

Australian Information Industry Association

Submission on the Innovative Business CGT Concession – response to the exposure draft legislation explanatory materials and legislative instrument

About the AIIA

The Australian Information Industry Association (AIIA) is the nation's peak body for those in the digital ecosystem, leading strategic policy and advocacy to shape a thriving digital sector. Through strong engagement with government, industry, and the broader community, the AIIA ensures the voice of its members informs decision-making on technology, innovation, and digital capability.

Membership provides direct access to influential networks, premium events, and opportunities to collaborate on initiatives with the sector's best and brightest to drive industry growth, improve productivity, and secure Australia's place as a global technology leader. AIIA members access real collaboration, real connections, and real outcomes.

Introduction

The Australian Information Industry Association welcomes the opportunity to comment on the exposure draft for the Innovative Business CGT Concession. AIIA supports the Government's decision to preserve a 50 per cent capital gains tax discount for qualifying early investment in innovative Australian start-ups and to exclude those gains from the new 30 per cent minimum tax on capital gains. The revised 15-year eligibility period, three-year minimum holding period and removal of the lifetime cap are material improvements to the proposal released in June 2026.

The concession will deliver its intended investment signal only if founders, employees and investors can determine eligibility with confidence. The exposure draft still allows that confidence to be lost later because of an administrative lapse by the company, an ordinary restructure, a change in business mix, or evidence requirements that favour a narrow class of venture-backed and patent-based businesses. AIIA recommends targeted amendments that preserve integrity while making the concession workable across the Australian technology ecosystem.

Executive summary

AIIA supports enactment of the IBCC, subject to refinements. Start-ups rely heavily on risk equity because intangible assets, uncertain revenue and long commercialisation periods make conventional debt difficult to obtain.¹ OECD analysis identifies venture capital as especially important for innovative firms whose intangible assets are hard to use as collateral.² Australian policy work has also identified a comparatively shallow venture capital market and a broader decline in business dynamism.

The technology sector magnifies the importance of getting the concession right. Technology contributed an estimated \$248.5 billion, or 8.9 per cent of Australian GDP, in 2025.³ Government analysis of the AI ecosystem identified 1,121 private AI companies in its sample, dominated by small businesses, with 85 per cent of those small businesses employing fewer than 50 people.⁴ The same analysis found a pronounced gap between Australian research output and commercialisation. Tax settings that affect founder incentives, employee equity and early capital therefore affect more than individual exits; they affect the pipeline of Australian-owned intellectual property, scale-ups, skilled jobs and future taxpayers.

AIIA's 2026 CGT roundtables recorded immediate effects following the Budget announcement. Members reported deferred or abandoned transactions, reassessment of Australian investment decisions and consideration of offshore holding structures. The concern was not about every operation leaving Australia, but that ownership of intellectual property and the eventual capital gain could move offshore while Australian employment and infrastructure costs remained here. Members also emphasised that the effect begins well before exit with uncertainty affects seed valuations, conversion caps, founder dilution and the willingness of early employees to accept equity in place of cash remuneration.

The exposure draft responds to several of those concerns. AIIA particularly welcomes the decision to apply the 15-year window to all eligible firms, reduce the minimum holding period from five years to three years, remove the proposed \$10 million lifetime cap, recognise common equity-like instruments, extend relief to eligible carried interest and establish binding public and private rulings. These improvements should be retained.

¹ The Hon Dr Andrew Leigh MP, Address to 18th annual Agile Australia conference, Melbourne Cricket Ground – The speech also states that high-performing young firms can achieve productivity around 45% above industry averages and that young firms create six out of every ten new jobs.

² OECD (2026), Financing SMEs and Entrepreneurs 2026: An OECD Scoreboard, OECD Publishing, Paris, <<https://doi.org/10.1787/075d8058-en>>.

³ Tech Council of Australia with Austrade and AWS, 'Technology as Australia's Productivity Engine', March 2026, ii.

⁴ The National Artificial Intelligence Centre (NAIC) & CSIRO, 'Australia's artificial intelligence ecosystem: growth and opportunities' <<https://www.ai.gov.au/news-and-insights/reports/australias-artificial-intelligence-ecosystem-growth-and-opportunities>>.

