



**Building a better
working world**

Ernst & Young Services Pty Limited
200 George Street
Sydney NSW 2000 Australia
GPO Box 2646 Sydney NSW 2001

Tel: +61 2 9248 5555
Fax: +61 2 9248 5959
ey.com/au

Director
Production Tax Incentives Unit
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

12 July 2024

Submitted via email:

CriticalMineralsProductionTaxIncentive@treasury.gov.au
HydrogenProductionTaxIncentive@treasury.gov.au

Dear Sir/Madam

Response to the Critical Minerals and Hydrogen Production Tax Incentives consultation papers 2024

EY makes this submission in response to consultation on the details of the proposed *Critical Minerals Production Tax Incentive* and *Hydrogen Production Tax Incentive* announced in the 2024-25 Budget as part of the Future Made in Australia initiative.

The development of Australian based critical minerals processing and renewable hydrogen production can be challenging for a range of reasons, including volatile market prices, prohibitive costs, geopolitical factors, technology constraints and the absence of existing and transparent markets. Consequently, a level of certainty around costs is needed to encourage private investment in these target areas. The provision of supporting mechanisms such as downside revenue protections, capacity payments and tax incentives, allow governments to help accelerate and encourage private sector investment into these targeted sectors.

As a set of Production Tax Incentives, EY is broadly supportive of both the Critical Minerals Production Tax Incentive (CMPTI) and the Hydrogen Production Tax Incentive (HPTI). With the right settings these incentives have the potential to grow investment and develop new critical minerals and hydrogen production industries within Australia. As such, we welcome the government's support for critical minerals and hydrogen production through a Production Tax Incentive. To ensure that these programs address the needs of the industry and are administered efficiently and effectively, while also protecting the revenue, we have provided some recommendations.

Critical Mineral Production Tax Incentive

As noted in the introduction to the consultation paper, Australia has some of the world's largest reserves of critical minerals needed to diversify supply chains and support low emissions technologies. Hence, the challenges are not only around the availability of these critical minerals, but rather where and how we process the raw materials, and in particular around the development of domestic capability needed to deliver adequate economic resilience and security in a complex geopolitical world. At present, a significant portion of Australia's mining output is exported offshore for processing, leaving a gap in the nation's domestic capability to deliver adequate economic resilience and security and with ramifications that include projects not being developed to their fullest extent. Hence, the proposed CMPTI as a tax incentive will encourage the private sector to develop these industries locally.

Hydrogen Production Tax Incentive

Development of an Australian renewable hydrogen industry is expected to provide Australia with a comparative advantage in a net zero global economy. Australia's growing renewable energy infrastructure provides the potential to produce renewable hydrogen at internationally competitive prices. This would in

turn open the door to the decarbonisation of hard-to-abate industries and green production of chemicals such as ammonia and methanol. Despite the benefits and need for renewable hydrogen production, the current costs of producing renewable hydrogen is still prohibitive to investment, a trend seen globally. Introduction of the HPTI as a tax incentive will not only lower the production cost of renewable hydrogen but has the potential to provide first mover advantages to Australia and economies of scale.

Our Submission

Following our review of the Critical Minerals Tax Incentive and Hydrogen Production Tax Incentive consultation papers released on 1 July 2024, we submit our opinions and recommendations to the specific questions made in the consultation papers. Although the submission addresses both the CMPTI and HPTI jointly, where appropriate we have included comments and recommendations to each specific area.

If you have any queries in relation to this submission, please don't hesitate to contact our government incentive partners Jamie Munday on 02 9276 9087, Tim Benbow on +64 27 207 1073, or Ezra Hefter on 08 9429 2293, or our Australia tax policy team, including Alf Capito on 02 8295 6473.

Yours sincerely

A handwritten signature in black ink that reads "Jamie Munday". The signature is written in a cursive, flowing style with a long, sweeping tail on the letter "y".

Jamie Munday
Partner

EY Submission

Production Tax Incentive Consultation:

*Critical Minerals Production Tax
Incentive*

Hydrogen Production Tax Incentive

1. Executive Summary

We support the introduction of the Critical Minerals Production Tax incentive (CMPTI) and Hydrogen Production Tax Incentive (HPTI) as part of the Future Made in Australia package announced in the 2024 -25 Budget. The incentives proposed will encourage investments in value-adding to Australia's resources and strengthen Australia's economic resilience and security.

This submission seeks to focus on points in the consultation papers that:

- ▶ Require further clarification, and
- ▶ To provide recommendations to areas that will improve the operation of, and effectiveness of the CMPTI and HPTI.

Please note that there are a number of industry-specific matters raised in the consultation papers that we do not propose to comment on, especially in relation to commercially sensitive or resource specific areas. Instead, our comments are focused around the administration, nature and construction of the production tax incentives, as well as the potential key issues associated with their deployment.

