

# Designing a Tax System Advisory Board

Discussion Paper  
January 2011

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ISBN 978-0-642-74669-6

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## CONSULTATION PROCESS

### Request for feedback and comments

The Government seeks your feedback and comments on the issues outlined in this discussion paper. The information obtained through this process will inform the Government on how to proceed with the proposed Tax System Advisory Board. An important consideration will be to ensure the Commissioner of Taxation's statutory independence to administer the Commonwealth's tax laws is maintained, whilst providing him with quality, relevant advice on organisational matters.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. A request made under the *Freedom of Information Act 1982* for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

### Closing date for submissions: 11 March 2011

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## FOREWORD



I am very pleased to release this discussion paper on the Government's proposed Tax System Advisory Board (the Board).

Establishing the Board forms a key element of the Government's election commitment to reshape the governance of our tax system which aims, amongst other things, to allow the Australian Taxation Office to benefit from a wider range of perspectives and experiences obtained in managing large complex organisations. This follows the release of the final report of Australia's Future Tax System Review last year.

Nonetheless, the Government is mindful that the Board should not impinge upon the Commissioner of Taxation's statutory independence to administer the tax, superannuation and Australian Business Register laws. Nor should the Board be used as a means for particular individuals or groups to pursue specific agendas. Either outcome would lead to an erosion of community confidence in the fairness of the tax system.

Consequently, the design details of the Board are very important.

I therefore encourage you to participate in this consultation and provide your views on the different design approaches outlined in this paper. Your input will assist the Government in deciding how best to proceed with this matter.

**Assistant Treasurer and Minister for Financial Services and Superannuation**  
**The Hon Bill Shorten MP**

## SUMMARY

The Government announced during the 2010 election that it would establish an advisory board for the Australian Taxation Office (ATO), to be known as the Tax System Advisory Board (the Board). The Government also announced that it would undertake detailed consultation with the Australian community on the design of the Board.

There are three key elements to consider when framing the design of the Board.

- The Board's role will be to advise the Commissioner of Taxation (Commissioner) on a range of organisational matters.
- The Board will not impinge on the Commissioner's statutory independence to administer the tax, superannuation and Australian Business Register laws and will not affect his existing accountabilities to the Parliament. Consequently, the Board will not be involved in the interpretation of laws administered by the Commissioner, in compliance strategies or in the affairs of individual taxpayers.
- The Board will be comprised of the Commissioner and non-Government members.

Within these design parameters, are two main issues.

- What structure should the Board have, including what governance arrangements should be put in place?
- What membership arrangements should the Board have?

The Government has made no decisions on the design details in relation to the Board at this stage. However, a critical factor will be maintaining the Commissioner's independence while providing him with quality, relevant advice on organisational matters.

Whilst this paper raises specific questions to consider in Part 5 'Consultation questions to consider', submissions may also comment on any other related matters in the paper. However, it is important to note that the 'Key Elements of the Board' discussed in Part 2 sets the framework for this consultation.



# 1. BACKGROUND

## 1.1 THE COMMISSIONER OF TAXATION AND THE AUSTRALIAN TAXATION OFFICE

The Australian Taxation Office (ATO) is an agency within the Treasury portfolio. Under the principles of responsible government, Treasury ministers are accountable to the Parliament for the ATO's performance. However, the Commissioner has a statutory independence to administer the Commonwealth tax laws. This independence was introduced when the Commissioner was conferred with the general power of administering the *Income Tax Assessment Act 1915*.

This statutory independence means the Commissioner decides how to administer and apply the tax laws and relevant superannuation laws free from political influence or interference. Accordingly, ministers have limited direct involvement in the ATO's governance and have no power to direct the Commissioner in administering the laws which he administers.

For convenience in this paper, tax laws is taken to refer to all the laws administered by the Commissioner. These include taxation, superannuation and Australian Business Register laws.

The Commissioner is also accountable to the Parliament for the general administration of the tax laws and the general workings of the ATO. The Commissioner provides an annual report to the Minister (who tables it in Parliament) and also appears before the Senate Standing Committee on Economics and the Joint Committee of Public Accounts and Audit. A schedule of laws which impose a reporting requirement on the Commissioner can be found in the 2009-10 Commissioner of Taxation Annual Report at page 196.

Australia's Future Tax System Review (AFTS Review) noted that there are strong equity and integrity reasons why tax authorities should be independent. However, the AFTS Review also noted that since tax authorities have significant powers and responsibilities in performing a critical function of government, effective monitoring and scrutiny of the authority is essential.

There is no legislative concept of the ATO in the *Tax Administration Act 1953*. Instead, Part II of the *Tax Administration Act 1953* establishes the Office of the Commissioner of Taxation and that of three Second Commissioners. Section 3A of the *Tax Administration Act 1953* empowers the Commissioner with the general administration of that Act. Other Acts administered by the Commissioner have similar provisions, including section 1-7 of the *Income Tax Assessment Act 1997*, section 8 of the *Income Tax Assessment Act 1936* and section 3 of the *Fringe Benefits Tax Assessment Act 1986*. Section 8 of the *Tax Administration Act 1953* allows the Commissioner to delegate any of his powers or functions under a tax law to a Deputy Commissioner or any other person. For the purposes of the *Public Service Act 1999*, the Commissioner and the individuals employed to assist him together constitute a statutory agency with the Commissioner as head of that agency. A schedule of laws administered by the Commissioner can be found in the 2009-2010 Commissioner of Taxation Annual Report at page 198.