Further changes are needed in three connected areas. First, the legislation should protect eligibility through ordinary start-up formation, capital raising, restructures, global expansion and business-model evolution. Second, administration should provide a reliable company-level status on which investors can depend, with proportionate reporting and cure arrangements. Third, the transitional rules and safe-harbour instrument should recognise the evidence actually available to bootstrapped, software, AI, cyber, digital services and public-sector technology companies, rather than privileging external fundraising, patents or export revenue.

Part one Exposure draft legislation

The core concession should proceed

The proposed Subdivision 115-BA appropriately recognises that early investment in an innovative company carries a risk profile that differs from passive ownership of established assets. Investors provide capital when products, markets and valuations are uncertain. Founders and early employees commonly accept below-market cash remuneration and concentrate a substantial share of their personal wealth in one illiquid business. For these groups, the capital gain is often the return for years of enterprise risk rather than a passive appreciation in an existing asset.

The concession should also be understood as part of a broader policy discussion. It will not assist every productive technology business affected by the general CGT reforms. Bootstrapped firms, specialist software and digital-services businesses, later-stage scale-ups and active businesses that do not satisfy the innovation tests may still face materially different treatment from passive assets. AIIA recommends that Treasury separately monitor the effect of the broader CGT reforms on active, value-creating businesses and consider whether an active-business safeguard is required.

Eligibility must be certain when risk is assumed

Proposed section 115-140 aims to encourage early investment. However, the incentive will have limited influence if eligibility can be lost years later because of circumstances outside the investor's control. Under the draft, an investment may qualify when made but be disqualified at exit if the company's registration changes or it does not satisfy the predominant activity test. This places ongoing compliance and business-model risk on founders, employees and investors after they have committed their capital.

AIIA recommends protecting investors from later events outside their control with a statutory investor-protection rule. If an investment qualifies when issued, or the investor reasonably relies on an official ruling or certificate, its eligibility should be preserved. Later non-compliance should not affect an arm's-length investor unless they were involved in fraud or serious misrepresentation. This would protect the scheme's integrity while ensuring the incentive supports the original investment decision.

Founder and early employee equity needs a formation pathway

For companies incorporated on or after 1 July 2027, an asset generally must be issued when the company is already an IBCC company. Backdated registration assists only if the company met the substantive tests at the earlier time. A technology company may issue founder shares on incorporation and employee options before it has customers, external capital, a developed product, 50 per cent of staff, or evidence of market reach. Requiring

the full test at that moment risks excluding the people whose labour creates the innovation.

AIIA recommends a formation safe harbour. Founder and employee equity issued during the first 24 months after incorporation should be capable of qualifying if the company registers within three years, demonstrates genuine innovative activity and meets the Australian nexus at registration. The rule should cover equity issued for nominal cash, assignment of intellectual property, services or assumption of entrepreneurial risk. It should also recognise employee share trusts and direct employee issues on equivalent terms.

Qualifying assets and investment structures should reflect market practice

AIIA welcomes the inclusion of shares, options and certain convertible notes, as well as recognition that some SAFEs may qualify. However, instruments serving the same economic purpose should be treated consistently. The legislation should clearly cover SAFEs, convertible notes, options, warrants, employee rights and other instruments that convert into equity and put capital at genuine risk.

The direct-issue requirement should allow common investment structures, including angel syndicates, nominee companies, custodians, employee share trusts and special-purpose vehicles. AIIA recommends a general look-through rule where these vehicles hold investments for identifiable beneficial investors and neither the capital nor return is guaranteed.

The rules should also allow limited secondary transfers that support employee retention and future funding. It allows founders and long-serving employees to diversify a small part of a concentrated holding and gives early funds a path to recycle capital. This could be a targeted exception for employee transfers, approved founder liquidity and transfers between related investment funds. These transactions should retain the investment's original acquisition date and qualifying status.

Restructures should not reset the concession

The exclusion of scrip-for-scrip rollovers and Division 122 rollovers is likely to capture common start-up restructures. Australian companies routinely insert a holding company, re-organise before an institutional round, undertake a share-for-share acquisition, redomicile for access to overseas customers or capital, or simplify an employee equity structure. These transactions may change legal form without changing the investor's underlying economic exposure.

