Tech Council of Australia

Australia's evolving capital markets

Tech Council of Australia Submission

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1. Introduction

The Tech Council of Australia (TCA) welcomes the opportunity to respond to ASIC's discussion paper *Australia's Evolving Capital Markets*. We strongly support ASIC's ongoing engagement with industry to ensure Australia's capital-raising framework remains competitive, responsive, and aligned with emerging market realities.

Over the past two decades, Australia's ability to build globally significant technology companies has advanced considerably. Today, Australia hosts more than 100 tech firms valued above A$100 million, including at least 28 unicorns—levels of success that scarcely existed at the turn of the millennium. This growth has been driven by targeted public policy initiatives such as the Venture Capital Limited Partnership regime and the R&D Tax Incentive, and has been critically supported by the parallel development of sophisticated private capital markets. Angel investors, venture-capital funds, and growth-equity vehicles have become indispensable in providing the risk-tolerant capital necessary for early-stage innovation, sustained expansion, and ultimately bridging high-potential businesses toward public listings or acquisitions.

Yet, despite these advances, structural weaknesses persist in the relationship between private and public markets. Australian technology companies founded between 2013 and 2015 progressed to Series B funding at rates comparable to their U.S. peers, yet beyond this stage, Australian firms face significantly greater hurdles. Late-stage domestic capital is limited, institutional investor participation remains low, and a declining IPO pipeline forces many founders offshore to secure growth funding or listing opportunities. The widening disconnect between private-market growth and public-market transitions poses a critical challenge for Australia's capital market regulation, highlighting a clear need for targeted recalibration.

Our submission identifies priority areas for regulatory attention, aiming to strengthen the linkage between private and public markets, protect investor confidence, and ensure Australia's continued competitiveness as a global centre for scaling technology businesses.

2. Regulatory Changes to Support Vibrant, Connected Capital Markets

Access to sufficient funding remains a key barrier for Australian scale-ups. Lower levels of scale-up funding reflect both the relative youth of Australia's tech sector and the relative shallowness of our capital markets compared to countries like the United States. There are several regulatory settings outlined below that affect the ability of Australian tech companies and venture funds to raise and deploy capital effectively. While each reflects a principled regulatory intent, they often introduce friction at key moments in a tech company's scaling journey.

We submit that regulatory focus should shift to how these legacy settings respond to developments in the scale, structure, and complexity of Australia's private capital markets. In each of the following areas,market conditions have moved materially but regulatory frameworks have not kept pace.

A. Early Stage Venture Capital Limited Partnerships (ESVCLPs)

Australia's Early Stage Venture Capital Limited Partnership (ESVCLP) regime has provided tax concessions to underpin early-stage funding growth, but no longer matches the scale or maturity of today's market. In the past decade, average deal sizes have grown, and more companies are remaining private for longer. Many now outgrow the A$50 million revenue threshold well before IPO readiness—resulting in a gap where local capital is disincentivised from participating in follow-on rounds.

As the scale and duration of private capital formation increases, regulatory focus should shift to whether the current thresholds and structural design of ESVCLPs continue to serve their intended purpose.

B. 50-Shareholder Caps (Corporations Act, s113, s606)

The 50-shareholder cap for unlisted companies is another area where changes in market practice are colliding with outdated regulatory architecture.

The 50-shareholder cap for proprietary companies, originally designed to limit public-style capital formation in private companies, is now regularly triggered by participation of angel or venture investors in funding rounds, as well as the use of crowdfunding programs or distributed angel syndicates.

Unlisted companies often inadvertently exceed the 50-shareholder cap for the application of the takeover provisions by having an employee equity scheme, since this cap (unlike the proprietary company cap) does not exclude employee shareholders.

As startups scale, ownership structures become more complex and participatory—yet the law still treats this as a signal to impose full public company obligations. This is no longer proportionate to risk. Revisiting the application of the caps, particularly through carve-outs for specific classes of non-controlling or (in the case of the takeovers cap) employee shareholders, would better align disparate provisions and align company law with modern fundraising and ownership models.

C. Regulated Securities and Product Offering Exemptions (Corporations Act, s708, ss1012D-E)

Private markets are also growing in volume and institutional exposure, but Australia's disclosure regime remains binary. Companies either raise capital under regulated product exemptions (e.g. wholesale/sophisticated offers) with minimal disclosure or undertake a full public offer. In 2024, Australian startups raised over $4 billion across 400+ private deals, while IPO volumes fell to historic lows.

As more institutional capital flows into large private rounds, this creates an information asymmetry that current law does not account for. There is a clear opportunity to examine whether a scaled disclosure regime—applicable to mid-sized private raises—could bridge the widening gap between private and public fundraising, while better protecting investor confidence in later-stage activity.

D. Financial Product Advice Obligations

Founders and syndicate leads raising early-stage capital also continue to face uncertainty around the application of financial product advice obligations. While ASIC provides general guidance, there remains ambiguity as to whether presenting an investment opportunity—even to sophisticated investors—could constitute advice requiring an AFSL.

