FAIR TRUST REFORM

A Call for Fairness, Certainty, and Better-Targeted Legislation

THE TREASURY

Trusts Branch

Australian Government Treasury

FURTHER SUBMISSION ON THE EXPOSURE DRAFT

Minimum Tax on Discretionary Trusts

EXPOSURE DRAFT RELEASED	3 September 2026
CONSULTATION PERIOD	3 September 2026 to 18 September 2026
SUBMITTER	A 70-year-old self-funded retiree, Victoria, Australia

SUBMISSION STATUS — ANONYMOUS, ATTRIBUTABLE TO FAIR TRUST REFORM

This submission is made on an anonymous basis and may be attributed publicly to Fair Trust Reform.

I consent to publication of its contents in full, but request that no personal name, email address, phone number, or other identifying detail be published.

My identity is provided to Treasury solely through the submission portal, for correspondence regarding this submission, and should not be disclosed.

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Re: Further Submission — Exposure Draft on the Proposed Minimum Tax on Discretionary Trusts

Dear Treasury

I appreciate the opportunity to provide further comments on the Exposure Draft legislation released on 3 September 2026 concerning the proposed minimum tax on discretionary trusts.

I am writing as a 70-year-old self-funded retiree. I have previously made submissions concerning this proposed reform. Those submissions raised serious concerns about the effect of a 30 per cent minimum tax on ordinary family trusts and, particularly, on people whose circumstances bear little resemblance to aggressive or artificial tax avoidance.

The Exposure Draft has introduced important changes. However, when the new proposals are compared with the concerns raised in the earlier submissions, it has not been demonstrated that those concerns have been resolved.

Before addressing the technical issues, I believe it is important to explain why this proposal matters to me personally.

1. Personal Impact — This Is Not Just a Technical Tax Issue

I am a 70-year-old self-funded retiree. My wife and I have spent our lives working, paying tax, saving and building assets so that we could support ourselves in retirement without relying on the Age Pension. That is why this proposal concerns me so deeply.

This is not simply a discussion about tax policy, percentages and legislative mechanisms. The income affected by this proposal is money my family relies on, and a reduction in it reduces what remains for our ordinary living expenses, retirement and family needs — with a corporate beneficiary in our arrangements potentially facing further taxation consequences on top of that, depending on how the legislation ultimately operates.

The effect on my family is not theoretical. I have a wife and a child currently attending university. The income generated through our family arrangements is not surplus money sitting unused — it contributes to supporting:

- my wife and me in retirement;
- our ordinary living and health-related expenses;
- our family's financial security; and
- our child's education and future.

If a significant portion of that income is removed through a new minimum tax, we are worse off. When income available to a family is reduced, the family's ability to support itself is reduced.

At 70 years of age, I cannot simply return to the workforce, start another career, or work additional decades to replace income lost through a new tax regime. I have worked, saved, invested and structured my affairs lawfully under the laws that existed at the time, precisely so that I would not need to rely on government assistance in retirement. The financial arrangements my family has built over a

lifetime are the arrangements we rely on now, and there is little practical opportunity to replace a significant reduction in them.

For my family, this is not an abstract policy debate. It is about whether the income we have lawfully built over a lifetime remains sufficient to support my wife, myself, our ordinary living expenses, our financial independence, and our child's education. That is why I respectfully ask Treasury to consider not only the technical design of this legislation, but also its real-world consequences.

2. Executive Summary

The Exposure Draft released on 3 September 2026 introduces significant changes to the original proposal. These include a new election intended to provide certain discretionary trusts with an alternative pathway outside the proposed minimum-tax regime.

The Government has stated that this election would allow certain trusts to make fixed distributions to pre-nominated beneficiaries and that:

> *"The election would not require a restructure and is not expected to result in state and territory stamp duties." [1]*

The introduction of this new mechanism is a significant policy development. However, the existence of a new mechanism does not, by itself, demonstrate that the principal concerns raised in the earlier submissions have been resolved. Those concerns remain. The four principal concerns are:

1. A reasonable minimum income threshold has not been provided.

The earlier submissions proposed a reasonable threshold before the minimum trustee tax would apply. The Exposure Draft has introduced elections and alternative mechanisms, but this is not the same as providing a general minimum threshold. If a threshold is introduced, it should also be appropriately indexed. Without indexation, inflation and ordinary income growth will progressively bring smaller and more modest family trusts into the regime. That is tax creep. A threshold that protects a family today may gradually lose its value if it remains fixed while incomes and prices rise.

