Employee Ownership
Australia *Making it your business*

ABN 40 152 310 266
a: GPO Box 2649, Sydney NSW 2001
e: info@employeeownership.com.au
w: www.employeeownsership.com.au

Submission to the Treasury
Employee Ownership Australia Key Reform Agenda for 2026

Employee Ownership Australia

11 March 2026

Employee Ownership Australia Key Reform Agenda for 2026

1 Introduction

Employee Ownership Australia (EOA) aims to promote employee ownership in Australia in all in various forms.

Our fundamental position is tax, regulatory, and policy settings should promote not prevent employee ownership.

The current tax, regulatory, and policy settings impact employee ownership would be not regarded as satisfying that general proposition.

They need reform to better support employee ownership structures and market segments.

This document outlines the key reform agenda to enhance the promotion and availability of employee ownership in Australia.

2 Contextual Differences in employee ownership

Understanding the contextual differences that impact the promotion and availability of Employee Ownership structures is crucial.

These differences exist across various sectors, and while there are common themes, each sector has unique challenges and opportunities.

This paper provides general observations and examines these sectors to identify areas for improvement.

3 Categories of employee ownership

3.1 Employee equity offers for listed company employees.

There are a series of challenges in employee equity offers for listed company employees

- **Prescriptive Corporate Relief Rules with an overly prescriptive liability regime**

  The corporate law framework governing employee equity schemes in public companies is highly prescriptive, limiting flexibility. Companies must adhere to strict timelines, disclosures, and conditions, which may not align with global practices or business needs.

- **Inconsistent Definitions of Equity**

  The treatment of “no-risk” or “low-risk” equity is inconsistent. Equity provided without direct monetary consideration, such as through salary sacrifice or non-recourse loans, often falls outside regulatory relief, adding complexity.

  The corporate relief which was provided in relation to the employee share scheme provisions sought to limit the range of corporate compliance to schemes which involve the provision of monetary consideration.

  The narrow view which has been taken by ASIC of schemes which do not involve the provision of “monetary consideration” which limits the scope of the benefit of the corporate reforms which were intended to improve the regime.

- **Overlapping Jurisdictions**

  The lack of coordination between corporate, tax, and securities regulators increases administrative burdens and leads to uncertainty for public companies.

- **Complex Tax Deferral Rules**

  Public companies must navigate distinctions between shares and rights to qualify for tax deferral. These distinctions are unnecessarily complex and not grounded in policy rationale, increasing compliance costs.

- **High Compliance Costs**

  Public companies face significant costs in designing, implementing, and maintaining employee equity schemes to comply with Australia’s intricate regulatory and tax requirements.

- **Employee Hesitation**

  Complex rules and tax liabilities deter employees from participating in equity schemes, especially if they cannot easily understand the benefits.

- **Low Tax-Exempt Threshold**

  The relatively low tax exemption of $1,000 was introduced in 1995 and has not been indexed since it was introduced. This provides a relatively weak incentive for companies to establish broad-based employee equity arrangements.

Potential Solutions

- Streamline corporate regulatory frameworks to provide principles-based relief for public companies.
- Align tax deferral rules for shares and rights, simplifying compliance.
- Promote liquidity mechanisms, such as employee share trusts, to mitigate market volatility risks.
- Increase the tax concession for tax exempt plans from $1,000 to $5,000.

3.2 Provision of Employee Equity in Unlisted Companies generally

Offering an employee share scheme to employees of an unlisted company in Australia present even greater challenges due to regulatory, tax, and structural complexities.

These challenges include

- **Valuation Complexity**

  The tax rules are heavily reliant on determining the market value of shares in the company at particular times.

  - **Difficulties in Determining Fair Market Value**

  Unlike public companies with readily available market prices, unlisted companies must determine the value of their shares other than where the start-up concession applies through independent valuations or complex methods, which can be costly and time-consuming.

  - **Inconsistent Valuation Standards**

    Valuation methods for employee equity often conflict with those required for tax compliance, leading to disputes or additional administrative burdens.

