

Supplementary Submission

Innovative Business CGT Concession — Exposure Draft Legislation

Aussie Angels | 28 September 2026 consultation deadline

Submitted via the Treasury Consultation Hub (c2026-801619)

Introduction

Aussie Angels welcomes the opportunity to provide further comment on the Innovative Business CGT Concession (IBCC), building on our submission to Treasury's initial consultation on the design of the concession, and on our subsequent engagement with the Department of Industry, Science and Resources (DISR) and the Australian Taxation Office (ATO) regarding safe harbour criteria for innovation company self-assessment.

This submission responds to the exposure draft legislation, explanatory memorandum, and draft legislative instrument released on 11 September 2026 for the Treasury Laws Amendment (Tax Reform No. 5) Bill 2026: Innovative Business CGT Concession.

Overall position and the case for speed

We are pleased to see that many of the concerns raised in our original submission and in earlier consultation have been substantively addressed. In particular, we welcome:

- the extension of company eligibility to 15 years across all sectors, rather than the 10 years originally proposed;
- the reduction of the minimum holding period to three years, from the five years floated in the June consultation paper; and
- the removal of the proposed \$10 million lifetime cap in its entirety.

These changes materially improve the concession, and we urge that they be preserved without further dilution as the legislation proceeds to introduction.

The value of these improvements, however, depends heavily on how quickly certainty is restored to the market.

On our platform we have seen the detrimental effects of this uncertainty first hand. Since May when the 2026 budget was handed down, we've seen a 25% decrease in the number of deals being launched and raised. We've also seen a 35% decrease in the number of cheques being written by angel investors across our platform. Every investor we asked about this, cited the CGT uncertainty as the reason.

The prolonged period of uncertainty since the Budget announcement has already had a material chilling effect on early-stage investment activity, as founders and investors alike have deferred decisions pending clarity on the tax treatment of new capital. Every additional month between this exposure draft and the passage of final legislation is a month in which that chilling effect continues to be felt by the companies and investors this concession is intended to support. We urge the Government to finalise and introduce this legislation as quickly as practicable, and to avoid further rounds of consultation on settings that are already well understood following extensive stakeholder engagement.

Priority issue: investor exposure to company-level compliance failures

Under the exposure draft, if a registered IBCC company fails to lodge its annual report under section 115-166, its registration is automatically suspended, and the equity interests of every investor in that company become disqualified assets for the duration of the suspension (section 115-167). If the report is not lodged before the end of the relevant income year, registration is cancelled outright and those interests become permanently disqualified (sections 115-168 and 115-169).

This creates a significant and, in our view, disproportionate risk for investors. An angel investor or syndicate member has no visibility into, and no control over, whether a portfolio company lodges its annual report on time. A missed administrative deadline, arising from nothing more than founder oversight or a lapse during a busy period of company growth, can strip every investor in that company of the CGT concession for that year, or permanently, through no fault of their own.

We recommend:

- a grace period before suspension takes effect, to allow companies a reasonable opportunity to remedy an oversight before investor entitlements are affected;
- a requirement that DISR notify all investors holding IBCC assets in a company, not only the company itself, at the point a suspension risk arises, so that investors have visibility and the opportunity to prompt remediation before the position crystallises; and
- consideration of whether cancellation, as opposed to suspension, should ever be triggered by a reporting failure alone, absent any suggestion of fraud or misrepresentation.

Safe harbour design gaps

We welcome the structure of the draft Income Tax Legislation (Innovative Company Test—Conditions for Existing Startups) Determination 2026, which avoids a cumulative points-test approach in favour of alternative, independently sufficient conditions within each limb of the innovative company test. This is consistent with the principle we raised directly with DISR and the ATO: that safe harbour criteria should be illustrative markers a company can meet through any one of several paths, not a cumulative threshold exercise.

We do, however, have a specific concern with the conditions for “high growth potential” in section 7 of the determination. Each of the five available conditions — external investment of at least \$200,000, venture capital investment, a 10 per cent employee share scheme allocation, three years of 30 per cent turnover growth, or three qualifying customer contracts — assumes the company has already reached a level of external validation or commercial traction. A genuinely early-stage, pre-revenue company, particularly in deep tech or biotech where commercialisation timelines are longest, may not yet have closed a priced round, engaged a venture capital investor, or signed a customer contract, notwithstanding genuine high growth potential.

We recommend an additional condition be included that recognises other objective, well-established indicators of high-growth potential available to pre-traction companies, such as a favourable finding or registration under the R&D Tax Incentive, consistent with our original submission's recommendation that R&DTI status serve as an objective marker of innovation.

We would also note, consistent with the disparate impact analysis in our original submission, that several of the available conditions (external investment, venture capital investment) rely on access to investor networks and capital that is not equally distributed across founder demographics. We do not propose a specific remedy here but flag it as a factor DISR should have regard to when finalising these conditions and when designing the equivalent instrument for future startups.

Consistency and timing for the future-startup instrument

We understand that a separate legislative instrument will be developed, through further consultation, to allow companies incorporating on or after 1 July 2027 to self-assess against the innovation requirement. We recommend that this future instrument adopt the same non-cumulative, alternative-conditions structure as the current determination, for consistency and to avoid founders and advisors having to navigate materially different tests depending on a company's incorporation

date. We would welcome an indication of the timeframe for that consultation, so that we and our members can plan our engagement accordingly.

Administrative arrangements not yet settled

Several matters central to the operation of the IBCC are left to forms, fees, and legislative instruments not yet released: the prescribed form and any application fee for registration under section 115-165, and the prescribed period and content of the annual report under section 115-166. Given how much rides on these details, particularly the annual reporting deadline given the consequences of a missed report discussed above, we would welcome early stakeholder consultation on these instruments once drafted, rather than their release without further opportunity for comment.

We would also urge that the content of the annual report itself be kept as light-touch as possible. Early-stage companies have limited time and capital, and a report that requires anything beyond a simple, low-cost confirmation of a company's continuing status risks becoming a genuine burden in its own right, on top of the consequences of missing it discussed above. If the report approaches the complexity of a fresh innovation reassessment each year, growing companies will need to divert scarce time and capital away from building their business and into a new, recurring compliance exercise. A report of any real complexity is also likely to give rise to a cottage industry of advisers engaged to prepare it, a further and unnecessary drain on runway for the smallest and most resource-constrained companies this concession is meant to support. We recommend the annual report be limited to straightforward confirmation of continuing status, for example that the company remains under the turnover and age thresholds and continues to operate in the manner assessed at registration, rather than requiring any fresh assessment or supporting documentation each year.

Indexation of the turnover threshold

The \$50 million aggregated turnover threshold is fixed in nominal terms, with no provision for indexation. Over time, this will erode the real value of the threshold and narrow the pool of eligible companies without any deliberate policy decision to do so. We recommend the threshold be indexed, for example to CPI, consistent with the approach taken elsewhere in the tax law for comparable thresholds.

Conclusion

The exposure draft represents genuine and welcome progress on several of the parameters most important to Australia's angel investment and venture capital ecosystem. We urge Government to preserve these improvements, address the priority issues raised above, particularly the investor-side compliance risk, and move to finalise and introduce this legislation as quickly as possible.

Continued uncertainty carries a real and ongoing cost to the ecosystem this concession is designed to support, and the sooner that uncertainty is resolved, the sooner investment activity can recover.

We thank Treasury for the opportunity to contribute and would welcome the opportunity to discuss any aspect of this submission further.

Best regards,

Cheryl Mack

CEO, Aussie Angels