Employee Ownership Australia Making it your business

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Committee Secretary
Senate Economics Legislation Committee
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Dear Committee Secretary

1. Introduction

Employee Ownership Australia welcomes the opportunity to make a submission to the Committee on the Bills that introduce the proposed 30 per cent minimum tax on discretionary trusts. This submission builds on our submission to Treasury dated 18 September 2026 on the exposure draft legislation, and our earlier submission dated 31 July 2026.

In our exposure draft submission we made two separate and discrete submissions. The first concerned employee share trusts. The second concerned employee ownership trusts. We said then, and repeat now, that the fact that both categories involve employees does not make them a single policy category. Each should be dealt with on its own terms.

This submission makes two points:

1. The Government has responded to our first submission. Employee share trusts are now specifically and directly excluded from the regime. We strongly support that outcome and ask the Committee to endorse it.
2. There is no corresponding exclusion for employee ownership trusts. This is a significant policy gap. Unless it is addressed, the regime will adversely affect the development of employee ownership trusts in Australia, a structure that presents no integrity risk and that is being actively encouraged in comparable jurisdictions.

This matters. Employee ownership trusts are one of the most effective means available for giving younger and lower-paid workers a genuine share in the businesses they help build, without requiring them to put their own savings at risk. They are also one of the few practical ways to keep successful Australian small and medium businesses operating, locally owned and independent when their founders retire. A tax setting that discourages them works directly against both objectives.

2. Executive summary

Employee share trusts: an important issue resolved

Proposed paragraph 101AB(1)(f) of the Income Tax Assessment Act 1936 excludes an employee share trust (within the meaning of the Income Tax Assessment Act 1997) from being a minimum tax trust. The exclusion is express. It does not depend on an employee share trust establishing that it



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satisfies the new fixed trust definition or comes within the more general exclusions. This provides welcome certainty for companies operating employee share schemes and, most importantly, for the employees who participate in them.

Employee ownership trusts: a significant policy gap

- **A stake for younger workers without financial risk**. Younger and lower-paid employees rarely have the savings, borrowing capacity or risk appetite to buy into their employer. An employee ownership trust holds the shares on their behalf, so they share in the profits and growth of the business without contributing capital or taking concentrated investment risk. For many workers it is the only realistic path to business ownership.
- **Keeping small businesses operating**. Many viable small and medium businesses close or are sold to interstate or foreign acquirers because the owner has no successor. A sale to an employee ownership trust keeps the business trading, keeps jobs and capability in the local community, and preserves its independence.
- **Intergenerational business transfer. Australia faces a large transfer of business ownership as founders reach retirement**. An employee ownership trust allows ownership to pass from founder to workforce, and then from each generation of employees to the next, without the business having to be repeatedly sold.

These are precisely the outcomes the minimum tax should not discourage. Yet the Bill does nothing to protect them.

The Bill contains no specific exclusion for employee ownership trusts. An employee ownership trust is a collective ownership and business succession vehicle. It holds a substantial interest in an operating business for the long-term benefit of a broad and changing class of employees. The features that make it workable (admitting new employees, adjusting participation when employment ends, and differentiating benefits by objective employment criteria) are the very features that may prevent it from being a fixed trust under proposed section 272-65. It may also fall outside the employee share trust sole activities test.

The result is that a trust which is not in any sense an integrity risk may be captured by a rule directed at family income splitting. The cost would be borne by employees, and most acutely by lower-paid employees. The likely practical effect is that employee ownership trusts will not be established in Australia at the very time other countries are adopting them.

Employee Ownership Australia does not seek an open-ended concession. We have proposed a self-executing statutory definition of a qualifying employee ownership trust built from objective, cumulative conditions that remove any family income-splitting risk. That definition is set out in Part C and Schedule 1.

Recommendation 1. The Committee should endorse the express exclusion of employee share trusts in proposed paragraph 101AB(1)(f).

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Recommendation 2. The Bill should be amended to insert a separate, express exclusion in proposed subsection 101AB(1) for an employee ownership trust satisfying the dedicated statutory definition proposed by Employee Ownership Australia. The exclusion should operate independently of fixed trust status and of the employee share trust definition.

Part A: Employee share trusts



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3. The Government has responded to our submission

Our principal exposure draft submission was that employee share trusts should be expressly excluded from the definition of a minimum tax trust, and that the exclusion should not depend on the trust satisfying the proposed fixed trust definition. We said that a statement in explanatory materials that employee share trusts would "generally" be fixed trusts was not adequate, because "generally" necessarily acknowledges that some ordinary employee share trusts may not be.

