

Hydrogen Production Tax Incentive

BCA submission

July 2024

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1. Overview

The Business Council of Australia (BCA) welcomes the opportunity to provide a submission to the consultation paper for the proposed Hydrogen Production Tax Incentive (HPTI). A well-designed HPTI, alongside other measures, can provide the foundation for Australia to be a competitive destination for hydrogen production.

A successful transition is being able to achieve a net zero economy while maintaining energy security, reliability affordability, and our international competitiveness – each vital to maintaining living standards and economic prosperity. Consistent with these objectives, the hydrogen industry has the potential to deliver new direct jobs, set Australia up with low cost, low emissions energy, drive economic growth and help diversify our export base.

The eligibility criteria and design of the HPTI must not be so restrictive as to limit support for projects that otherwise meet the policy objectives, or that may otherwise result in investment going overseas. Many of these projects will deliver benefits across local communities and supply chains, but at the same time, the Community Benefit Principles must not be so narrowly or rigidly defined as to undermine the success of the HPTI. It is important to be aware that these principles, while positive in the broad sense, risk increasing costs and offsetting competitive gains achieved through the HPTI. There is evidence emerging in other countries that providing subsidies has increased project costs, particularly when labour and product markets are tight.

The Future Made in Australia agenda reflects the balanced intent of the Government to craft an Australian response to the US Inflation Reduction Act (IRA), as called for by the BCA. Australia should respond if other nations are taking significant action to attract investment. Ideally, this is achieved by learning from the errors made in other programs and getting the investment fundamentals right. As with any policy though, there is a need for firm guardrails to ensure the policy is a success, there is judicious use of taxpayer dollars, and to deliver a sustainable and enduring policy agenda that allows businesses to plan confidently. The BCA has previously proposed a set of guardrails to help select priority industries and develop any policy response:

- All investments must be expert-led, with expert advice provided to government as the origination point.
- The process must be open, transparent, evidence-based and unimpeachably independent.
- It should be carefully targeted and avoid parameters which can be broadly interpreted.
- There must be the scope to withdraw, or limit, funds based on outcomes being missed or achieved.
- We must not invest in projects that can stand alone from the outset with private investment, or those which will never stand alone without government support.
- All our investments must be in areas in which we have a comparative advantage and where the investment helps those projects get to market faster, or there is clear national interest in making that investment.¹

Just as Australia cannot sit still while other countries increase their incentives, nor can we sit still while they are growing their competitiveness at a foundational level. To reinvent our economy we must, as a point of national urgency, become a more competitive place to do business. This requires a focus on getting the fundamentals right to make Australia an attractive investment destination through reform of our tax system, easing the burden of regulation, a streamlined project approvals process, a high-quality skills and education system, a well-managed migration program, a streamlined foreign investment screening regime, and improvements to the workplace relations system. Getting these fundamentals right will spur innovation and lift productivity. Consideration should also be given to the incentives and barriers around the development of the infrastructure to support hydrogen production. With incentives aimed exclusively at hydrogen production at the expense of all other inputs, those investors tasked with developing the necessary infrastructure, are faced with significant capital outlay with no (tax incentive) upside.

¹ https://www.bca.com.au/keynote_address_to_the_business_hunter_annual_summit_2024

Simply put, the benefits of the HPTI cannot be realised if a project is unable to proceed in Australia – be it through issues with the project approvals process or a fundamentally uncompetitive business environment.

