements for tax design, the non-government members of the Board believe that leadership and responsibility for the tax policy advising and legislation development functions, currently split between the Treasury and the Australian Taxation Office (ATO), should be unified within a single “Tax Policy and Legislation Unit”, located within the Treasury. This should result in better coordinated tax design and consultation processes, and clearer accountability for implementing the Government’s tax policy initiatives, while addressing concerns over the inappropriateness of the ATO, as the administrator of tax legislation, holding the responsibility for designing that legislation.

The Tax Policy and Legislation Unit should have the accountability and independence to ensure the delivery of good tax law or to advise in circumstances where good tax law is being sacrificed to achieve broader economic and social policy objectives.

The Board's specific recommendations are shown below and discussed further in the body of this report. A summary of how the Board's recommendations might operate in practice is provided at [Appendix A](#).

Recommendations

1. *The Government reaffirm its commitment to the principles of integrated tax design and their implementation.*
2. *The Government make a commitment to consult on the development of all substantive tax legislation initiatives, except in exceptional circumstances only. When exceptional circumstances do arise in specific cases, these should be explained publicly at the appropriate time.*
3. *The Government adopt a framework for consultation that embraces three key phases of external involvement:*
 - (i) *early external input to the identification and assessment of high level policy and implementation options (before the public announcement of policy intent);*
 - (ii) *technical and other input from external stakeholders in the development of policy and legislative detail; and*
 - (iii) *thorough road-testing of draft legislation and related products prior to their implementation.*
4. *The Government enhance the transparency of consultation arrangements by:*
 - (i) *ensuring that the policy intent of each new tax measure is clearly established and articulated at the time of public announcement;*
 - (ii) *developing and releasing for each new (substantive) tax measure a consultation plan that outlines the objectives of the consultation, the processes to be employed and indicative timeframes;*
 - (iii) *the annual release by the Treasurer of the Government's indicative tax legislation forward work program; and*
 - (iv) *improving feedback provided to external participants.*
5. *The Government should determine the form of consultation to be undertaken, with an emphasis on identifying and pursuing the most appropriate and effective external input at the various phases of the development process.*

6. *The Government should ensure that there are clear accountabilities for:*
- (i) *the overall design and implementation process for a particular taxation measure; and*
 - (ii) *the consultation undertaken as part of that process.*
7. *There should be regular and formal reviews of both the conduct of consultation processes and the effectiveness of the resulting legislation, including through obtaining feedback from external stakeholders.*
8. *The Government should provide the necessary resources of time, personnel and finances to support implementing the recommendations of this report on an ongoing basis.*
9. *Within the enhanced consultation framework, the Board should:*
- (i) *monitor and report to the Treasurer and Minister for Revenue and Assistant Treasurer on the effectiveness of consultation arrangements for tax legislation development and implementation;*
 - (ii) *conduct and report to the Treasurer and the Minister on post-implementation reviews of significant tax legislation initiatives; and*
 - (iii) *in limited cases, where requested by the Treasurer or the Minister, directly participate in or undertake consultation on the development of specific tax measures.*
10. *Leadership of, and responsibility for, the tax policy advising and legislative development (instructing) tasks, including consultation in relation to each, should be united within a single, specialised "Tax Policy and Legislation Unit" located in the Department of the Treasury.*

Introduction

1. The Board's Charter gives the Board the key function of advising the Treasurer on the "quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design".
2. The Board has examined the Government's approach to consultation with the community on the development of tax legislation. The Board sought to work out how to get more effective input from the community, leading to better Government decisions and, ultimately, a better tax system. That is, a system that implements the Government's policy intent while minimising compliance costs for taxpayers and administrators and also "unintended consequences".
3. The Board has focussed on consultation on the development of tax legislation, but this is only one part of the tax design process that creates the system within which tax administrators, tax practitioners and taxpayers must operate. Initial policy development, and designing and implementing administrative products and systems, are also important, and this report recognises consultation will also be useful in those phases.
4. In developing its recommendations, the Board considered:
 - a report commissioned from KPMG Consulting (KPMG) on best practice consultation arrangements (the report reflects extensive input from government and external stakeholders);
 - feedback obtained from general discussions with stakeholders;
 - briefings by officials from the Australian Taxation Office (ATO) and the Treasury on current tax design processes;
 - the Board's own experience in consulting on the tax value method; and
 - consultation arrangements for tax legislation in New Zealand.
5. Effective consultation involves bringing together different perspectives to develop more focused policy direction and to generate creative and effective solutions to implementation problems. The Board's review indicates that all stakeholders see consultation as important and beneficial to tax policy design and implementation. Genuine consultation shows that the Government values community input to policy development and implementation, and recognises the community's expectation that it will be included in these processes. Genuine consultation can result in broader acceptance of government policy, and can also serve an educative role.
6. There is considerable willingness among external stakeholders to be consulted. However, that willingness is not infinite and depends on stakeholders continuing to see consultation processes as genuine. The Board found widespread

acknowledgment and appreciation of the improved level of consultation undertaken by the Government in developing and implementing recent new tax legislation (for example, by releasing exposure drafts and engaging with focus groups during work on elements of the New Business Tax System).

7. However, stakeholders still see considerable shortcomings in current legislation development arrangements. The Board believes that improved consultation arrangements will bring significant further benefits, for both the Government and the community, through the better design and implementation of tax legislation.

Stakeholder concerns and the need for change

8. A summary of the key findings and recommendations of the KPMG report is included at [Appendix B](#).
9. The Board strongly endorses KPMG's key propositions in relation to both community consultation and the tax design process generally, namely:
 - the need for clear accountability during the tax design process, and the need for transparency and clarity about the objectives of both policy proposals and consultation processes;
 - the value of getting external stakeholder input early in the tax design process;
 - the importance of feedback to stakeholders; and
 - the need for systematic review of both consultation processes and legislative outcomes.
10. Based on the KPMG report and the Board's own information, the Board sees the following as the most important concerns for stakeholders:
 - there is a lack of order and planning around the Government's tax reform agenda: this results in:
 - unrealistic (and often unmet) timetables for implementing tax measures; and
 - excessive demands on government officials, taxpayers, tax practitioners and the Parliament;
 - there is an ad hoc approach to consultation: this contributes to a perception that the Government is not committed to "genuine consultation";
 - when consultation does occur, often insufficient time is allowed, which can lead external stakeholders to suspect that government positions are already entrenched;
 - there is insufficient external input at the policy design phase: this often results in policy parameters and design features that are sub-optimal, for example, for achieving the Government's policy intent so as to minimise compliance costs for taxpayers and administrators of the tax system;
 - there is a lack of clarity and transparency about the aims of tax reform initiatives and of the accompanying consultation processes;
 - often, the Government's policy intent is unclear, and the aim of consultation is not defined: this may reduce the scope for productive dialogue and effective outcomes;

- there are unclear accountabilities among government agencies for the tax design process, in particular for ensuring that legislation achieves the Government's policy intent and is delivered in a timely fashion;
- there is an over-emphasis on compliance, both in tax legislation and its implementation: this has given rise to a perception among external stakeholders that the ATO should not have the dual responsibilities of designing and administering tax legislation; and
- there is not enough continuity of technical expertise and experience within government agencies, and not enough agency use of external expert advisers.