The Bill as introduced adopts that approach. Proposed paragraph 101AB(1)(f) lists an employee share trust as a trust that is not a minimum tax trust. The Explanatory Memorandum explains that employee share trusts are existing defined terms subject to specific requirements, that the trust's sole activities must relate to obtaining shares or rights provided to employees under an employee share scheme, and that distributions are based on scheme rules and entitlements rather than the trustee's absolute discretion (paragraphs 1.18 and 1.25).

4. Why the exclusion matters

Employee share trusts are mainstream remuneration and plan-administration vehicles used by listed, private and multinational employers. Some have more than 10,000 or 20,000 employee beneficiaries. The sole activities test in subsection 130-85(4) of the Income Tax Assessment Act 1997 already provides the relevant integrity boundary. An express exclusion avoids recurring review of trust deeds and plan rules, avoids trustee-level tax that would reduce value delivered to employees, and gives employers certainty from the outset.

We commend the Government for this outcome and ask the Committee to endorse it. We would be concerned by any amendment that narrowed the exclusion or made it conditional on fixed trust status.

Part B: Employee ownership trusts: the policy gap

5. What an employee ownership trust is

An employee ownership trust is not an employee share trust with different drafting. It is a collective ownership vehicle. It ordinarily holds a substantial or controlling interest in an employing business for the benefit of all or a broad class of employees, supports long-term stewardship and business succession, and provides benefits over time by reference to objective employment-related factors such as remuneration, service or hours worked.

6. Why employee ownership trusts are a good thing

Employee ownership trusts offer substantial economic, business and workforce benefits. Three stand out:

- **Younger and lower-paid workers share in the benefits of the business without financial risk**. Junior, younger and lower-paid employees are the least likely to have savings, borrowing capacity or appetite for concentrated investment risk. Without a collective vehicle they are effectively shut out of ownership. An employee ownership trust gives them a real share in the profits and growth their work creates, without requiring them to fund an acquisition or put personal savings at risk.
- **Small businesses keep operating**. Where a trade sale, management buyout or family succession is unavailable or inappropriate, a viable business may otherwise close or be sold away from its community. An employee ownership trust provides an ownership pathway that keeps the business trading, keeps jobs local, and preserves its continuity and independence.
- **Intergenerational business transfer is supported**. As founders retire, an employee ownership trust allows ownership to pass to the workforce and then to successive



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generations of employees. Employees can join and leave without the underlying interest in the business being repeatedly transferred, so the business is held for the long term rather than sold at each generational change.

Employee ownership trusts also:

- extend business ownership beyond founders, senior executives and employees who have the capital to buy shares directly; and
- align employees with the long-term performance of the enterprise and provide a framework for employee voice and stewardship across successive generations of employees.

7. Employee ownership trusts are being adopted elsewhere in the world

Comparable jurisdictions have recognised these benefits and have legislated specifically to facilitate employee ownership trusts:

- United Kingdom. The employee ownership trust regime was introduced by the Finance Act 2014. A qualifying disposal of a controlling interest in a trading company to an employee ownership trust can be made at a favourable rate of capital gains tax (and from 2014 to 2025 was completely exempt from capital gains tax). Qualifying all employee bonuses can be paid free of income tax up to an annual limit. The regime has been widely used for private business succession. Importantly, the United Kingdom generally taxes discretionary trusts at trustee level, yet it chose to define and facilitate employee ownership trusts by statute rather than leave them to its general trust rules. There is also a long-standing exemption from the UK's inheritance tax regime for employee trusts that benefit all or most employees in the Inheritance Tax 1984 (and which extends to employee ownership trusts).
- United States. Employee stock ownership plans are trusts which have operated under federal law for more than 50 years, supported by specific tax provisions, including deferral of gain for owners who sell to a plan. They are an established succession model for privately held businesses.
- Canada. Canada introduced a dedicated employee ownership trust framework in 2024, with a defined statutory concept of an employee ownership trust and a now permanent (originally) temporary capital gains exemption for owners who sell their business to one.

The Explanatory Memorandum notes that jurisdictions such as the United Kingdom, New Zealand and Ireland commonly impose trustee-level tax on trust income. The United Kingdom experience shows that a robust trust tax regime and a dedicated employee ownership trust regime can operate together. The way to achieve this is a specific statutory definition. Australia is now designing its trustee-level regime. That is the time to make the same choice.

