Future Made in Australia

Consultations on Critical Minerals Production Tax Incentive and Hydrogen Production Tax Incentive

Australian Sustainable Finance Institute | July 2024

Australian Sustainable Finance Institute

About ASFI

The Australian Sustainable Finance Institute (ASFI) is a not-for-profit organisation committed to realigning the Australian financial system to be sustainable, resilient, and inclusive. ASFI's members are large Australian financial institutions – including major banks, superannuation funds, insurers, asset managers, and financial services firms – that support ASFI's mission. ASFI members collectively hold over AU$22 trillion in assets under management and are committed to allocating capital in a way that creates positive social and environmental outcomes.

Introduction

ASFI welcomes the opportunity to respond to Treasury's consultations on both the Critical Minerals Production Tax Incentive (CMPTI) and Hydrogen Production Tax Incentive (HPTI). Both incentives are being developed under the Future Made in Australia agenda, which seeks to make Australia a renewable energy superpower, support Australia's net zero ambitions, and strengthen Australia's long term economic prospects.

Realising these objectives will require coherent approaches across Government policy and programs that align the public and private sectors behind common objectives and standards, help unlock significant capital, and bring in key stakeholders. Our submission focuses on (i) meaningful incorporation of First Nations considerations as part of the Community Benefit principles for both proposed incentives, and (ii) alignment of production incentive eligibility criteria with social and environmental standards being developed for the private sector through the Australian sustainable finance taxonomy.

Our work and its relevance to the Future Made in Australia vision

First Nations and Finance

ASFI prioritises elevating First Nations' perspectives, emphasising the value of their lived experiences and First Nations knowledge across all facets of our operations. This approach ensures that these critical insights actively inform and shape the development of sustainable finance, policy, and practices in Australia.

ASFI's focus on elevating First Nations peoples, perspectives and outcomes in finance originated in the recommendations outlined in the Australian Sustainable Finance Roadmap[1]. In 2023, we undertook scoping work to establish ASFI's First Nations focus area and developed our First Nations Work Program. Our four focus areas within this work program are:

1. Elevating First Nations voices, lived experiences and perspectives into all ASFI work programs,
2. Connecting, convening and coordinating First Nations activity in the finance sector,
3. Improving First Nations disclosures and,
4. Policy and regulatory engagement.

As a non-First Nations-led organisation, ASFI has established a First Nations Reference Group, comprising a diverse and nationally represented group of First Nations Traditional Owners, First Nations finance and industry professionals, and ASFI members. The Reference Group operates consultatively with ASFI, and Traditional Owners are remunerated for their knowledge, skills, and guidance. Our First Nations Reference Group members are listed on our website here.

[1] ASFI, Australian Sustainable Finance Roadmap, The Roadmap — ASFI

The Australian Sustainable Finance Taxonomy

With support from the Australian Government and significant finance sector and industry input, ASFI is currently leading the development of Australia's sustainable finance taxonomy. The taxonomy will form a critical part of market and regulatory architecture for sustainable finance by establishing a credible industry benchmark to evaluate economic activities. These standards can be applied to the labelling of financial instruments and products, helping guide financial institutions' asset allocation decisions and unlocking private capital towards sustainability objectives.

The taxonomy will cover six priority sectors[2], and will set out criteria for how particular economic activities can be assessed as "green" or "transition". It does so by using internationally recognised and credible 1.5° C-aligned scenarios to determine greenhouse gas emissions performance thresholds and by setting out strong environmental and social performance standards more broadly through 'Do No Significant Harm' and 'Minimum Social Safeguards' criteria[3]. The taxonomy has an important role to play in unlocking private finance in support of the Future Made in Australia agenda.

In designing and implementing initiatives under the Future Made in Australia agenda – including production tax incentives covered in this consultation - the Government should seek to align as much as possible with the approach and standards being developed in the Australian taxonomy. This will:

- help ensure Government approaches are credible and science-based, promoting meaningful decarbonisation across priority sectors
- align the approaches of the public and private sectors, allowing for consistency and efficiency across value chains
- ensure that implementation of the Future Made in Australia package properly takes into account social and environmental considerations.

