TAX REFORM: A TOWER OF BABEL; DISTINGUISHING
TAX REFORM FROM TAX CHANGE

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I TAX REFORM: WHAT IS IT?

For many years now the subject of tax reform has rarely been far from the front pages of the nation’s newspapers. It is not to be assumed, however, that this reflects an all-consuming interest in tax reform on the part of those who buy these newspapers. Rather it reflects politicians' perceptions that the subject is one with a high electoral profile which can be turned to advantage in the everyday cut and thrust of Australian political life, especially having regard to the amount of space newspapers afford our politicians. Whether the politicians are right is not a question I am qualified to judge. Presumably, however, political surveys must give some support to these perceptions, or perhaps even guide them.

Tax reform has not always been a topic for media coverage—this is a modern phenomenon. Nor, presumably, was it given great popular emphasis in political platforms of the past, although governments in Australia have appointed a plethora of Royal Commissions or bodies of inquiry over the first 100 years of federation.

The central role that taxation plays today in the political process probably dates from the late 1970s when the bottom of the harbour schemes attracted public attention. It was given an even higher profile by the Taxation Summit of 1985. Since then, governments of both political persuasions have made tax reform a political issue. The continuing emphasis upon tax reform, and the media concentration upon it, assumes that there is a common understanding about what tax reform means, even if there is no complete agreement about how it is to be achieved.

The word ‘reform’ is defined in the Macquarie Dictionary (Third Edition) as ‘improve by alteration, substitution, abolition etc’. Unfortunately we can discard the alternative meaning given by the same source: ‘put an end to (abuses, disorders etc)’ or ‘abandon evil conduct or error’. The word does not simply mean ‘change’. Because the word carries within it the subjective concept inherent in ‘improvement’, opinions may differ as to what constitutes reform on the one hand, as against mere alteration in the law on the other.

It is not a particularly insightful comment to make the point that tax reform being subjective can have no fixed meaning. The more important point is that because the concept of reform is subjective the word will have different meanings or will signal different messages to different audiences or users.
Lawyers and accountants, particularly those who teach law, would acknowledge a
difference in meaning between reform of the tax system and reform of a particular tax. Reform of the tax system is necessarily wider than reform of a particular tax, because it directs attention to the significance of a particular tax within the tax system as a whole, as well as to the need to remedy defects in a particular tax. Indeed, a proposal for reform of the tax system as a whole might render irrelevant any defect that may exist in a tax which is to be repealed. While a particular section of the death duty legislation may have warranted discussion in the early 1980s, if the subject matter of debate then was the reform of death duty, that question would have been quite insignificant if the subject matter of the debate at that time was whether death duty should be abolished and replaced by some other form of tax.

An assessment of the tax system generally involves the application of three criteria, namely that the system involves equity and simplicity, and that it promotes economic efficiency.\(^1\) The same criteria may be applied to the assessment of a particular tax on its own. These criteria are often, and probably almost always, incompatible with each other.

Equity involves both horizontal and vertical equity. The former is concerned with ensuring that those having equal ability to pay tax bear equal burdens of tax. The latter is concerned rather with ensuring that a greater ability to pay attracts a greater tax burden. Both imply fairness. There can be little dispute that change will not be reform if it produces unfairness.

Simplicity may be less significant than fairness. It is generally the case that the more fairness there is in the tax system the less simple it will be. A flat-rate income tax permitting no deductions might be simple yet unfair. The Australian income tax system clearly is not simple. But this does not mean that simplicity should be discarded. Indeed, it should be encouraged, for complexity increases both the costs of administration and the costs of compliance. Change that is designed to produce simplicity without affecting either fairness or efficiency (for example, the work of the Tax Law Improvement Project) may still involve reform.

Efficiency of a tax system is said to exist where the tax system is neutral, that is to say, in relation to an individual when the choices available to the individual are not skewed by the tax system. Efficiency is but one public policy end. Other matters of public policy may suggest that efficiency should not be promoted. For example, health considerations may dictate that there be a high rate of excise on cigarettes to discourage smoking and thus encourage other kinds of expenditure. Almost invariably political considerations will take priority over efficiency. The exemption of the family home from capital gains tax creates fiscal inefficiency but any government that sought to abolish it would not remain long in office.

It is questionable whether the three criteria can play a role in defining when change is reform. If there \(\text{is}\) a role for them in the definition process, it can only be if agreement can be reached as to the weight that is to be given to each. A change that created both simplicity and unfairness might or might not properly be regarded as involving real

\(^1\) The Asprey Committee Report of 31 January 1975 discussed below contains in Chapter 3 a useful discussion of the criteria for assessing tax systems and particular taxes.
reform. Whether it should be so regarded will depend upon the weight to be given to simplicity and the weight to be given to equity in relation to the particular change. This is a matter to which I will return later in the paper. It suffices to say here that the subjective element that differentiates reform from mere change is to be found in the application of these criteria and, furthermore, the weight to be given to each of them.

There is a question whether tax reform has a common or accepted meaning even if the subjective element is put to one side. If the expression means different things to different people then any debate about tax reform would be rather useless. Hence the reference to the Tower of Babel in the title of this paper. For this purpose I propose to approach the question in two ways. The first is to examine how those involved in the tax reform process see tax reform. The second is to see what governments have meant by tax reform when they have appointed committees to advise them on tax reform.

The first approach may be assisted by considering the way newspapers report or editorialise upon tax reform. On the assumption that newspapers reflect public opinion, and do not create it (an assumption that is clearly only partly correct), the public perception of tax reform will be reflected in the way that newspapers deal with tax reform. Newspaper reports may also provide some insight into how those who participate in the tax reform process view that process. It is for this reason that I have, from time to time, referred to reports from the *Sydney Morning Herald* (SMH) on tax reform. I have restricted my research to that newspaper because it is generally accepted as a quality newspaper of record and would most likely be the only newspaper in the Commonwealth which would, in the period since federation, have continuously reported on tax matters.