8. Why the Bill impedes employee ownership trusts

The Bill uses the absence of fixed entitlements, or the presence of material discretionary elements, as a proxy for income-splitting risk. That proxy is inappropriate for an employee ownership trust:

- Fixed trust definition. An employee ownership trust must determine eligibility, admit new employees, adjust participation when employment ends, differentiate benefits by objective criteria and retain value for future employees. These features may prevent fixed entitlements to all income and capital, and may be characterised as material discretionary elements under proposed section 272-65.
- Employee share trust exclusion. Because an employee ownership trust holds an interest for the collective benefit of a changing workforce, rather than obtaining and delivering shares or rights under an employee share scheme, it may not satisfy the sole activities test in subsection 130-85(4).



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- Ministerial determination power. Proposed subsection 101AB(2) permits exclusion by legislative instrument only on specified grounds. It is uncertain whether an employee ownership trust would qualify as being "of a similar nature" to an excluded class. In any event, an instrument may be amended, disallowed or sunsetted, and is not a sound foundation for a long-term ownership and succession structure.
- Electable regime. The excluded election trust regime requires nominated beneficiaries and fixed proportions to be maintained. It cannot accommodate a changing workforce and is not available to trusts established after commencement. Every new employee ownership trust would therefore be outside it.
- Roll-over relief. Restructuring into a company or fixed trust would defeat the collective ownership model that the trust exists to deliver.

The very features that make an employee ownership trust workable therefore expose it to the minimum tax. Trustees would be encouraged to make participation rules more rigid, narrow the eligible workforce or reduce provision for future employees merely to argue fixed trust status. Tax law should not distort the governance of a legitimate employee ownership structure in that way.

9. The burden would fall on employees

The economic cost of the minimum tax would be borne by the employees for whom the trust exists. Because the beneficiary offset is non-refundable, an employee whose own tax is less than the tax attributed to them cannot recover the difference. The cost is permanent and is most acute for lower-paid employees. A measure intended to align the tax on trust income with the rates paid by workers would reduce the value delivered to workers through a genuine employee ownership arrangement. That is a perverse outcome.

10. Employee ownership trusts are not an integrity risk

This is a clear example of a trust which is not in any sense an integrity risk being caught by the operation of the new provisions. The policy concern in the Explanatory Memorandum is that trustees of discretionary trusts can allocate income to family members on lower marginal tax rates, stream income, and use corporate beneficiaries to defer tax. None of those features is present in a properly defined employee ownership trust:

- the beneficiaries are employees, defined by their employment, not by family relationship or tax rate;
- substantial pre-existing owners are excluded from benefit;
- differential participation is permitted only by reference to objective employment-related factors;
- distributions may be made only directly to employee beneficiaries, not through interposed companies or trusts;
- loans to beneficiaries and their associates are prohibited; and
- the employee ownership purpose and beneficiary class are entrenched against amendment.

The discretions in an employee ownership trust are operational and fiduciary. They exist to administer collective ownership for a changing workforce, not to select lower-taxed family beneficiaries. The absence of an integrity risk is not merely a reason for administrative tolerance or a private ruling. It is a reason for exclusion from the operative regime.

Part C: Our proposal



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11. A specific carve-out

Employee ownership trusts need to be specifically carved out. We recommend that a new paragraph be inserted in proposed subsection 101AB(1) excluding "an employee ownership trust (within the meaning of section [X])", with section [X] containing a self-executing definition. The definition should not depend on the Commissioner or the Minister being satisfied, on a legislative instrument, or on a case-by-case ruling.

A definition with no integrity risk

Our proposed definition is designed so that a trust can qualify only if it is confined to genuine collective employee ownership. Each condition performs a specific integrity function:

Condition	Integrity function
Resident trust estate under subsection 95(2) of the Income Tax Assessment Act 1936	Secures an Australian tax connection and the ordinary Australian trust administration framework
All or substantially all of the market value of trust property attributable to membership interests in one or more qualifying companies controlled by the trust	Prevents the trust being used as a general investment or family wealth-holding vehicle
Qualifying company is an Australian incorporated private company carrying on a business	Directs the exclusion to the business succession and collective ownership context
Trustee holds at least 20 per cent of profits, assets on winding up, or voting power	Requires a meaningful ownership interest, not a nominal parcel held to obtain the exclusion
Property applied solely for the benefit of all eligible employees, with merely incidental activities	Prevents value being redirected to founders, family members or other private objects
Eligible employees are employees, office holders or contractors of the company or a related entity, excluding any person holding 10 per cent or more	Beneficiary class is defined by employment, not family; substantial owners cannot extract private value
Differential participation only by reference to employment, office or engagement	Trustee cannot select beneficiaries by tax rate or family relationship
At least one third of trustees (or trustee company directors) are beneficiaries	Embeds employee participation in governance
Distributions only directly to beneficiaries in that capacity	Prevents distributions through interposed entities that could reproduce income splitting
No loans (within subsection 109D(3) of the Income Tax Assessment Act 1936) to beneficiaries or associates	Prevents extraction of value through loans
Amendment power cannot alter the employee ownership purpose or beneficiary class	Prevents later conversion into a family or private benefit vehicle

Taken together, these conditions mean the family income-splitting concern at which the minimum tax is directed cannot arise. They allow the Commissioner to test a trust against observable facts



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and legal obligations, rather than an impressionistic assessment of whether a particular operating power is "material".