- **Limited Liquidity for Shares**

  The limited liquidity for creates particular issues

  - **Employee Cash Flow Issues**

    Employees of unlisted companies may hold shares that are illiquid, making it difficult to realize value or fund tax liabilities when taxing points occur (e.g., on vesting).

  - **Restricted Exit Opportunities**

    Without a public market, employees can only sell shares during exit events, such as a trade sale or IPO, or through internal buyback arrangements.

- **Alternative Exit Opportunities**

  Without a liquidity event it is necessary on creating a market for the shares either through a share buyback or a created market perhaps through an employee share trust. These arrangements are complex to establish and difficult to operate.

- **Corporate Regulatory Burdens**

  - **Prescriptive Relief Requirements**

    Corporate relief for ESS is highly prescriptive and applies narrow conditions, such as restrictions on the type of consideration (e.g., monetary versus non-monetary), creating barriers for salary sacrifice or limited recourse loan arrangements.

  - **Limited Corporate Relief for Private Companies**

    Private companies must navigate stricter compliance rules, including the need for detailed offer documents and financial disclosures, compared to public companies.

- **Taxation Challenges**

  - **Complex Taxing Points**

The taxing point for employee equity often occurs upon vesting, even if there is no immediate financial benefit, such as in cases of illiquid shares. This mismatch can deter employees from participating in the scheme.

Disparity Between Shares and Rights

The tax treatment of shares versus rights is inconsistent, creating unnecessary complexity for unlisted companies trying to offer flexible employee equity arrangements.

- **Employee Education and Perception**
- **Lack of Understanding**
  - Employees may struggle to understand the value and risks associated with holding equity in an unlisted company, particularly if the shares are illiquid.
- **Reluctance to Participate**
  - Employees may be hesitant to accept shares instead of cash benefits due to perceived risks and complexities.

Potential Solutions

- **Simplify Valuation Rules**

  Introduce standardised, less costly valuation methods for unlisted companies offering employee equity

- **Enhance Tax Deferral Options**

  Allow employees of unlisted companies to defer tax until a liquidity event, such as a sale or IPO.

- **Improve the Corporate relief**

  Allow the corporate relief to apply if the if at risk employee equity in a more practical and less prescriptive way.

- **Expand Start-Up Concession Criteria**

  Relax eligibility rules for the start-up concession to include a wider range of unlisted companies.

- **Promote Employee Education**

  Provide government-backed resources to educate employees on the benefits and risks of Employee equity participation.

3.3 Employee Equity for Start-Ups

- **Start-up Tax Concession**

  The underlying principles associated with the start-up concession are sensible.

  There is, however, difficulty in the application of the relevant rules and arbitrary inclusion and exclusion of particular schemes within the rules.

This is exacerbated by the lack of coordination between the corporate relief and the preconditions for the corporate relief.

The focus of the tax preconditions is the provision of monetary consideration by the employee. As a result, it is necessary to rely on the more complicated corporate relief for private companies.

Many of the conditions in the relief are so complicated that, in effect, the rules operate as an effective prohibition. There needs to be improved coordination between the corporate and tax regulatory frameworks.

Although the start-up concession offers tax benefits, its eligibility criteria are strict and can exclude many unlisted companies based on arbitrary factors like age or size.

3.4 Development of Employee Ownership Trusts

A robust regime supporting Employee Ownership Trusts is critical.

The Australian Taxation Office (ATO) should provide guidance to ensure no unintended adverse tax consequences from implementing employee ownership trusts.

The lack of tax certainty and equivalent tax treatment to normal third-party transactions restricts the ability to use EOTs.

We have provided the ATO with extensive material and documents to support the provision of general guidance in relation to EOTs.

General ATO guidance is critical to provide cheap and effective access to EOTs for small business owners. The ATO has indicated that, at this stage, they are not prepared to provide this guidance; rather, they have suggested that individual rulings be applied for on a case-by-case basis.

This solution is uneconomic, as small business owners simply do not have the expertise and cannot justify the cost of obtaining expensive and detailed rulings on a case-by-case basis.

The key matters needing guidance from the ATO are set out in annexure A.