2. The proposed minimum tax reduces the resources available to low-income beneficiaries and self-funded retirees.

The basic economic effect is straightforward. Where 30 per cent of relevant trust income is paid as minimum tax, that amount is no longer available for family use unless the operation of the credit system fully restores the relevant economic benefit. Where that does not occur, the family's resources are reduced. For self-funded retirees and low-income beneficiaries, this can have a direct effect on financial independence and living standards. Treasury's own Explanatory Memorandum confirms that the only beneficiary-based protection built into the entire regime is a narrow exclusion for certain minors in defined hardship categories; no equivalent protection exists for adult beneficiaries, including self-funded retirees. [7]

3. The treatment of corporate beneficiaries requires greater clarity.

The interaction between trustee-level minimum tax, corporate beneficiaries and subsequent taxation must not result in unintended cumulative taxation of the same economic income. Treasury should provide clear worked examples demonstrating the complete tax outcome.

4. State duty and legal uncertainty have not been demonstrated as resolved.

The Government has stated that the election "would not require a restructure and is not expected to result in state and territory stamp duties." However, "not expected" is not the same as a statutory exemption or guarantee. For families holding substantial assets in long-established trusts, uncertainty concerning trust law and State and Territory duty consequences remains significant.

3. What the Earlier Submissions Asked For

The earlier submissions did not seek to defend artificial arrangements or aggressive tax avoidance. The position was, and remains, that genuine integrity measures should target inappropriate tax practices without unnecessarily damaging ordinary family arrangements. Four principal issues were raised.

3.1 A reasonable minimum threshold

The earlier FTR policy position proposed a minimum threshold of approximately $100,000 to $150,000 of net trust income before the proposed minimum trustee tax would apply. [5] The purpose was straightforward. A modest family trust earning relatively small amounts should not necessarily be treated in the same way as a large structure earning substantial income.

A threshold would allow the Government to focus the integrity measure where it considers the greatest revenue or integrity risks to exist. It would also provide greater protection for:

- modest family trusts;
- self-funded retirees;
- small businesses;
- families with investment assets; and
- ordinary Australians who have lawfully accumulated assets over many years.

Any threshold should be indexed. Without indexation, inflation and ordinary increases in income will gradually bring more trusts within the regime. This would create tax creep. The threshold should therefore be reviewed or indexed so that its intended protection is not gradually eroded over time.

3.2 Protection for low-income beneficiaries

The earlier submissions raised concerns about the effect of a trustee-level minimum tax where the ultimate beneficiary has a relatively low personal tax liability. This concern remains important. A self-funded retiree may have a modest personal income. An adult student may have little or no other taxable income. A beneficiary may be receiving legitimate family support for living expenses, education, housing, family welfare, or the transition into financial independence. The practical value of any credit mechanism must therefore be examined carefully.

3.3 Corporate beneficiaries

Many family trusts legitimately use corporate beneficiaries as part of long-term business and investment arrangements. The earlier submissions raised concerns that the same economic income could potentially be exposed to cumulative taxation. The Exposure Draft must be assessed carefully to ensure that the interaction between trustee-level minimum tax, corporate beneficiaries and subsequent taxation does not result in unintended cumulative taxation of the same economic income. This is an issue Treasury should address through clear and comprehensive worked examples.

3.4 The State duty restructuring problem

The earlier FTR policy material examined the potential cost of conventional restructuring. For consistency, the same illustrative scenario remains relevant. The example involved trust-held assets valued at $2.5 million. The earlier FTR methodology used indicative duty calculations across three States:

State	Indicative amount used in FTR methodology
Victoria	$142,500
New South Wales	$117,140
Queensland	$132,025
Average	$130,555

This was rounded to approximately $130,000. [5][6] The purpose of this example was not to suggest that every trust would pay exactly $130,000. It demonstrated the potential scale of the State duty problem where a family was required to undertake conventional restructuring involving valuable trust assets.

4. What Changed in the Exposure Draft Released on 3 September 2026?

The Exposure Draft introduces a significant new option. The Government has stated that certain discretionary trusts may elect to make fixed distributions to pre-nominated beneficiaries as an alternative to the proposed minimum-tax regime. This is a significant development. It should not simply be dismissed.

However, the relevant question is not whether Treasury has introduced something new. The relevant question is whether the new mechanism has actually resolved the concerns previously raised. When the Exposure Draft is compared with the earlier submissions, that has not been demonstrated.

5. Issue One — The Missing Minimum Threshold

The threshold requested in section 3.1 has not been provided. A family trust earning a relatively modest amount of income may still face the proposed regime without that protection. An election is not equivalent to a threshold: a threshold lets a trust continue operating below a defined income level, while the election instead requires nominating beneficiaries and fixing their proportions. These are

fundamentally different concepts, and the introduction of an election does not demonstrate that the original request has been met.