II TAX REFORM: WHAT IT MEANS TO PARTICIPANTS IN THE PROCESS, THE PUBLIC AND THE POLITICIANS

To the man or woman in the street and the politician shortly to face the electorate, tax reform generally means lowering the tax thresholds or the tax rates, or increasing deductions or rebates. Other changes are irrelevant unless they promote a lessening of the tax burden. The emphasis upon the self-interest of the taxpayer is nowhere better demonstrated than in the famous Liberal–Country Party electoral campaign which centred upon ‘the fist full of dollars’ or the ‘L-A-W tax cuts’ promised by the then Prime Minister, Mr Keating. But it is hard to see the normal citizen as in any real way a participant in taxation reform. Rather he or she is the target of rhetoric in support of, or opposed to, what is said to be tax reform as part of the political process.

Politicians, on the other hand, are in a different position. Reform is a useful political mantra. To appear concerned to promote reform is a political positive. It may be satisfied by politicians who form part of the government for a while by the setting up of inquiries to report on tax reform. That gives, at least, the appearance of action. At some stage there may be a need to legislate for change. That change will be proclaimed by the government to be reform even if the label is not accepted by the opposition. Oppositions likewise may make tax reform a political issue. The Democrats have fulminated about tax avoidance. They have pushed the view that Part IVA is defective, a view that is, to say the least, questionable. They constantly remind
both the government and the public that trusts are a vehicle of tax avoidance, and that what they would label ‘reform’ is necessary to change that.

The Whitlam government put tax reform on the political agenda in 1975 when it tabled the Asprey Committee report\(^2\) although the Committee itself was established by the former Liberal government in 1972. By this time the effect of inflation and bracket creep was being clearly felt by workers and the case for tax reform as enunciated by the Asprey Committee in its final report was becoming obvious. The events of 11 November 1975 not only ended the fortunes of the Whitlam government, but also ensured that the implementation of the Asprey recommendations would, with a minor exception, be substantially delayed.

Tax avoidance exploded as an issue for the Fraser government with the bottom of the harbour schemes and the sale of packaged tax avoidance schemes. The government was ultimately forced into acting against the former with the *Taxation (Unpaid Company Tax) Assessment Act 1982* (Cth) and against the latter with the introduction of Part IVA by the then Treasurer, Mr Howard. This legislative activity, including a plethora of specific anti-avoidance measures, was clearly accepted as tax reform by the community.

The Hawke and subsequent Keating Labour government thereafter made tax reform a major political issue. No more clearly was this demonstrated than with the Taxation Summit of 1985 which led to the introduction of a tax on capital gains\(^3\) and to fringe benefits tax, although not to Mr Keating’s favoured GST. The Keating government commissioned the Tax Law Improvement Project which promised more than it ultimately delivered when the *Income Tax Assessment Act 1997* (Cth) was unfolded. But at least simplicity of a kind was put on the agenda of tax reform even if it could be argued that simplicity meant not merely simplicity of language but simplicity of concept. Tax became a vehicle for the government’s social policies; a collection mechanism for child support and HECS payments, as well as fulfilling a function of social security through rebates and other tax relief to the poorer sections of society. The Howard government has pushed the barrow of tax reform to the point where it has almost become identified with tax reform more than with any other issue. That identification evidenced by the avalanche of tax legislation enacted since it took office.

There are, however, identifiable participants in tax reform besides the politicians and the public generally. They have, in various guises, had input into the process since federation, although the weight of each may have altered in regard to shifting political circumstances over time. By identifying these participants it is possible to list factors that are present in the way tax reform is addressed in Australia.


\(^3\) The Asprey Committee had recommended deferring the introduction of a capital gains tax. The government had announced the introduction of a capital gains tax as and from 17 September 1974 but subsequently decided to postpone introduction of that tax. It was not revived until after the tax summit.
III PARTICIPANTS IN TAX REFORM: SEPARATE AGENDAS

There are many recognisable participants in the tax reform process. Some of them are identified in the short discussion that follows, although the list is not intended to be complete. Given that advocates for change often wish to be cloaked with anonymity, a complete list would be impossible. Further, participation in the tax reform process has changed over time. But there are some important and recognisable categories of persons who may readily be identified as participants. Their agendas and what they would nominate as tax reform are often in opposition.

Among the most significant categories of participants in tax reform, at least in recent times, is the welfare lobby. This includes the churches, particularly those engaged in providing social services, for example, the Salvation Army, the Catholic Church’s Social Welfare organisation, and the Uniting Church as well as the other mainstream churches. It also includes the Australian Council of Social Services (ACOSS), a body which has played a significant role in the tax reform process; the Council of the Aging and like bodies. To many of these organisations tax reform may be seen to be directed more at social security or welfare benefits to the disadvantaged, or at incentives which may be aimed at improving their situation within the community, than at other areas that could be considered reform. The welfare lobby was instrumental in the axing of Option C advocated by the then Treasurer, Mr Keating, at the Taxation Summit of 1985. 4 These bodies would probably see other measures—for example, measures designed to simplify appeals—as not constituting real tax reform but rather a distraction from tax reform, unless, measurably, they operated to reduce the tax burden on the poor, or improved the social security position of their constituents.

It is questionable whether social security benefits have any place in the tax system at all. On the one hand it may be said that social security benefits are just the opposite side of revenue raising, with the consequence that the two are intertwined. On the other hand, it may be said that taxation should be concerned with raising money and not with how the money raised is spent. It is impossible to divorce the raising of revenue from the spending of that money, if only because an estimate must necessarily be made as to what outlays the government may have, and the revenue required to meet those outlays, before decisions can be made as to how the necessary revenue is to be raised. In any event social security benefits can be, and are, provided through the taxation system itself as well as from outside that system. The family tax allowance is an example. There are many who say that incentives (tax expenditure) should arise outside the taxation system, rather than be hidden from scrutiny within it. All these issues form part of the tax reform debate and mean that tax reform can encompass consideration of social benefits.

The welfare lobby is but one of the many special interest groups that demand a say in tax reform. Some feminists point to women being disadvantaged by the present tax system and advocate reform to remove that disadvantage. 5 The debate has in more recent times, and partly through the work of Ms Pru Goward, extended to a review of

4 A report of the Tax Summit is to be found in 20 Taxation in Australia, 82.
family tax benefits with particular emphasis on the effect of the taxation system upon the choice of mothers with infant children to work or stay at home. Newspapers suggest that the present government will in early 2004 publish a detailed policy statement on these issues.