11. The KPMG report proposes a very prescriptive model of consultation. The Board fully endorses KPMG's support for a more robust, transparent and consistently applied consultation process. However, the Board recognises that the Government's need for flexibility in managing issues, timing and resource needs will affect the scope for consultation from case to case, and that the consultation model should not be too prescriptive. This is reflected in the recommendations that follow.

Integrated Tax Design

Recommendation 1 – Integrated Tax Design

The Government reaffirm its commitment to the principles of integrated tax design and their implementation.

12. In considering improvements to consultation arrangements, the Board has taken as its starting point the “integrated tax design” processes currently being refined and applied within the three key agencies for developing tax legislation – the Treasury, the ATO and the Office of Parliamentary Counsel (OPC).

13. The Government accepted the 1999 Review of Business Taxation recommendation for further development and application of the integrated tax design processes used during the Review. The aim was to replace the sequential working arrangements between the Treasury, the ATO and OPC with a more integrated and iterative process that would increase collaboration between these agencies and with other stakeholders in the tax system.

14. Integrated tax design encompasses the tax design process from start to finish, and incorporates the policy, legislative and administrative aspects of building and maintaining the tax system. Key objectives of integrated tax design are to ensure that:

- tax legislation and administration faithfully reflect government policy intent, while policy aligns with the practicalities of law and administration; and
- all stakeholders are engaged during the tax design process, leading to better tax products (for example, legislation, rulings, administrative systems, and educational materials) that have enhanced community support and that incline taxpayers to accept and meet their obligations.

15. The Board supports the objectives of integrated tax design and believes that it can improve existing processes for translating tax policy into tax legislation, leading to better outcomes for the Government and taxpayers. In particular, the Board supports a focus on:

- clear, early articulation of the policy intent of tax policy initiatives, and
- establishing a shared understanding of that intent among stakeholders.

16. Integrated tax design has been under development for a long time. The approach has recently been applied to a number of tax policy initiatives, and the Board welcomes this progress. The remainder of this report focuses on community consultation within the integrated tax design process.

17. Further information on the Integrated Tax Design project is included at Appendix C.

Improving Consultation

Recommendation 2 – Commitment to Consultation

The Government make a commitment to consult on the development of all substantive tax legislation initiatives, except in exceptional circumstances only. When exceptional circumstances do arise in specific cases, these should be explained publicly at the appropriate time.

Commitment to consult

18. Effective consultation requires a culture of cooperation and trust between all the parties concerned. The parties must share a goal of achieving outcomes that best serve the national interest, and must all accept that this may often not coincide with the vested interests of particular parties.
19. To achieve such a culture, stakeholders taking part in consultation must understand clearly the purpose of the consultation. For instance, consultation on draft legislation will generally be aimed at ensuring that the legislation delivers the Government's policy intent effectively and efficiently. It will not be aimed at revisiting aspects of that policy intent.
20. Also, stakeholders taking part in consultation must be confident that the officials consulting them have the authority to deal with contributions made by stakeholders. That is, stakeholders must be confident that they are engaged in a genuine consultation process.
21. Achieving a culture of cooperation and trust will take time. However, the Government can begin the process by making an explicit commitment to consult on nearly all future substantive tax policy initiatives. The Government should explicitly commit itself to the high-level principles and associated practices described in paragraphs 27 to 34 below, to underpin an enhanced consultation framework. This should create the positive and self-fulfilling expectation, within both the Government and the community, that there will be appropriate consultation on all substantive tax initiatives.
22. The Board hopes that by making such a commitment the Government would also encourage external stakeholders to participate in consultations in a genuine fashion.

Exceptions to commitment to consult

23. Sometimes the Government will have good reason for engaging in little or no consultation before announcing particular initiatives. Such initiatives include:
 - sensitive measures being developed in the budget context;

- sensitive anti-avoidance measures; and
- other measures that have the potential to impact significantly on markets, especially financial markets.

24. Also, minor measures may need little or no consultation.

25. However, the Board believes that almost all tax policy initiatives would benefit from some form of external input or advice at some stage of their development. Therefore, if the Government decides not to consult at all on a substantive measure, the Board recommends that the Government explain that decision to the community at an appropriate time.

26. To facilitate early consultation on sensitive tax measures, the Government could consider reserving the right to legislate such measures with effect from the date that they are first revealed in consultations. The Board recognises, however, that an approach of this kind would only work with bipartisan political support.

Recommendation 3 – Consultation Framework

The Government adopt a framework for consultation that embraces three key phases of external involvement:

- (i) early external input to the identification and assessment of high level policy and implementation options (before the public announcement of policy intent);*
- (ii) technical and other input from external stakeholders in the development of policy and legislative detail; and*
- (iii) thorough “road-testing” of draft legislation and related products prior to their implementation.*

Early Consultation

27. Early external input to policy development is crucial to determining the best options for delivering a policy measure. Early high level policy decisions usually limit the options for detailed implementation. Limiting the implementation options may in turn lead to unnecessary complexity or unintended consequences. The Government would therefore benefit from adopting a process aimed at ensuring that the policy measures it announces can be efficiently and effectively implemented, and that subsequent consultation will not send policy makers “back to the drawing board”.

28. If the Government is ready to address a tax policy issue, but is open to community views on how to proceed, such input could be obtained through:

- a call for submissions; or
- the general or targeted release of a discussion paper, followed by meetings or focus groups with stakeholders.