AIIA recommends continuity where ultimate economic ownership is substantially maintained. Integrity can be protected through a purpose test, minimum continuity

threshold and tracing rules. A blanket exclusion creates a strong incentive to move holding structures offshore earlier than commercially necessary, which is contrary to the objective of retaining ownership, intellectual property and future gains in Australia.

The Australian nexus should support global growth

AIIA supports targeting the concession to businesses with a substantial Australian connection. The proposed requirement that more than 50 per cent of staff work in Australia and more than 50 per cent of assets are located in Australia may, however, penalise the behaviour that successful technology firms must undertake. Export-oriented firms establish overseas sales teams, regulated entities may need local operations in customer markets, and software or data assets can be difficult to locate. A company may remain Australian-founded, Australian-controlled and R&D-intensive while failing one of the mechanical tests during rapid expansion.

A substantial economic presence test would better protect the policy intent. Relevant indicators should include Australian tax residence, headquarters and strategic decision-making, development or ownership of intellectual property, core engineering functions and material commercial activity. The legislation could require Australian residence plus a weighted combination of these indicators, supported by an anti-avoidance rule for artificial migration of assets or activity.

The size tests should not create new growth cliffs

The 15-year period is a practical improvement and should be retained for all sectors. The \$50 million aggregated turnover threshold should be reviewed against the capital needs of high-growth technology firms and indexed. Turnover is an imperfect measure of maturity as low-margin marketplaces, hardware-enabled software and rapidly scaling exporters can exceed it while still requiring risk capital. Aggregated turnover can also import revenue from affiliates that did not fund or create the innovation.

AIIA recommends either increasing the threshold to \$100 million or introducing an alternative test based on the company's own turnover, assets and capital raised. At minimum, unrelated affiliate turnover should be excluded, thresholds should be indexed annually, and companies crossing the threshold should retain a limited window in which new employee equity and a committed financing round can qualify.

The predominant activity and disqualification tests need stability

The predominant activity test requires at least two of assets, employees and income to be more than 75 per cent connected with the relevant innovation. This can be difficult to apply to businesses that commercialise through professional services, integrate acquired technology, operate multiple innovative products or hold substantial cash after a financing round. The location and use of data, software, goodwill and intellectual property also

require guidance. Short-term movements in revenue or staffing can change the outcome even though the business remains genuinely innovation-led.

AIIA recommends a majority test, assessed over a rolling three-year period where possible, with alternative evidence for pre-revenue firms. Capital-raising cash, passive treasury assets and temporary staffing changes should be disregarded. A company that ceases to meet the test should receive notice and at least 12 months to cure the position. More fundamentally, loss of the test should prevent new qualifying issues rather than disqualify existing assets held by investors who reasonably relied on the company's earlier status.

The holding period needs broader involuntary disposal relief

AIIA supports the reduction to three years, which aligns more closely with current international settings. The United States expanded its qualified small business stock rules in 2025 to provide a phased exclusion after three, four and five years, increased the per-issuer limit to US\$15 million and raised the gross-assets threshold to US\$75 million, with indexation.⁵ Australia's three-year period is therefore competitive in duration, but its exceptions should reflect how start-up exits occur.

The takeover exception should extend to disposals under an IPO, scheme of arrangement, insolvency or compulsory acquisition, drag-along or tag-along provisions, death or disability, a good-leaver event under an employee share scheme, and a board-approved liquidity program undertaken with a financing round. Where proceeds are rolled into replacement equity, the holding period should continue. These rules should be objective and documented so that they do not create a discretionary avoidance pathway.

Part two Administrative and transitional arrangements

A single company status should be reliable across government

If the Industry Secretary registration process proceeds, it must be simple and coordinated. Companies and investors should not face conflicting decisions, duplicate requests or uncertainty between DISR and the ATO.

Government should provide a single digital portal, shared guidance and coordinated case management. The register should clearly show registration dates, suspensions and binding

⁵ United States Government Publishing Office, Public Law 119-21 section 70431 Expansion of qualified small business stock gain exclusion, 4 July 2025.

rulings. Complete applications should be decided within 30 days, with faster processing for pending financing or exits. Any delay should be explained and a revised decision date provided.

AIIA does not support measures that add complexity or reduce confidence in the process.