Treasury's own Explanatory Memorandum confirms that this is not an oversight capable of being resolved through further guidance — it is a complete and deliberately exhaustive list. A trust is a 'minimum tax trust', and therefore subject to the 30 per cent tax, unless it is a fixed trust, a special disability trust, a deceased estate, a complying superannuation entity, or a trust of a kind the Minister separately determines by legislative instrument. Separately, income is excluded from 'minimum tax income' only if it is primary production income, a narrow category of income for certain minors, income of a registered charity or deductible gift recipient, income of another income tax exempt entity (subject to a cap), a withholding payment to a non-resident, or qualifying testamentary trust income. [7] Nowhere in either list is there a dollar figure, an income floor, or any general concept of a 'modest' or 'small' trust. The absence of a threshold is not something this submission infers from silence — it is the plain effect of Treasury's own operative provisions.

Tax creep must also be addressed

As set out in section 3.1, this threshold should not remain permanently fixed once introduced. Without indexation or regular review, its real value erodes and more modest trusts are gradually brought into the regime without Parliament making a further policy decision.

Recommendation

Treasury should amend the legislation to introduce a reasonable minimum income threshold before the proposed minimum trustee tax applies. The earlier FTR recommendation of approximately $100,000 to $150,000 of net trust income should be seriously considered. The threshold should also be appropriately indexed or reviewed to prevent tax creep.

6. Issue Two — The Direct Effect on Available Family Income

This is one of the most important practical issues. The proposed system involves a minimum tax at trustee level, and this is no longer only a matter of policy description. The Exposure Draft's own imposition legislation, the Income Tax Rates Amendment (Minimum Tax on Discretionary Trusts) Bill 2026, sets the rate of tax "payable by a trustee under section 101AA of the Income Tax Assessment Act 1936" at 30 per cent, and confirms that the trustee "is to be assessed and is liable to pay tax" on that income. [3] Treasury's own transitional roll-over provisions, and Treasury's own Explanatory Memorandum for the measure itself, confirm that this sits within a broader block of new provisions — sections 101AA to 101AG of the Income Tax Assessment Act 1936 — dealing with the minimum tax on minimum tax trusts. [4][7]

The basic economic effect should not be overlooked. If $100 of relevant trust income is subject to a 30 per cent trustee-level minimum tax, then $30 is paid as tax. That leaves $70, before considering any further taxation consequences and the final operation of the relevant beneficiary credit arrangements.

The final tax outcome will depend upon the detailed operation of the legislation. However, one basic fact remains: the 30 per cent minimum tax immediately reduces the income available within the family's financial arrangements. Where that amount is not fully and effectively restored through the

ultimate tax treatment, the family is worse off. This is not complicated. It is basic mathematics — and it is now mathematics applied to a rate Treasury has itself put into a bill.

7. Why This Matters to Me as a Self-Funded Retiree

I am not asking Treasury for a special privilege. I am asking Treasury to recognise a practical reality: many Australians have spent decades working, saving and arranging their affairs lawfully, including through family trusts, under the laws that existed at the time. Many are now retired, with no ability to replace lost income through employment. I am one of those people.

This is why the effect on self-funded retirees requires particular consideration. A person who has spent a lifetime attempting to remain financially independent should not find that independence materially undermined without careful consideration of the real consequences.

8. Low-Income Beneficiaries

The position of low-income beneficiaries also remains important. The practical value of any tax credit depends upon whether it can be effectively utilised. Where trustee-level tax is paid but the beneficiary cannot fully obtain the economic benefit of the relevant credit arrangements, the family has fewer resources available.

This may affect retirees, beneficiaries with modest incomes, beneficiaries with little or no taxable income, and adult students. The legislation should therefore ensure that legitimate family arrangements do not produce disproportionate outcomes merely because the beneficiary's personal tax circumstances differ from those of a higher-income taxpayer.

The Explanatory Memorandum is specific about this: the only beneficiary-based protection built into the entire regime is a narrow exclusion for minors who are disabled, in receipt of a carer allowance or disability support pension, receiving a double orphan pension, or presently entitled to income derived from compensation, workers' compensation, life insurance, a superannuation death benefit, or a family-breakdown property settlement. [7] There is no equivalent protection for an adult beneficiary on a low personal income, including a self-funded retiree. Treasury has turned its mind to protecting certain vulnerable beneficiaries in this legislation; it has simply not extended that protection to the categories this submission raises.

9. Adult Students, Family Education and Financial Independence

This issue deserves particular consideration. The Government has described its broader reform objectives in terms including making the tax system fairer, making it more sustainable, and making it easier for Australians to buy a first home. Those are important objectives. However, Treasury should also consider the effect of this particular measure on families who legitimately use discretionary trusts to assist adult children.