The Commissioner is already subject to a number of accountability and governance mechanisms, including those contained in the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997* (FMA Act). The FMA Act provides a framework for dealing with and managing the money and property of the Commonwealth. The FMA Act imposes a range of reporting and accountability obligations on agencies that receive their own appropriations through the Annual

Appropriation Acts. The Commissioner is accountable in relation to his administration of the Goods and Services Tax (GST) to the Ministerial Council on GST.

As noted in the AFTS Review, the Commissioner is also subject to a wide range of external scrutiny, including by the Australian National Audit Office, the Parliamentary Joint Committee on Public Accounts and Audit, the Inspector-General of Taxation and the Commonwealth Ombudsman (whose office has a Special Taxation Adviser). The Commissioner consults widely with the private sector, including through more than 50 consultative committees. Private sector experts also sit on a range of specialised committees in relation to matters such as test case funding, the application of the general anti-avoidance provisions, the development of public rulings, governance committees such as the Audit Committee and organisational committees such as the People Committee.

The ATO Executive Committee, which comprises the Commissioner, the Second Commissioners and the ATO's Chief Finance Officer, Chief Information Officer, Chief Operating Officer and the First Assistant Commissioner of ATO People, assists the Commissioner:

- to set the longer term direction for the ATO; and
- to execute his responsibilities:
  - to undertake the administration of aspects of Australia's tax and superannuation systems;
  - for the overall delivery of the ATO's commitment to government; and
  - to manage the ATO as an agency.

More generally, the role of the ATO Executive Committee includes:

- setting the strategic direction and organisational priorities;
- leading implementation of the strategic direction;
- establishing and reviewing corporate plans;
- reviewing, monitoring and evaluating organisational performance;
- scrutinising business activities;
- directing and managing corporate governance; and
- ensuring compliance with legal and ethical frameworks.

Attachment 1 provides an overview of the existing ATO corporate governance structure and Attachment 2 provides an overview of the existing ATO key consultative forums.

## 1.2 THE AFTS REVIEW'S FINDINGS AND RECOMMENDATION

The AFTS Review was commissioned by the Government in 2008 to examine and make recommendations to create a tax structure that positions Australia to deal with the demographic, social, economic and environmental challenges of the 21st century and to enhance Australia's economic and social outcomes. The AFTS Review's terms of reference included examining and

making recommendations to simplify the tax system and consider appropriate administrative arrangements across the Australian Federation.

The AFTS Review noted that independent surveys continue to find that Australians have a high level of confidence in the ATO.

However, the AFTS Review recognised that whilst the Commissioner's independence needs to be preserved, governance arrangements need to strike a balance between maintaining that independence and receiving the best performance from the ATO.

The AFTS Review considered that an advisory board to the ATO would usefully add to, formalise and elevate the existing consultative arrangements which support the Commissioner. Rather than a criticism of the existing arrangements, the AFTS Review considered that the pace and significant changes to the ATO's work means it could benefit from additional management arrangements that offer an even greater range of expertise and perspectives.

The AFTS Review also commented that an advisory board would contribute to a more open and transparent environment, thereby promoting greater trust and confidence in the operation of the tax system.

Consequently, the AFTS Review recommended (recommendation 115) that:

*A board should be established to advise the Commissioner of Taxation on the general organisation and management of the ATO. The board would not be a decision-making body and would have no role in interpreting the tax laws or examining individual taxpayer issues. The government would appoint members to the board.*

### 1.3 THE GOVERNMENT'S ELECTION COMMITMENT

On 5 August 2010, the Government announced an intention to reshape the governance of the tax system by establishing a Tax System Advisory Board to advise the Commissioner and the ATO Executive Committee:

- on the strategy, direction, culture, organisation, management, compliance planning, staff profile and information technology plans at the ATO; and
- by providing a new, direct and in-built voice for business and taxpayer communities in relation to ATO decision making and culture.

This announcement formed part of the Government's response to the AFTS Review.

Attachment 3 provides a copy of the Government's announcement.



## 2. KEY ELEMENTS OF THE BOARD

The final design of the Board will need to accommodate the following features.

- The Commissioner will continue to be responsible and accountable for administering the relevant tax, superannuation and other laws, and the Board will not impinge on his statutory independence in doing this. Consequently the Commissioner will not be obliged to follow the Board's advice.
- The Board will provide advice in relation to internal ATO matters only.
  - The Board will provide organisational advice to the Commissioner about the management of the ATO including its direction, culture, management, staff profile and information technology plans. It will play a role similar for example to the ATO's People Committee. The Board's advice in relation to compliance planning will be limited to the ATO's internal processes for developing its compliance plan. The Board will not provide advice in relation to the specific details of the plan, such as what tax risks to target or what industry sectors or companies to audit. In addition, the Board will be able to consider ideas and issues raised by the Commissioner.
  - Therefore, the Board will complement the ATO's many existing consultative forums, which tend to focus on the ATO's relationship with key stakeholders in relation to design of the implementation of tax laws and administrative practices, and the various specialised expert Panels, such as the Public Rulings Panel, the General Anti-Avoidance Panel and the Offshore Voluntary Disclosures Panel.
  - The Board will not be a decision making body. The Board will not provide advice about administering or interpreting the various laws for which the Commissioner has responsibility or be involved in the affairs of individual taxpayers.
- The Board will comprise the Commissioner as the Chair as well as non-Government members. Non-Government members will be appointed for fixed terms on a part-time basis. They are likely to be management leaders with extensive experience in managing and leading large complex organisations from corporate, government or not-for-profit bodies. These members will be appointed in their personal capacity only and not as representatives of specific organisations or other bodies. In addition, non-Government members will need to have high standards of ethical conduct and high levels of compliance with the various laws administered by the Commissioner in relation to both their personal affairs and those of their associates.