In addition, the Trade Union movement has the particular interest of its membership in mind and approaches tax reform, at least to some extent, by reference to the impact it might have upon employment, either generally, or in particular industries. To be fair to the Australian Council of Trade Unions, the submissions it makes on taxation reform are much more far-reaching than that.

At the other end of the political spectrum is what is popularly referred to as the ‘big end of town’—represented, for example, by the Australian Chamber of Commerce and the Corporate Tax Association—with a particular interest in the reform of corporate taxation, incentives to business in general, or to specific industries in particular. Like the Trade Union movement, these bodies have a wider view of tax reform than the mere promotion of their members’ interests although the ultimate focus will necessarily be on business taxation. Often big business views of tax reform may be opposed by those representing small to medium business, and particularly those representing primary industries, for example, the Farmers’ federation. The tax legislation in Australia, both federal and state, is replete with concessions to primary producers.

There are, additionally, lobby groups (sometimes ad hoc, at other times more organised), which are concerned to advance the claims of particular industries for special taxation treatment and who would define tax reform as the taking of such steps as were necessary to satisfy such claims. One need only mention the Australian film industry as an example. Professional actors and others interested in the arts fall within this category, although because they are ad hoc and generally galvanised into action by elections or at budget time, they would be unlikely to participate directly in the reform process.

Purporting, at least sometimes, to stand on loftier ground outside mere economic self-interest, are economists whose contribution to the debate may cover theoretical issues or proposals as well as those invariably suggested by their own underlying political philosophy. Indeed, it may be difficult to separate economic theory from the underlying political philosophy that influences it. One may expect economists to take a much wider view of what constitutes tax reform than those who are self-interested, while nevertheless being constrained by their political philosophy. Economists might well see the idea of taxing imputed rent from home ownership as tax reform whether or not this was politically possible. Other participants in the reform process would regard such a proposal, on the other hand, as mere change at the least. By virtue of their training, it might be expected that economists would tend to emphasise economic efficiency over the other criteria for judging tax reform.

Tax teachers, lawyers and accountants (perhaps even judges, although judicial participation would raise a constitutional question as to whether participation in the legislative process is compatible with the conferral of Commonwealth judicial power in Chapter III of the Constitution) must be included in any list of participants in tax reform, although their voices may not be heard among the Babel originating from those motivated by self-interest. Academic and other informed criticism from experts in
taxation law may give rise to change in the law. Their influence will be greater through submissions made by professional bodies such as the Law Council of Australia, the accounting bodies or the Taxation Institute of Australia, and operate more at the level of detail in draft legislation than in the larger tax policy issues. This is reflected in the liaison meetings with the Australian Taxation Office (ATO) and Treasury and in membership of ruling panels.

Last, but not the least significant, are officers from Treasury and the ATO itself. The influence of Treasury and of the ATO will by its nature not be visible save in so far as officers have in the past staffed Committees of Inquiry and can be expected to do so in the future. Since Treasury operates to advise the government of the day, and is charged with guarding the revenue and promoting the economic health of the country, tax reform would most likely be seen by Treasury or ATO officials as steps required to make the tax system more efficient. Compliance or administration would constitute reform so long as it brings about an increase in tax revenue or produces an economic benefit to society.

While each of these groups have been involved in tax reform in Australia, the focus they bring is so different that debate among them may do little to bring about real reform. They have conflicting views about what changes constitute tax reform. However, once the participants in the process are identified, it is possible to deduce what tax reform would mean to them considered as a whole, rather than individually. It would extend to some or all of the following:

- Reducing or increasing tax rates, deductions or rebates
- Adjusting the progressivity of tax rates
- Increasing social security benefits
- Providing industry incentives
- Plugging loopholes
- Encouraging social policy objectives (including reducing unemployment)
- Increasing economic efficiency

Of necessity, there will be considerable overlap of these matters. For example, while tax reform will clearly focus on reducing or increasing tax rates so too will steps aimed at making the tax rates more progressive. A focus on tax rates inevitably requires consideration of deductions or rebates as well as tax thresholds. The question of tax rates likewise will require an analysis of the tax base and the mix of taxes to be employed. All of these matters, therefore, must be included in the general rubric of tax reform.

What governments regard as tax reform might perhaps be gauged by classifying what they ultimately do through legislation. That would be misleading. On this basis, allowing a deduction for child care expenses could not be classified as tax reform because, however desirable, it has not been legislated for. Another, and perhaps less cynical, way of classifying what governments see as tax reform is to consider the many commissions or bodies that have been set up since Federation to advise the government on tax reform and the terms of reference under which they have operated. These commissions were necessarily concerned with the issues of the time, many of which have ceased to interest us. So, for example, the earliest commissions had as their major
objective uniformity between Federal and state taxes. However, all to some extent were concerned with general tax reform even though their focus differed. It is proposed, therefore, to consider the various commissions established since Federation in chronological order to see what conclusions can be drawn as to whether there is some consensus about what tax reform is.

In the interests of space I have omitted reference to a number of commissions that have peripherally touched on taxation, for example, the Campbell Commission which reported on the Australian Financial System and the Mathews Report on inflation. I have omitted the latter, not because it was insignificant, for indeed, at the time when inflation was almost out of control, inflation indexation was a very important issue for taxation. However, the issue it touched upon was too narrow and specific to its times to be included in a generally accepted consensus about tax reform. I have also not dealt specifically with the Report on Rates of Depreciation, issued in 1955 by what was then identified as the Hulme Committee, because of the narrowness of the issue with which it was concerned. This report received editorial approval, with the *SMH* pointing out that if Australia was to hold its own in an increasingly competitive world, the Treasurer would need to give full weight to its recommendations. The Committee was absolutely excluded by its terms of reference from giving consideration to initial depreciation allowances, but bravely recommended that depreciation on industrial and commercial buildings should be allowed.

Likewise, I have chosen not to discuss the countless amending acts which have changed the face of income taxation by countering loopholes, and generally by legislating changes in the way the tax system operates, even though this form of legislation is tax reform in action. Finally, I have arbitrarily stopped at 1999 with the publication in 1998 of *Tax Reform: Not a New Tax a New Tax System* and the Ralph Report.