A practical family example

Consider a family that has lawfully accumulated investments over many years. The family has an adult child undertaking full-time higher education. The student has little or no other taxable income. The

family trust has historically been used to provide legitimate assistance with education costs, books and equipment, accommodation, transport, food, living expenses, and general support while the student completes their education.

If the minimum-tax regime reduces the income available through the family's arrangements, there are fewer resources available to provide that support. That is a direct consequence.

This is confirmed, not speculated: as noted in section 8, the only beneficiary-based exclusion in the entire regime applies to certain minors in defined hardship categories. [7] An adult child in full-time higher education, over 18 and receiving ordinary family support rather than compensation of that kind, falls outside it entirely. Treasury has already considered, and declined to extend, protection to exactly the kind of beneficiary this example describes.

The policy question

> *If a family has fewer net resources available to support an adult child through higher education and early financial independence, how does that outcome assist that particular young Australian to achieve greater financial independence and accumulate savings for future home ownership?*

This is not an argument that every family trust should receive special treatment. It is an argument that legislation should distinguish between genuine family support and artificial arrangements designed principally to obtain an inappropriate tax advantage. Those are not the same thing.

10. Recommendation — Genuine Education and Welfare Support

Families have historically saved and invested to assist their children. If a new minimum tax reduces the resources available to that family, there is less money available for university expenses, accommodation, living costs, education, and early financial independence. That may leave the student with greater financial pressure, affecting their ability to meet living expenses, to save, to achieve financial independence, and to accumulate a housing deposit.

Treasury should consider whether additional safeguards are required for genuine distributions involving adult students undertaking higher education, legitimate education expenses, genuine family welfare, and low-income beneficiaries. Possible approaches could include an appropriate exemption, a targeted concession, improved treatment of unused credits, or another mechanism ensuring that genuine family support is not disproportionately affected. The objective should be clear: target artificial tax avoidance without unnecessarily reducing the resources available for genuine education and family welfare.

11. Issue Three — Corporate Beneficiaries and Cumulative Taxation

This remains an important issue. Many family trusts legitimately use corporate beneficiaries. The reasons may include business requirements, retaining funds for future investment, working capital, asset protection, and long-term financial planning.

The introduction of a trustee-level minimum tax creates an important question: what happens when the same economic income subsequently passes through a corporate beneficiary? The legislation must

not produce an unintended outcome in which the same economic income is exposed to cumulative taxation without appropriate recognition of tax already paid.

Treasury's own Explanatory Memorandum confirms that this outcome is deliberate, not an unintended gap. It states plainly that corporate beneficiaries are excluded from the tax offset so that the effect of the minimum tax cannot be negated by distributing income via a corporate beneficiary. [7] This submission accepts that preventing the minimum tax from being negated is a legitimate integrity objective. However, a deliberate design choice is not, of itself, a justified one. The relevant question for Treasury is not whether this outcome was intended, but why a family business retaining working capital in a corporate structure for entirely legitimate commercial reasons should be treated in the same way as an arrangement designed to negate the tax.

11.1 Treasury should provide worked examples

This issue should not be left to taxpayers, accountants and lawyers to reconstruct from complex legislation. Treasury should publish clear worked examples.

Example A — Individual beneficiary

Trust income of $100. Treasury should demonstrate: trustee-level tax; beneficiary treatment; available credits; limitations on credits; and final effective tax.

Example B — Corporate beneficiary

Trust income of $100 distributed to a corporate beneficiary. Treasury should demonstrate: trustee-level tax; the amount included in the company's tax position; the applicable company tax treatment; whether any credit is available; the combined effective taxation; and the consequences if company profits are subsequently distributed.

This submission does not suggest that corporate beneficiaries should be used to avoid tax. The concern is different: the interaction between trustee-level minimum tax, corporate beneficiaries and subsequent taxation must not result in unintended cumulative taxation of the same economic income. Treasury should demonstrate the intended outcome clearly.

Recommendation

Treasury should amend or clarify the legislation to ensure that tax paid at trustee level is appropriately recognised when the relevant income is subsequently taxed within a legitimate corporate beneficiary structure. At a minimum, Treasury should publish comprehensive worked examples demonstrating the complete tax outcome.

12. Issue Four — The New Election

The new election is the most significant change introduced in the Exposure Draft. The Government has presented it as an alternative pathway for certain discretionary trusts. However, it should not be treated as though it were a simple, consequence-free administrative “tick box”. It is not. The election involves nominated beneficiaries, fixed proportions, fixed treatment of income and capital, and a substantial reduction in the future flexibility normally associated with a discretionary trust.

12.1 Discretionary trusts provide family flexibility

One of the defining characteristics of a discretionary trust is flexibility. Depending upon the terms of the particular trust deed, trustees may have discretion concerning distributions among beneficiaries. Family circumstances change: one child may be studying, another may become unemployed, another may experience illness, one beneficiary may require additional financial assistance, or another may no longer require support. A discretionary trust may allow a family to respond to those circumstances.