## 3. POSSIBLE STRUCTURE OF THE BOARD

### 3.1 DIFFERENT DESIGN MODELS

There are three possible structures for the Board within the design parameters outlined in Part 2 ‘Key Elements of the Board’.

- A board established by legislation (statutory board).
- A board established by charter (executive board).
- A board established by the Commissioner (Commissioner’s board).

Theoretically, the Board could also be established as a separate statutory agency under the FMA Act accountable to the Treasurer and the Parliament (separate agency). However, there are significant design risks that this approach would undermine the relationship between the Commissioner and the Board that will be necessary if the Board is to be an effective advisory body.

A separate agency would be accountable to the Treasurer and the Parliament, replicating existing portfolio, ministerial and parliamentary arrangements. This means the Board would be required to provide an annual report to the Parliament and its members may be called before Parliamentary Committees. If the Commissioner did not follow the Board’s advice (assuming it were unanimous advice) it may create a conflict of interest between the Commissioner and the Board and would put the Commissioner in an invidious position when he appears before Parliamentary Committees as a member of the Board and as Commissioner. There are also potential conflicts with the Commissioner receiving advice from other formal sources such as the ATO’s Audit Committee or less formal sources from the existing consultative and advisory bodies. These issues are likely to result in the Commissioner’s independence being impinged, as well as considerable confusion about accountabilities.

More generally, establishing the Board as a separate agency would be inconsistent with the Government’s governance policy preference of avoiding the proliferation of Australian government bodies and to consolidate activities in existing bodies wherever possible. It would also mean that the Board would need to spend a disproportionate amount of its appropriated funding on administration and compliance with the FMA Act.

Consequently, establishing the Board as a separate agency is not a viable design model.

Further information on the other three possible legal structures is set out below.

#### 3.1.1 Statutory board

With a statutory board, Parliament would establish the Board by amending the *Tax Administration Act 1953*. A combination of legislation, regulations or non-statutory protocols could govern the Board’s functions, appointment processes and procedural processes.

This would add to the size of the *Tax Administration Act 1953* and would need to cover matters of detail such as remuneration, conflicts of interest, and integrity criteria. Any changes would also have to be done legislatively which would limit flexibility to address problems as they arose.

The Commissioner would be responsible for managing the Board's financial management practices in accordance with the FMA Act. The Commissioner would also provide secretariat and other support services for the Board.

The Treasurer would appoint non-Government members to the Board and may terminate their appointment in certain circumstances, as prescribed in the law.

The Board would be accountable to the Treasurer for carrying out its function of providing advice to the Commissioner. For the reasons outlined in dismissing the separate agency concept, this would replicate existing portfolio, ministerial and parliamentary arrangements. As the most 'formal' of the three possible models, a statutory board would pose the greatest risks associated with differing advice, potential to impinge on the Commissioner's independence and confusion as to accountabilities.

Such a statutory board would also be inconsistent with the recommendations of the Uhrig Review and the approach taken for the Board of Taxation.

### 3.1.2 Executive board

With an executive board, the Government would establish the Board with a charter setting out its functions and appointment processes (similar to how the Board of Taxation was established).

The Commissioner would be responsible for managing the Board's financial management practices in accordance with the FMA Act. The Commissioner would also provide secretariat and other support services for the Board.

The Treasurer would appoint non-Government members to the Board and may terminate their appointment in certain circumstances.

The Board would be accountable to the Treasurer for carrying out its function of providing advice to the Commissioner. This is a more flexible arrangement than that outlined in Part 3.1.1 'Statutory board', but still shares some of the issues of that option.

### 3.1.3 Commissioner's board

Finally, the Commissioner, in consultation with the Government, would establish the Board. The Board's functions, appointments, membership and governance processes would be determined by the Commissioner in consultation with the Government.

The Commissioner would be responsible for managing the Board's financial management practices in accordance with the FMA Act. The Commissioner would also provide secretariat and other support services for the Board.

The Treasurer, or, in consultation with the Government, the Commissioner, would appoint non-Government members to the Board and may terminate their appointment in certain circumstances.

The Board would be accountable to the Commissioner for carrying out its function of providing advice to him, but would also be available as a board to advise the Treasurer on whether the arrangements are meeting the key elements outlined in Part 2 'Key elements of the Board'.

**Table 1 — Overview of the key differences between the three design models.**

	Established by...	Financial practices managed by the...	Appointments made by the...	Accountable to the...
Statutory board	Legislation	Commissioner	Treasurer	Treasurer
Executive board	Charter	Commissioner	Treasurer	Treasurer
Commissioner’s board	Charter	Commissioner	Treasurer or Commissioner	Treasurer and Commissioner

**3.2 POLICY TRADE-OFFS BETWEEN THE DIFFERENT MODELS**

Each model offers a number of policy trade-offs. These relate to the Board’s status, the independence of its non-Government members, Board accountabilities, governance and the level of flexibility the Board can adopt in meeting the Commissioner’s needs. These issues are discussed below.

The policy intent of the Board is to assist the Commissioner in the general management and organisation of the ATO.