Summary of recommendations

We acknowledge that design and implementation of both the CMPTI and HPTI will depend in part on finalisation of broader policy parameters relating to Future Made in Australia. We underscore the importance of consistent approaches across Government policies and initiatives as part of the Future Made in Australia agenda. In this context, our recommendations are as follows:

1. *Ensure meaningful incorporation of First Nations considerations as part of the Community Benefit principles for both proposed incentives (i.e. CMPTI and HPTI)*

2. *Ensure both incentives incorporate eligibility criteria that protect against social and environmental harm, and align with standards being developed for the private sector through the Australian sustainable finance taxonomy*

3. *As much as possible, align eligibility criteria relating to emissions intensity with standards being developed for the private sector through the Australian sustainable finance taxonomy. This would apply to the criteria currently proposed for the HPTI, and should be extended to the CMPTI*

[2] The six priority sectors are electricity generation and supply (energy); minerals, mining and metals; construction and the built environment; manufacturing/ industry; transport; and agriculture. Draft criteria is available here.
[3] This includes addressing environmental impacts (e.g. biodiversity, water and pollution), stronger engagement with Indigenous communities, and embedding circularity principles. These standards will be developed in the second half of 2024.

Recommendation 1 – Ensure meaningful incorporation of First Nations considerations as part of the Community Benefit principles for both the CMPTI and HPTI

First Nations people represent a unique stakeholder group in Australia due to their distinct culture, history, and authority to hold Native Title. Recognising them specifically in Government policies and initiatives responds to these factors, as well as growing investor expectations globally around proper engagement with First Nations peoples[4]. It also helps to better realise opportunities for shared economic benefits and reconciliation as part of Future Made in Australia vision.

ASFI welcomes the fact that both consultation papers propose eligibility criteria that will seek to implement community benefit principles, including *"…engaging collaboratively with and achieving positive outcomes for local communities, such as First Nations communities…".* To ensure meaningful participation in the Future Made in Australia objectives, implementation of the Community Benefit principles should align with the principles of Free, Prior, and Informed Consent (FPIC) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which emphasises rights to self-determination, participation in decision-making, and control over land and resources.

To give effect to this, we recommend an entity applying for the tax offsets proposed in both the CMPTI and HPTI should be required to demonstrate:

- how they have considered impacts on First Nations communities, including through engagement with First Nations representatives; and
- how, based on the above engagement, they are providing (or planning to provide) benefits to First Nations communities for example through employment opportunities, procurement, community development initiatives or other means.

In addition to providing evidence to the relevant body responsible for administering the production tax incentives, entities should be required to disclose publicly how they are meeting the above requirements. Public disclosures on First Nations impacts and engagement have an important role to play in enhancing understanding of First Nations-related risks, opportunities, and outcomes, across both Government and the private sector.

Alignment between public and private finance standards is important for promoting consistency and good practice across the economy. The approach to First Nations engagement and disclosures currently being developed for the private sector via the Australian sustainable finance taxonomy could be a suitable model for Treasury. This is particularly relevant for further articulation of the Community Benefit principles and underlying implementation requirements in the CMPTI and HPT.

Recommendation 2 - Ensure both the CMPTI and HPTI incorporate eligibility criteria that protect against social and environmental harm, and align with standards being developed for the private sector through the Australian sustainable finance taxonomy

We acknowledge that the CMPTI and HPTI seek to advance multiple objectives within the Future Made in Australia agenda, including developing industries critical to Australia's economic prospects and supporting Australia's net zero transformation. ASFI's view is that in doing so, incentives should not be available for– or inadvertently encourage - activities that might cause significant social or environmental harm.

Eligibility criteria should therefore include minimum requirements that seek to avoid such harm. These requirements could form part of the rules that sit beneath the Community Benefit Principles,

---

[4] See, for example, recent guides for investors developed by the Responsible Investment Association of Australasia, the Australian Council of Superannuation Investors, and the First Nations Clean Energy Network.

or be a separate category within the eligibility criteria currently proposed. Such an approach would be consistent with best practice globally (for example in international development finance[5]), and emerging best practice for private finance in Australia (for example demonstrated in increasing ESG and sustainability due diligence criteria, and support for development of the Australian sustainable finance taxonomy[6]).

The standards being developed in the taxonomy could be adopted within eligibility criteria for production incentives. This would align the approaches of public and private finance in Australia, providing for consistency and simplicity for Australian businesses. Specifically, the Minimum Social Safeguards and Do No Significant Harm criteria in the taxonomy include requirements to address environmental impacts (including biodiversity, water and pollution), and social issues (including corporate governance, human rights, First Nations engagement and protection of cultural heritage). These will be developed in the second half of 2024 with considerable industry and expert consultation, and are expected to be adopted voluntarily across both industry and the finance sector.

Recommendation 3 - As much as possible, align eligibility criteria relating to emissions intensity with standards being developed for the private sector (i.e. through the Australian sustainable finance taxonomy). This would apply to the criteria currently proposed for the HPTI, and should be extended to the CMPTI

Hydrogen Production Tax Incentive

ASFI supports the current proposal outlined in the consultation paper for the HPTI to include eligibility criteria relating to emissions intensity for production. This is in-line with the 'Net Zero Transformation Stream' of the Future Made in Australia framework, as well as broader Government policy in relation to Australia's net zero ambitions. We also support the proposal for emissions intensity to be verified through the Government's Guarantee of Origin scheme.