29. If the Government has more definite views on its policy intent and how to deliver it (with or without having undertaken a process as mentioned in paragraph 28 above), the Board strongly believes that the Government should still seek external input before publicly announcing the policy intent and how it will be delivered. This process might involve getting specific technical or expert advice, rather than broader community input. The input might come from a more limited group, and might need to be obtained on a confidential basis. The aim of consultation at this stage is to ensure that the best implementation options are identified, with advice from external experts or affected taxpayers, before positions become entrenched within the Government.

30. This approach requires identification of key stakeholders or experts best placed to assist the Government. It also requires trust between Ministers, officials and external advisers. This could be underpinned by contractual or other confidentiality requirements imposed on the external advisers, which may be important also to maintaining broader community confidence in the approach. The Board might be

able to advise the Government in such situations, either through the direct input of Board members acting as external advisers, or by facilitating discussions with other external advisers.

Consultation on Policy Detail and Legislative Design

31. Once the policy intent and delivery method for a tax measure have been established, further external input should be sought, to ensure that the detailed design of the policy and legislation is the most effective means of delivering the policy intent, taking account of the interests of all stakeholders. As discussed at paragraph 47 below, there are various means by which this input can be obtained.

Consultation on Implementation/Administrative Issues

32. Compliance and administrative issues need to be considered and addressed in the design and development of tax legislation. The consultation process should ensure that these issues are considered from both the ATO and the taxpayer / tax practitioner perspective.

33. As well as tax legislation, accompanying products such as rulings, explanatory materials and return forms are integral to the implementation of tax measures. The accompanying products ultimately determine taxpayers' and tax practitioners' experience with the tax system.

34. The Board believes that, before a tax measure is implemented, the draft legislation and the accompanying products should be "road-tested" (that is, tested with individual taxpayers and tax practitioners using real life information and data). Road-testing before implementation should ensure workable solutions that minimise compliance and administration costs, and promote a smooth implementation process.

Recommendation 4 - Transparency

The Government enhance the transparency of consultation arrangements by:

- (i) ensuring that the policy intent of each new tax measure is clearly established and articulated at the time of public announcement;*
- (ii) developing and releasing for each new (substantive) tax measure a consultation plan that outlines the objectives of the consultation, the processes to be employed and indicative timetables;*
- (iii) the annual release by the Treasurer of the Government's indicative tax legislation forward work program; and*
- (iv) improving feedback provided to external participants.*

35. Stakeholders see improving the transparency of consultation arrangements as a high priority.

Clarity of Policy Intent

36. Effective consultation on a specific tax measure requires the policy intent of the tax measure to be clearly articulated. If there is no shared understanding of the measure's policy intent among officials and external stakeholders, the subsequent phases of the tax design processes may be seriously undermined (however well formulated and established those phases may be). Establishing a clear shared understanding of the policy intent is also fundamental to integrated tax design.

Consultation Plan for Each Tax Measure

37. For each new substantive tax measure, the Government should publicly announce a consultation plan, setting out the process to be undertaken and the objectives of that process. It is especially important that potential participants in the consultation process understand the basis of their participation (participants may be alienated by misunderstandings that emerge after the process has started).

38. The plan should:

- identify the sections of the community that are likely to have the most interest in the issue;
- identify those accountable for the overall design and implementation process;
- set out clearly what is expected of external participants at different stages of the consultation process;
- outline the processes to be employed;
- include an indicative timetable; and

- invite early stakeholder input about the proposed consultative arrangements themselves.

39. Options for consultation should be included in the initial advice on a tax policy measure that officials give to the Minister. The consultation plan approved by the Minister would then be announced at the same time as the substantive measure.

40. A common criticism of consultation processes is that too little time is allowed for meaningful input from external stakeholders. Sufficient time should be allowed for both input from external stakeholders and proper government consideration of that input. This time must be set out in the consultation plan, and built into policy implementation timetables. Obviously, what constitutes sufficient time is a matter for judgement and will vary with the size and complexity of a measure. Over time, this judgement will be informed by experience.

Release of a Forward Work Plan

41. The Government should inform the community of its immediate reform priorities, and the key measures to be progressed over the next one to two years, through the annual release of a forward work plan. This would supplement the present arrangements under which the Government's priorities are announced in an ad hoc manner through ministerial speeches and statements.

42. The Board recognises that a forward work program could only be indicative, and that it would need to be continually adapted to changing circumstances, priorities and legislative timeframes. As well, highly sensitive tax initiatives would not be included. However, the preparation of a forward work plan for announced measures would give the Government an opportunity to determine its priorities, as well as allowing stakeholders to prepare for consultation processes.

Feedback

43. External stakeholders want participants in consultation processes to receive feedback. They believe this would make the processes more transparent. The Board believes more should be done:

- to assure key external participants that officials fully understand their views, and adequately represent those views to the Government (for example, by allowing those participants to see, or even contribute, to draft Ministerial briefings that describe those views); and
- to explain why particular legislative or administrative options have been favoured or rejected.

44. The Board recognises that sometimes the Government or its advisers may not be able to provide feedback, either for resource reasons or where policy matters are involved. For this reason, the Board does not endorse the highly iterative and resource intensive approach to feedback recommended by KPMG. However, the Board believes that a consultative culture requires a strong disposition on the part of the Government and its advisers to provide feedback whenever possible.

Recommendation 5 – Form of Consultation

The Government should determine the form of consultation to be undertaken, with an emphasis on identifying and pursuing the most appropriate and effective external input at the various phases of the development process.

45. The KPMG report recommends a uniform consultation process with standard activities and documents, with specified ways to involve external stakeholders, and with a standard degree of iteration. A standard activity (for example the release of a discussion paper) could only be omitted if it would add no value to the particular consultation process.

46. The Board sees some merit in KPMG’s proposal, because it would promote a consultative culture. However, the Board recognises that consultation processes need to be tailored to the tax measure concerned, taking account of factors such as the significance of the measure and the number or classes of taxpayers affected. Flexibility is also important because of resource constraints on the Government and the finite capacity of stakeholders to participate in consultation. “Over-consultation” is potentially costly to all stakeholders, especially if it causes unnecessary delays in implementing policy.

47. Various ways of getting community input on policy and legislative design have been used from time to time. They include:

- establishment of a committee, panel or other body that includes external stakeholders to investigate, consult more broadly and make recommendations on specified issues (for example, the Review of Business Taxation, and the Tax Consultative Committee which advised on the application of the GST to certain sectors of the economy);
- an invitation, to the public or to stakeholders, to make submissions (either at large or in response to a discussion paper or draft legislation);
- meetings between officials, government advisers and external stakeholders (for example, taxpayers, tax practitioners, industry or community representatives, or subject matter experts), either individually or in focus groups; and
- ongoing, informal dialogue between officials, government advisers and their contacts among external stakeholders.

