FINANCIAL ADVICE ASSOCIATION AUSTRALIA

26 October 2026

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted online via the inquiry webpage

Dear Committee Secretary,

Inquiry into the Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 and the Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026

The Financial Advice Association of Australia (FAAA) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee on the Treasury Laws Amendment (Tax Reform No. 3) Bill 2026 (the Bill) and the Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026.

We note that we received an invite from the committee secretariat to make a submission late in the day on 16 October 2026, with a deadline of 26 October 2026. This has allowed only six business days for organisations like ours to provide feedback on lengthy, highly complex and high impact legislation. Timeframes have been very short throughout the multiple consultations on the various tax changes announced in the May 2026 Federal Budget. We have exerted our best efforts to provide useful and constructive feedback within the allowed timeframes. However, this timeframe does not allow any participant to do this important job well, and this increases the likelihood of a sub-optimal outcome for Australians. We strongly urge the Government to adhere to its own best practice guidelines on consultation, which state among other things "Depending on the significance of the proposal, between 30 to 60 days is usually appropriate for effective consultation, with 30 days considered the minimum." It is only today, on finalising our submission, that we have now discovered that the deadline recorded on the Senate Economics Legislation Committee webpage is in fact 29 October 2026.

The FAAA is the largest association representing the financial advice profession in Australia, with over 10,000 members. Our members advise clients on the tax and structuring consequences of holding, transferring and disposing of property and other capital assets, and many financial advice practices operate through, or are owned via, discretionary trusts. The reforms in the Bills therefore affect our members both as advisers to, and as, business owners.

The FAAA has engaged extensively throughout the tax reforms consultation process, including through our 9 June 2026 submission and appearance before the Senate Economics Committee Inquiry on 16 June. We made a submission on the Treasury consultation paper on the minimum tax on discretionary trusts on 31 July 2026, a submission on the capital gains tax (CGT) and negative gearing tranche 2 exposure drafts on 21 August 2026, and a submission on the discretionary trust exposure draft legislation on 18 September 2026, following a consultation meeting with Treasury on 16 September 2026. This submission reviews the Bills and the explanatory memorandum (EM) against the issues raised in those earlier submissions.

The FAAA welcomes the improvements made since the exposure drafts, but significant concerns remain across the discretionary trust, negative gearing and CGT reforms. In particular, we recommend greater flexibility and proportionality in the transitional and EET regimes, clearer treatment of genuine family and business succession events, coordinated State and Territory stamp duty relief, and further changes to address negative gearing and CGT issues. These changes would provide greater certainty and reduce unintended consequences without undermining the integrity of the reforms.

Our analysis and recommendations are set out below.

1. Minimum tax on discretionary trusts: framework and timing

1.1 The expanded minimum tax trust test

Proposed section 101AA of the Income Tax Assessment Act 1936 (ITAA 1936) applies the minimum tax where a trust estate 'is a minimum tax trust at any time during the year of income'. This differs from the exposure draft legislation, which determined a trust's minimum tax status at the end of the income year. Proposed section 101AB similarly tests the exclusions from minimum tax trust status 'at a particular time during a year of income'.

This change broadens the regime. A trust that stops being a minimum tax trust part way through a year, for example by completing a restructure and being wound up or vested, or by otherwise becoming a fixed trust, remains exposed for the whole of that year. This matters, because the transitional pathways run well into the period in which the minimum tax applies. Roll-over transfers may occur until 30 June 2030, and an excluded election trust (EET) election may be made in the 2028–29 income year. The EM confirms that only a restructure completed in 2027–28 ensures that a trust has no liability for the minimum tax. It does not explain the reason for the 'at any time' test or how it interacts with the transitional pathways. For trustees making significant and often irreversible decisions, this adds uncertainty and runs counter to our call for greater certainty in the operation of the regime.

Recommendation 1: Apply the minimum tax by reference to a trust's status at the end of the income year, as in the exposure draft, or alternatively limit the tax to the net income attributable to the period in which the trust was a minimum tax trust. The EM should explain how this test operates with the roll-over and EET pathways.

1.2 State and Territory stamp duty

Our 31 July 2026 submission asked the Government to coordinate stamp duty relief with the States as part of the roll-over pathway, and we recommended in our submission on 18 September 2026 that the package not be finalised until the Government had engaged with the States and Territories. The Bill does not signal any progress in resolving this critical issue.