1.1 General Comments on CMPTI and HPTI

As a general comment, we are supportive of the proposed regime and the structure of the program as a refundable tax offset. This uses an already established area of tax to achieve the policy outcomes, and furthermore provides companies with support for projects at a time when they need it.

We are supportive of the dual regulator approach (with different regulators for each program) and generally the use of industry-accepted techniques for certifications and validation, and suggest an annual registration or similar requirement.

We recommend that additional clarification be made in relation to entities eligible for the CMPTI and HPTI as entities engaged in qualifying activities may not be part of a company structure. Clarification should be made as to whether these incentives can be accessed by other business structures, such as trusts or partnerships. Clarification should also be provided as to how these incentives will apply to incorporated and unincorporated joint ventures, that jointly operate a single qualifying facility for the CMPTI or HPTI.

We recommend that the requirement to reach FID by 30 June 2030 be removed from both programs. Removing the FID requirement will simplify the administration and integrity of the program, by removing the need to establish the criteria for reaching FID, while providing certainty to potential claimants that the CMPTI and HPTI are available even if projects are delayed. It will also still encourage projects to progress, as projects would still be subject to the phase out of the program by 2040.

We are also supportive of the proposed transparency measures, but note that this information may be quite sensitive, and suggest that transparency be in line with other tax incentives (published on a 2-year lagging basis with name, ABN and amount of credit received). We recommend that this information is published by the ATO in line with existing tax transparency reporting.

Finally, we are also supportive of the establishment of guidelines to ensure community benefit is maintained and that the benefits under these programs are captured and aligned with other government focus areas. There are already a range of requirements for accessing Commonwealth grant funding, (e.g., compliance with workplace gender equality and Australian Industry Participation Plans), that can be utilised and made to be a requirement for accessing funding under these production incentives. We strongly recommend using these existing and well understood programs and initiatives in establishing the community benefit guidelines.

1.2 Critical Mineral Production Tax Incentive

In relation to the CMPTI, as noted above, we are broadly supportive of the proposed regime and highlight the following areas for further discussion and potential for improvement, including:

▶ Eligible expenditure

As a general principle, this strikes the right balance in limiting expenditure to the relevant areas that should be supported while ensuring that the credit is available for valid processing activities. However, there are a few potential areas for improvement including:

- ▶ Depreciation of capital equipment and waste disposal - these reflect the investment required to refine minerals to high purities and grades. As Australia is a high-cost jurisdiction, it would be expected that efficient resource use should be heavily weighted towards capital costs (reflected in depreciation) and that waste disposal will also be a key consideration given our high environmental standards. By excluding depreciation, there is the potential for the CMPTI to be distortive and drive expenditure away from capital (and from making projects more competitive in the long term). Furthermore, it would be appropriate for the CMPTI to encourage companies to optimise and spend in these areas to improve capital efficiency and drive innovative and new ideas around waste and waste treatment.
- ▶ Integrity provisions - the treatment of Royalty / IP payments is a complex area and could create integrity issues for the program:
 - ▶ Royalty / IP payments should only be claimable as eligible expenditure under the CMPTI where there is a clear arms-length value. Particular caution should be taken in relation to related party transactions, where we would suggest that clear arms-length rules, such as those found in transfer pricing are used.

▶ Eligible facilities

Critical minerals operations that process across separate facilities, or processing at two separate, but co-located facilities, will need clarification on the definition of "facility":

- ▶ Co-located facilities - projects may develop additional sites that are owned by the same operator and more clarity around this will be necessary to understand whether each facility will be treated separately for the purposes of the CMPTI.

▶ Eligible outputs

These need to be set at appropriate specification levels and with appropriate recognition of Australia's place in global supply chains across different resources. As such, we would recommend:

- ▶ Ongoing industry consultation - Further definition of outputs eligible for the CMPTI needs to be developed in collaboration with the industry to define the range and types of outputs claimable under the scheme, and appropriate levels for mixed use guidelines.
- ▶ In addition to defining eligible outputs, considerations also need to be made in relation to the types of activities eligible under the CMPTI. Given that the incentive seeks encourage investment in downstream critical minerals projects, value add activities from mine gate to free on-board shipping should be considered eligible for the CMPTI.