48. It is a matter for the Government to decide on a suitable consultation process for a particular tax measure. This decision should be informed by any stakeholder feedback on the initial consultation plan. However, the Board notes that if consultation processes are to be targeted it will be important to ensure that the appropriate external expertise and knowledge is being accessed.

49. The practice of exposing draft legislation to implement aspects of The New Business Tax System has been well received, and the Board urges the Government to continue this approach in relation to all substantive tax legislation packages.

Recommendation 6 - Accountability

The Government should ensure that there is clear accountability for:

- (i) the overall design and implementation process for a particular taxation measure; and*
- (ii) the consultation undertaken as part of that process.*

50. The KPMG report indicates that external stakeholders are concerned about lack of clear accountability for the development of tax legislation. Three separate agencies are involved — Treasury (tax policy advice), the ATO (legislative design and instructing), and OPC (drafting of legislation) — and stakeholders claim that attempts to raise issues of concern are often met with “buck-passing” between those agencies.

51. KPMG recommends that a sufficiently senior official should be appointed as a “project champion”, with responsibility and accountability for ensuring that the Government’s policy intent in relation to a particular initiative is delivered throughout all phases of the tax design process.

52. The Board endorses the principle of assigning to a senior official the overall accountability for ensuring that the policy intent of a tax measure is realised. This approach may have some practical difficulties, given current institutional arrangements, especially the overlapping roles of the Treasury and the ATO. However, it should be possible to ensure that one person is given overall responsibility in relation to each new measure, for example, through a protocol between the two agencies that clearly defines their respective roles and responsibilities in the design process. Possible changes to institutional arrangements that might, among other things, help in delivering clearer accountability are discussed further at paragraphs 62 to 78 below.

Recommendation 7 - Review

There should be regular and formal reviews of both the conduct of consultation processes and the effectiveness of the resulting legislation, including through obtaining feedback from external stakeholders.

53. Presently, there is no systematic or formal practice of reviewing the operation of new tax legislation, or the consultation processes undertaken during its development. The proposed reviews would identify possible improvements to tax legislation design processes, and desirable changes to legislative and administrative arrangements. The Board could do the reviews itself, consistent with the its Charter. This is discussed further in paragraphs 60 to 61 below.

Recommendation 8 - Resources

The Government should provide the necessary resources of time, personnel and finances to support implementing the recommendations of this report on an ongoing basis.

54. A commitment by the Government to enhanced consultation arrangements must be backed up by the commitment of resources (time, personnel and finances) needed for those enhanced arrangements. The resource implications of the Board's recommendations are uncertain, for both the Government and external stakeholders.

55. There may be some savings; improved consultation practices should make the development and implementation of tax legislation more efficient, and should also reduce the need for post-enactment amendments. However, there may also be increased costs:

- planning the tax reform agenda and the consultation processes for specific measures will involve time and personnel;
- consistently applying the enhanced consultation arrangements will absorb additional time and personnel resources;
 - the elapsed time required for developing new tax measures will increase in some cases, but might be reduced in other cases (this highlights the importance of developing an annual work plan as mentioned in recommendation 4);
- consultation may be more expensive because of the increased use of external advisers.

56. The Board suggests that the Government should keep the situation under review, but should not hesitate to commit extra resources if needed. The Government

also needs to be sensitive to the demands being placed on external stakeholders, such as taxpayer and tax practitioner representative organisations.

Role of the Board of Taxation

Recommendation 9 – The Board of Taxation

Within the enhanced consultation framework, the Board should:

- (i) monitor and report to the Treasurer and the Minister for Revenue and Assistant Treasurer on the effectiveness of consultation arrangements for tax legislation development and implementation;*
- (ii) conduct and report to the Treasurer and the Minister on post-implementation reviews of significant tax legislation initiatives; and*
- (iii) in limited cases, where requested by the Treasurer or the Minister, directly participate in or undertake consultation on the development of specific tax measures.*

Consultation processes

57. The Board's main contribution to facilitating consultation would be by ensuring that suitable processes are used to deliver the outcomes sought, and to engender trust among all parties. Generally, the Board envisages that the relevant government agencies would retain the role of managing and undertaking consultation, with appropriate accountability to Ministers and the Parliament.

58. Sometimes, however, the Board might become directly involved in consultation. As suggested at paragraph 30, the Board might be able to help the Government with early policy formulation, and in developing consultation plans for particular measures (including by identifying stakeholders or those with useful expertise). Also, the Government might ask the Board to investigate an issue or oversee a particular project or consultation exercise; an example of this is the Board's current work on the tax value method.

59. However, the Board believes its role generally should be limited to monitoring and reporting on consultation processes. The Board intends to develop performance criteria for reviewing consultation processes. The criteria would enable the Board to assess whether those processes have been satisfactory to all stakeholders. They would also promote the continuous improvement of consultation. The factors to be considered by the Board would include:

- the clarity, from the outset, of the measure's policy intent;
- the preparation of consultation plans clearly showing processes, objectives, timeframes and accountabilities;
- sufficient and timely feedback to stakeholders;

- adherence to the consultation framework in general, and the consultation plan in particular; and
- participant satisfaction with the process.

Post-implementation reviews

60. Presently, there is no systematic or formal practice of reviewing the operation of new tax legislation. The Board believes that resources should be devoted to assessing new legislation, after about two years of operation, to ensure that it is having the intended effect and to find out whether its implementation can be improved. The Board could oversee such reviews, consistent with its Charter to advise on the "quality and effectiveness of tax legislation and the processes for its development".

61. In assessing the quality and effectiveness of tax legislation, the Board would have regard to the extent to which the legislation:

- gives effect to the Government's policy intent;
- is expressed in a clear, simple, comprehensible and workable manner;
- avoids unintended consequences of a substantive nature;
- reflects actual taxpayer circumstances and commercial realities;
- results in compliance and administration costs commensurate with the legislation's significance to the tax system;
- is consistent with other tax legislation; and
- provides certainty.

Institutional arrangements

62. The KPMG report reflects a very strong view held by at least some tax system stakeholders that current institutional arrangements for tax legislation development and administration are inappropriate. The perception is that the ATO's dual responsibility for instructing on the drafting of tax legislation and for administering that legislation results in legislation that is overly biased towards meeting the compliance and administrative objectives of the ATO. This is seen as producing unnecessary complexity and compliance cost burdens on taxpayers.