**IV THE FIRST ROYAL COMMISSION: THE KERR COMMISSION 1920**

The Commonwealth, faced with the wartime expenditure brought on by the First World War, entered the field of income tax in competition with the states in 1915. Although the initial draft of the 1915 legislation is said to have been prepared with the view to conforming as much as possible with the state laws, the first Commonwealth Income Tax Assessment Bill bore slight evidence of any conformity. Thereafter, several conferences directed at uniformity were held between state and Commonwealth

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8 Commonwealth Committee on Rates of Depreciation, Chief Minister’s Department, (7 June 1955). This Committee was really no more than an extension of the Spooner Committee appointed in 1950 which is discussed later in the paper.

9 *SMH*, 9 June 1955.


officials in the years 1916 to 1921. One of these considered a uniform Income Tax Bill which was not adopted by any of the states and only partly by the Commonwealth.

The first Commonwealth Royal Commission into tax reform was instigated by the then Prime Minister, the Honourable Mr W M Hughes, in September 1920. According to the Letters Patent under which it was appointed, the Commission was to inquire into and report upon the incidence of Commonwealth taxation and any amendments necessary to place the system of taxation:

upon a sound and equitable basis, having regard generally to the public interest, and particularly to –

1. The equitable distribution of the burdens of taxation;
2. The harmonisation of Commonwealth and state taxation;
3. The giving to primary producers of special consideration as regards the assessment of income tax, particularly in relation to losses resulting from adverse weather conditions; and
4. The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals.

The Commission, named after its Chairman, Mr Warren Kerr, reported in 1922. It held 118 public sittings and heard evidence from 191 witnesses. Notwithstanding the breadth of its terms of reference, its first report dealt with only seven topics: special concessions to primary producers; the taxation of profits on the sale of mining leases; bonus shares; the establishment of a Board of Review; double taxation as between Australia and the United Kingdom where residents of the United Kingdom derived income in Australia; the taxation of lessees’ interests in Crown leaseholds; and the general exemption and allowances for children. The greatest emphasis in the report was upon granting special consideration for primary producers to average their incomes.

Witness support for a Tribunal being established to hear tax appeals was unanimous.

The Committee noted that in its recommendations it held ‘tenaciously’ to the principle of equity formulated by Adam Smith which it described as ‘classical both in precept and in practice’, namely:

1. The subjects of every State ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities, i.e., in proportion to the revenue which they respectively enjoy under the protection of the State.

2. The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought to be clear and plain to the contributor and to every other person.

13 Considered by a conference of taxation officers held in March 1917. Ibid 287.
Every tax ought to be so levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it.

Every tax ought to be so contributed as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the State.

The Committee also accepted for the purposes of its recommendations another principle attributed to a Professor Bastable, which was expressed as follows:

The successful administration is the final object (of any system of Taxation), and therefore convenience or even equity may have to yield to productiveness.

The Committee split on the question of averaging income. The majority recommended a system of averaging with individual taxation being imposed on the net taxable income of the twelve months immediately preceding the year of assessment, taxed at the rate applicable for the year of assessment to the average net taxable income of the taxpayer for all the years for which the taxpayer has lodged returns, not exceeding the five years preceding the year of assessment. The majority expressed the view that averaging should not be limited to primary producers as such, but should be applicable to all taxpayers. A minority of the Committee, comprising the chairman and two other members, strongly disapproved of applying a system of averaging. Instead, they recommended a modification to the normal carry forward of losses provision. It is interesting that the minority made the point that the effect on revenue should not be the dominant factor in appraising a system of taxation designed to create a more equitable distribution of the burden of taxation, while nevertheless treating the effect on revenue as an element that should not be ignored.

V THE FERGUSON COMMITTEE 1932

In the October 1932 budget speech, the Government announced the establishment of a further Royal Commission to inquire into and report upon the simplification and standardization of the taxation laws of the Commonwealth and of the States in so far as they relate to substantially the same subject-matters of taxation, as, for instance, income tax, land tax, and death duties; and, in particular to make recommendations for the purpose of obtaining uniformity in legislative provisions, including provisions relating to procedure and forms of returns.

The Committee’s deliberations attracted considerable publicity.

By 1931 taxation had become a political issue as may be seen from the reporting by the SMH on 21 January 1931 of the establishment of a taxpayers’ party of protest against extravagance by NSW state politician, Mr Drummond. In announcing the establishment of this party, Mr Drummond pointed out that it had by then become abundantly clear to the average citizen that all government revenue came from citizens. Hence citizens should insist upon ‘sane government, hard work and thrift’.14

14 SMH, 21 January 1931.
There was also to be found in the newspapers of the time some more informed technical criticism of taxation legislation, for example, from Mr McGrath, later to edit a series of reports on income tax cases.\textsuperscript{15}

The Commission was established against the background of the depression, the deterioration of the credit position of Australia overseas—reflected in the dismissal of the Lang government in NSW—and the fall in commodity prices. Even the government of the day admitted that the people of Australia bore a heavy taxation load.\textsuperscript{16} However, it was the complexity of the tax system and the lack of uniformity that provided the impetus to appoint a Commission to examine both Federal and state taxation laws.

In an opening address to the Ferguson Commission, counsel assisting the Commission, Mr Roper, is reported to have said\textsuperscript{17} that there had been brought to the knowledge of the Federal Government ‘considerable public feeling with regard to the complexity of the Federal and State Acts, and of their operations upon the individual taxpayer.’ Thus complexity would be the subject of the Commission’s focus. In all, the Commission examined some 136 witnesses and conducted interviews with the Commissioners of Taxation for both Commonwealth and state.