3.5 Provision of Employee Equity in Unlisted Companies loan schemes

- **Provision of Employee Equity in the Scope of Unlisted Companies**

  A common structure for unlisted companies is reliance on limited recourse loan schemes.

  These effectively provide a basis for employees to acquire an interest in their employer without risk.

  The regulation of these schemes is uncoordinated and has several distinctions which are not based on sound policy considerations.

  These include:

  - The requirement that a loan may only be made to a non-shareholder to obtain the benefit of the corporate relief. This disregards that there are circumstances where loans may be made to existing shareholders in their capacity as employees. It appears be based on a misconception of the scope of the provisions of Division 7A.

- The treatment of limited recourse loans as being acquisitions for monetary consideration. The appropriate structure is to examine the nature of the acquisition to determine whether the relevant employee is "at risk." Limited recourse loan arrangements where the employee is not "at risk" should not be treated as acquisitions for monetary consideration for the purposes of the relief.
- The scope of the exemption from the Division 7A rules for employee share scheme provisions is too narrowly drafted. It creates arbitrary and inappropriate restrictions. It should be extended to modified loans made for an employee for the acquisition of securities.

3.6 Overseas Offering of Employee Equity to Australian employees

- **Overseas companies Offering of Employee Equity to Australian Employees**

  Many overseas entities have Australian subsidiaries and seek to provide equity in the parent company to their Australian employees.

  Australia is regarded as among the most difficult countries for foreign groups to offer their Australian employees' equity.

- **Importance of Corporate Regulation**

  The aspects which cause particular concern in relation to the corporate regulation of employee equity include

  - The highly prescriptive nature of corporate regulatory relief which is available from the general prospectus rules.
  - The Australian rules are very prescriptive. It is difficult in many cases to adjust the offering conditions which are applied globally to employees of these groups to satisfy the conditions in Australia. The result is that, because of the excessive regulation, in many cases offers are simply not made to Australian employees.

  Examples of Regulatory Issues

  Some examples of these issues are as follows

  - The prescriptive conditions in relation to the time for which the relevant offer must be open.
  - The narrow list of countries whose listings are recognised for the purposes of the exemptions.
  - The narrow view which has been taken by ASIC of schemes which do not involve the provision of "monetary consideration" which limits the scope of the benefit of the corporate reforms for which were intended to improve the regime. The corporate relief which was provided in relation to the employee share scheme provisions sought to limit the range of corporate compliance to schemes which involve the provision of monetary consideration.

4 Some common issues across the categories of employee ownership:

4.1 Lack of alignment of State and Federal Taxation Regimes for Employee Share Schemes

In the current framework, significant differences exist in the timing and circumstances under which employees are assessed for income tax on benefits received through employee share schemes, as compared to when employers incur payroll tax liabilities on these benefits.

This disparity creates unnecessary complexity, costs, and uncertainty for businesses and undermines efficiency in administration.

Timing Discrepancy

The income tax rules may allow for deferred taxation of employee share scheme benefits, whereas payroll tax obligations often arise at the point of grant or vesting. This difference complicates financial planning for both employers and employees.

Administrative Complexity

The lack of consistency between the two regimes results in additional reporting obligations and regulatory burdens. Employers must navigate divergent rules, including separate compliance processes for income tax and payroll tax.

Cost Implications

Misalignment of these regimes increases compliance costs and administrative overheads, particularly for small and medium-sized enterprises.

Proposal for Reform

To address these challenges, it is recommended that the income tax and payroll tax regimes for employee share schemes be better aligned.

- **Unified Reporting Framework:**
  Introduce a standardised reporting process for both income tax and payroll tax obligations relating to employee share schemes, reducing duplication and streamlining employer compliance.
- **Coordinated Timing Rules:**
  Synchronise the timing of tax liability assessments under the two regimes to improve predictability and simplify accounting procedures.
- **Maintaining Tax Integrity:**
  Ensure that any alignment reforms preserve the integrity of both the income tax rules and the payroll tax rules, without compromising their ability to prevent tax avoidance or abuse.

Benefits of Alignment

- **Simplified Compliance:**
  A harmonised approach would reduce complexity and improve the overall efficiency of tax administration for ESS benefits.