63. Stakeholders are also concerned that the involvement of three separate agencies in preparing tax legislation creates a situation where no one agency is responsible or accountable for ensuring the Government's intended policy is reflected in the legislation and that other objectives are met (for example, implementation timetables).

64. KPMG's proposal for overcoming these problems is to bring together the relevant expertise from Treasury, the ATO and OPC into a single separate government agency that would both advise on tax policy and develop and draft tax legislation. The tax system administration function would remain with the ATO.

65. This proposition directly and significantly affects the interests and responsibilities of the *ex officio* members of the Board. These members have, accordingly, reserved their position on the issue. The following discussion and recommendation, while informed by the views of the *ex officio* members, reflects the views of the non-Government members of the Board.

Recommendation 10 – Institutional Arrangements

Leadership of, and responsibility for, the tax policy advising and legislative development (instructing) tasks, including consultation in relation to each, should be united within a single, specialised "Tax Policy and Legislation Unit" located in the Department of the Treasury.

66. The Board believes that, irrespective of institutional arrangements, those responsible for the development of taxation legislation should have as their overriding objective the creation of "good tax law". That is, law which:

- optimises economic growth;
- promotes equity; and
- promotes simplification and certainty.

67. In particular, the people or area concerned should have sufficient independence to determine what is good tax law, and specifically to advise responsible Ministers

when good tax law is being sacrificed to achieve broader economic and social policy objectives.

68. With this in mind, the Board considered various possible responses to the concerns identified by KPMG, specifically:

- (i) leaving current institutional arrangements unchanged, on the basis that adoption of the Board's recommendations for an enhanced consultation framework, together with fully developed integrated tax design processes, should deliver the better legislative and tax system outcomes that all stakeholders want;
- (ii) combining responsibility for the tax policy advising function and the legislation development function within a single specialist 'Tax Policy and Legislation Unit' (TPLU). The Board considered two options for locating the TPLU in the Treasury or the ATO:
 - the co-location within the TPLU of all personnel and other resources of the Treasury and the ATO presently engaged in tax policy advising, legislative development and consultation; or
 - a more limited transfer of resources to the TPLU: the specialist unit would assume the prime leadership responsibility for policy and legislative development and design (including consultation), and would draw on the relevant resources and expertise from the Treasury and the ATO, and from outside government, for each particular project;
- (iii) creating a new, specialist agency within the Treasury portfolio, separate from the Treasury and the ATO, with accountability and responsibility for advising on tax policy and developing tax legislation. The two options mentioned in paragraph (ii) above would also be available for resourcing the TPLU.

69. The premise underlying the "no change" option (paragraph (i) above) is that the major deficiencies with the tax design and consultation processes, and the measures required to address them, are largely independent of the structure of the policy advising and legislative development agencies. On this view, a restructure would not necessarily solve the perceived problems. At the same time, it would carry costs and risks (particularly during the transitional period), and could undermine the benefits expected from the enhanced consultation framework and the application of integrated tax design principles.

70. However, the Board believes that integrating the leadership roles for tax policy advising and legislative development would offer ongoing advantages that would outweigh any short-term difficulties. These advantages include better coordinated tax design and consultation processes, and clearer accountability for implementing the Government's tax policy initiatives.

71. The Board's preferred option is that the TPLU be located within the Treasury. This would address the concern that the ATO, as administrator of tax legislation, should not also have primary responsibility for designing that legislation. This

perceived conflict of interest is clearly of major concern to taxpayer and tax practitioner representative organisations.

72. The Board is open-minded whether the TPLU takes the form of:

- a large team comprising all the relevant tax policy advising and legislative design resources of the Treasury and the ATO; or
- a smaller team responsible for leading and coordinating project teams performing those functions for individual tax initiatives.

73. In either case, project champions for each new tax measure (described at paragraphs 51 to 52 above) would be located within the TPLU. A project champion would have unambiguous authority to make decisions to ensure that the development process moves forward in a timely way and consistently with the Government's objectives. The manager of each consultation process would also be an official from within the TPLU. The TPLU would routinely draw on external expertise to complement and supplement the skills of officials.

74. The Board considers that the leader of the TPLU would be someone who:

- has a strong capacity to understand commercial and public sector issues in tax design;
- is committed to community consultation and building constructive relationships with stakeholders; and
- has earned the trust of both government and external stakeholders.

75. Under any revised structure, the principles of integrated tax design would still need to be applied to the tax design task. In particular, there would still need to be a close working relationship between the tax policy developers in the TPLU and the tax legislation administrators within the ATO, because:

- choices about policy options and legislative approaches will both influence and be constrained by administrative considerations;
- administrators must understand the policy intent of the Government's tax measures and administer them accordingly; and
- the ATO, as administrator of the tax system, has a unique perspective arising from its privileged access to individual taxpayers' records and activities that should inform policy development.

76. Under the Board's proposal, OPC would retain responsibility for the drafting of tax legislation, as a service provider to the TPLU. The Government could consider bringing legislative drafters skills within the single unit, but the Board does not regard this as essential. What is important is to ensure that sufficient drafting resources are available to meet the demands of the Government's tax legislation program – this appears to have been a constraint in the past. The Board notes that

improved tax design and consultation processes should contribute to the more efficient use of OPC's tax drafting resources.

77. Under any of the options set out in paragraph 68 above, the ATO would retain statutory responsibility for administering the tax system, and would remain accountable to Parliament.

78. The Board considered the option of creating a new Government agency responsible for tax policy and legislation design, separate from both Treasury and the ATO. Those agencies would still provide input to the tax design process, but their views would be considered by the new agency alongside those of other stakeholders. An argument for this approach is that it would create a more level playing field for all stakeholders in the development of tax measures, and would ensure that the design of the tax system is not influenced by non-taxation related issues.

79. On balance, however, the Board believes that the Treasury should retain the primary responsibility for advising the Government on taxation policy. The Board recognises the Treasury's economic and whole-of-government advising role, and also recognises that tax policy is:

- an integral part of the Government's overall economic policy framework;
- inseparable from budget and macroeconomic policy; and
- closely related to other matters such as international competitiveness, and industry and social policy.

The enhanced consultation framework – an example

The following illustrates how the Board's recommendations would apply in relation to the forthcoming review of international taxation arrangements.

Note that, given the significance of international taxation for the competitiveness of the Australian economy, and the complexity of the issues, the process described below indicates a more substantial first stage than would be necessary for many other tax measures.