We understand that the NSW Government has proposed that a trust's initial election into the EET pathway would not trigger NSW stamp duty. That would assist affected NSW trusts, but NSW is the only jurisdiction to have announced such an approach that we are aware of, and this is a federal measure whose practical effect depends on the treatment adopted by every State and Territory. The NSW proposed relief is not yet law, would be subject to consultation after the federal legislation is finalised, and is limited to the initial election. It does not address the stamp duty treatment of other restructuring steps including the roll-over option, which is more critical or of a later revocation of the EET.

The stamp duty costs are potentially very significant for a large number of affected small businesses, and Parliament should not be asked to vote on these proposals until this impact is known. We appreciate that, particularly in the context of a downturn in the property market and a likely significant decline in stamp duty for state governments, that they may be hesitant to give up the prospect of receiving additional stamp duty as a result of forced business restructures. Providing small businesses with clarity on this issue is essential before critical decisions can be made.

Recommendation 2: The Government should engage with the States and Territories on the stamp duty consequences of all the restructuring pathways, including steps beyond the initial EET election and the consequences of a later revocation, and the outcomes of that engagement should be made public before finalising the legislation.

2. Transitional roll-over relief

2.1 Single transferee, all-assets rule and cash reserves

In Recommendation 11 of our 18 September 2026 submission on the discretionary trust exposure draft legislation, we asked for:

- multiple transferees to be permissible, where each meets the residency and no-material-discretionary-element requirements,
- clarification of whether genuine cash reserves held by primary production businesses can be retained, and
- a materiality threshold and Commissioner discretion for the all-assets requirement.

None of these recommendations have been adopted. The roll-over remains limited to a single transferee and retains an all-assets approach that can cause the entire restructure to lose relief if one required asset is not transferred by 30 June 2030. The $1,000 exclusion does little to address this risk, as it is a narrow asset-value exemption rather than a materiality threshold. This creates a disproportionate outcome where a minor or inadvertent omission can unwind relief across the entire restructure, including relief already claimed. The position is further complicated by the requirement extending to assets acquired after the first transfer, potentially creating an ongoing compliance risk throughout the transitional period.

For primary production businesses, the Bill provides some relief by excluding certain CGT assets used to generate primary production income from the transfer requirement. However, it does not resolve the practical issue raised by the FAAA regarding cash reserves held for drought, flood or price volatility, or clarify the treatment of interest earned on those reserves. This leaves uncertainty about how the ordinary risk-management practices of primary producers will interact with the roll-over.

Recommendation 3:

Redesign the roll-over to allow multiple transferees, clarify the treatment of primary production cash reserves, and replace the all-or-nothing outcome for assets transferred with a materiality threshold, a rectification period and denial of relief only for the affected asset rather than the whole structure.

2.2 The extended amendment power and the material discretionary elements test

In Recommendation 12 of our 18 September 2026 submission, we asked that the Commissioner's extended amendment power not include beneficiaries or members unless there is a specific integrity concern that cannot be addressed against the transferor or transferee.

Rather than addressing this concern, the Bill broadens the power further by extending it to 'any interposed entity or member of an interposed entity'. This increases the number of taxpayers potentially subject to an extended amendment period, without explaining why the existing scope is insufficient or what integrity risk requires the additional reach. This is particularly concerning given the length of the period involved: the material discretionary elements test applies from the day after the last required transfer until the end of the fourth income year after that transfer (proposed section 126-905(5)).

We also asked, in Recommendations 12 and 16 of our 18 September 2026 submission, for worked examples clarifying whether employee share and option schemes, discretionary employee bonuses and performance-based remuneration constitute material discretionary elements. These examples have not been provided, leaving uncertainty about how the test will apply to common remuneration arrangements in practice.

Recommendation 4: Narrow the extended amendment power so that it does not include beneficiaries, members or interposed entities unless there is a specific integrity concern that cannot be addressed against the transferor or transferee. Publish worked examples covering employee share and option schemes, discretionary bonuses and performance-based remuneration.