- **Enhanced Business Certainty:**
  Aligning the two regimes would provide employers with greater clarity and certainty regarding their obligations, fostering confidence in employee ownership initiatives.

- **Promoting Employee Ownership:**
  Simplification and cost reductions would make employee ownership schemes more accessible, encouraging broader adoption by businesses and employees.

5 What are the concerns in Relation to the Reform of Employee Ownership ?

There appear to be two broad concerns which are sometimes raised as policy concerns in relation to reforms associated with employee ownership.

Both considerations are relevant but, in our view, have been too widely applied in a way that inappropriately restricts the way in which employee ownership reforms are approached.

Tax Integrity

There appears to be a concern that the tax deferral regime and employee equity provide a significant risk to revenue. This is based on the first-round modelling which simply examines the impact of what might be regarded as wages and salary and the deferral of tax in respect of those amounts.

What it does not consider is that for schemes that provide tax deferral, the increase in the relevant securities is taxed as ordinary income. The result is that greater amounts are exposed to tax as ordinary income than in instances where the relevant wages and salary are taxed when provided, and the ultimate gain in relation to the securities is assessed under the employee share scheme provisions and the capital gains tax provisions at a discounted tax rate.

It is important that we can provide simple guidance in relation to these matters to give comfort to the government when reviewing reforms to employee ownership.

More controversially, in relation to this aspect of the regime, it is whether consideration should be given to whether a 15-year tax deferral is appropriate.

This is particularly the case in relation to the result of the impact of this situation on the employment taxing point altering.

It is questionable whether, as a practical matter, taxpayers under the scheme as currently drafted take advantage of the 15-year tax deferral.

Consideration might be given to the shortening of that maximum period of tax deferral.

Employee protection

The protection of employee investors is important. However, we think that the regime could better be applied by

- The creation of the provision of no-risk equity being treated in the same way as equity provided for no consideration.

- A recognition that the level of regulation which has been imposed in relation to the current corporate relief is too prescriptive. It would be far better if it created a series of principle-based outcomes rather than prescriptive timelines and conditions.

6 Promotion of Employee Equity More Generally

A major concern in relation to the development and promotion of employee equity is that it is not provided by a government body with the appropriate remit to promote employee equity.

Both government bodies which currently deal with the regulation of offering employee equity do so from the position of regulators. Namely ASIC and the ATO. We would strongly recommend the creation of a government body or group that is responsible for the promotion of employee ownership in Australia.

7 Measurement of the Scope of Employee Ownership in Australia

It is difficult to obtain any meaningful information in relation to the scope of employee ownership in Australia. The adage that “What does not get measured does not change” is important. The measurement of the scope of employee ownership in Australia is a prerequisite for initiating or tracking meaningful change.

It would be helpful if the details and range of employee ownership could be published each year. This could be done in a way that was not an administrative burden. There is a current reporting system for employee equity. It would be simple to adapt the information provided through that system and make it available.

8 Conclusion

Reforming the tax, regulatory, and policy settings for employee ownership is essential to promote employee ownership effectively. By addressing the issues outlined in this document, we can create a more supportive environment for employee ownership in Australia.

1 Key matters needing guidance from ATO.

1.1 Recognition of the key elements of an appropriate EOT

Principle There is a need to recognize the key principles and criteria that should exist for employee ownership trusts (EOTs) so that we do not create tax integrity risks.

Resolution ATO recognition of the current template documents provided to them as allowing appropriate tax integrity limitations.

1.2 Ability to pass on franking credits to employee owners.

Principle There should be a mechanism to pass franked dividends to employees through an EOT.

Challenge Currently, franked dividends cannot be passed through discretionary trusts unless either a family trust election is made, or the Commissioner exercises discretion.

Note This would not involve income splitting; the dividend would only be passed to the employee.

Resolution An exercise of discretion by the Commissioner under franking rules. No legislative change is required, but ATO guidance is needed.

1.3 Access to existing small business CGT concessions when transferring shares to an EOT.

Principle There should be reliance on existing small business CGT concessions when transferring shares to an EOT; it should be treated the same as any third-party sale.