The first witness to appear before the Commission was Mr McKellar White, then President of the Taxpayers’ Association of New South Wales, a body influential in the tax reform process over a long period of time. One of the issues raised by the Commission was whether the concept of taxation at source could be extended beyond dividends. Mr McKellar White was strongly opposed to this because, he said, taxation should not be imposed by reference to gross income. Outgoings were allowed by way of deduction. The taxation of dividends should, he thought, be in no different position.\textsuperscript{18}

A Mr Bogan representing the Commonwealth Institute of Accountants emphasised the complexities which existed in the then system and which placed much work in the way of accountants. He was reported on 2 December 1932 as stating that ‘[h]opelessness and helplessness were the feelings engendered by the present system’.\textsuperscript{19} He said that the incentive to earn profits was being stultified by excessive taxation and complained of the methods adopted by tax officers of the Investigation Department many of whose inquiries were, he said, found to be unnecessary. These comments have a contemporary feel about them. Another witness, a taxation consultant and former tax assessor claimed that the burden of taxation on commerce had reached breaking point. The then Professor of Mathematics at Sydney University, Mr Carslaw, made a personal submission in which he emphasised the complexity of the income tax system. The Federal government was, he said, the ‘chief offender’.\textsuperscript{20}

\textsuperscript{15} SMH, 1 December 1931.
\textsuperscript{16} Budget Speech, Hansard 1, September 1932.
\textsuperscript{17} SMH, 22 November 1932.
\textsuperscript{18} SMH, 22 November 1931.
\textsuperscript{19} SMH, 2 December 1932.
\textsuperscript{20} SMH, 3 December 1932.
By 1932 the Board of Review that had been so enthusiastically recommended by the Kerr Commission was not so favourably seen by the profession. A solicitor and member of the taxation committee of the Sydney Chamber of Commerce, Mr Maund, suggested that the Board was a ‘farce’ and that ‘[o]ne gentleman sits on his own cases.’ In a ‘trenchant criticism’, Mr Maund said that, ‘the tax collectors were setting up the worst kind of “new autocracy”’. He recommended that it would be preferable for cases to be heard by ‘an inexpensive Court’.21

The Commission reported in stages, handing down its first report in December 1933 and its fourth and last report in November 1934. The first report dealt with the taxation of companies and dividends, the allocation of the statutory exemption and concessional deductions, the provisions dealing with insufficient distributions of private companies, and the complications created by the then extant Special Property Tax. The second report concentrated upon the principles underlying the assessment and collection of income tax. Its most significant recommendation was for the preparation of a uniform assessment act to give effect to a reconciliation reached by agreement between the Commonwealth and the states about the differences in their legislation. The Commission was of the view that the Commonwealth legislation should be taken as the base for uniform legislation. Necessarily, the Commission was required to consider the then vexing problem of apportioning profits where a trade was carried on in more than one state. The third report was largely concerned with the discrimination that was made by some states against residents of other states. The Commission had little difficulty in rejecting the idea that the allowance of deductions should be determined by the custom of accountants. The recommendations of the Committee formed the framework for the *Income Tax Assessment Act 1936 (Cth)* (ITAA36). The fourth and final report was concerned with estate duty and land tax.

VI THE SPOONER COMMITTEE 1950

The emphasis after the ITAA36 continued to be upon simplicity. In 1950 the government established another committee to undertake a comprehensive review of ITAA36 under the chair of the Honourable Mr Spooner, a Sydney Chartered accountant. The Spooner Committee included the late Mr Gunn, author of the work later to become the Law Book Company’s Tax Service and Dr Hannan, a Sydney barrister and author of the first Australian income tax text. Dr Hannan died before the Committee reported and his place was taken by Mr Gordon Wallace, later to become a Judge of the New South Wales Court of Appeal. The terms of reference were as follows:

The functions of the Committee will be to examine and inquire into such matters as are, from time to time, referred to the Committee by the Treasurer of the Commonwealth in connexion with income tax and other taxation laws of the Commonwealth, and to report to the Treasurer upon those matters. In respect of those matters, the Committee will recommend any changes in law or procedure which it considers necessary to achieve the following objects:

21 SMH, 24 November 1932.
(1) making the laws as simple and intelligible to the taxpayer as the nature of
the legislation admits;
(2) simplifying the duties of taxpayers under those laws, especially in
preparation of returns;
(3) removing anomalies in those laws; and
(4) providing an adequate and equitable basis of taxation.

The Committee became a standing committee on income tax to which references were
made by the Treasurer over a period of some five years. Annexed to this paper is a list
of the references to the Committee. Consequently the Committee, unlike other
committees, did not issue a single report, but rather a series of reports, ordinarily one
report for each reference. The references were narrow and generally required
consideration of particular sections of ITAA36. The first reference required the
Committee to report upon the advantages or disadvantages of substituting for the then
schedule of rates graduated in steps of one pound of taxable income—a schedule of
rates graduated in steps of, say 100 of taxable income or some other gradation. The
Committee took the view that this system was too complex and that it should be
replaced by a stepped scale of rates. It recommended abolition of the differential rates
between property and other income while adding that if differentiation should be
regarded as necessary, it should be achieved by the imposition of a surtax. Reference
No. 3 required the Committee to report on the assessability of amounts received in
relation to employment and retirement from employment (ss 26(d) and (e)). Reference
No 6 concerned the assessment or exemption of incomes derived from primary
production and related to averaging and concessions for primary producers. Reference
No 29 concerned the PAYE system of tax collection by instalments. Reference No 22
concerned contributions to pension funds. There were 53 references in all, which gave
rise to 37 reports.

The newspapers awaited the first of the Committee’s reports dealing with rates, with
the editorial line ‘Taxpayers Looking for a New Deal’.22 One of the issues regarded as
urgent by the profession, as reported in the SMH, was the system of review of objection
decisions. The Tax Boards of Review were by then three years in arrears—proof, so
the SMH said, that ‘the whole taxation system has become bogged (down)’. The paper
awaited, it said, a cut in the tax rates. The level of rates represented ‘a severe deterrent
to effort or initiative’. The paper called also for more honesty in the budget predictions
for tax revenue receipts. It complained that Mr Chifley had indulged in ‘consistent
evasion’ in the revenue papers, on one occasion underestimating revenue by no less
than 61 million pounds.

VII THE LIGERTWOOD COMMITTEE 1961

On 3 December 1959 the Commonwealth Government appointed yet another
committee to inquire into the taxation laws. The terms of reference were, however,
somewhat more limited than those applied to earlier committees. The enquiry was (as
well as relating to any matters that might be specifically referred to the committee) to
consider the existing income tax laws and their operation:

22 SMH, 8 May 1950.
for the purpose of ascertaining any anomalies, inconsistencies, unnecessary complexities and other similar defects that exist in, or arise out of the operation of those laws, and to formulate proposals for remedying those anomalies, inconsistencies, complexities and other defects and for simplifying those laws.

The Ligertwood Committee was required to have regard for the cost to revenue of its recommendations. Later the terms of reference were extended so as to permit the Committee to inquire into the whole of the laws relating to income tax, subject to some specified exceptions such as depreciation, which had been the subject of the earlier Spooner/Hulme reports and zone allowances.