Investors need a statutory reliance mechanism

The draft appropriately allows a company's private ruling to protect eligible investors. The same principle should apply to registration. Companies should be able to issue a standard IBCC certificate for investments and employee equity grants. Investors who reasonably rely on the certificate or public register should not need to reproduce company records at exit or lose the concession because the company later fails to retain them.

The certificate should record the company, issue date, instrument type, registration period and any relevant ruling. It would not cover investor-specific requirements such as residency or holding periods. False certificates should attract penalties, while innocent investors should remain protected unless they knew, or recklessly ignored, that the certificate was false.

Reporting sanctions should be proportionate

Annual reporting is reasonable and can support evaluation of the scheme. Automatic suspension, followed by cancellation if a report remains outstanding at the end of the income year, is disproportionate where it changes the tax outcome for third parties. Start-ups experience rapid personnel change, insolvency risk and limited administrative capacity. A late report is not evidence that the underlying investment ceased to be innovative.

AIIA recommends staged compliance: reminders, a formal notice, at least 90 days to cure, proportionate company-level penalties and suspension of the ability to issue new IBCC assets. Existing assets should be affected only by a final finding of fraud, serious misrepresentation or deliberate and sustained ineligible activity. Relief for exceptional circumstances should not be the only remedy for an ordinary administrative mistake.

Rulings must be accessible to smaller firms

Private rulings will be valuable where software, AI, platform or hybrid business models do not fit a safe harbour. Cost recovery should not turn certainty into a service available only to well-funded companies. Registration should be free. Private-ruling fees should be waived for small and pre-revenue firms, capped for other applicants and published in advance. AIIA also recommends a short-form ruling process based on standard evidence for recurring fact patterns.

Transitional arrangements should protect existing expectations

AIIA supports access for interests issued before 1 July 2027 and the ability of an existing company to register before the relevant CGT event. The transition must nevertheless account for the fact that historic investments, employee grants and restructures occurred without the IBCC evidence requirements in mind. Companies may not be able to show that every condition was satisfied at a precise historic time, even where their trajectory plainly demonstrates innovation and Australian economic activity.

Existing companies should have at least 24 months from commencement to register, with expedited late registration where an exit occurs during that period. The law should accept reasonable contemporaneous or later evidence, including product releases, customer records, grant decisions, R&D claims, technical documentation, board papers, accelerator participation and capital-raising materials. Past rollovers, nominee arrangements and employee share trust transactions should receive continuity where economic ownership was maintained.

The current cut-off for listings and the use of the later of the 2025-26 income year or incorporation year should be tested for unintended exclusion. A company that was innovative earlier but temporarily recorded a different income or staffing mix in 2025-26 should be able to establish eligibility over a reasonable multi-year window.

Part three Legislative instrument for existing start-ups

Safe harbours should provide more than a venture-backed pathway

AIIA supports objective safe harbours. They reduce advisory costs and allow companies to communicate eligibility to investors. The draft instrument, however, relies heavily on R&D expenditure, registered intellectual property, external sophisticated investment, formal venture capital, accelerators, export revenue and institutional research agreements. These are credible indicators, but they are not the only ways a technology company demonstrates innovation, growth potential, scale or competitive advantage.

The current conditions may be easiest for companies already connected to established venture networks. Bootstrapped companies, regional businesses, female and diverse founders with less access to venture capital, public-sector technology suppliers, software firms that rely on copyright and trade secrets, and companies developing products for Australia's national market may be innovative but fail the safe harbours. Safe harbours

should be alternatives, not a de facto definition of an eligible start-up.

Test limb	Recommended safe-harbour expansion
Genuine innovation	Retain the R&D expenditure pathway, but recognise registered R&D activities, competitive grants, technical validation, product releases and material engineering expenditure. Broaden IP beyond patents, designs and plant breeders' rights to include copyright in software, exclusive data rights, trade secrets, circuit layouts, confidential know-how and enforceable commercialisation rights.
High growth potential	Reduce the \$200,000 external investment threshold or allow cumulative equity, crowd-sourced funding and non-dilutive grants. Remove the requirement that investors be wholesale or sophisticated where investment occurs through a regulated channel. Treat recurring revenue, paid pilots, material user growth and government procurement as customer validation. Clarify that growth from a zero-revenue base can qualify.
Capacity to scale	Retain recognised accelerators and venture investment, but add evidence such as a scalable cloud or platform architecture, repeatable unit economics, licensed distribution, a material channel partnership, certification for a regulated market, or a credible board-approved scale plan supported by delivery evidence.
Market beyond local area	Clarify that a national Australian market is broader than a local market. Recognise cross-jurisdiction customers, national procurement panels, multi-state deployment, international users, channel agreements and regulatory approvals. Reduce or remove the fixed \$100,000 export threshold for pre-revenue and enterprise firms with long sales cycles.
Competitive advantage	Recognise proprietary software, datasets, technical know-how, security accreditation, network effects, switching costs, exclusive licences, domain expertise and validated performance. Broaden research collaboration to CRCs, medical research institutes, overseas universities, recognised private laboratories and other credible research partners.