2. Key recommendations

- **Recommendation 1:** Clarify that companies that would otherwise qualify for the HPTI should not be restricted based on the structure of a project, such as a joint venture.
- **Recommendation 2:** Adjust the \$2 per kilogram incentive amount by inflation to maintain the real level of support.
- **Recommendation 3:** Remove the requirement for FID by 2030, recognising the additional compliance costs and time-limited nature of the HPTI.
- **Recommendation 4:** If an FID requirement is included, ensure that it takes a substance over form approach.
- **Recommendation 5:** Clarify that companies can claim for the HPTI for 10 years from when they first apply.
- **Recommendation 6:** Increase the emissions intensity threshold for eligible production. This could be achieved through a sliding scale with the highest level of support for the least emissions intensive production, as per the approach under the US IRA and Canada's clean hydrogen investment tax credit.
- **Recommendation 7:** Adopt a technology neutral approach to eligible hydrogen production processes.
- **Recommendation 8:** A definition of capacity tied to nameplate production capacity should be adopted and be inclusive of all production processes.
- **Recommendation 9:** Prioritise legislating the GO scheme, recognising its critical role across a range of policies, including the HPTI.
- **Recommendation 10:** Lower the proposed minimum capacity requirement to support smaller scale projects, such as those supporting hydrogen supply to domestic transport.
- **Recommendation 11:** Ensure the dual agency administration model clearly outlines the roles and responsibilities of administrator and information sharing arrangements, publishes timely and clear guidance material, and includes a timely and efficient dispute resolution process.
- **Recommendation 12:** Community Benefit Principles should recognise the significant broader economic benefits of current projects and not be narrowly or rigidly defined so as to undermine the success of the HPTI.
- **Recommendation 13:** The compliance and administration costs related to Community Benefit Principles should be minimised and leverage existing reporting measures and arrangements as much as possible.
- **Recommendation 14:** Any ATO HPTI transparency and disclosure reporting requirements should report the value of the tax benefit and publish the data post a minimum two-year delay given the potentially commercially sensitive nature of this data.
- **Recommendation 15:** Ensure the next round of consultation provides sufficient time to consult on the design and application of the HPTI.
- **Recommendation 16:** Clarify how the HPTI will interact with other policies, such as the global and domestic minimum tax.

3. Eligibility

3.1 Eligible entities

The HPTI will be available for companies subject to Australia's corporate tax system. There may be projects that involve companies operating together on a joint venture basis. Eligibility for entities should be agnostic on the structure of projects. For example, the corporate participants of trusts, partnerships or unincorporated joint ventures should be able to directly claim the tax offset in respect of their share of eligible production where they would otherwise qualify as companies. Similarly, corporate limited partnerships and corporate unit trusts that are taxed as companies should be eligible.

It should also be clarified that for tax consolidated groups, the head company would be the eligible entity so that a subsidiary member (whether a company or not) owning the eligible facility and that is not itself subject to tax while part of that tax consolidated group, will not lead to an ineligibility outcome and the tax offset will accrue to the head company of the tax consolidated group which includes that subsidiary member.

Recommendation 1

Clarify that companies that would otherwise qualify for the HPTI should not be restricted based on the structure of a project, such as a joint venture.

3.2 Incentive amount

The \$2 per kilogram incentive amount compares with a range of US\$0.60 to US\$3 per kilogram under the IRA's 45V Clean Hydrogen Production Tax Credit (and depending on carbon intensity). This is equivalent to \$0.89 to \$4.44 per kilogram in today's dollars.

At the same time, Australia's credit is not adjusted for inflation while the IRA does provide an inflation adjustment factor in its tax credit. A lack of inflation adjustment for the HPTI means the real value of the tax offset will have declined more than 10 per cent by the time the HPTI comes into effect, and by around a third by the time it expires.² The inflation adjustment for US support will mean both a growing nominal and real level of support relative to Australia.

Recommendation 2

Adjust the \$2 per kilogram incentive amount by inflation to maintain the real level of support.

3.3 Start date/duration

The merits of the 2030 deadline for final investment decision (FID) are unclear, given the time it may take projects to proceed through regulatory approvals processes and begin production. At the same time, this introduces additional costs and complexity around compliance with the HPTI that may not be necessary to achieve its objectives. For example, the benefits from the HPTI will ultimately be capped by the 2040 end date.

Another issue for consideration is the treatment of expansion or additional phases of the same project initially approved by 2030. For example, where additional facilities or sites are added over time, but where the additional electrolyser capacity formed part of the initial investment decision. In other contexts, criteria such as common infrastructure (such as power supply), commonality of ownership, or physical proximity have been used.

When these factors are considered alongside the time-limited nature of the benefit and it being linked to production, the need for these limitations should be reconsidered.

² Based on Commonwealth Budget 2024-25 CPI inflation forecasts.

Were the FID requirement to remain, it should take a substance over form approach. For example, the ATO nominated substantive FID indicators as part of PCG 2016/17. This focuses more on the indicia of the decision or definitive commitment to proceed, which may not always be a formal FID. To illustrate, FID decision can take different forms across companies, projects, and scenarios, while different FID activities can occur progressively or in parallel. For example, a commitment to purchase long lead items, a signed lease/option to buy/lease a proposed site, or entering into contracts for power and water supply.

Recommendation 3

Remove the requirement for FID by 2030, recognising the additional compliance costs and time-limited nature of the HPTI.

Recommendation 4

If an FID requirement is included, ensure that it takes a substance over form approach.

Recommendation 5

Clarify that companies can claim for the HPTI for 10 years from when they first apply.