The Committee received 519 written submissions and also heard oral evidence from many of the submission writers. Most of the report is concerned with amendments to counter tax avoidance. In addition, the Committee made recommendations for taxation relief where to do so appeared equitable subject to questions of policy, which were left to the government.

After the report was tabled, the Government adopted all the recommendations made to counter avoidance, but virtually none of the concessions (other than a deduction for dental expenses and a deduction for underground water pipes for primary producers). The then Treasurer, Mr Holt, advised Parliament that the recommendations on liberalising deductions ‘would deplete revenue and might cause anomalies in the future’. They would, he said, be treated as ‘taxation policy issues’ and be considered ‘at the appropriate time’. The then Leader of the Opposition, Mr Calwell criticised the government for ‘showing little concern about any real reform of our taxation laws except where suggested reform can benefit Commonwealth revenue’. The SMH in its editorial on 19 August 1961 headed, ‘The Tax Stick Used and The Carrot Ignored’ took up the criticism. It noted that the Treasurer was hungry for more revenue and that the recommendations made in the Report, comprising amendments to the legislation to counter avoidance as well as suggesting some liberalisation, were intended to be acted upon as a whole. Likewise the Taxpayers’ Association of NSW expressed its regret at the Government’s intention to defer indefinitely the Committee’s recommendations for taxpayer relief while implementing the recommendations designed to plug loopholes.

VIII THE APSREY COMMITTEE 1972

Nineteen seventy-two saw the appointment of what became known as the Asprey Committee. Unlike the Ligertwood Committee inquiry, this was to be a full-scale inquiry into the operation of the taxation system and was designed to ‘put the Government in a position to have an overall look at tax policy’.

The terms of reference of the enquiry were as follows:

1. The functions of the Committee of Inquiry are –

24 SMH, 19 August 1961.
25 See the Preface to the Committee’s Report.
(a) to examine and inquire into the structure and operation of the present Commonwealth taxation system;
(b) to formulate proposals for improving the Commonwealth taxation system, either by way of making changes in the present system, abolishing any existing form of taxation or introducing new forms of taxation; and
(c) to report to the Treasurer of the Commonwealth accordingly;

2. The Committee of Inquiry shall, in carrying out its functions, do so in the light of the need to ensure a flow of revenue sufficient to meet the revenue requirements of the Commonwealth and have regard to –

(a) the effects of the present Commonwealth taxation system, and of any proposals formulated by the Committee, upon the social, economic and business organisation of the community and upon the economic and efficient use of the resources of Australia; and
(b) the desirability of the Commonwealth taxation system being such that, so far as is practicable, there is a fair distribution of the burden of taxation, and revenue is raised by means that are not unduly complex and do not involve the public or the administration in undue difficulty, inconvenience or expense.

The Committee received 605 written submissions and also commissioned studies from experts. It took into account reports from other countries, particularly the Carter Commission in Canada, the Ross Committee in New Zealand, various commissions in South Africa, Green and White Papers from the United Kingdom and evidence given at Congressional hearings on tax reform in the United States. The final report, when printed in 1975, was produced against the standard criteria for assessment of taxes (see above). The Committee noted, however, that flexibility in the taxation system was important, so that rates could be quickly raised or lowered where this was needed, and that taxation should contribute to economic growth.

The report contains a detailed criticism of the income tax legislation then in force and the problems contained within it. It took almost twenty years before the legislature had adopted virtually all the recommendations contained in the report. The recommendations include the introduction of a broad-based goods and services tax (BBCT) in place of the then wholesale sales tax. The Report suggested an initial rate for the BBCT of five per cent which could thereafter be increased with downward adjustments to income tax. The Committee considered, but did not recommend the introduction of a wealth tax. As earlier noted, it recommended deferral of the proposal to introduce a capital gains tax.

Given that Professor Parsons played a large role in the preparation of the report, it is not surprising that the report is probably the most technically competent of all reports that have been issued in the name of tax reform.

The SMH editorialised on 4 March 1975 that the Asprey Report was eagerly awaited, particularly because it was expected that it would be recommending that Commonwealth estate duty not be levied on homes passing to widows. In fact when the final report was published it recommended that a previous exemption of duty on
homes up to a certain value passing to widows be repealed and replaced with a fixed money exemption for property passing to a surviving spouse, or gifted to that spouse, a consequence of a recommendation that estate and gift duty be integrated.

IX THE POPULARISATION OF TAX: THE TAX SUMMIT JULY 1985

Probably nothing was calculated to raise awareness of tax reform more than the calling of a ‘Tax Summit’ in 1985 by then Prime Minister, Mr Hawke. In place of the advisory Commissions which had been the instruments of reform in the past, there was prepared by Treasury a Draft White Paper entitled ‘Reform of the Australian Tax System’. The White Paper contained a discussion of some of the problems of the personal income tax system. These included the tax unit, the absence of a tax on capital gains and fringe benefits, concessional rebates, the rate scale, the need for a foreign tax credit system and provisions to deal with the question of inflation. Discussions followed, firstly on broadening the tax base to encompass a broad based consumption tax (for example, a GST), secondly on the possibility of a wealth tax and finally on issues of business tax including imputation, inflation adjustments, and the taxation of foreign source income. The White Paper concluded with three options, the last of which, Option C, consisted of broadening the tax base by legislating for: capital gains to be taxed; fringe benefits to be taxed; imputation to be introduced; concessional expenditure rebates to be abolished; and particularly for the enactment of a goods and services tax at an initial rate of 12.5 per cent.

Ultimately Option C did not gain approval.

The newspapers at the time were replete with commentary, much unfavourable in regards to both Option C, and particularly the introduction of what was referred to as a broad based consumption tax. Tax started to occupy the Letters to the Editor page. After the summit concluded the broad based consumption tax vanished from view, at least for a time. Most other proposals from Option C were adopted.