The new election introduces a different model. Nominated beneficiaries may receive fixed proportions. That is a significant policy choice. It should not be presented as though nothing meaningful changes. Treasury's own Explanatory Memorandum confirms just how narrow that flexibility becomes: once a nomination is made, it can only ever be varied where a specified beneficiary passes away or where two specified beneficiaries are involved in a formally recognised relationship breakdown, and even then only the affected beneficiary's share may be reallocated, with the nomination still required to total exactly 100 per cent of the trust's income and capital at all times. [8] No other change in family circumstances permits any variation at all.

12.2 The election is far less flexible, and far riskier, than it first appears

Where a family nominates a corporate beneficiary, a further, largely hidden risk arises. The company must be an ‘eligible company’, meaning its constitution gives its members no material discretionary elements over their rights, including no ordinary director discretion over dividends. [8] Many standard small proprietary company constitutions, of the kind used by typical family ‘bucket companies’, are not drafted this way. A family may therefore need to amend its company's constitution, in addition to making the trust-level nomination, before that company can validly be nominated at all.

Even after a valid nomination is made, the election can be automatically and permanently revoked by events entirely outside the family's control. If a nominated company is wound up, deregistered, ceases to be an object of the trust, ceases to be an eligible company, or has a shareholder cease to hold their shares for any reason other than death or a relationship breakdown, the election is automatically revoked. [8] An ordinary commercial event — a shareholder selling their shares, a new investor being admitted, or a routine corporate restructure that has nothing to do with the family trust itself — can therefore extinguish the entire family's protection from the minimum tax.

Finally, there is no soft way out. Treasury's own Explanatory Memorandum confirms that whether an election ends through a deliberate, considered decision by the trustee or through an inadvertent breach, the consequence in the year the election ends is identical: every beneficiary who received a distribution that year is treated as if they were never entitled to it, and the trustee is assessed on the whole of the trust's net income at the top marginal tax rate plus the Medicare levy — currently a combined 47 per cent. [8] Once an election ends, it cannot be reinstated or remade for that trust, ever again. [8] A family that later concludes the election no longer suits its circumstances has no way to step back from it gradually; the cost of leaving is the same whether the trustee planned it or not.

12.3 Treasury should explain the interaction with existing trust arrangements

The Exposure Draft creates a Federal tax mechanism. However, existing trusts operate within separate legal frameworks, including the governing trust deed, trustee powers, trustee duties, beneficiary rights, general trust law, corporate governance obligations where a company acts as trustee, and State and Territory revenue legislation. Trust deeds are not identical, and their governing provisions differ.

> *What analysis has been undertaken to demonstrate how the requirements of the new election will operate across the diverse terms of existing discretionary trust deeds and other applicable legal obligations?*

Treasury's own Explanatory Memorandum confirms that making the nomination does not, of itself, alter the trustee's powers under the trust deed. It states that the nomination "does not restrict the trustee's discretion to determine who is entitled to a share of the income and capital of the trust" and that "a trustee continues to have unrestricted capacity to decide to make beneficiaries presently entitled… in line with the trustee's powers under the trust deed." [8] On the face of the Commonwealth tax law, no deed variation is required, and the trust remains, as a matter of trust law, a discretionary trust throughout.

That confirmation answers one question but raises a more precise one. If the trustee's underlying discretion is untouched, and the trustee simply chooses, year after year, to exercise that discretion in exactly the way the nomination describes, a State or Territory revenue authority may still take the view that this pattern amounts, in substance, to a fixed entitlement for duty purposes, regardless of what the trust deed formally says. Treasury's materials do not address this question. The relevant question for Treasury is therefore not whether a deed variation is legally required — it is not — but whether a State or Territory revenue authority could treat the practical, ongoing effect of an EET nomination as equivalent to a fixed entitlement, and if so, on what basis families can be given confidence that it will not. Families should not be left to discover significant legal or revenue consequences only after making an election.

12.4 "Not expected" is not the same as "exempt"

The Government has stated:

> *"The election would not require a restructure and is not expected to result in state and territory stamp duties." [1]*

The words "not expected" are important. They do not mean "exempt". They do not create a statutory State duty exemption, a guarantee of the outcome for every trust, a binding direction to State or Territory revenue authorities, or protection against all consequences arising under separate State legislation. "Not expected" is not the same as "cannot occur". For families with substantial assets, this distinction is extremely important.

12.5 State and Territory governments remain separate jurisdictions

State and Territory duties are governed by separate legislation and administered by separate revenue authorities. The Commonwealth's introduction of a Federal tax election does not, merely by describing an expected outcome, establish a State or Territory duty exemption. A taxpayer considering a permanent change to the operation of a long-established trust needs to understand what legal changes are required, what changes are permitted, what changes may affect beneficial interests, whether State revenue consequences may arise, and what certainty is available before an election is made.

