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# Australian Tax Rewrite

**Abstract**
On 13 March 2009, in a speech to the annual conference of the Taxation Institute of Australia, the Honourable Chris Bowen, the then-Assistant Treasurer, announced an intention to complete the rewrite of Australia's income tax legislation. The rewrite began in 1994 but was abandoned in 1999, leaving Australia with the worst possible result; half of the legislation written in the old style and half in the new style. Rest assured, however, that even after the rewrite is complete — the projected completion date is 2013 — Australia will still have the dubious distinction of having the worst (ie, most poorly drafted) income tax legislation in the world. In his speech, the Assistant Treasurer said that there was no justification for two long Tax Acts. The real point is that there is no justification for poorly drafted legislation.

**Keywords**
income tax, legislation, rewrite

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# EDITORIAL

## AUSTRALIAN TAX REWRITE

BRIAN J ARNOLD[1]

On 13 March 2009, in a speech to the annual conference of the Taxation Institute of Australia, the Honourable Chris Bowen, the then-Assistant Treasurer, announced an intention to complete the rewrite of Australia's income tax legislation. The rewrite began in 1994 but was abandoned in 1999, leaving Australia with the worst possible result; half of the legislation written in the old style and half in the new style. Rest assured, however, that even after the rewrite is complete — the projected completion date is 2013 — Australia will still have the dubious distinction of having the worst (ie, most poorly drafted) income tax legislation in the world. In his speech, the Assistant Treasurer said that there was no justification for two long Tax Acts. The real point is that there is no justification for poorly drafted legislation.

The rewrite exercise is a red herring, a very expensive and prolonged one. It has resulted in a change in the style of the legislation, but not in its quality. The real question is, why is Australian tax legislation so poorly drafted? Why is Australian tax legislation so much longer than the tax legislation of other countries? (For example, Canada's income tax legislation, including regulations, is about one-third of the length of Australia's tax legislation.) Often tax legislation is complex and confusing because the underlying policy is complex and confused, or the process for making the policy and legislation is flawed. In Australia's case, neither explanation is satisfactory. In my opinion, the explanation for the poor quality of Australian tax legislation is the obvious one — bad drafting.

This problem will not be fixed by having the same people (Office of Parliamentary Counsel) responsible for drafting the new legislation who were responsible for drafting the old legislation. The solution that I have suggested since the early 1990s is for Treasury to take responsibility for the drafting of tax legislation. Although the Treasury took over the tax policy function of the ATO in 2002, the drafters in the Office of Parliamentary Counsel have remained separate and apart. Tax policy officials in the Treasury who are responsible for developing tax policy proposals should also be responsible for rendering that policy into words. This change makes sense for several reasons. First, the Treasury tax policy officials are intimately familiar

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with the policy; they know (or at least should know) what the government is trying to achieve. OPC officials cannot be as familiar with the policy unless, of course, they are involved from the outset in the development of the policy in which case they would effectively be a part of the Treasury. Second, the necessity for tax policy proposals to be referred to OPC for drafting introduces an extra step into the process that is inefficient and unnecessary. Treasury officials must instruct OPC officials about the desired tax policy result rather than just draft the legislation. Third, the drafting exercise would impose some useful discipline on the formulation of tax policy proposals in the sense that policies that cannot be rendered into reasonably clear concise language probably need to be rethought.

It seems to me that the separate (and exalted) status of OPC in Australia is based on the underlying false assumption that drafting legislation is a specialized skill. People who write clearly and concisely can draft legislation that is clear and concise. It is obviously important for drafters to be knowledgeable concerning the subject matter about which they are drafting but it is not necessary for them to be specialized drafters or even lawyers.