This uncertainty discourages legitimate capital formation at the early stage, particularly where community-based or professional investor syndicates are involved. Clarifying the boundary between factual information-sharing and advice would reduce the regulatory overhead without undermining core investor protections.

Similar uncertainty exists in relation to the ability of an employer to provide an employee with information about their employee stock entitlements, which discourages employees from understanding or realising the value of their equity. It is inappropriate to treat an employee shareholder – who has earned an interest in a company of which they hold an intimate understanding – in the same manner as a retail investor in respect of financial product advice.

E. Confidentiality of Fund Disclosures to Regulators

As ASIC increases its scrutiny of private markets, there is growing concern among fund managers around the confidentiality of performance and valuation disclosures. These concerns are especially acute in ESVCLP and VCLP structures, where disclosures to regulators may contain sensitive commercial information.

RG 97 currently compels superannuation funds to publish the paper valuations of every unlisted company they hold via VC or PE mandates. Releasing these can be commercially sensitive for scale-ups. We suggest consideration be given to amending RG 97 to allow look-through valuations of private tech investees to be lodged confidentially and reported to members only in aggregate. This would preserve transparency while avoiding the leakage of sensitive data and protecting a critical source of domestic growth funding. Given the volatility and milestone-driven nature of tech valuations, we also propose the consideration of a specific index suited to the early-stage components of the tech sector.

Without clear statutory protections or safeguards from FOI exposure, there is a risk that funds under-report or withhold information, undermining the very transparency regulators are seeking to improve. Providing stronger confidentiality guarantees would support ASIC's market-monitoring efforts while preserving trust and participation.

F. Employee Share-Ownership Plans

Employee share-ownership plans (ESOPs) occupy a unique place in Australia's capital markets. Equity granted through an ESOP is remuneration, not a speculative retail investment, and remains the principal avenue by which staff share in the long-term value they help create. Treating ESOP holders as retail investors also imposes prospectus-style disclosure and wholesale-investor thresholds that are ill-suited to an employment benefit, discouraging firms from offering meaningful equity and limiting workers' direct participation in Australia's growth economy. The 2022 reforms acknowledged this by carving out a broad-based exemption for qualifying schemes. Yet practical constraints persist, such as the $30,000 annual issue cap: an amount that is too low for cash-constrained start-ups that rely on equity to attract and retain talent.

G. Foreign Investment Review Board (FIRB)

The operation of foreign investment review mechanisms in the tech sector has become a more prominent friction point. As scale-ups in AI, quantum, cybersecurity and healthtech increasingly rely on global capital, FIRB's expanded remit and longer assessment timeframes have caused material deal uncertainty.

While national interest tests remain essential, there is scope for Treasury and regulators to consider calibrated approaches—such as clearer sector-based guidance, expedited review for low-risk jurisdictions, or improved pre-lodgement pathways—that better reflect the speed and structure of international growth capital flows. While not within ASIC's direct remit, these settings shape the capital environment in which late-stage private companies operate.

3. Protecting Investors through Targeted, Risk-Calibrated Regulation

While ASIC's identification of valuation opacity, leverage risks, liquidity constraints, and governance conflicts as central private-market investor concerns is correct, these risks are not uniform across all private-market strategies. Venture capital and growth-equity funds that finance technology firms differ significantly from traditional leveraged buy-out (LBO) vehicles. Tech-sector investment predominantly deploys fresh equity to fund expansionary activities—R&D, talent acquisition, and product development—rather than asset restructuring or financial engineering. Applying uniform regulation across fundamentally distinct strategies risks obscuring the true drivers of investor harm and inadvertently restricting crucial innovation funding channels.

Retail investor exposure to venture and growth-equity funds remains minimal. The wholesale-investor test effectively restricts direct participation, while indirect retail exposure through superannuation funds is diversified and limited. Consequently, the principal retail-investor risks flagged by ASIC—leverage-driven amplification, dividend recaps, and covenant breaches—are materially less prominent in growth-focused vehicles.

Regulatory overreach in applying highly prescriptive, PE-style disclosure and liability standards to tech funds would significantly exacerbate Australia's existing late-stage funding gap. Domestic growth-stage capital is already scarce, forcing founders increasingly offshore once local funding capacity is exceeded. Unnecessary compliance costs and overly restrictive frameworks would accelerate this offshore migration, undermining sovereign tech capability, local employment opportunities, and future IPO pipelines.

TCA therefore advocates for proportionate, targeted transparency standards rather than replicating onerous public-market compliance obligations. Independent valuation reviews, ILPA-style quarterly reporting, and voluntary governance standards represent an appropriate balance. These measures would increase investor confidence and transparency without imposing excessive compliance costs, preserving agility critical for innovation.

Efficient, trusted private markets underpin Australia's innovation agenda. Each Australian unicorn has emerged from private-market beginnings, underscoring the importance of maintaining agile, accessible private capital pools. Effective regulation must strengthen investor confidence while safeguarding this essential pipeline, ensuring Australian ingenuity and research continue to translate into globally competitive, listed technology leaders.

We appreciate the opportunity to provide feedback to this important review. We would be happy to meet with you to provide further detail on any of the recommendations in this submission.

Yours sincerely,

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