13. Current State Duty Uncertainty — What the Roll-Over Relief Legislation Actually Says

The policy concern raised in the earlier submissions has changed in form, but it has not disappeared. The original concern involved the possibility that conventional restructuring could produce substantial State duty costs. The new election is intended to provide an alternative. However, the Government's statement remains that duty is “not expected” — and it has not been demonstrated that every State and Territory has adopted, or will adopt, an approach that guarantees no duty consequences for every trust making the new election.

This is no longer only a matter of interpretation. The Government's own transitional relief provisions confirm the limits of what is actually on offer. The roll-over relief exposure draft requires that a restructure “transfers all of the relevant trust assets out of that discretion-based trust structure” during the three-year transitional period; roll-over relief is not available if, at the end of that period, the trustee has not transferred all of the trust's assets, subject only to narrow exclusions for assets that cannot be transferred, primary production assets, amounts reasonably required to discharge liabilities or winding-up costs, and assets that cost $1,000 or less. [4] Partial restructuring of a single valuable asset, while retaining the rest of the trust's holdings, does not attract roll-over relief on those terms.

The same provisions confirm that a trustee cannot choose roll-over relief for a minimum tax trust that has already made an excluded election trust election, and cannot make an excluded election trust election having already chosen roll-over relief — the two pathways are legally mutually exclusive. [4] A family cannot combine the flexibility of one option with the protection of the other.

Most importantly for this submission, nowhere in this Commonwealth transitional relief does any provision address State or Territory transfer duty. The roll-over relief deals only with Commonwealth income tax and capital gains tax consequences. That confirms, from the Government's own legislation rather than from commentary, that the “not expected” language addressed above has no corresponding statutory foundation in the roll-over relief provisions themselves.

14. Why This Matters — The $2.5 Million FTR Example

The $2.5 million, three-State scenario set out in section 3.4 remains directly relevant here. [5][6] It illustrates the scale of the conventional restructuring problem the new election is meant to solve. But a mechanism aimed at avoiding that cost does not, on its own, show the cost has actually been avoided. The statement that duty is “not expected” does not provide the certainty of a statutory exemption or guarantee — and, as set out above, the Commonwealth's own roll-over relief provisions for the alternative restructuring path are entirely silent on State duty.

15. The Practical Reality for Families

For a self-funded retiree or family with substantial assets held in a trust, uncertainty itself is significant. Consider a family that has a trust established many years ago, valuable assets, adult children, different financial circumstances among family members, and a carefully drafted trust deed. The family may now be presented with a choice.

Option One

Remain within the existing discretionary structure and potentially become subject to the new minimum-tax regime.

Option Two

Make an election involving nominated beneficiaries and fixed proportions, or undertake a full restructure of all trust assets under the roll-over relief provisions within the three-year transitional window.

That is not necessarily a simple choice. Before making a potentially long-term decision, the family may need advice concerning tax law, trust law, the governing deed, beneficiary rights, corporate trustee obligations, and State revenue consequences. That advice costs money. Families therefore need clarity and certainty.

16. The Earlier FTR Restructuring Concern Has Not Been Demonstrated as Resolved

The Government has introduced a new mechanism intended to avoid the conventional restructuring cost identified in the earlier submissions. But a new mechanism is not itself proof that the underlying State duty and legal concerns have been resolved. Treasury should therefore demonstrate:

- why the alternative can operate without restructuring;
- how it operates with existing trust deeds;
- what legal changes, if any, may be necessary;
- how State and Territory revenue consequences have been assessed; and
- why taxpayers should have confidence in the statement that duty is “not expected”, given that the roll-over relief provisions themselves do not address State duty at all.

Until those matters are demonstrated clearly, the original concerns remain unresolved.

17. Before and After — The Central Comparison

Earlier concern	What was requested	What changed in the Exposure Draft	Current position
Minimum threshold	$100,000–$150,000 threshold	New elections and exclusions	A general threshold has not been provided; tax creep should also be addressed
Low-income beneficiaries	Protection from unrecoverable excess tax	Credit arrangements	Family resources are reduced where trustee-level tax cannot be fully restored through the final tax treatment
Corporate beneficiaries	Avoid unintended cumulative taxation	New regime introduced	Clear complete tax treatment and worked examples are still required

Restructuring and duty	Avoid the State duty trap	New election intended to avoid restructuring; roll-over relief requires transfer of all trust assets	"Not expected" is not a statutory guarantee, and the roll-over relief itself is silent on State duty
Trust flexibility	Preserve legitimate family flexibility	Fixed nominated beneficiaries and proportions	Significant flexibility may be lost, and an ended election cannot be reinstated
Adult students	Protect genuine family support	No specific demonstrated safeguard	Further consideration is required

THE EXPOSURE DRAFT HAS CHANGED THE MECHANISM, BUT IT HAS NOT DEMONSTRATED THAT THE PRINCIPAL CONCERNS RAISED IN THE EARLIER SUBMISSIONS HAVE BEEN RESOLVED.