▶ Certification

Efficient certifications will be vital for the effectiveness of the CMPTI; this requires that where possible, industry accepted standards should be used without the need to create significant bureaucratic or other impacts. In many cases, traditional commercial arrangements between parties producing and buying processed minerals will contain measures requiring independent third parties to resolve differences in purity or other characteristics of products and where possible these existing accepted practices should be utilised as part of the CMPTI process. We recommend the following:

- ▶ Certification methods - currently in industry, producers of processed minerals and the end users will utilise the services of their own internal or external laboratory providers to establish product specifications. Where there is a dispute between parties, this will be resolved by a third party normally utilising a NATA-specified laboratory, independent from both parties. We recommend that this be considered as the standard process when certifying the relevant product specification.
- ▶ Updates to Certification methods - the CMPTI required product specifications need to be aligned with industry-accepted standards. These standards evolve over time, and it will be important to ensure that they are current. We recommend that Geoscience Australia will serve as independent advisor to government in cases where there continues to be ongoing technological or market developments that require changes to specification standards.

1.3 Hydrogen Production Tax Incentive

In relation to the HPTI, as noted above we are broadly supportive of the proposed regime and highlight the following areas for further discussion where we see potential for improvement, including:

- ▶ **Indexation of \$2 per kilogram of hydrogen credit**

While we support the \$2 per kilogram for eligible hydrogen as a baseline, we recommend that this \$2 per kilogram amount be indexed annually over the lifetime of the HPTI, to take into account inflationary pressures and cost escalations. This will ensure the relative value of the credit is maintained over the lifetime of the HPTI.

- ▶ **Eligible facilities**

We are broadly supportive of the measures proposed around eligibility, however, we recommend there be:

- ▶ Clarification on appropriate “single site” rules - while the requirement for 10 MW electrolyser capacity equivalent production is clear and in line with the interest of supporting larger-scale facilities, it is not clear what the limitations are that will apply around a single site. For example, it is unclear if a staged approach to a single geographically proximate location will be considered as a single site under the HPTI, as well as whether distributed projects such as green hydrogen logistics networks will qualify for the HPTI. As such, we suggest additional guidelines be provided to clarify whether a staged approach to development that includes a capacity of 10 MW or above is acceptable.

- ▶ **Connection to the electrical grid**

We support the consultation paper’s proposal that time matching or additionality will not be required as this has been an area of significant concern around other incentives globally. However, we have some concerns in relation to the proposed grid connection requirements and recommend:

- ▶ Guarantee of Origin (GO) scheme to remove same grid requirement - the proposed guidelines require that any renewable power used to produce hydrogen must come from a connection to a specific grid. While appropriate when looking at the NEM, this may not be an appropriate approach when looking at projects connected to remote or localised grids where power may otherwise have a blend of renewable and non-renewable sources due to technical and location requirements. As such, we would suggest that in this scenario, an offset approach be taken that will allow renewable energy fed into other grids in Australia (even if not drawn down directly to the specific project) be considered as renewable source for hydrogen generation under the HPTI. While we recognise this brings complexity, this will only apply to a limited number of projects. This can be achieved through the proposed GO scheme

to ensure that hydrogen production is within the prescribed emissions limits for the HPTI.

▶ **Certification**

We agree with the need for an appropriate certification process around renewable hydrogen and note that the recommended GO scheme while still to be finalised, would be an appropriate certification process. The main concern we have with the GO process is ensuring that what is implemented will be industry accepted and not overly bureaucratic. As such, we suggest:

- ▶ GO scheme clarification - Clarification of the operation and implementation of the GO scheme is needed, particularly in relation to quantifying the emissions intensity of hydrogen produced (given that a per kg approach is proposed under the HPTI as opposed to an overall production approach).

▶ **Interaction with other incentives**

There may be several existing or future interactions with ARENA grants and other Hydrogen Headstart (HHS) incentives. We strongly support that Commonwealth or State support will not limit access to the HPTI. However, we note that HHS funding is proposed to impact the HPTI. Given the implications that this entails, we suggest that:

- ▶ Further clarification is needed to confirm that grants, direct government support, and the Research & Development Tax Incentive will not impact on the HPTI.
- ▶ Eligible applicants for the HHS program receive the value of both the HHS and the HPTI in full. This is especially important, given the limited number of companies undertaking HHS projects are taking on a high level of risk by making large-scale, first mover investments in the hydrogen industry. The total amount received by successful applicants of Hydrogen Headstart should not impact the HPTI value.

2. Opinions and Recommendations

Establishment of the CMPTI and HPTI by way of a refundable tax offset mechanism is important to encourage participation by the broader sector as:

- ▶ Refundable tax offsets provide an immediate benefit to producers. Without these tax offsets being refundable, companies will not have immediate benefit from the CMPTI and HPTI, as projects attracting this funding will typically have large accumulated losses and will take multiple years of production to realise the credit.
- ▶ The CMPTI and HPTI provide a broad incentive, ensuring a consistent level of tax incentive across industry to produce high-value energy inputs in Australia, and encouraging participants to invest and claim.
- ▶ Australia already has a well-established and understood framework for refundable tax offsets in particular the R&D Tax Incentive, which has been extensively utilised by current critical minerals producers and early-stage hydrogen R&D projects.
- ▶ Refundable tax offsets are acceptable as part of the BEPS Pillar 2 rules, reducing the likelihood of governments providing a tax benefit that is eroded by other tax rules.