3.4 Eligible production

3.4.1 Emissions intensity threshold

The proposed carbon intensity threshold of 0.6 kilograms of carbon dioxide equivalent up to the production gate is internationally uncompetitive. This could place Australian projects at a competitive disadvantage and see investment go offshore. For example, support starts from 4.0 kilograms of carbon dioxide equivalent production in the United States, Canada and South Korea, while it is from 3.4 kilograms of carbon dioxide equivalent production in the European Union and Japan.

Higher production costs for Australian hydrogen projects will also increase costs for hydrogen offtake. In turn, this may slow and reduce the transition to hydrogen as a lower carbon energy source.

The BCA also welcomes the decision not to include additional requirements on renewable energy generation for access to the incentive, such as additionality and hourly time-matching with hydrogen production, or any restriction on use. Such requirements would be highly impractical and significantly increase capital costs.

Recommendation 6

Increase the emissions intensity threshold for eligible production. This could be achieved through a sliding scale with the highest level of support for the least emissions intensive production, as per the approach under the US IRA and Canada's clean hydrogen investment tax credit.

3.4.2 Production processes

Policy settings should not specify a particular type of production method but be technology neutral as to how the same end product of hydrogen is produced. There is a role to play for many different types of energy sources in Australia's future energy mix on the path to net zero.

The proposed Guarantee of Origin (GO) scheme includes various hydrogen production pathways, such as steam methane reforming, coal gasification and electrolysis. Similarly, the Safeguard Mechanism adopts a technology neutral approach that is ultimately focussed on emissions intensity.

Recommendation 7

Adopt a technology neutral approach to eligible hydrogen production processes.

Recommendation 8

A definition of capacity tied to nameplate production capacity should be adopted and be inclusive of all production processes.

Recommendation 9

Prioritise legislating the GO scheme, recognising its critical role across a range of policies, including the HPTI.

3.4.3 Minimum capacity requirement

Heavy duty road transport is one of the key expected uses of hydrogen, as a substitute for both diesel and battery electric trucks. Australia's National Hydrogen Strategy similarly identified use for heavy duty road transport as an action that could support the development of the industry, alongside various state initiatives.³ However, the minimum capacity requirement will exclude most hydrogen refuelling stations targeting domestic transport. Indeed, none of those currently in development currently meet the 10 MW threshold.⁴ It would also likely exclude mobile containerised units with smaller capacity that could be deployed to remote areas, such as for agriculture (such as for green ammonia/fertiliser production).

Recommendation 10

Lower the proposed minimum capacity requirement to support smaller scale projects, such as those supporting hydrogen supply to domestic transport.

4. Administrative arrangements

The proposed dual agency model for administration of the HPTI is appropriate given the technical nature of the scheme, with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) managing eligibility requirements and the ATO managing the tax offset claims. The dual agency model will however be inherently more complex and costly to administer and comply with, as demonstrated by the experience around administration of the Research and Development Tax Incentive (RDTI).

It will therefore be critical to have settings in place to ensure the HPTI is administered effectively, consistently, predictably and efficiently, while delivering a streamlined and timely process for companies to comply with. This will help deliver on the policy intent at least cost, and support confidence in the scheme. It may be best achieved through a legislative instrument. Key elements of an effective and efficient dual agency model include:

- **Clearly outlining the roles and responsibilities** of DCCEEW and ATO in administering the HPTI. This could be achieved through a public charter that clearly outlines roles and expectations, including how the administrators will work together, how they will engage with companies (including expected timeframes) and appropriate accountability mechanisms for administrators.
- **Information sharing** between administrators to reduce duplication and compliance costs.
- **Guidance material** should be prepared in a timely manner to provide claimants with certainty around the operation and administration of the HPTI. There is also merit in an ability to seek an advanced finding/determination (similar to the RDTI) based on the proposed project parameters prior to FID so that it reduces any uncertainty or risk of not being eligible
- **Dispute resolution** processes to resolve reviews undertaken by the administrators in an efficient and timely manner before further escalation (e.g. to the Administrative Appeals Tribunal).

³ For example, Western Australia's Hydrogen Fuelled Transport Program.

⁴ <https://research.csiro.au/hyresource/projects/projects-spreadsheet/>

Recommendation 11

Ensure the dual agency administration model clearly outlines the roles and responsibilities of administrator and information sharing arrangements, publishes timely and clear guidance material, and includes a timely and efficient dispute resolution process.