X AN INQUIRY INTO THE AUSTRALIAN TAXATION OFFICE: JOINT COMMITTEE ON PUBLIC ACCOUNTS 1991

Many aspects of tax administration have from time to time been the subject of review by Parliament. In 1991 the Joint Committee of Public Accounts conducted a wide-ranging review of the administration and operation of the ATO. The terms of reference for this inquiry required the Committee to

inquire into and report on the administrative procedures adopted by the ATO in the collection of taxation revenues under ITAA36 with particular reference to:

- the administrative and operational structures of the ATO and the application of common standards of practice across Australia;
- the efficiency and effectiveness of self assessment;

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26 Mungo MacCallum, SMH, 9 June 1985. See also Peter Robinson in the paper of the same day.
27 See, for example, SMH, 12 June 1985.
• the authority and application of taxation Rulings;
• the use of information technology within the ATO; and
• the resources of the ATO and their allocation.

This inquiry received some 120 submissions, one from the then Chairman of ATTA. It reported in November 1993. Among a number of significant recommendations—such as the establishment of a Small Taxation Claims Tribunal, a Taxation Ombudsman and the formulation of a taxpayers’ Charter of Rights—was a recommendation that ITAA36 be redrafted using simplified language and that a broadly based task force be established for this purpose. The then Treasurer, Mr Dawkins, responded by announcing on 17 December 1993 the establishment of a taskforce to rewrite ITAA36 and related Acts so as to make them more understandable. Legislation to fund the task force was introduced into Parliament on 8 December 1994.

The Tax Law Improvement Project was said to be about reducing the costs to taxpayers brought about by the complexity of expression and presentation of the existing law. Its aim was to completely rewrite the income tax legislation and thereby to develop a better structure and arrangement of the law. The rewrite was to promote an understandable expression of the law. Some small changes of policy were later introduced so as to make the tax rules ‘more commercial’.

The Income Tax Assessment Act 1997 (Cth) was the tangible outcome of the project. While the rewrite was generally simpler than ITAA36 provisions it replaced, the legislative statement that the 1997 Act was not intended to change the meaning of the comparable provision of ITAA36, had the result that it was (and still is) often necessary to consult both Acts. As a result, the apparent plus for simplicity was converted into a negative of complexity.

XI THE NEW TAX SYSTEM: AUGUST 1998

The period from the Tax Summit until 1998 was the age of tax change. At no other time since federation was parliament so occupied with amendments to the taxation law. It may be argued that the legislative activity was a reaction to public interest in tax. It’s more likely, however, that public interest was fostered by the newspapers’ constant publicity given to taxation, and their publication of political comment on taxation.

Whatever was cause and whatever effect, by the 1990s taxation had become political. The document ‘Tax Reform: Not a New Tax a New Tax System’ (ANTS), published in August 1998, was not a technical document. It was a political document and did not purport to be otherwise.

The ANTS document was produced on the premise that Australia’s existing tax system condemned Australia to a future of high tax, (particularly high income tax), evasion and avoidance, unfairness, complexity and penalisation of exports. Change was, it was said, ‘a clear national priority’. The existing system was ‘out of date’ (this was a reference to wholesale sales tax); ‘unfair’ (this was a reference to tax rates and thresholds); penalised exports and discouraged investment (a reference to the wholesale sales tax but as well to the distortion of business decisions by tax considerations);
‘ineffective’ (a reference to the supposed decline in indirect tax revenue); and ‘complex’ (this appears to be a reference to the growth in tax legislation as a result of changes in tax policy over the preceding 15 years). The implication was that these defects in the existing system were to change as a result of government policy.

Of the five principles of taxation reform which had been announced by the Prime Minister on 13 August 1997, the first was that there be no increase in the overall tax burden, and the second was that there were to be major reductions in personal income tax. These goals were to be achieved by a number of measures. The first was the introduction of a GST, the revenue from which was to go to the states, thus helping to solve the problem brought about by the High Court holding that tobacco and petrol licensing was outside the legislative competence of the states because they were duties of excise.28 The GST was to replace a number of state stamp duty taxes as well as sales tax. Secondly, there was to be a reduction in personal income tax and increased family and social security benefits. Thirdly, tax avoidance, particularly through trusts, was to be targeted. Finally, the design of tax laws was to be ‘improved and streamlined’.

Space does not permit a detailed outline of the various proposals contained in the document. However, it is important to note that the document repeatedly emphasises the need for tax laws to be clearer, and the rights and obligations of taxpayers more certain. As spelled out in more detail in the document the tax laws were to be brought together into a code to be designed from the taxpayer’s perspective—integrated, easily understood and difficult to avoid, and written with general principles in mind. The Tax Law Improvement Project was to be subsumed into the larger goal of codification.

Five years on the prospect of a simpler tax system seems just as unattainable as it did in 1998.

The document contemplated that consultation would take place with business on the proposed reforms of business entities and business. This took the form of establishing a Review Committee under the chair of Mr John Ralph AO, a prominent company director, assisted by Mr Allert, a chartered accountant and company director, and Mr Bob Joss, formerly Managing Director and CEO of Westpac Banking Corporation and thereafter to become Dean of the Graduate School of Business at Stanford University as from September 1999. The terms of reference of this Committee were announced by the Treasurer on 14 August 1998. They required the Committee to

assess the design and the administration of the tax regimes affecting business and to make recommendations on the fundamental design of the business tax system, the processes of ongoing policy making, drafting of legislation and the administration of business taxation.

The Committee was to be guided by the strategy identified in ANTS and it was required that its recommendations be:

consistent with the aims of improving the competitiveness and efficiency of Australian business, providing a secure source of revenue, enhancing the stability of taxation arrangements, improving simplicity and transparency and reducing the costs of compliance. The Review will adopt a comprehensive

approach to reform driven by clear, sound principles involving a move towards greater commercial reality.

The Review Committee formulated for itself the outcomes it sought to achieve in the following terms:

- A structure that is robust and based upon explicit principles so that the architecture of business tax legislation is durable and capable of future modification without doing damage to the framework on which it is based.
- An integrated design process, reflected in the accountabilities of a Charter of Business Taxation, that ensures that business tax policy, the legislation to give effect to that policy and the systems to administer it are compatible and integrated.
- An ongoing process of external involvement, including a Board of Taxation with specific accountabilities towards ensuring the integrity of the processes are maintained, to build upon the more constructive relationships that have been established during the review process.
- A more neutral system where similar activities, investments and entities are taxed similarly – and where taxpayers feel they are treated equitably, with the burden being shared fairly across the community.
- A tax system which is easier to understand and comply with, and makes fewer demands on the time of ordinary taxpayers.
- A far simpler system for small businesses, with a more concessional approach to writing off their capital expenditure and a reduced record-keeping load.
- A flow-through basis of taxation which puts individuals, who pool their resources to invest collectively and obtain the benefits of diversification, on an equal footing with wealthier individuals who can invest directly.
- A more competitive capital gains regime to encourage investment particularly to attract highly mobile international capital for which there is strong and increasing competition, to encourage entrepreneurs to start their businesses in Australia, and to achieve a better functioning capital market.

