



ALLENS ACCELERATE

GET READY FOR THE #IdeasBoom!

Prime Minister Malcolm Turnbull has unveiled the hotly awaited National Innovation and Science Agenda (*NISA*). The Prime Minister declared the beginning of the Ideas Boom, stating that 'unlike the mining boom, this is a boom that can continue forever'. The NISA comprises more than 20 individual policies and will deliver \$1.1 billion worth of measures to kick-start the Ideas Boom over the next four years.

In this update, the Allens Accelerate team provides a brief summary of the key NISA measures. It is a very substantial package. Some of the most important elements include the new tax measures to incentivise investments in eligible startups, reforms to the insolvency laws, more funding for CSIRO and a big push on STEM skills training. Over the coming weeks, as more detail is released, we will provide additional analysis of the key NISA measures and how they might impact on your business.

But, at first blush, the view of the Allens Accelerate team is that the measures will constitute a quantum leap for the startup landscape in Australia.

HOW DOES IT AFFECT YOU?

Get used to hearing about innovation! The NISA comprises more than 20 individual policies and will deliver \$1.1 billion worth of measures to kick-start the *Ideas Boom* over the next four years.

The Government has identified science, technology and entrepreneurship as critical elements to a successful economic transition away from a reliance on minerals.

The NISA, which builds upon the 2014 Industry Innovation and Competitiveness Agenda, focuses on four key areas affecting entrepreneurs, startups, incubators/accelerators, investors and the relationship between industry, academia and the Government:

1. 'Taking the leap' – making capital raising easier for entrepreneurs and encouraging businesses, especially startups, to take risks and innovate.
2. 'Best and brightest' – developing and retaining key talent and skills.
3. 'Working together' – commercialising research and aligning R&D with business.
4. 'Leading by example' – the government as an 'exemplar' for innovation.

It is expected that a more detailed proposal paper will be released in 2016, and legislation will go before Parliament in mid-2017.

The policies falling under each area are listed below.

'TAKING THE LEAP'

1. As foreshadowed in recently introduced legislation, startups will be able to access crowd-sourced equity funding (*CSEF*) via an online fundraising platform:
 - CSEF will be available to Australian public companies with a turnover and gross assets of less than \$5 million. However, companies that become a public company to access CSEF will receive a five-year exemption

from obligations to hold AGMs, produce audited financial statements and provide an annual report to shareholders.

- Startups may raise up to \$5 million per year through CSEF platforms. By comparison, the USA caps total investment in CSEF at US\$1 million per year and New Zealand caps investment in CSEF at NZ\$2 million per year).
 - Individuals seeking to invest using the CSEF platform will be limited to a maximum amount of \$10,000 per company, per year.
2. Tax incentives for investors:
 - A 20 per cent non-refundable tax offset for investors who invest in eligible companies, capped at \$200,000 per investor, per year. An offset has been adopted rather than a deduction (as in the UK), meaning that the relevant amount will be subtracted from tax payable rather than deducted from assessable income. The intention is to provide all investors the same level of benefit irrespective of their marginal tax rate.
 - A 10-year capital gains tax exemption for investments held in an eligible venture for three years. To be eligible, the company must have been incorporated during the last three years, not be listed on a stock exchange, and have expenditure less than \$1 million and income less than \$200,000.
 - Proposed date of introduction – from 1 July 2016.
 3. New arrangements for Venture Capital Limited Partnerships:
 - Partners in new Early Stage Venture Capital Limited Partnerships (*ESVCLP*) will receive 10 per cent non-refundable tax offset on capital invested.
 - The maximum fund size for new ESVCLPs is increased from \$100 million to \$200 million.
 - ESVCLPs will no longer need to divest from a company when its value exceeds \$250 million.
 - Proposed date of introduction – from 1 July 2016.

4. Increased access to company losses:
 - Currently, companies may carry forward a tax loss indefinitely and use it, provided they have carried on the *same business* since the tax loss was incurred.
 - The *same business* test will be relaxed to the *predominantly similar* business test for losses incurred going forward. This will provide greater flexibility to startups to pivot into new areas without incurring a tax penalty.
 - Proposed date of introduction – from 1 July 2016.
5. Intangible asset depreciation:
 - Businesses will be permitted to self-assess the tax-effective life of acquired intangible assets (eg patents, copyrights) that are currently fixed by statute. By allowing faster depreciation, the Government intends that the costs of investment in those assets will be decreased, allowing companies to better exploit and commercialise them.
 - Proposed date of introduction – from 1 July 2016.
6. Insolvency reforms proposed for discussion in the first half of 2016 with legislation to follow in 2017:
 - Reduce the current default bankruptcy period from three years to one year. Under [section 149](#) of the *Bankruptcy Act 1966* (Cth) as currently in force, a bankrupt will ordinarily be automatically discharged from bankruptcy after a three-year period.
 - Introduction of safe harbours to protect directors from personal liability for insolvent trading if they appoint a restructuring adviser. Details have not yet been provided on what constitutes a restructuring adviser or the point at which they need to be appointed.
 - So called ‘ipso facto’ clauses to be unenforceable while a company is undertaking a restructure. ‘Ipso facto’ clauses allow a party to a contract to terminate the contract if a counterparty becomes insolvent. Such provisions are commonplace in commercial contracts, but can lead to value destruction (and consequently can make restructures or turnarounds more difficult) where a company’s contracts with, for example, suppliers or customers are terminated on it suffering some insolvency event. There are as yet no details as to when a company will be regarded to be undertaking a restructure.
7. Reforms to Employee Share Schemes (**ESS**):
 - The requirement for eligible companies (not yet defined) to publically disclose ESS documents will be reduced. The Government states that this will allow otherwise non-disclosing companies to keep commercially sensitive information confidential.
 - Legislation is expected in the first half of 2016.
8. The Government proposes to establish a \$250 million Biomedical Translation Fund, to invest in promising biomedical innovation and assist in its commercialisation. The fund is expected to become operational in 2016.
9. \$220 million investment in the CSIRO Innovation Fund:
 - \$200 million early stage innovation fund to support co-investment in startup companies with research based products.
 - \$20 million expansion to CSIRO’s Accelerator programme to prepare research for commercial adoption.
10. Incubator Support Programme, slated to commence from 1 July 2016:
 - Government funding to encourage the development of new incubators and accelerators in regional areas and sectors with high innovation potential.
 - Funding boost to existing high performing innovators.
 - Funds to support expert advisers on secondment to startups.
 - Provide incubator support through Australian Innovation Network – online portal for entrepreneurs to access information.