**3.2.1 Status of the Board**

The status of the Board could affect the quality of the candidates attracted to positions on the Board. An enhanced status may assist in attracting well qualified candidates to the Board which, in turn, would improve the Board’s effectiveness. However, attracting quality candidates has not proved to be a difficulty in setting up and running the Board of Taxation. Furthermore, given the members’ prime role is to assist the Commissioner on organisational matters, it is unlikely that status of the Board would be a significant consideration in terms of attracting applicants.

Establishing a statutory board could enhance its advisory status relative to an executive board. This is because the Commissioner is accountable to Parliament and, by passing relevant legislation, Parliament would endorse the creation of the Board. Legislation could also provide greater certainty and transparency about the role of the Board. However this could be at the cost and inflexibility of extra legislation and could potentially lead to the arrangements becoming fixed and poorly suited for the very dynamic environment in which the ATO operates. Flexibility is particularly important as the board’s processes are worked out.

**3.2.2 Independence of non-Government Board members**

It is important that the non-Government members of the Board will have broad organisational experience in leading and managing large organisations. One issue might be that the power to terminate the appointment of non-Government members may affect the advice these individuals provide, however that is very unlikely given the calibre of members sought. In any event, under all the options if termination was to occur, this would be undertaken by, or in consultation with, the Government.

The Treasurer would appoint non-Government members to a statutory board or an executive board and may terminate their appointment in specific circumstances. Consequently, non-Government members could provide frank advice to the Commissioner without fear of adverse consequences.

Under a Commissioner's board, the Commissioner would, in consultation with Government, appoint non-Government members to the Board and may, also in consultation with Government, terminate their appointment in appropriate circumstances. Under this arrangement there may be a public perception that a Commissioner's board would not be as independent as a statutory board or an executive board. However, this perception could be mitigated by the Commissioner adopting transparent processes in relation to the Board including seeking Government advice on appointments. Again, the policy intent is that the Board members provide advice which assists the Commissioner.

### 3.2.3 Board accountabilities

The fundamental requirement is that the introduction of a board should not and will not affect the Commissioner's existing accountabilities for administering the tax laws. In addition, the Commissioner will have the extra responsibilities of funding and managing the Board's financial practices under any of the design models. This is not an area of accountability for Board members but for the Commissioner.

With the Treasurer responsible for, or being consulted in, the appointment of non-Government members, an additional level of accountability and engagement for Board members could be achieved by requiring the Board (however it is created) to provide an annual report to the Treasurer, or by requiring this report to be included in the Commissioner of Taxation's annual report. This report could detail the Board's activities throughout the year including for example, its operating costs and the general nature of the issues members have advised on. Information about the number of meetings the Board has held and the attendance of members would provide accountability of member participation. The Commissioner could report on the effectiveness of the Board's operation in his annual report. Publishing these reports would also provide transparency about the Board's effectiveness.

This form of accountability should not lead to an erosion of the Commissioner's independence as the Treasurer is already accountable to the Parliament for the ATO's performance under the principles of responsible government. The Commissioner is responsible under the FMA Act for the efficient use of resources and so it is appropriate for the Commissioner to report on the quality of advice that would be funded by public resources.

Under a Commissioner's board, the Board would be accountable to the Commissioner and the Treasurer, and the Commissioner could, in consultation with the Government, determine the level of assistance being provided by the Board. The Commissioner could choose to include information about the Board's activities in his annual report to the Parliament.

To encourage robust and frank discussions under any of the proposals, Board meeting minutes would be kept confidential. Members would need to maintain this confidentiality even after leaving the Board. There may also need to be restrictions on non-Government members making public comments about current taxation issues, except where they do so on the basis that their views are personal and not in their capacity as Board members, so as to not undermine the Commissioner's statutory independence or cause public confusion about the ATO's view on these issues, or in any way place pressure on Government.

Nonetheless, documents prepared for the Board, and by the Board would be subject to existing freedom of information laws.

### 3.2.4 Flexibility of the Board

Ideally, the Board should operate in a flexible way that best assists the Commissioner. This is likely to be important during the Board's early stages when key processes are still settling.

As the Commissioner would manage the functions and processes of a Commissioner's board, he could easily make changes to the Board to ensure it best suits his needs.

A non-legislative approach would provide a higher degree of administrative flexibility compared to a legislative approach. For example, a charter determined by the Government would be easier to amend than legislation. Similarly, it would also be easier for the Government to update regulations and protocols than have Parliament amend legislation.

However, a statutory board could be governed by a combination of legislation, regulations and protocols. Key processes (such as the establishment of the Board, its functions and appointment processes) could be set out in legislation and other processes could be set out in regulations or protocols. Adopting regulations would still allow Parliament to oversee changes through the form of disallowable instruments. Other less critical processes could be governed by protocols that the Board could update as necessary. However, the legislated approach is not flexible and is difficult to change, so it was not the model followed for the Board of Taxation.

It is likely that the Board would meet no more than quarterly depending on the Commissioner's needs for advice. The Board itself could settle these processes. The work program, given the prime intent of assisting the Commissioner, is more likely to take the form of advice on organisational issues such as major investments, than reports. Except in the Commissioner's board proposal, there are difficulties in establishing any accountability in individual members for the quality of their advice.



## 4. POTENTIAL MEMBERSHIP OF THE BOARD

As noted in Part 2 'Key elements of the Board', the Board's non-Government members will be leaders, or former leaders, with extensive experience in managing large complex organisations such as public companies, government organisations or large not-for-profit bodies.