In summary, to quote Mr Ralph, the task was to ‘adopt and implement a more certain, equitable and durable taxation system’. The Review Committee’s stated objectives that the Committee accepted involved trading one objective off against another, including ‘optimising economic growth; promoting equity; and promoting simplicity and certainty’. One may question whether recommendations such as consolidation (now implemented) or the tax value basis of calculating taxable income (now discarded) produce or, in the case of the tax value method, would have produced, either simplicity or certainty. It is not the purpose of this paper to assess the Committee’s recommendations.

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29 A Tax System Redesigned, 2.
30 A Tax System Redesigned, 13.
The Committee went about its work by publishing and circulating discussion papers, conducting public seminars, and receiving and considering written submissions. It complemented its program by conducting focus group discussions on particular issues involving, inter alia, business representatives, academics, tax advisers and practitioners.

XII SO, HOW SHOULD WE DEFINE TAX REFORM?

There is a thread which runs through the terms of reference of each of the Committees to which reference has been made. Not surprisingly it does not differ greatly from the aggregate of views of the participants in the reform process to which reference was earlier made, notwithstanding that those views conflict with each other. What a perusal of the SMH over more than 80 years shows is that the establishment of Committees to advise on tax reform has not, in the past, been a consequence of public pressure on the government except in the area of tax rates. To the extent that tax reform was a matter of public interest, at least prior to the Tax Summit, that interest was largely focused on matters of administration and, in the late 1970s and onward, tax avoidance.

To define what is meant by tax reform it is first necessary to draw the distinction between reform of the whole system and reform of a particular tax, although the former may involve steps to reform a particular tax as well.

Reform of the system as a whole will involve a change of one or more of the following kinds:

- Tax mix—existing taxes
- Tax mix—the imposition of new taxes
- Existing taxes—tax rates including deductions and rebates having regard to the tax mix and to promote an equitable distribution of tax burdens
- Existing taxes—change in tax rates including deductions and rebates to promote an equitable distribution of tax burdens
- Existing taxes—change in the tax base (for example extension of income tax to include capital gains).
- Existing taxes—promoting neutrality of the tax system, eg, entity taxation
- Existing taxes—substantive amendments such as plugging loopholes or removing anomalies, inconsistencies or complexities
- Existing taxes—procedural or administrative changes to promote simplicity in compliance or administration
- Existing taxes—simplifying language to improve intelligibility
- Existing taxes—tax expenditure elimination (or introduction of new concessions designed to promote government economic policy)

If what is under consideration is reform of a particular tax rather than the whole system then the change will necessarily exclude the first three matters.

As already noted, tax reform involves more than merely adopting one or other of the above proposals simply to effect change. That is where the three criteria of equity, simplicity and efficiency have their place in defining tax reform. Strangely, while there

31 According to the Report some 300 submissions were received, 12.
is general agreement about these criteria, they are, once stated, then largely ignored. My thesis is that they should be given a real place in the definition of tax reform by being used to distinguish change from reform. The suggestion is that before a proposal can be classified as reform there be a requirement that the proposal be judged against the criteria. It may be necessary that other criteria be taken into account as well. That should be the subject of further discussion. For example, there is much to be said for the view that the criterion of efficiency be replaced by a broader criterion of economic benefit or advantage. The debate itself is worth having, whether or not there is ultimate agreement. However, it must be realised that if the criteria to be used is too vague, the advantage which the adoption of criteria would bring to assessing whether there is really tax reform could be lost.

It has become conventional to require environmental impact studies whenever development is considered, victim impact studies before sentencing, or cost estimates to be prepared before new legislative proposals come before Parliament. There is already an administrative requirement that Explanatory Memoranda include a financial impact statement describing both the direct and indirect financial impact for the Commonwealth of the Bill which the Explanatory Memorandum explains. Before changes are accepted as tax reform they might likewise be required to be rated by reference to the three criteria of equity, simplicity and efficiency/economic advantage. Only where the rating was positive and so reflected improvement rather than change could a proposal be assessed as tax reform. While both the rating and the content of the criteria are necessarily subjective a requirement to rate by reference to criteria would introduce some objectivity to the labelling of change as reform and in any event promote a more informed discussion of what really is tax reform and of the proposal being rated.

A possible methodology of rating might be to take the particular change proposed (for example, removal of an anomaly) and to rate the proposal on a scale from one to ten on each of the three criteria. So, for example, the recommendation might rate nine for equity. However, the recommendation might create complexity so that it might rate only three on simplicity where five would be neither complex nor simple. So far as efficiency/economic advantage is concerned the recommendation might be neutral (ie it would be rated five on a scale of 1–10). Unless there was a need to adopt some special weighting of the criteria the recommendation would rate overall 17 out of a possible 30. So long as the recommendation rated more than 15 it could be said then to involve a change which is an improvement and therefore reform.

The above proposal for rating changes in tax policy or law before those changes can be labelled as reform can easily be criticised not only because it reintroduces subjectivity in a different guise, but also because it places equal weight upon each of the three criteria. If it is thought that more weight should be given to one of the three criteria rather than the other two this could be done. Again, the debate about what weight should be given to a particular criterion is a debate that is worth having in its own right. So long as the criteria against which a proposal is to be rated and the weight to be given to the criteria are known it will be possible for a judgment to be made whether what is proposed is really reform or whether it is mere change even if there is not universal

agreement either as to the criteria to be adopted or as to the weight to be given to any
criterion. At the least the requirement to rate changes by reference to a set of criteria
would permit a more informed discussion of tax reform than at present is possible.

The alternative is to continue to accept, uncritically, that a proposal constitutes tax
reform merely because the proponent of it says so.
### Schedule 1: Commonwealth Committee on Taxation (Spooner) 1951 – 53

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33 The Committee had received no reference for this report.
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