‘BEST AND BRIGHTEST’

The Government has announced a number of initiatives designed to encourage and support innovation and entrepreneurialism. Key programs, scheduled to commence in 2016-17, include:

1. \$13 million to encourage women to choose careers in STEM research, startups and entrepreneurial firms.
2. \$51 million funding for educational initiatives (eg computing challenge for primary age students, ICT summer schools, coding and digital curriculum support).
3. \$48 million funding for education in STEM skills.
4. Visa reforms to encourage the retention of talent in Australia:
 - New provisional Entrepreneur Visa for entrepreneurs with innovative ideas and financial backing, with a pathway to permanent residence.
 - Pathways to permanent residence for postgraduate research graduates with STEM qualifications.

‘WORKING TOGETHER’

The NISA also hopes to encourage a boom in collaboration and investment in the Australian science and technology industry. The ‘Working Together’ initiatives include:

1. Direct investment into cutting edge science and technology including:
 - An investment of \$26 million over five years into silicon quantum computing technology.
 - An investment of \$30 million, through to 2020, for the development of an industry-led Cyber Security Growth Centre.
2. New research funding arrangements for universities to commence in 2017, designed to replace six existing research block grants with two streamlined programs:
 - \$885 million for the Research Support Programme to support the systemic costs of research; and
 - \$948 million for the Research Training Programme to support training the next generation.
3. A new global innovation strategy, taking Australian innovators to the world:
 - \$11 million to establish landing pads (including in Silicon Valley and Tel Aviv) to support Australian market-ready startups overseas.

- \$22 million seed funding to assist Australian collaborations with international research groups, such as the Fraunhofer Institute in Germany.
 - Funding for these programs is expected to commence from 1 July 2016.
4. A renewed focus on the relationship between academia and business and greater focus on innovation in regional areas:
- \$18 million investment in the Innovation Connections Initiative, which works to partner small and medium enterprises with researchers.
 - Support for regional areas, including seed funding for workshops in regional areas on issues such as food and bio security.
 - Systematic assessment to measure the impact of investment in university research to tangible benefits for the Australian community.

‘LEADING BY EXAMPLE’

Core to the Prime Minister’s announcement was the concept of ‘Government as an exemplar’, through which the Government intends to take a central role in creating and benefiting from innovation. The key drivers of ‘Government as an exemplar’ are:

1. The creation of Innovation and Science Australia, to replace Innovation Australia from 1 July 2016. ISA will be a new independent body responsible for advising the government on all science, research and innovation matters.
2. The Business Research and Innovation Initiative, to be launched on 1 July 2016, will focus on encouraging businesses to develop innovative solutions to government policy and service delivery problems.
3. A commitment to Government data sharing:
 - Make de-identified and non-sensitive public data openly available by default.
 - Open access to public data, with fees only applying for specialised data services.
 - \$75 million investment in CSIRO data research unit Data61.
4. Development of a Digital Marketplace to allow small to medium businesses to compete for government procurement opportunities.

OPPOSITION POLICIES

The Federal Opposition renewed their own commitment to innovation by announcing a suite of measures on 4 December 2015. This round of measures is the Opposition’s third wave of innovation policies, which have previously included educational measures and two classes of visa. The Opposition outlined four key policies.

1. Encourage greater innovation in regional Australia, recognising that two-thirds of startup activity currently occurs in Sydney.
 - Creating a national entrepreneurship support network. This will emulate Canadian, Swedish and Finnish models. The network involves expanding existing university-based hubs, and creating 20 new hubs in rural and regional sites.
 - Each hub would receive up to \$500,000 seed funding annually, which must be matched dollar-for-dollar by the hub or other sources.
 - Funding may also be used by universities to address skills gaps, and enable investment in student-led startups.
2. Encourage investment in startups, emulating the UK’s Seed Enterprise Investment Scheme (SEIS).
 - Re-establishing the Innovation Investment Fund, allowing the government to invest in the early stages in high potential companies.
 - Establishing a partial guarantee scheme.
 - Providing tax relief for angel investors, including a 50 per cent tax reduction (for investments up to \$200,000 pa) and a full capital gains tax exemption for equity held in the startup for more than three years.
3. Establish Innovate Australia, an independent agency to administer and deliver new innovation initiatives. This is modelled on Innovate UK. Innovate Australia will alter the functions of the current Innovation Australia Board.
4. Establish a ‘landing pad’ in San Francisco to support Australian entrepreneurs in the US. This is modelled on the Kiwi Landing Pad, a successful initiative supporting New Zealand entrepreneurs in the Silicon Valley.

FINALLY

The Government has stated that the National Innovation and Science Agenda is a work in progress. Startups, entrepreneurs and investors alike will keenly await the release of further details on the many initiatives outlined above. As that detail is released and the innovation agenda evolves, stay tuned to Allens Accelerate for detailed legal analysis of what the new agenda means for you.

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