Table A1: Example of Enhanced Consultation – Review of International Taxation

Activity	Relevant Board of Taxation Recommendation
Development of high level policy and implementation options	
<p><i>The Government announces the intent of the review process</i></p> <p>The Government indicated in <i>Securing Australia's Prosperity</i> on 15 October 2001 that it will consult with the business community to address international tax barriers:</p> <ul style="list-style-type: none"> (a) faced by Australian based companies seeking to raise equity in domestic and international equity markets; (b) to offshore expansion from an Australian base; and (c) to locating international holding companies in Australia. 	<p>Recommendation 2</p>
<p><i>Terms of reference, form and timetable for the review established and published with a Consultation Plan</i></p> <p>The Government would settle the terms of reference, form and timetable for the Review following appropriate consultations with key individuals and peak organisations considered to have expertise in the areas to be considered by the Review. The terms of reference would establish a timetable for the review and oblige it to consult with interested individuals and organisations in the development of policy intent.</p>	<p>Recommendation 3(i)</p>

Accountability for review process established by the terms of reference

Recommendations 6(i), 8 & 10

Appropriate processes could involve assigning accountability to a senior officer from the Treasury, or establishing a private sector panel along the lines of the Ralph Review of Business Taxation. Sufficient resources would be made available to the review to enable it to effectively and efficiently discharge its terms of reference.

Government receives and responds to recommendations

Recommendation 5

Input is sought from the community, perhaps in response to an issues paper. The review's recommendations (formulated in consultation with the business community and other stakeholders) and / or the Government's response would establish the policy intent of proposed reform measures.

Provision of feedback to external participants

Recommendation 4(iv)

This could be achieved through, for example, the review's report canvassing options favoured by external participants and outlining the reasons why they were not taken up in the report's recommendations. The report should be made public at an appropriate time. The Government should indicate the priority to be given to implementing the measure, with an indicative timetable, in its tax legislation forward work program.

Development of policy and legislative details

Clear articulation of policy intent

Recommendation 4(i) & (iii)

The Government's response to the policy review should indicate an acceptance of the policy intent or establish a substitute policy intent. The Government should also indicate the priority to be given to implementing the measure, with an indicative timetable, in its tax legislation forward work program.

Clear accountability for the design and implementation process (within the Treasury) and the consultation process

Recommendations 1, 6, 8 & 10

Accountability for the design and implementation process should be allocated to a senior officer in the Treasury. The design and legislation team would be adequately resourced and include representatives from both Treasury and the ATO, and potentially also private sector experts. Accountability for consultation should be established.

Consultation Plan published

Recommendations 2 & 4(ii)

There would be a presumption in favour of consulting, with the timetable allowing sufficient time for appropriate consultation processes. The consultation plan would be published and would outline the objectives of the consultation, the processes to be employed and the indicative timetable.

Consultations undertaken

Recommendations 3(ii), 5

The consultation process should seek to engage relevant private sector experience and expertise in identifying and implementing the preferred legislative option.

Feedback to participants

Recommendation 4(iv)

Feedback would be given to participants in the consultative process. This could be achieved through a discussion included in the explanatory material accompanying the legislation, or in discussions with a senior member of the legislative team.

Road testing

Road testing of draft legislation and administrative products

Recommendation 3(iii)

The draft legislation and related administrative products would be road tested against “real life” case studies.

Post-implementation review

Review processes

Recommendation 7

Following implementation, there should be a review of the effectiveness of the consultation process and the resulting legislation, with feedback being sought from those whose affairs are affected by the legislative change and also those who participated in the consultation process.

The KPMG Report on Consultation Arrangements

KPMG's findings and recommendations to the Board reflected the collection and analysis of a range of information including on: government and community stakeholders' views and suggestions; consultation on tax legislation undertaken in comparable countries (Canada, New Zealand, the UK, the US and Ireland); and consultations in relation to non-tax legislation undertaken in Australia.

- Interviews and focus groups were held with officials, Ministerial and Opposition advisers, business and business organisations, welfare and community groups, senior tax practitioners and academics and tax practitioner representatives.
 - In addition, a survey on consultation on tax legislation was sent to over 600 potential respondents (with a 25 per cent response rate) and also made available generally to the public via the Board's web site.
2. KPMG's recommendations, cross-referenced to the discussion in relevant sections of this report, are shown in Table B1 below.

Summary of Findings

3. KPMG found that most key stakeholders believe that consultation can be highly valuable and that it has improved in recent years, but there is also scope for significant improvement. Shortcomings identified by KPMG include: a lack of strategic tax planning; ad hoc and insufficient effective consultation; unclear objectives and insufficient time provided for consultation; and the absence of clear accountabilities for both consultation and the broader tax legislative design process in respect of specific tax measures.
4. KPMG recommends the adoption of a formal, generic and mandatory model of community consultation, that can be applied to the majority of situations, that it claims will ensure the objectives of consultation are met and that the process reflects best practice principles, including in relation to transparency, openness and feedback. The model describes 42 separate steps in the tax design process, beginning with the formulation of the Government's broad tax policy strategy and concluding with the review of particular tax legislation initiatives some 12 to 18 months after they have commenced. The various stages of the model are summarised in Table B2.
5. KPMG emphasises that cultural and other changes are required to engender the necessary level of genuineness, trust among participants and common purpose — all currently lacking — if the potential benefits of consultation are to be realised fully. KPMG recommends that the consultation model be accompanied by the following initiatives.

Board of Taxation to act as an "independent honest broker"

6. The Board of Taxation should perform the role of an "independent honest broker", with responsibility for overseeing the consultation model, and with a particular view to ensuring that appropriate consultation is taking place, thereby contributing to the building of trust and underpinning the genuineness of the process.

Adoption of a Strategic Planning Process

7. The Government should adopt a strategic approach to tax policy planning, that includes at least a rolling annual work plan for the development of policy and legislation, to help plan, focus and prioritise resources and timetables both within Government and without. This could be included as either part of the budget process or a separate process in consultation with the Board. The Board could also have a role in undertaking consultation on behalf of the Government over the order, priority and timing of the tax policy initiatives the Government has determined.