We note that the current proposed eligibility threshold[7] has been developed with reference to international benchmarks, including similar Government schemes in the United States and Canada. As highlighted above, the Australian sustainable finance taxonomy will outline similar criteria for 'green' and 'transition' activities, including those relating to hydrogen production. The taxonomy will be the benchmark for private finance in Australia and is being developed through a rigorous technical and consultation process involving experts across finance, industry, climate and decarbonisation, and social domains. Criteria will draw on internationally recognised and credible 1.5° C-aligned scenarios to determine greenhouse gas emissions performance thresholds.

In developing the taxonomy, ASFI is consulting closely across Government, including to ensure alignment with the Guarantee of Origin Scheme. This includes ensuring that the taxonomy is consistent with requirements set out in the EU's Carbon Border Adjustment Mechanism and other relevant global standards.

To ensure Government standards are credible, and to promote simplicity and consistency across public and private approaches, we recommend aligning emissions intensity criteria in the HPTI with the standards being developed in 'manufacturing/industry' sector of the taxonomy (expected to be finalised by the end of 2024).

Critical Minerals Production Tax Incentive

---

[5] See, e.g. IFC Performance Standards n Environmental and Social Sustainability.
[6] See e.g. recommendations on the design of the Australian sustainable finance taxonomy.
[7] The consultation paper notes that to be eligible for the production tax incentive, each kilogram of renewable hydrogen must be produced with an emissions intensity less than or equal to 0.6 kg of carbon dioxide equivalent from well to the production gate.

We note that the CMPTI is aligned with the 'economic resilience and security' stream of the National Interest Framework), and that no emissions intensity requirements are currently proposed as part of the eligibility criteria for refining and processing activities. ASFI sees this as a missed opportunity to promote decarbonisation across the value chain.

As noted in the consultation paper, Australia is home to some of the world's largest reserves of critical minerals needed to diversify supply chains and support low emissions technologies, and global demand for critical minerals is set to increase. In addition to bolstering its own supply of these minerals and bringing value onshore through processing capabilities, Australia has an opportunity to establish itself as a global leader across the critical minerals value chain – increase export opportunities.

Key to doing so, however, will be the adoption – across the critical minerals value chain – of credible green standards that will unlock further capital, increase the competitiveness of Australian products to attract green premiums, and avoid application of tariffs such as the EU carbon border adjustment mechanism.

With the above in mind, and to ensure consistency across Government (including to support Australia's net zero ambitions), ASFI recommends eligibility criteria for the CMPTI should also include emissions intensity requirements. As per our recommendation for the HPTI, these should draw on the standards being developed in the taxonomy.

Appendix 1:

Additional information on the Australian sustainable finance taxonomy project

In July 2023, the Australian Sustainable Finance Institute (ASFI), in partnership with the Department of Treasury, commenced the initial development phase of the Australian sustainable finance taxonomy. The taxonomy's development forms part of the Government's broader sustainable finance agenda to mobilise private capital towards net zero emissions, Australia becoming a renewable energy superpower and other key sustainability goals.

The core purpose of the Australian sustainable finance taxonomy is articulated in the Terms of Reference between ASFI and the Council of Financial Regulators Climate Working Group (CWG) that govern the initial development phase[8]. It states the taxonomy's purpose is to "support the mobilisation of private finance toward sustainable activities, provide a foundation for further regulatory measures to address greenwashing and promote transparency." Taxonomies can help guide the flow of capital towards sustainable activities and assets by providing clarity for financial institutions as to what constitutes 'sustainable', or taxonomy aligned.

Climate change mitigation has been identified as the priority objective in the Australian taxonomy's initial development phase. This is due to the market's urgent need for credible and usable guidance on the types of activities that align with an Australian net zero transition pathway, and to support interoperability with international taxonomies that also prioritise mitigation.

However, in this initial development phase the full taxonomy framework will be developed including identifying and defining all key environmental objectives of the taxonomy (see **Figure 2**). During this phase, climate mitigation standards will be developed for green and transition activities while "Do No Significant Harm" (DNSH) standards will be developed for the other environmental objectives defined in the taxonomy, including adaptation and resilience. Minimum Social Safeguards (MSS) will also be incorporated. The DNSH and MSS standards aim to ensure climate mitigation activities do not undermine Australia's other sustainability and social goals[9].