18. What Would Actually Improve the Legislation?

I respectfully ask Treasury to consider the following amendments.

Recommendation 1 — Introduce a Reasonable Minimum Threshold

Introduce a threshold of approximately $100,000 to $150,000 of net trust income before the proposed minimum trustee tax applies. The threshold should also be indexed or regularly reviewed to prevent inflation and ordinary income growth from creating tax creep. Any threshold introduced should be accompanied by an appropriate aggregation or associate-entity rule, consistent with mechanisms already used elsewhere in the tax law, to prevent a modest family trust from being artificially fragmented to access multiple thresholds. The design of that safeguard is properly a matter for Treasury.

Recommendation 2 — Protect Low-Income Beneficiaries and Self-Funded Retirees

Ensure that the proposed regime does not permanently reduce family resources where beneficiaries have low incomes, have little or no taxable income, or cannot fully utilise the benefit of relevant tax credits. Treasury should consider refundable treatment, carry-forward mechanisms, or another effective method of ensuring that excess trustee-level tax is not permanently stranded.

Recommendation 3 — Provide Clear Protection Against Unintended Cumulative Taxation

Treasury has confirmed that corporate beneficiaries are deliberately excluded from the tax offset so that the minimum tax cannot be negated by distributing income via a company. [7] Treasury should explain why this objective cannot be achieved through a more targeted integrity rule, rather than a blanket exclusion that also captures family businesses retaining working capital for entirely legitimate commercial reasons, and should publish comprehensive worked examples showing trustee-level tax, corporate taxation, available credits, combined effective taxation, and subsequent shareholder consequences.

Recommendation 4 — Provide Genuine Certainty Concerning State and Territory Duty

Treasury should work with State and Territory governments to address potential duty consequences. The words "not expected" should not be the final level of certainty provided to taxpayers making significant decisions about long-established family arrangements and valuable assets, particularly

where the Commonwealth's own roll-over relief provisions do not themselves address State duty. Treasury should seek a clear and coordinated approach.

Recommendation 5 — Protect Legitimate Family Flexibility

The legislation should recognise that discretionary trusts have historically been used for legitimate reasons. Family circumstances change. The law should distinguish between genuine family arrangements and artificial arrangements designed principally to obtain an inappropriate tax advantage. A substantial loss of family flexibility should not become the only practical alternative for taxpayers seeking to avoid a new minimum tax. In particular, Treasury should reconsider provisions that automatically and permanently revoke an election because of ordinary commercial events unrelated to the family trust itself, such as a change in shareholding of a nominated corporate beneficiary, and should reconsider why a trustee's deliberate, considered decision to end an election attracts the same one-year penalty as an inadvertent breach. [8]

Recommendation 6 — Protect Genuine Education and Family Support

Treasury should examine the effect of the measure on adult students, low-income beneficiaries, genuine education support, and family welfare arrangements. A specific safeguard or targeted concession should be considered where distributions represent genuine family support rather than artificial tax avoidance.

19. A Request for Evidence and Worked Examples

Before the legislation is finalised, Treasury should publish clear worked examples demonstrating the practical operation of the proposed regime. Examples should include:

- Self-funded retiree — a beneficiary receiving modest trust income.
- Adult student — a beneficiary with little or no other taxable income receiving legitimate support for education and living expenses.
- Corporate beneficiary — trust income distributed through a company, demonstrating the complete cumulative tax position.
- Existing discretionary trust — a trust with an existing deed considering the new election.
- Changing family circumstances — a situation in which family circumstances change after beneficiaries and fixed proportions have been nominated.
- Trust with significant assets — a family trust holding valuable property and considering the legal and State revenue consequences of the election.

These examples would greatly assist taxpayers and their advisers.

20. The Reform Should Target Abuse — Not Ordinary Families

I do not oppose genuine integrity measures. If the Government identifies artificial arrangements, tax avoidance schemes, arrangements without genuine commercial or family purpose, or structures designed principally to obtain inappropriate tax advantages, then those arrangements should be properly addressed.

The issue is whether a broad minimum tax should apply without adequate protection for ordinary Australians whose circumstances are entirely different. A 70-year-old self-funded retiree with a long-established family trust is not necessarily engaging in aggressive tax avoidance. A family supporting an adult child through university is not necessarily engaging in aggressive tax avoidance. A family legitimately using a corporate beneficiary for business or investment purposes is not necessarily engaging in aggressive tax avoidance. The legislation must be capable of recognising those differences.