A Single, Specialist Government Agency to Develop Tax Policy and Legislation

8. A single and specialist Government agency or unit should be created with the responsibility for advising on tax policy and drafting tax legislation, bringing together the relevant expertise from the Treasury, the ATO and OPC. The use currently of these three separate agencies for tax legislation development creates a situation where no single body is accountable for ensuring that the intended policy is reflected in legislation. Another major concern expressed with the approach is the preoccupation with compliance in legislative drafting, resulting in complex and lengthy legislation. This is perceived to result from the ATO's primary role in the preparation of legislation.

Commitment by the Government to Consultation

9. The initiatives for reforming consultation should be underpinned by a strong public commitment by the Treasurer, on behalf of the Government, to demonstrate Government support, encouragement and endorsement of the formalising of currently ad hoc and arbitrary practices.

Table B1: KPMG's Recommendations

Recommendation	Issues discussed in the Board's report at paragraph/s...
Formal process: A formal process should be established for community consultation with stakeholders around the development of tax legislation in Australia.	21, 27-34
Mandatory process: The consultation process should be mandatory unless overridden by a decision of Cabinet.	21-26
Single model with variations: There should be a single model of community consultation that may be consciously varied if required, but with particular accountabilities if there is an immediate date of effect.	45-49
Clear objectives: The goals and objectives of community consultation should be defined clearly at the outset, namely to:	
<ul style="list-style-type: none"> • Achieve the stated policy intent; • improve the effectiveness of legislation for both tax administration and the community; • ensure that the legislation has no unintended consequences or excessive compliance costs; • educate and inform the public as to the policy intent of the legislation; and • simplify the introduction and administration of new tax legislation. 	5, 37-38, 56, 59
Staged approach: The consultation model should define clear stages or decision points with clear accountabilities and achievement targets.	27-34
Iterative feedback: Regular and iterative feedback be provided to participants, particularly at the end of each of the model stages.	43-44
Open and regular communication: Open and regular communication during the consultation process is required to ensure that all participants are fully involved throughout the process.	37-38, 43-44
Measurement and review: Introduction of performance measures to be used throughout the process and for the initial post implementation review, and the collection and analysis of data for these performance measures.	53, 59-61
Technical quality assurance: The tax legislation consultation model should complement, but not be a substitute for, current internal technical tax development quality assurance processes including those being implemented through the Integrated Tax Design initiative.	12-17, Appendix C
Strategic workplan: A strategic workplan should be developed to assist stakeholders to plan and prioritise their time, resources and budgets.	41-42, 54-55

Table B1: KPMG's Recommendations (continued)

Recommendation	Issues discussed in the Board's report at paragraph/s...
Leadership: The consultation process should be led by a Project Champion who is responsible and accountable for the policy intent and ensuring that there is a strong level of stakeholder satisfaction.	50-52, 72-73
Facilitation: The consultation process itself should be managed by a Project Manager/Facilitator who is responsible and accountable for the management and facilitation of the consultation process, its tasks and activities.	72-73
Single accountability: A single and specialist Government agency should be given the accountability to focus on tax policy and legislation, bringing together all required Government expertise together with any relevant external expertise.	62-79
Independent accountability: The single and specialist Government agency should be independent of the ATO; the ATO should be viewed as one of a number of stakeholders in the tax legislation consultation process.	62-79
Model oversight: The Board of Taxation should oversee the management and facilitation of the consultation processes in relation to the development of tax legislation.	57-61
Tax legislation consultation model: The tax legislation consultation model outlined in this report has been developed around best practice consultation principles and is recommended as the model to be used for community consultation processes for the development of tax legislation.	10-11, 45, Appendix B
Engagement of external expert advisers: External expert advisers should be engaged to assist in the process of developing tax legislation including the consultation process, the tax agency/agencies responsible for development, and the Board.	27-34, 45-48, 72-73

Table B2: KPMG's Proposed Consultation Model for Tax Legislation Development

Phase	Stage	Main Activities
Policy Intent	Generate	Canvass policy options, develop strategic plan and announce annual work plan or rolling work program.
	Select	Determine policy intent. Identify constraints and/or variations to application of the consultation model. Establish project team.
Development of Legislation	Design	Advertise policy intent and commencement date. Plan consultation and announce details. Establish and consult with "Expert Group" and with focus group(s) and sectoral subgroups (if required). Consider educational and administrative arrangements. Prepare and release "Options and Issues" paper to the community. Review submissions and prepare "Design Response Report". Feedback to and from stakeholders on "Design Response Report".
	Test	Prepare drafting guidelines for legislation and administrative arrangements for review by the "Expert Group". Prepare and release exposure draft legislation (ED) and draft administrative arrangements. Establish "Road Test Group" and "road-test" the ED. Consult with focus group. Review submissions to ED and administrative arrangements and prepare "Test Response Report". Feedback to and from stakeholders on "Test Response Report" and prepare "Final Test Report".
	Legislate	Prepare final bill, obtain Cabinet sign-off and introduce the bill into Parliament, with the "Final Test Report" attached. Consideration of Bill by Parliamentary Committees. Consider amending Bill (further consultation, if required). Bill passed by Parliament and receives Royal Assent.
	Commence	Confirm start date for legislation. Draft final administrative arrangements. Feedback to and from stakeholders on administrative arrangements. Finalise administrative arrangements, ramp-up education campaign and related activities, issue requisite rulings and determinations. Legislation takes effect.
Post-Implementation Review	Review	Prepare "Project Completion Review" to assess effectiveness of consultation and report to Treasurer, Board of Taxation and agencies. Independent consultant prepares "Post Implementation Review" of legislation/its implementation for Board of Taxation and others. Feedback to and from stakeholders. Feed into Generate stage.

Integrated Tax Design

1. The ATO, in conjunction with the Treasury, OPC and some business sector input, is developing and implementing integrated tax design processes for the formulation and delivery of tax policy.
2. The Integrated Tax Design (ITD) project was established in response to a recommendation by the Review of Business Taxation that there be a continuation and further development of the integrated tax design processes that were employed during the Review. The project has identified its task as involving four key challenges:
 - Ensuring feedback loops between policy, legislation and administration operate as concurrently as possible, so that policy is faithfully reproduced in legislation and administration, and is fashioned in such a way as to make it capable of being so reproduced.
 - Balancing legal and operational processes so that they are mutually consistent and supportive of policy vision.
 - Integrating user needs into policy, legislation and administration, subject to constraints stemming from considerations of government.
 - Ensuring policy continuity - of accurately preserving, consistently applying and intentionally involving the original policy vision.
3. The ITD project is being overseen by a Sponsor's Group comprising senior officials from the ATO, Treasury, OPC, the Chairman of the Board of Taxation, and Mr John Ralph AO.