The number of non-Government members appointed to the Board would need to provide a balance between offering a wide range of experience and expertise, and preventing a board from becoming unwieldy. A board of initially no more than six members may be appropriate although this could be monitored over time to determine if it was too large or too small, and whether it continued to add value.

### 4.1 EXPERTISE AND EXPERIENCE OF POTENTIAL MEMBERS

It is likely that current and past directors and other senior executives of large public companies would have the appropriate level of expertise to sit on the Board. Persons with similar experience in the public and not-for-profit sectors may also be suitable. Specific expertise in any of the following areas would also be valuable:

- strategic planning;
- financial performance and budgeting;
- corporate values and probity processes;
- technology;
- human resource strategies; and
- management of substantial contracts.

### 4.2 APPOINTMENT PROCESSES

As noted above, the structure of the Board would determine the appointment processes for its non-Government members. These have been outline above.

Given the calibre of the intended membership, and the fact that they are likely to have major other commitments, and even though the ATO is a very large complex organisation, it would be expected that the advice of members would be immediately constructive and valuable. In this context, and given the dynamic nature of the environment in which the ATO operates, relatively short terms of appointment, one to two years, are likely to be appropriate. However, where appropriate, members could be reappointed.

Non-Government members could resign their appointment. Alternatively, their appointment could be terminated in specific circumstances. Such circumstances would include:

- misbehaviour (including in relation to their own or their associated entities' taxation affairs), bankruptcy, physical incapacity or mental incapacity;

- failing to attend a certain number of meetings; or
- failing to comply with member conduct requirements (see Part 4.3 'Conduct of Members').

### 4.3 CONDUCT OF MEMBERS

Potential non-Government members would need to provide a declaration prior to their appointment that their personal tax, superannuation and other affairs relevant to the laws the Commissioner administers, and those of any associated entities, are in order and that they and their associates are not involved in any unresolved disputes with the ATO. Potential non-Government members would also need to declare any interests that could conflict with their duties on the Board (such as tendering for ATO contracts).

Once appointed, non-Government members would be required to:

- discharge their functions with care and diligence;
- avoid conflicts of interests; and
- not engage in activities which could compromise the ATO's standing in the community.

In situations when it is not possible to avoid all conflicts of interests, the relevant non-Government member would be required to declare these interests and manage them in consultation with the Commissioner or the Treasurer, if necessary.

## 5. CONSULTATION QUESTIONS TO CONSIDER

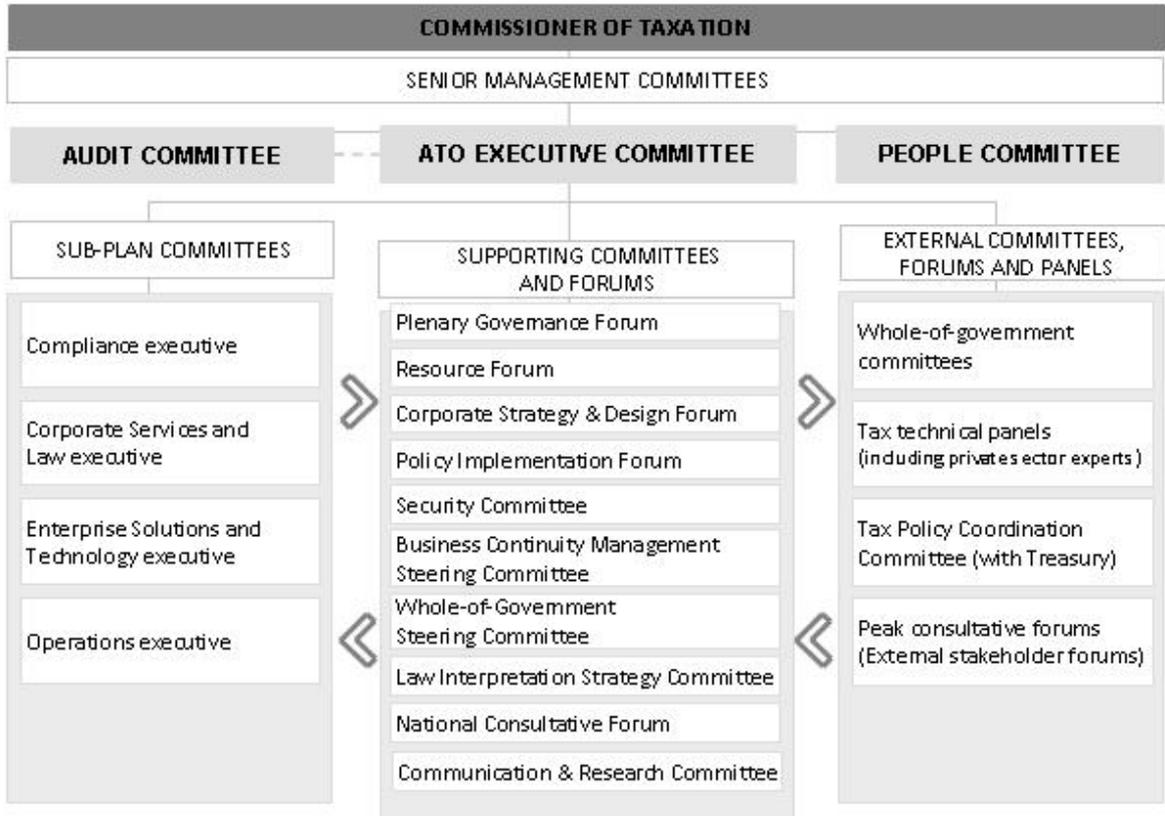
Some specific questions to consider when preparing submissions may include:

- The Board's function is to provide strategic organisational advice to the Commissioner. Are there specific outcomes that the Board should deliver? Is there a means of objectively measuring the effectiveness of the Board, especially as Board members may have differing views and the Board will be only one of many sources of advice to the Commissioner? Should, and if so how, the value added from the different views be evaluated?
- Are there additional matters that the Board should advise on (within the framework that the Board cannot impinge on the Commissioner's statutory independence) given the prime intent that the board is to assist the Commissioner on general management and organisational matters? Are there additional matters that the Board should not advise on?
- Requiring the Board to provide an annual report (whether it be to Parliament or the Treasurer) forms the only element of the Board's public accountability. Should the Board have additional, specific accountabilities? What accountability should the board members have to the Commissioner, whom it is seeking to assist?
- Is there a risk that the appointment of business leaders to the Board will lead to a public perception that these individuals (or their employers) have an undue influence on the Commissioner due to their increased contact with him?
- Notwithstanding the advisory nature of the Board, is there a need to provide non-Government members with protections for their actions taken in good faith while on the Board?
- If the Government was to adopt the legislated Board model, are there specific processes that should be fixed in legislation rather than regulations, guidelines or protocols?
- What other governance arrangements should be in place for the advisory board to ensure that the community's confidence in the laws administered by the Commissioner is improved?



# ATTACHMENT 1. EXISTING AUSTRALIAN TAXATION OFFICE CORPORATE GOVERNANCE STRUCTURE

Figure 1 — Existing ATO corporate governance structure.





## **ATTACHMENT 2. EXISTING AUSTRALIAN TAXATION OFFICE KEY CONSULTATIVE FORUMS**

### **ATO peak consultative forums**

#### **National Tax Liaison Group**

##### Member organisations

Department of Treasury  
Law Council of Australia  
National Tax and Accountants' Association  
National Institute of Accountants  
Corporate Tax Association  
Association of Taxation and Management Accountants  
Institute of Chartered Accountants Australia  
National Institute of Accountants  
CPA Australia  
Taxation Institute of Australia

#### **Large Business Advisory Group**

##### External members

Rio Tinto  
ExxonMobil Australia  
Telstra Corporation  
Law Council of Australia  
Caltex Australia  
BP Australia  
Business Council of Australia  
Woolworths  
Deloitte Touche Tohmatsu  
Corporate Tax Association  
ANZ Banking Group  
Linfox  
AMP Capital Investors  
National Australia Bank  
Property Council of Australia

#### **ATO Tax Practitioner Forum**

##### Member organisations

CIMA Australia  
H&R Block  
Association of Taxation and Management Accountants  
Taxation Institute of Australia  
National Tax and Accountants Association  
Institute of Chartered Accountants of Australia

Tax practitioners  
Income Tax Professionals  
CPA Australia  
Taxpayers Australia  
National Institute of Accountants

### **Personal Tax Advisory Group**

#### **Member organisations**

Adult Multicultural Education Services  
Association of Independent Retirees  
Australian Council of State School Organisations  
Australian Financial Counselling and Credit Reform Association  
Australian Shareholders Association Limited  
Australian Youth Affairs Coalition  
Business and Professional Women Australia  
Centrelink  
Country Women's Association  
Enterprise Network for Young Australians  
Financial Planning Association of Australia  
National Union of Students  
Superannuated Commonwealth Officers' Association  
Tax Help Program (Volunteer representative)  
Taxpayers Australia

### **Commissioner's Small Business Consultative Group**

#### **Member organisations**

Australian Chamber of Commerce and Industry  
Australian Retailers Association  
Australian Trucking Association  
CPA Australia  
Council of Small Business Organisations of Australia  
Department of Innovation, Industry, Science and Research  
Institute of Chartered Accountants  
Master Builders Australia  
Multicultural Business Chamber of Australia  
National Farmers Federation  
National Tax and Accountants Association  
Pharmacy Guild of Australia  
Real Estate Institute of Australia  
Small Business Advisory Group representative  
Software Developers Consultative group representative

### **Charities Consultative Committee**

#### **Member organisations**

Anglicare  
Australian Catholic Bishops Conference  
Australian Council of Social Services

Community Housing Federation  
Department of Treasury  
Independent Schools Association  
Mission Australia  
National Disability Services  
Qld University of Technology  
Centre of Philanthropy and Non-Profit Studies  
St John Ambulance Australia  
Salvation Army  
UnitingCare Australia

## **Superannuation Consultative Committee**

### **Member organisations**

Institute of Chartered Accountants in Australia  
National Institute of Accountants  
CPA Australia  
National Tax & Accountants Association  
Taxation Institute of Australia  
Association of Taxation and Management Accountants  
Association of Super Funds Australia  
Financial Services Council  
Industry Funds Forum  
SMSF Professional Association of Australia Limited  
Financial Planning Association of Australia Limited  
Superannuation Aust Pty Ltd  
Australian Chamber of Commerce and Industry  
Council of Small Business Organisations of Australia Limited  
Australian Institute of Superannuation Trustees  
Law Council of Australia  
Department of Treasury  
Australian Prudential Regulation Authority  
Australian Securities and Investments Commission  
Superannuation Complaints Tribunal  
SmartSuper Proprietary Limited  
Mercer