A one-size-fits-all rule, not a proportionate one

Beyond a specific, named list of exemptions — primary production income, certain minors, charities and deductible gift recipients, complying superannuation entities, deceased estates, and qualifying testamentary trusts — the Exposure Draft still applies one blanket 30 per cent rule to every discretionary trust. [7] Outside that list, it draws no distinction between an arrangement designed to avoid tax and a modest, long-established family trust used by a self-funded retiree to support a spouse and an adult child through university. That is a one-size-fits-all design, and for people in my circumstances, it remains exactly that after the 3 September changes.

This is not a request for a special exception. Distinguishing the conduct a measure is meant to target from the ordinary, lawful arrangements it was never meant to catch is not a favour for Treasury to grant — it is the basic task of proportionate drafting. On the evidence of this Exposure Draft, that task has not yet been carried out for people like me.

21. Conclusion

I appreciate the Government's decision to release an Exposure Draft and provide a further opportunity for consultation. The changes introduced on 3 September 2026 demonstrate that the original proposal required further consideration. The new election is a significant development. However, the introduction of a new mechanism should not be confused with the resolution of the underlying problems.

When the Exposure Draft is compared against the concerns raised in the earlier submissions, it has not been demonstrated that the following matters have been resolved:

- A reasonable minimum income threshold has not been provided, and the risk of tax creep must also be addressed.
- The proposed minimum tax reduces the income and resources available to families where trustee-level tax cannot be fully restored through the final tax treatment.
- The position of low-income beneficiaries and self-funded retirees requires stronger protection.
- The potential for unintended cumulative taxation involving corporate beneficiaries requires clear resolution and comprehensive worked examples.
- The statement that State and Territory duty is “not expected” is not a statutory exemption or guarantee, and the Commonwealth's own roll-over relief provisions do not themselves address State duty.
- The new election involves significant consequences and may reduce the flexibility traditionally associated with a discretionary trust.

- The effect on legitimate family support for adult students and young Australians requires further consideration.

For me, these issues are personal, for the reasons explained at the outset of this submission. If 30 per cent of our relevant trust income is taken through a new minimum-tax regime, the income available to support my wife, myself, our ordinary living expenses and our child's university education is reduced — and at 70 years of age, I cannot simply return to work to replace it.

This is why I ask Treasury to look beyond the technical structure of the proposed legislation. The real question is not simply whether a new tax mechanism can be designed. The question is who will be hurt by it.

A tax policy intended to target inappropriate tax practices should not unnecessarily undermine the financial independence of ordinary Australians who have lawfully structured their affairs and spent a lifetime working and saving. The final legislation should distinguish carefully between artificial tax avoidance and legitimate family, retirement, education and business arrangements.

I support genuine action against artificial arrangements and inappropriate tax avoidance. However, I do not believe ordinary self-funded retirees and families should become collateral damage in the process. The Government has stated that its reforms are intended to make the tax system fairer and more sustainable and to improve the financial circumstances of Australians. Those objectives should apply to ordinary families as well.

I respectfully submit that the Exposure Draft released on 3 September 2026 does not yet demonstrate that it has achieved that balance. I ask Treasury to reconsider these matters and amend the legislation before it is finalised.

Thank you for the opportunity to provide this further submission.

A Concerned Self-Funded Retiree
Melbourne, Victoria, Australia
Submission made anonymously

References

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4. Treasury Laws Amendment Bill 2026: Minimum tax on discretionary trusts — roll-over relief (Exposure Draft), inserts to the Income Tax (Transitional Provisions) Act 1997, proposed Subdivision 126-C (ss 126-425–126-480).
5. Fair Trust Reform, FTR-001 Policy Brief — Protecting Self-Funded Retirees, 28 July 2026, fairtrustreform.com.

6. Fair Trust Reform, FTR-003-AN Treasury Submission — Minimum Tax on Discretionary Trusts, 1 August 2026, fairtrustreform.com.

7. Treasury Laws Amendment (Tax Reform No. 4) Bill 2026: Minimum tax on discretionary trusts, Exposure Draft Explanatory Materials, paragraphs 1.1–1.86 (definition of ‘minimum tax trust’ and ‘minimum tax income’, beneficiary tax offset, and corporate beneficiary treatment).

8. Treasury Laws Amendment (Tax Reform No. 4) Bill 2026: Minimum tax on discretionary trusts — Electable regime for discretionary trusts, Exposure Draft Explanatory Materials, paragraphs 1.1–1.43 and following (EET election, nomination, variation, revocation and consequences of revocation).