



# AUSTRALIAN EMPLOYEE OWNERSHIP ASSOCIATION

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## SHARING IN GROWTH

**The business of Government is to deliver prosperity for all. Employee ownership is one way of sharing the wealth of a nation to all those participating in productive enterprises.**

The Australian Employee Ownership Association (AEOA) is advocating for supportive tax legislation and corporations' law for employee ownership in Australia.

Employee share ownership legislation as it operates in Australia today is biased in favour of listed companies at the expense of unlisted and small companies. This needs to be corrected.

Employee ownership law should be targeted at expanding broad-based employee share ownership in the area where the greatest employment generation takes place – that is in small and medium sized enterprises.

International research identifies that the full benefits of employee share ownership are rarely achieved without combining it with employee participation in decision-making within the business at all levels. The AEOA supports positive business cultures that generate high performance and inclusive workplaces.

The following are starting points for change.

### **Help employees invest in their companies**

- Reduce the cost and complexity of implementing employee share ownership plans by a combination of regulatory reform and improved administration of ESOP related legislation.
- Improve the efficiency of the current administration of ESOP law. This includes ensuring that the ATO administers in accordance with the law - and the High Court decisions relating to that law – and speeds up the process for issuing tax rulings on employee share schemes.
- Upgrade the Federal “Tax Exempt” scheme (under Division 13A of the ITAA) for employee share purchases up to a level of \$8000 per year, to bring Australia into line with similar schemes in most other developed nations, and for purchases beyond this limit, provide tax deferral until such time as the shares are sold.
- Develop ESOP templates and generic ESO documentation - the easier an ESO scheme is to design, document, implement and manage, the more companies will embrace the concept, with greater numbers of employees participating in employee share ownership than currently.
- Encourage appropriate ‘share market’ mechanisms which can assist unlisted and private companies, upon the retirement or exit of an employee, to buy back the employee shares at fair market value.

### **Encourage companies to offer shares to employees**

- Continue to allow employers to deduct the cost of setting up an “all employee” Employee Share Ownership Plan (ESOP), including contributions made to ESOP trusts to purchase shares in the company.
- Ensure that tax legislation will not be introduced which will over-ride the “Indooroopilly” High Court decision on FBT exemption to ESOPs.
- To encourage more employee buyouts of smaller companies, legislate to increase the 5% rule to 15%. (This rule - in Division 13A of the ITAA - currently limits the ownership of the capital of a company to no more than 5% per employee participating in an ESOP).

- Legislate to replace the separate “Exempt” and “Deferred” plans under Division 13A of the ITAA with a single structure which can encourage employees to take up greater amounts of equity than can currently be delivered under existing arrangements.
- Continue the process of easing prospectus and disclosure requirements for private and unlisted companies implementing ESOPs by providing for an “Evergreen”, ESOP specific disclosure regime lasting for the duration of the plan.
- For all retiring owners, legislate to allow ESOP specific capital gains tax exemptions for selling shares to employees, if the proceeds from the sale are invested in Australian securities or other productive assets.
- In the case of near insolvent companies, legislate to protect employee entitlements by enabling employees to exchange them for equity in an employee buyout of the company in question.

#### **Install quality control in the spread of employee share ownership**

- Ensure better co-ordination of the activities of the government agencies involved in administering employee share ownership programs, especially the ATO, ASIC and DEWR.
- Upgrade the consultation process currently offered by the Treasury Industry Consultation Group on Employee Share Schemes to the status of a “Reference Group” with powers to advise the Treasurer on policies to overcome obstacles to the growth of broad and deep employee share ownership within the Australian economy.
- Ensure that only those companies offering broad-based employee share ownership are able to benefit from tax concessions though the continuation and extension of “qualifying criteria” in legislation and through the supervision of employee share schemes via a process of formal registration.
- Ensure that employees buying shares in their company continue to receive maximum risk protection through programs encouraging the setting up of employer-funded employee share plans.
- For an ESOP to benefit from tax concessions, employees should continue to receive ordinary shares or securities with full voting rights, including pass-through voting if held in an ESOP trust.
- Both employees and managers will have a need for training in order to adopt the responsibilities arising from employee ownership. Employee participation programs will also need to be supported in workplaces.
- Participating in an ESOP cannot become a condition of employment in any workplace. Union and employee consultation in developing ESOPs will improve their quality.

#### **Communication and Education programs to increase public awareness of employee share ownership**

- Fund a national, not-for-profit association which represents all Australian ESOP stakeholders to educate Australian companies, trade unions and employees in employee share ownership, and carry out research and promotion of employee ownership and participation nationally.
- Implement programs within the Federal Government’s industry, business and workplace relations departments to educate owners, employees and lenders about employee share ownership and participation.
- Support the development of a special ESOP accreditation and training program for legal, financial and human resource professionals who assist companies with employee share ownership and participation.
- Encourage tertiary educational institutions to include courses on ESOPs in their business programs and to undertake more comparative studies on ESOPs across the developed world.