Specific drafting issues in the instrument

R&D expenditure - The 30 per cent single-year and 15 per cent three-year thresholds should use the company's genuine innovation expenditure, not only amounts notionally deductible under the R&D Tax Incentive. Many start-ups do not claim immediately, and some legitimate software development is excluded or disputed under that regime.

Employee equity - A 10 per cent pool at establishment is a useful indicator but should not be the only qualifying level. A genuine scheme with at least 5 per cent allocated or committed should qualify, and the test should allow later top-ups and direct grants outside a formal pool.

Turnover growth - The draft should state whether 30 per cent means cumulative growth or annual growth. It should accommodate companies moving from pre-revenue validation to first revenue and companies whose revenue is deliberately deferred during product development.

Customer contracts - Paid supply, licence, subscription and trial contracts should remain. Purchase orders, government pilots, milestone-based research contracts and material letters of intent should also qualify where they provide credible third-party validation.

Accelerator programs - The six-month and one-cohort requirements are sensible minimums, but guidance should recognise university incubators, government programs, corporate accelerators and reputable overseas programs selected through a competitive process.

IP jurisdictions - Requiring applications in two jurisdictions can be costly and inappropriate for software, AI and cyber companies that protect value through speed, secrecy, data or copyright. It should remain one optional indicator and not become the practical gateway to market-reach or competitive-advantage findings.

The instrument for new companies must be available before commencement

Treasury indicates that it will consult separately on an instrument for companies incorporated on or after 1 July 2027. The two instruments should be developed together and use a common architecture unless a difference is necessary. Investors and founders will make incorporation and financing decisions before 1 July 2027. They should not have to do so without knowing the evidence that will establish eligibility.

AIIA recommends release of the second draft instrument, registration form, annual report, public register design and regulator guidance as one implementation package. Industry should have at least eight weeks to test the package against real company structures. Final materials should be published at least six months before commencement.

Implementation and evaluation

The IBCC should be implemented as an investment measure, not only as a tax compliance measure. Treasury and DISR should establish an industry reference group including founders, angel investors, venture funds, tax practitioners and representatives of software, AI, cyber, deep tech, medtech and regional start-ups. The group should test forms and guidance before launch and review recurring eligibility questions during the first two years.

Evaluation should measure whether the concession changes behaviour. Relevant indicators include the number and value of qualifying rounds, company and investor diversity, founder and employee participation, use by bootstrapped and regional firms, time and cost to register, private-ruling volumes, offshore incorporations and holding-company migrations, restructures, disputes and the survival and growth of registered companies.

Reporting should distinguish genuine additional investment from investments that would have occurred without the concession.

A statutory review after two years of operation would allow Parliament to address exclusion errors and administrative burden before they become embedded. Monetary thresholds should be indexed automatically, and the legislative instruments should be reviewed on the same cycle so that safe harbours keep pace with changing technology business models.

Conclusion

The exposure draft responds constructively to industry concerns and improves significantly on the June 2026 proposal. AIIA supports retaining the 50 per cent discount, extending the company age limit, shortening the holding period and removing the lifetime cap.

Further practical changes are needed. Investors must be able to confirm eligibility when they invest and retain it if the company later grows, restructures or experiences an administrative lapse. The rules should also recognise the realities of technology businesses, including intangible assets, global teams, software-based intellectual property, government customers and bootstrapped growth.

With these refinements, the IBCC can encourage Australian incorporation, patient investment and the growth of more technology companies in Australia.

AIIA would welcome further technical consultation with Treasury, DISR and the ATO on the legislation, instruments and implementation materials.