Challenge The sale of shares to an EOT is made in instalments, making it difficult to access small business CGT concessions on the instalment sales without significant complexity and a lack of appropriate commercial flexibility.

Reason There are significant funding limitations on contributions to be made to an EOT once it becomes a shareholder in an operating company. These contributions are made to fund the acquisition.

Resolution The best means to resolve this is as an exception to the deemed dividend rules in Division 7A for contributions made to an EOT. This is likely to require legislative amendment, as the ATO is unlikely to resolve issues through a general exercise of discretion.

Alternative Resolution The ATO could provide guidance on the way various aspects of the law are to be interpreted, allowing contributions to be made to an EOT to fund the acquisition of instruments without contravening the deemed dividend rules in Division 7A. However, this involves additional complexity and therefore cost in setting up an EOT.

Annexure 2 **Fair Entitlements Guarantee**

1 Fair Entitlements Guarantee

1.1 Legislative Background

The Fair Entitlements Guarantee Act 2012 (Cth) (Act) provides a safety net for employees who have lost their jobs due to the insolvency or bankruptcy of their employer. The Act allows the Commonwealth to pay advances to cover certain unpaid employment entitlements, including wages, annual leave, long service leave, payment in lieu of notice, and redundancy pay.

The eligibility criteria are contained in Part 2 of the Act. However, section 11 of the Act excludes the following individuals from eligibility for an advance under the fair entitlements guarantee (FEG) scheme

- directors of the company;
- spouses or de facto partners of directors; and
- relatives of directors or their spouses/de facto partners.

This exclusion aligns with section 556 of the Corporations Act 2001, which prioritises the payment of debts in the winding up of a company and similarly excludes directors and their close associates from certain entitlements. It appears to be based on the principle that individuals in positions of control or significant influence over the company should not benefit from the same protections as ordinary employees.

However, the exclusion does not take into account that employees may be appointed to the board as directors to promote or represent the interests of the employees, and excludes these employees from the FEG regime.

2 Policy Considerations for Employees Representing Employee Interests

There are two policy considerations that support the view that employees appointed on the board to represent the interests of their fellow employees should not be excluded from the FEG scheme.

2.1 Non-Disadvantage Principle

Employees who hold or represent employee interests on an employer's board should not be disadvantaged under the FEG scheme.

This principle is consistent with the policy objectives of the legislation, which aim to protect the entitlements of employees who have lost their jobs due to the insolvency of their employer.

2.2 Consistency with Legislative Policy

The policy of the FEG legislation is to provide a safety net for employees who are left without their entitlements due to the insolvency of their employer.

Employees who serve on the board to represent the interests of their fellow employees are performing a valuable role and should not be penalised for their involvement in governance.

Excluding such employees from the FEG scheme would be contrary to the spirit of the legislation, which seeks to protect the rights and entitlements of all employees.

3 Regulation-Making Power for Exemption

The regulation-making power under the Act can be utilised to provide exemptions where the employee is a director representing employee interests, ensuring that the protections of the FEG scheme are applied equitably.

3.1 Regulation-Making Power

Section 55 of the Act grants the Governor-General the power to make regulations prescribing matters required or permitted by the Act or necessary or convenient for carrying out or giving effect to the Act. This includes the ability to provide exemptions for certain categories of employees or entitlements.

3.2 Potential Exemptions

The regulation-making power could be used to provide exemptions for employees who are directors of the operating company to represent

- the interests of employees generally; or
- the interests of employees arising under appropriate employee share schemes such as an Employment Ownership Trust.

This approach would align with the policy objectives of the legislation and ensure that all employees, regardless of their involvement in governance or share schemes, are afforded the same level of protection.

3.3 Position of Substantial Shareholders

The Act does not explicitly exclude employee shareholders from eligibility for an advance under the FEG scheme unless they fall into one of the categories mentioned above (i.e., they are also a director, a spouse or de facto partner of a director, or a relative of a director or their spouse/de facto partner).

Therefore, unless an employee shareholder is also a director, they would not be considered an excluded employee.