5. Community Benefit Principles

Investment is more than just the capital needed to fund projects to allow businesses to grow, compete and expand. It delivers many other broader economic benefits, such as:

- Creating jobs and stimulating further investment across the supply chain and in local communities.
- Driving productivity growth, which in turn drives real wages growth.
- Promoting competition and the efficient allocation of resources across the economy, while also stimulating research, development and innovation.
- Increasing global linkages and opportunities by linking to international supply chains.

Governments play a crucial role in providing the right incentive framework for ensuring that the benefits of investment are maximised and the risks minimised. Primarily, this requires ensuring open and competitive markets across the economy and transparent regulatory and governance systems.

While investment can bring many broader economic benefits, it should not be a rigid requirement for investment to proceed. It is important to not lose sight of the overall benefits higher investment provides through higher productivity and, in turn, higher real wages for workers and lower prices for consumers. It can also improve the allocation of resources by freeing up local resources for more efficient uses.

In that context, there is significant uncertainty around what the Community Benefit Principles will entail in practice and a risk that the costs of compliance, and any additional cost arising from increased demand for labour and materials, could undermine the competitiveness of projects. There is evidence emerging in other countries that this has increased project costs, particularly when labour and product markets are tight. Simply put, the costs could exceed the benefits such that they could undermine the success of the HPTI if they restrict project eligibility – including ongoing eligibility – due to a set of narrowly defined benefits. At the same time, these requirements should not be so onerous as to create barriers for small- and medium-sized businesses from participating in Future Made in Australia programs.

There should also be an acknowledgement that significant work is already underway through a range of other initiatives to deliver community benefits as part of the net zero transition, including through the Net Zero Economy Authority. Investment is occurring to develop a skilled workforce in the renewable energy sector. It should also be noted that Australia's workforce is well paid in comparison to other countries with which Australia is competing. Suggestions that these jobs are not well paid ignores the significant workplace protections currently in place.

The Community Benefit Principles must be fit for purpose, while also objective and clear to provide certainty for taxpayers to at least initially self-assess eligibility for FID deliberations. If the conditions are too onerous, it will become a disincentive. Key considerations for how the Community Benefit Principles should be designed in practice include:

- Not undermining the eligibility and competitiveness of projects that otherwise deliver net benefits to the community, particularly if these arise from onerous labour market conditions.
- Future Made in Australia Plans should leverage other similar reporting requirements – where appropriate – to minimise compliance costs for companies, administration costs for regulators and leverage already developed and understood initiatives.

- This could include Australian Industry Participation Plans and the Statement of Tax Record.
- There should not be ongoing reporting requirements except where there is a material change in circumstances or to ensure ongoing compliance with any conditions. This should be conducted in a ‘light touch’ manner that minimises compliance costs.

The consultation paper notes transparency and disclosure reporting requirements will form part of the HPTI. Many companies will reflect the impact of production tax credits as part of existing financial reporting requirements (including proposed Australian public country-by-country reporting) or as part of the Voluntary Tax Transparency Code. It will be critical that any reporting requirements improve public accountability without duplicating existing transparency obligations and do not unnecessarily confuse or undermine the operation of the HPTI. For example, to the extent production tax credits data are reported by the ATO, only the value of the tax benefit should be reported. A minimum two-year delay in publication should also be considered given the potentially commercially sensitive nature of this data. For example, RDTI transparency data are published with a two-year delay for this reason.

Recommendation 12

Community Benefit Principles should recognise the significant broader economic benefits of current projects and not be narrowly or rigidly defined so as to undermine the success of the HPTI.

Recommendation 13

The compliance and administration costs related to Community Benefit Principles should be minimised and leverage existing reporting measures and arrangements as much as possible.

Recommendation 14

Any ATO HPTI transparency and disclosure reporting requirements should report the value of the tax benefit and publish the data post a minimum two-year delay given the potentially commercially sensitive nature of this data.

6. Other issues

The feedback in this submission is not exhaustive, recognising the limited time available to consult with member companies, and the added complexity and challenges of industries in their nascency. The next round of consultation should include further clarification of the issues raised in this submission as well as other issues flagged in the consultation paper. There should also be sufficient time for further consultation, recognising the current two-week consultation period falls well short of best practice principles. At the same time, many issues will be further realised as projects progress further through the development process. This may include clarifying how the HPTI will interact with the 15 per cent global and domestic minimum tax. In particular, it should be treated as a qualifying refundable tax credit as part of the Pillar Two rules.

Recommendation 15

Ensure the next round of consultation provides sufficient time to consult on the design and application of the HPTI.

Recommendation 16

Clarify how the HPTI will interact with other policies, such as the global and domestic minimum tax.

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