## **Software Industry Liaison Group**

### **Member organisations**

ADP Employer Services  
Advanced Professional Solutions  
AM-Win Software Pty Ltd  
Arrow Research Corporation Pty Ltd  
Assett Software (Aust) Pty Ltd  
Attache Software Australia Pty Ltd  
Banklink (Media Transfer Services LTD)  
Bravura Solutions  
Cashflow Manager Pty Ltd  
CCH ProSystem Australia Pty Limited

Class Financial Systems Pty Ltd  
Dowlan Pty Ltd  
DWS Advanced Business Solutions  
Empower Masterpay  
e-Record (ATO Product)  
Frontier Software Pty Ltd  
GBST  
InSynergy Solutions Pty Ltd  
Interactive Accounts Manager  
JCurve Solutions Pty Ltd  
Landmark Software Pty Ltd  
Muli Management Pty Ltd  
MYOB Australia  
MYOB Incorporating Solution 6 Group  
Neller Pty Ltd  
NorthgateArinso  
NTAA  
Oracle Corporation  
PayGlobal Ltd  
Pentaq Technology Pty Ltd  
Reckon  
Rockfast International Pty Ltd  
Sage Handisoft  
Sage Micropay Pty Ltd  
SAP Australia  
Sherlock Software  
Software Objectives  
Synchronised Software  
Talent 2  
Taxnology Pty Ltd  
Taxstar Pty Ltd  
TechnologyOne  
Thomson Reuters  
Xero

## **Expert panels**

### **Public Rulings Panel**

#### **Representative — Capacity**

Ray Conwell — Lawyer, Chartered Accountant  
David Williams — Lawyer  
Richard Krever — Academic  
Richard Shaddick — Lawyer (retired)  
Ian Farrow — Chartered Accountant  
Rebecca Millar — Academic  
John O'Halloran — Lawyer (Special Adviser, Russell Kennedy)  
Ross Stitt — Lawyer (Partner, Allens Arthur Robinson)  
Gary Chiert — Lawyer (Partner, Corrs Chambers Westgarth)  
Gordon Brysland — Lawyer (Senior General Counsel, AGS)

John King — Lawyer (Partner, Malleson Stephen Jaques)  
Ann O’Connell — Academic  
Jeremy Geale — Barrister at Law  
Hon Roger Gyles — QC, Judge  
Robert Deutsch — Academic

### **Superannuation Rulings Panel**

External representative — Capacity

Cynthia Coleman — Academic  
Graeme Colley — Superannuation Strategy Manager (ING Australia) and Technical Manager (Super Concepts)  
Richard Friend — Specialist in superannuation matters, Principal of Balena Tassa Pty Ltd  
Peter Haggstrom — Specialist in superannuation matters (former Tax Adviser to Commonwealth Ombudsman)

### **General Anti-Avoidance Rules Panel**

External representative — Capacity

Ray Conwell — Deloitte Legal, Consultant  
David Williams — Taxation Institute of Australia, National President  
Tony Payne — Village Roadshow, Tax Manager  
Hon Alan Goldberg QC — Barrister at Law

### **Test Case Litigation Panel**

External representative — Capacity

Hon John Clarke — Judge (retired)  
Graeme Wade — Accountant  
Peter Poulos — Tax Lawyer (Partner, Maddocks)

### **ATO advisory committees — External representatives**

#### **People Forum**

External representative — Capacity

Dr Julie West — Workplace Research Associates Pty Ltd  
Brian Moran — Principal, Managing Values Pty Ltd  
David Lawson — Independent HR Consultant  
Catherine Walsh — Employee Relations, Australia Post  
Heather Box — Corporate Manager, Toyota Australia  
Stephen Carpenter — National Managing Partner, KPMG  
Andrew Bell — Principal, Grain of Sand  
Rose Clements — Human Resources Director, Australia & NZ, Microsoft  
Philippa Crome — Assistant Secretary, Prime Minister and Cabinet

## **Audit Committee**

### External representative — Capacity

Peter Kennedy — Australian Public Service Commissioner, ex Deputy Commissioner

Mark Sullivan — ActewAGL, Managing Director

Margaret Gibson — Pricewaterhouse Coopers, former partner and board member

## **OTHER**

Damian Bugg — ATO Integrity Advisor. Mr Bugg is the ex Commonwealth Director of Public Prosecutions

## ATTACHMENT 3. COPY OF THE GOVERNMENT'S ELECTION COMMITMENT

# Reshaping the governance of our tax system

Julia Gillard and Labor — Let's move Australia forward

### OVERVIEW

The Gillard Labor Party is the only party committed to comprehensive tax reform that will strengthen the Australia's economy, that will boost productivity levels, that will grow retirement incomes, support small businesses and significantly simplify tax time for millions of Australians.

In addition to these critical reforms to support our national economy, another important aspect of our tax system that must also be kept modern, open and accessible, is how it is governed and administered.

### Governance of the tax system matters

A tax system can have the very best laws in the world but if the infrastructure that administers them does not keep pace then we could be put at a disadvantage.

In Australia we are fortunate to have a tax administrator, the Australian Taxation Office (ATO), that has a 100-year long record of using its authority and responsibility in a highly professional manner. However, the Australia's Future Tax System (AFTS) review has identified ways to deliver improvements in the responsiveness, accountability and transparency of tax system administration.

### Meeting the challenges of the coming decades

Australia's tax system will face new challenges over coming decades that will affect tax policy development and the administration and interpretation of the tax laws.