The climate mitigation standards for green and transition activities will cover up to six of the below priority economic sectors:

- electricity generation and supply (energy)*;
- minerals, mining and metals*;
- construction and the built environment*
- manufacturing/industry;
- transport; and
- agriculture.

(indicates the first sectors to be developed).*

The sector coverage aligns with the six sector decarbonisation plans that the Australian Government is developing for the Australian economy to help mobilise the private sector investment needed to support net zero, invest in Australia's ability to become a renewable energy superpower, and achieve its other sustainability and social goals.

In accordance with the mandate set by the Australian Government, there are four key principles to guide the development of the Australian taxonomy:

- the taxonomy should be credible and science-based;

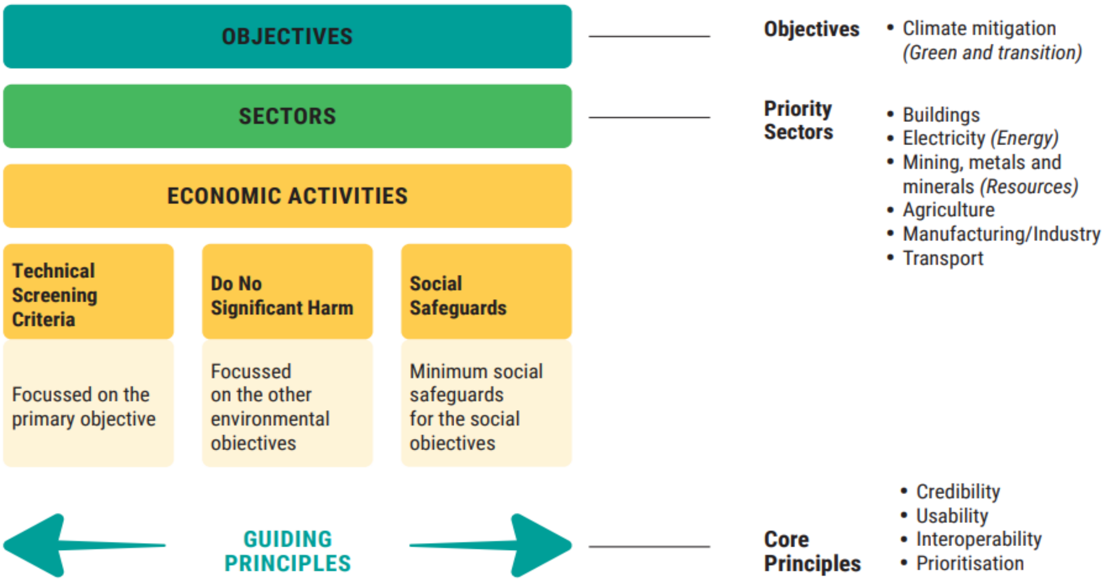
---

[8] The Australian Council of Financial Regulators' Climate Working Group (CWG) is overseeing the initial development phase of the taxonomy project, as part of its role supporting the development and implementation of the Government's Sustainable Finance Strategy. The Terms of Reference between ASFI and the CWG sets out the scope and mandate for the initial development phase. A copy of the Terms of Reference is available on ASFI's website here: https://www.asfi.org.au/taxonomy-governance (accessed 25 November 2023).

[9] The methodology for determining the sustainability objectives and social considerations in the Australian taxonomy are set out in the Methodology report published by the TTEG, available at https://www.asfi.org.au/publications/introducing-the-methodological-design-features-of-the-australian-sustainable-finance-taxonomy (accessed 20 December 2023).

- the taxonomy should be usable for a range of different users;
- the taxonomy should be interoperable and broadly compatible with international approaches to sustainable finance taxonomies; and
- the taxonomy should be tailored to Australian priorities. These include supporting the allocation of capital towards transition activities; aligning with broader government climate policy objectives; supporting the foundation for broader regulatory frameworks on sustainable finance; and being adaptable to incorporating other climate and sustainability objectives such as nature in the taxonomy.

Figure 1: Initial development of the Australian Taxonomy



The Australian Council of Financial Regulators' Climate Working Group (CWG) is overseeing the development phase of the taxonomy project as part of its role supporting the development and implementation of the Government's Sustainable Finance Strategy.

ASFI, with endorsement from the CWG, has established a Taxonomy Technical Expert Group (TTEG), comprising 25 experts in sustainable finance; whole-of-economy decarbonisation; climate and environmental science and policy; human rights; and Indigenous rights and perspectives. This group is tasked with providing strategic direction over, input into and endorsement of taxonomy products for consideration by government.

Figure 2: Classification of environmental objectives in the Australian Taxonomy.