The ITD Process Cycle

4. The ITD Process Cycle (see Chart C1 on page C3) is a stylised and prototypic representation of any one episode of tax system design at the project level. It outlines the broad stages of the design process for those projects and some features related to the nature of the execution of those stages. While there is a logical sequence to the stages portrayed, it is a complex, iterative process that seeks to integrate the policy, legislative and administrative elements within each stage and contains feedback loops/collaboration between stages.

Formulate intent

5. Ideas for changes to the tax system arise from many quarters, either within or outside government but must ultimately be endorsed by the Government of the day in order to be implemented. The main processes for this stage are:
 - the initial generation of an idea (from whatever source);
 - assessing and scoping the project including an initial view on resources;

- the decision to proceed to develop the idea (ahead of other possible ideas) and to allocate resources and accountabilities accordingly; and
 - the initial recording of the policy intent outlining the purposes of the measure and the givens (if any) that accompany it, including what it isn't.
6. During this stage, there may not be firm proposals on which to consult, but an understanding of the "system in use" (perhaps achieved through more general "consultation") is critical. It is open to the Government to pursue community input at this stage through discussion papers or other mechanisms.

Create blueprint

7. In this stage, a multi-disciplinary cross-agency team is established to understand and refine the intent and elements of a proposal, as well as gain an understanding of the total breadth of how the policy intent will be delivered in practice. This encompasses the community impacts of the proposal, as well as the legal and administrative implications.
8. Subject to sensitivity and timing of Government announcements, close engagement with the community is envisaged during this stage.

Design Products

9. This stage involves the design of products and services that will deliver the policy intent with the products grouped into families such as legislation, compliance, interpretation, transactional and information. Product design must be based on data, not supposition. It is likely that some initial consultation and exploratory research will have been pursued with target users in stage 2. Here research is more profitably based on direct observation of user behaviour.
10. Product prototypes will be developed at this stage and tested with users.

Build Products

11. This involves writing the legislation, coding IT systems, writing, designing and publishing information, setting up call centre scripts and training, designing the field program and training staff. It also includes the building of any community systems.
12. Testing, including with users, would happen throughout. For legislation products this would include exposure drafts, technical quality assurance, etc.

Test User Pathway

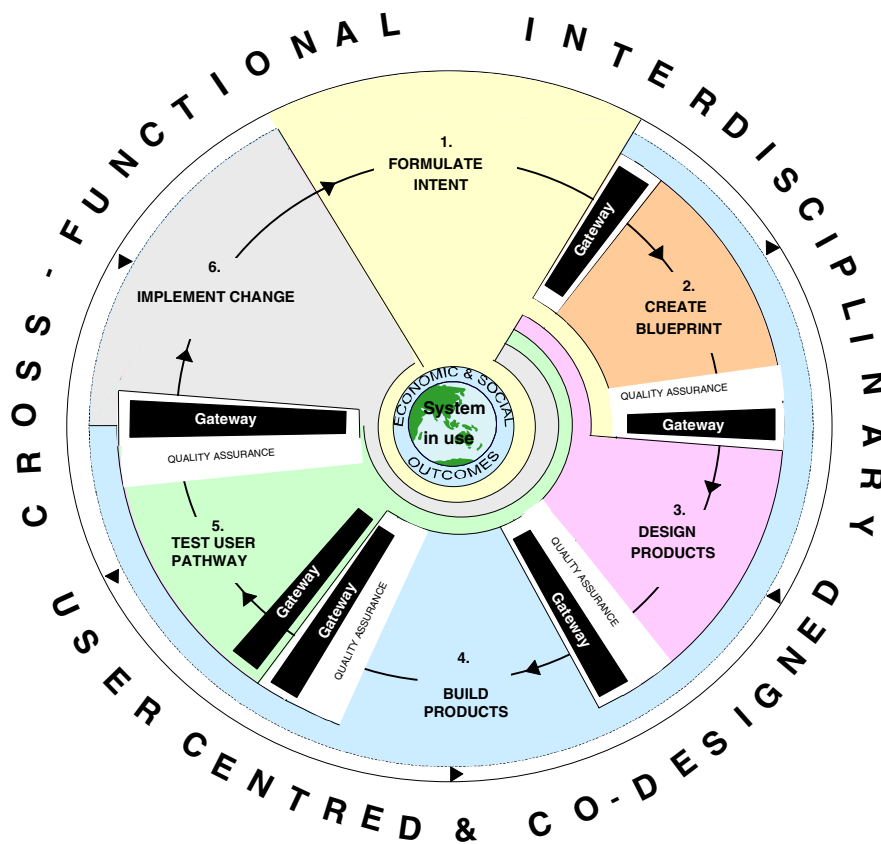
13. The focus here is on how all parts of the proposed system work together
14. A test as a full "dry run" is undertaken to assess the interaction of all products and services. This testing differs from earlier prototyping and testing mainly in purpose but also in scale. Prototyping is mainly about simulating a user's experience and this should be tested early (Stages 2 and 3) to create a rougher product rather than a full operating model that is tested here. Community participation is essential

in this stage.

Implement Change

15. The system is now handed over to ATO administration and the community for use. Continual evaluation of the use of the system occurs to learn about enhancements and to ensure intent is being realised in practice.

Chart C1: The Integrated Tax Design Process Cycle



Members and Charter of the Board of Taxation

Members

The members of the Board of Taxation are:

Chairman - Richard F E (Dick) Warburton

Members

John Bronger

Tony D'Aloisio

John Harvey

Brett Heading

Chris Jordan

Alison McClelland

Ex officio members

Michael Carmody
(Commissioner of
Taxation)

Ken Henry
(Secretary to the
Department of the
Treasury)

Hilary Penfold QC
(First Parliamentary
Counsel)

Charter

Mission

Recognising the Government's responsibility for determining taxation policy, and the statutory role of the Commissioner of Taxation, to contribute a business and broader community perspective to improving the design of taxation laws and their operation.

Membership

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

Up to seven members of the Board will be appointed, for a term of two years, on the basis of their personal capacity. It is expected that these members will be appointed from within the business and wider community having regard to their ability to contribute at the highest level to the development of the tax system. The Chairman will be appointed from among these members of the Board. Members may be re-appointed for a further term.

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

Function

The Board will provide advice to the Treasurer on:

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

Relationship to other Boards and Bodies

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

Report

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

Secretariat

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

Other

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

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

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