Many in the business and general taxpayer communities have also told us that measures to improve how our tax system is administered will help to prepare for these challenges.

Tax professionals have also strongly endorsed this view.

A re-elected Gillard Labor Government will take further steps to build on the current strengths of how our tax system is administered. These reforms will give the community a stronger voice in tax administration.

This major reshaping of the governance of our tax system includes **three important reforms**:

- **Establishing a Tax System Advisory Board** to advise the Tax Commissioner and ATO Executive Committee on the strategy, direction, culture, organisation, management, compliance

planning, staff profile and information technology plans at the ATO and to provide a new, direct and in-built voice for the business and taxpayer communities in relation to ATO decision-making and culture.

- **Recommitting to a principles-based approach to tax design** to deliver a simple, transparent, responsive, accountable and accessible tax system, including continuing work to deliver Australia a single modern Income Tax Assessment Act.
- **Reshaping and boosting the Board of Taxation** to provide a new “circuit-breaker” in our tax system to address emerging issues.

## **A TAX SYSTEM ADVISORY BOARD**

A re-elected Gillard Labor Government will establish the Tax System Advisory Board (TSAB).

The TSAB will advise the Tax Commissioner and ATO Executive Committee on the direction, culture, organisation, management and staff profile of the ATO and to provide a new, direct and in-built voice for the business and taxpayer communities in relation to ATO decision-making and culture.

Tax system advisory boards already exist in other key comparable jurisdictions, including the United Kingdom, the United States and Canada, and establishing such a board was the key governance reform recommended in the AFTS review.

The TSAB’s role, structure and appointment processes will be set out in legislation but it will be an advisory board similar to a strategic private-sector style board, and will be made up of non-government members. The TSAB will commence its work with a review of the ATO’s management practices to ensure the highest level of corporate governance.

The Tax Commissioner will remain the independent head of the ATO with responsibility to undertake the administration of aspects of Australia’s tax system and deliver the ATO’s commitments to government and manage the ATO as a government agency. The TSAB would not be involved in the interpretation of tax laws or in the affairs of individual taxpayers.

None of the ATO’s other important accountabilities will be removed as a result of the TSAB. It will remain accountable to relevant Ministers under the Financial Management and Accountability Act 1997, and to the Parliament through hearings of the Joint Committee of Public Accounts and Audit and the Senate Standing Committee on Economics.

The costs of the TSAB will be met from within the existing resources of the ATO.

A re-elected Gillard Labor Government will undertake detailed consultation with the Australian community on the TSAB in 2010.

## **A RECOMMITMENT TO A PRINCIPLES-BASED APPROACH TO TAX DESIGN**

A re-elected Gillard Labor Government will also recommit to a principles-based approach to tax design.

A principles-based approach helps deliver a simpler and more transparent tax system. It avoids unnecessary prescription but still delivers certainty for taxpayers.

Federal Labor has already made progress on rewriting the provisions of the 1936 Income Tax Assessment Act (ITAA) into the 1997 ITAA, to create one single consolidated and modern Tax Act for the Australian people. This work will continue if re-elected.

## **A RESHAPED AND BOOSTED BOARD OF TAXATION**

The Board of Taxation is a non-statutory advisory body that contributes a business and broader community perspective to improve the design and operation of our tax laws.

The Board of Taxation has developed into a widely respected body in the business community and the AFTS review recommended that it be developed into a tax system “circuit breaker” to identify, and propose solutions for, policy issues or unintended consequences of tax laws and tax interpretations.

A re-elected Gillard Labor Government will boost and reshape the role of the Board of Taxation by empowering it, in consultation with the government, to initiate its own reviews to examine how current tax policies and laws are operating.

In addition, the Government will also adjust the membership of the Board of Taxation as necessary to ensure it is correctly balanced and fully representative.

These improvements will be met within the existing resourcing of the Board of Taxation.

## **OUR RECORD SO FAR**

We’ve **delivered on our strong commitment** to better tax design by:

- Establishing a permanent Tax Design Advisory Panel made up of private sector advisors to assist Treasury with the design of new tax measures.
- Successfully using, for the first time, confidential pre-Budget consultations with the private sector on key tax measures in the 2010-11 Budget.
- Establishing a Tax Issues Entry System (TIES) for the public to directly raise issues relating to the care and maintenance of the Australian tax and superannuation systems.
- Introducing an extended public consultation period on policy design or draft legislation to allow sufficient opportunities for stakeholders to be engaged.

We’ve acted to make our tax system **more responsive, simple and modern** by:

- Committing to the Board of Taxation conducting more post-implementation reviews of major tax policies.
- Progressing towards a single, modern tax Act for Australia — something that was stalled under the previous Coalition government.

We’ve significantly **improved the experience many Australians** have with the tax system by:

- Improving the system for taxpayer objections through a new set of principles to improve dispute resolution within the ATO and improving objection management for all in the community.

- Boosting certainty for taxpayers using public binding advice.
- Improving taxation running balance accounts by re-writing the running balance account provisions to provide the flexibility to manage tax debts and entitlements more efficiently.

### **AUSTRALIA'S FUTURE TAX SYSTEM REVIEW**

The Federal Labor Government commissioned a detailed independent review of Australia's taxation system, the Australia's Future Tax System review (AFTS).

The AFTS review made several reform recommendations in relation to the governance of our tax system.

Taken together today's package of governance reforms forms a re-elected Gillard Government's response to the 'A responsive and accountable tax system' section of the AFTS review.

Other recommendations in this section are not supported.