3. The electable regime (EET)

3.1 Commissioner discretion for inadvertent errors

We welcome proposed section 102UYH. It responds directly to the policy intent Treasury confirmed at our 16 September 2026 meeting, that a minor unintentional error should not automatically revoke an EET election (Recommendation 4). However, the commissioner discretion does not apply to the company-beneficiary triggers such as a corporate beneficiary being wound up or deregistered, ceasing to qualify, or a shareholder ceasing to hold a share for a reason other than death or relationship breakdown. In Recommendation 6 of our 18 September 2026 submission, we asked that these triggers be narrowed where the event is outside the trustee's control.

Furthermore, the consequences of revocation are unchanged. The EM describes this as a genuine disincentive for trustees who do not intend to act consistently with the election. We accept the integrity concern, but the same outcome applies to a deliberate departure as it does to an error outside the trustee's control, leaving the discretion as the only safeguard.

Recommendation 5: The Commissioner's discretion in proposed section 102UYH should be extended to company-beneficiary events outside the trustee's control, and the consequences of EET revocation should be proportionate to the nature and circumstances of the breach.

3.2 Variation for family and succession events

The variation rules remain confined to the death of a nominated beneficiary and relationship breakdown. On death, a new individual must be a beneficiary of the deceased individual's estate. The scenario Treasury invited us to raise following our meeting on 16 September 2026, where the deceased leaves the estate first to a spouse and then next to their children in the event of the earlier death of the spouse, has not been addressed. The children would not be considered to be beneficiaries of the will if the entire estate is left to the spouse, and would therefore not be accepted as replacement beneficiaries of the trust. It may be more appropriate to have them replace the deceased as the beneficiary of the trust, particularly if the spouse is elderly and has no involvement in the trust.

A child born or adopted after 1 July 2028 would also not appear to satisfy the requirement to have been capable of benefiting on that date, and there is no variation for stepchildren, incapacity, disability, bankruptcy or court orders, or any discretion to approve other genuine and unforeseen events. As we raised in our 18 September 2026 submission, the variation rules should be sufficiently flexible to accommodate genuine family and succession events without jeopardising access to the EET.

Recommendation 6: Broaden the variation rules to allow a deceased beneficiary's share to pass to the deceased's descendants where the estate passes first to a spouse or another person, to allow later-born, adopted and step-children to be included proportionately, and to give the Commissioner discretion to approve variations for other genuine and unforeseen family, succession or incapacity events.

3.3 Election window, pathway switching and aligned entitlements

We recommended in our 18 September 2026 submission that the election window be extended to the first three income years, with discretion to accept a late election in exceptional circumstances (Recommendation 8), that a one-time switch from the EET to the roll-over pathway be permitted (Recommendation 9), and that beneficiaries be able to hold different fixed proportions of income and capital (Recommendation 5). The Bill retains the original position in each case.

We acknowledged Treasury's concern about opportunistic switching between regimes in our meeting on 16 September 2026. However, the Bill still does not distinguish between opportunistic switching and a trustee who reassesses a good-faith decision in light of experience or changed family or business circumstances. The narrow election window and prescribed alignment of beneficiary entitlements similarly limit the capacity of trustees to use the transitional pathways in a way that reflects their circumstances.

Recommendation 7: Allow an EET election in any of the first three income years from 1 July 2028, with discretion to accept a late election in exceptional circumstances. Permit a one-time switch from the EET to the roll-over pathway, subject to safeguards against opportunistic switching, and allow beneficiaries to hold different fixed proportions of income and capital, provided the proportions are specified in the nomination and total 100 per cent.

4. Corporate beneficiaries, fixed trusts and succession

4.1 Corporate beneficiaries

The Bill retains the denial of the offset for corporate beneficiaries and extends it to exempt-entity beneficiaries. In our 31 July 2026 submission we asked the Government to consider alternatives to full disallowance and to explain why an effective tax rate of at least 55 per cent on corporate beneficiaries was justified. We repeated these concerns in Recommendation 15 of our 18 September 2026 submission. The Impact Analysis considers an option allowing offsets for all beneficiaries and rejected it because corporate beneficiaries could continue to defer tax for underlying shareholders, and because tracking would be required. We do not accept that this is grounds to reject greater flexibility with this measure.

Recommendation 8: Re-examine the non-refundable character of the beneficiary offset, including whether unused amounts should be refundable or able to be carried forward and whether the offset should be able to reduce the Medicare levy. Provide a means to exclude minor beneficiaries from excessive distributions in years of unexpectedly high income. Reconsider the denial of the offset for corporate beneficiaries.