12. Supporting clarifications

- The exclusion should apply to existing and future employee ownership trusts from commencement.
- The exclusion should apply irrespective of whether the trust satisfies either limb of the fixed trust definition.
- Changes in the employee population, and differential participation determined by objective employment-related factors, should not jeopardise the exclusion.
- "All or substantially all" should be supported by a practical threshold, with limited allowance for cash, working capital and assets reasonably required to administer the trust.
- A temporary breach caused by an external transaction, valuation movement or administrative error should be capable of cure within a reasonable period where no value has been diverted outside the employee class.
- If any further integrity rule is considered necessary, it should be a targeted purpose test directed at arrangements benefiting persons outside the permitted employee class, not a broad Commissioner discretion that would recreate uncertainty.

13. Conclusion

One important issue has been resolved. One is still to go. The second offers a huge opportunity for Australian Small Business and the new generation of younger Australian workers EOTs provide a highly effective means of business succession that benefits those who have most to lose from sale of their company to a third party, such as private equity, or even dissolution should a buyer not be found.

The express exclusion of employee share trusts gives certainty to employers and to the employees who participate in employee share schemes. We ask the Committee to endorse it.

Employee ownership trusts should also be specifically recognised and encouraged, rather than potentially caught by rules directed at income splitting through discretionary trusts. They allow younger workers to share in the success of the businesses they help build without financial risk, keep small businesses operating, and support intergenerational business transfer. They have an important role to play in Australia, as they already do in the United Kingdom, the United States and Canada. A carefully defined statutory carve-out would close the policy gap without any integrity risk.

Employee Ownership Australia would welcome the opportunity to appear before the Committee and to assist with the detailed drafting of the proposed exclusion.

Yours sincerely

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Schedule 1: Recommended amendments

Amendment to proposed subsection 101AB(1) of the Income Tax Assessment Act 1936

Insert after paragraph (g):

"(ga) an employee ownership trust (within the meaning of section [X]);"

Make a consequential amendment to paragraph 101AB(2)(a) so that its reference to "paragraphs (1)(a) to (g)" includes the new paragraph.

New section [X]: Meaning of employee ownership trust

A trust estate is an employee ownership trust at a particular time if, at that time, all of the following conditions are satisfied:

1. the trust estate is a resident trust estate within the meaning of subsection 95(2);
2. all or substantially all of the market value of the trust property is attributable, directly or indirectly, to membership interests in one or more qualifying companies controlled by the trust;
3. a qualifying company is an Australian incorporated private company carrying on a business, whether directly or as the head company of a consolidated group;
4. the trustee holds membership interests in the qualifying company carrying an entitlement to at least 20 per cent of the distributable profits of the company, the assets of the company on winding up, or the voting power on all questions affecting the company as a whole;
5. the property of the trust must be applied solely for the benefit of all eligible employees, together with activities merely incidental to that purpose;
6. an eligible employee is an individual employed by, holding office in, or acting as an independent contractor of, a qualifying company or a related entity, but does not include an individual holding a membership interest of 10 per cent or more in the qualifying company;
7. the trustee may permit differential participation only by reference to matters relating to the individual's employment, office or contractual engagement with the qualifying company or a related entity;
8. where the trustees are natural persons, at least one third of the trustees are beneficiaries of the trust; where the trustee is a company, at least one third of the directors of the trustee company are beneficiaries of the trust;
9. the trust may distribute income or capital only directly to beneficiaries in their capacity as beneficiaries;
10. the trust is prohibited from making a loan, within the meaning of subsection 109D(3), to a beneficiary or an associate of a beneficiary; and
11. the power to amend the trust instrument is restricted so that it cannot be used to alter the employee ownership purpose of the trust or the nature of the beneficiaries entitled to benefit under the trust.

Explanatory Memorandum

- Employee share trusts and employee ownership trusts should be addressed under separate headings.
- The materials should explain that a qualifying employee ownership trust is excluded because a dedicated definition confines it to collective employee ownership and removes the family income-splitting risk.
- The word "generally" should not be used to describe the statutory outcome.