4.2 Fixed trust definition and business succession

In Recommendation 16 of our 18 September 2026 submission, we sought greater clarity on the new fixed trust definition, including its interaction with other provisions and application to employer discretion in remuneration. The definition is now principles-based, supported by a ministerial determination power and, as confirmed by the EM, applies across the tax law. However, the only worked example relates to a managed investment trust (Example 1.7), with ATO guidance expected following passage of the Bill. Uncertainty therefore remains about how the definition will apply in other contexts, including employee share schemes, options and performance-based remuneration.

The Bill excludes primary production income and testamentary trust income from the new tax, but provides no equivalent concession for other family businesses. In our 31 July 2026 submission, we noted that control of other businesses, including financial advice practices, commonly passes between generations. Recommendation 17 of our 18 September 2026 submission therefore sought a targeted business succession concession, subject to appropriate integrity safeguards. We continue to advocate for this concession, particularly given that the EM itself recognises succession planning as a common reason for the use of discretionary trusts.

Recommendation 9: The Government should provide further guidance on the application of the new fixed trust definition beyond managed investment trusts, including to employee share schemes, options and performance-based remuneration.

5. Negative gearing

5.1 Treatment of secondary and redeveloped dwellings

The Bill's treatment of secondary and redeveloped dwellings continues to raise concerns. A granny flat without separate title follows the treatment of the host dwelling, meaning it will also be subject to quarantining where the host dwelling is quarantined. This applies even though a self-contained granny flat that is built and made available for rent contributes to rental supply regardless of whether it is

separately titled. This position appears inconsistent with State and Territory incentives for secondary dwellings.

Similar issues arise where land is subdivided or redeveloped. The EM retains the position that only a new dwelling constructed on a subdivided block qualifies as a new residential dwelling, while the original dwelling does not, and does not adopt a threshold under which substantial redevelopment would allow the property as a whole to be treated as new. Further, neither the Bill nor the EM provides a methodology for apportioning interest and borrowing costs where a single loan funds both a new and existing dwelling on the same land, leaving investors and their advisers without a clear basis for allocating these costs.

Recommendation 10: Reconsider the treatment of secondary and redeveloped dwellings, including recognising self-contained granny flats that contribute to rental supply, providing an appropriate threshold for substantial redevelopment, and establishing clear rules for apportioning interest and borrowing costs where new and existing dwellings are funded through a single loan facility.

6. CGT adjustments

6.1 The apportioning method

In our 21 August 2026 submission, we recommended a simple day-count alternative to the apportioning method, a simpler calculation model with a plain-English calculator, and corrected and more detailed examples. However, the bill instead narrows the method. The apportioning method is not available for a unit in a trust or a share in a company where the cost base has been adjusted under CGT events E4, E10 or G1 after 1 July 2027. For individuals holding units or shares affected by the cost base adjustments, the EM confirms that they will need to determine market value as at 1 July 2027. That could be a costly valuation exercise that our earlier submission pointed out would be difficult to arrange and costly at a time of high demand for valuation services.

Recommendation 11: Reassess the restrictions on the apportioning method and provide a simple day-count alternative for affected individuals who would otherwise be required to obtain a market valuation as at 1 July 2027.

7. Schedule 6 - Transitional relief for excess concessional contributions in first year of payday superannuation

We welcome the inclusion of Schedule 6 in this Bill and the ability to disregard excess concessional contributions that resulted from transitional issues with the commencement of payday super in the 2026/27 financial year. We ask for clarity on what the implications might be with respect to the impact of the additional contributions on assessment for Division 293 tax and with respect to the application of the carry forward of unused contributions rules.

Conclusion

The Bills improve on the exposure drafts in some respects, and we appreciate the engagement Treasury has had with us during the consultation process. However, the discretionary trust measures still impose rigid pathways, leave trustees to make major and often irreversible decisions before the regime is settled and before potential costs such as stamp duty are known, and do not adequately accommodate genuine family and succession events. The negative gearing and CGT measures leave practical issues for advisers and their clients unresolved. We believe that greater flexibility, clearer guidance and more

proportionate outcomes would improve the operation of the reforms without undermining their integrity objectives.

If you have any questions about our feedback, please do not hesitate to contact me on 02 9220 4500 or sarah.abood@faaa.au.

Yours sincerely,



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