The uncapped and demand driven nature of the offsets is also supported as it allows companies to make market-based decisions, allows participation in the tax incentives by the broader (eligible) private sector, and providing certainty to industry, allowing projects to factor this into decision making and financial modelling needed to reach Final Investment Decision (FID).

Please refer to the subsequent sections for our opinions and recommendations that will improve the targeting and operation of the CMPTI and HPTI to best address current requirements. These contain both significant areas of recommendation and some more minor recommendations.

2.1 Proposed Details

In relation to the questions raised in this section in both consultation papers, opinions and recommendations on the proposed details are as follows:

Eligible entities: We are supportive of the broad-based system as this encourages participation by all levels of the private sector, providing all eligible corporations with support to add value to the industry. As entities engaged in qualifying activities for the CMPTI or HPTI may not be part of a company structure, clarification should be made as to whether these incentives can be accessed by other business structures, such as trusts or partnerships. Clarification should also be provided as to how these incentives will apply to incorporated and unincorporated joint ventures, that jointly operate a single qualifying facility for the CMPTI or HPTI.

FID requirement by 30 June 2030: We recommend that claiming the CMPTI and HPTI is not contingent on reaching FID by 30 June 2030, and should instead be based on production of critical minerals or hydrogen meeting the required specifications from the tax incentives throughout the life of the program. This will remove any ambiguity around whether a project has reached FID by 2030 and simplifies the administration of the program, while also providing certainty to potential claimants about the availability of the incentives, and ensure the cost of revenue is not exceeded given the 2040 expiry.

2.1.1 Critical Minerals Production Tax Incentive

2.1.1.1 Terminology

CMPTI Question 1-3 - We recommend clarification of the following areas:

2.1.1.2 Eligible facilities

There is a need to clarify the definition of “facility”, to note that a facility may be a new facility co-located on an additional site. Additionally, certain projects may consist of two separated facilities, both operated by the same entity, and it is unclear as to whether each will be treated separately for the purposes of the CMPTI.

2.1.1.3 Eligible processing activities/ outputs

We recommend that an end-to-end approach be taken in defining eligible processing activities, for example a definition covering activities from mine gate to free on-board shipping, or where the risk passes from the processor to the next user. This has the advantage of ensuring that multi-step processing by different parties would be captured for each party.

Additional clarity is required around this statement, “Activities in the mining and extraction part of the supply chain will not be eligible”, and in particular around the term “extraction”. The ineligibility of the mining of the critical mineral for the CMPTI is clear. However, extraction and processing of the mineral(s) are intimately tied together, so it is important to clarify what type of “extraction” activities will be excluded.

Recommendations:

- ▶ Clearly define what is meant by ‘facility’, when certain operations may involve critical minerals processing across separate facilities, or processing at multiple separate, but co-located facilities.
- ▶ Clarify that the scope of activities at a project be considered from mine gate (for mining projects) or for commencement of processing (for downstream projects purchasing critical minerals feedstock), up until when the risk passes from the processor to the next user.
- ▶ Clarify define what is meant by ‘Activities in the mining and extraction part of the supply chain are ineligible’ with criteria that are broad enough to cover all critical minerals.

2.1.2 Hydrogen Production Tax Incentive

2.1.2.1 Terminology

HPTI Question 1-6 - It is proposed that to be eligible for the HPTI, facilities must be located at a single site. Further clarification is necessary to ensure that this does not exclude projects across multiple production sites, but that otherwise meet the 10MW criteria, potentially such as large green hydrogen production for refuelling for use in distributed logistics. Considerations also need to be made for staged facilities, as it is unlikely a single facility with nameplate maximum hydrogen production will be built at once. Interested parties are likely to stage construction of hydrogen production facilities, gradually building up to maximum production capability.

We recommend that the \$2 per kilogram for eligible hydrogen produced be indexed every year to take into account inflation from the first financial year of the introduction of the credit. This ensures that the value of the credit accounts for inflationary pressures and reflects cost escalations that factor into other project costs over the lifetime of the project.

Recommendation:

- ▶ We recommend that a project can qualify for the HPTI if it is across multiple sites, and has a minimum capacity equivalent to a 10MW electrolyser across those sites.
- ▶ We recommend that the \$2/kg HPTI credit be indexed to account for inflation.

2.2 Eligible processing expenditure

CMPTI Question 4-11 / HPTI Question 7-12 - these questions are addressed below:

2.2.1 Critical Minerals Production Tax Incentive

2.2.1.1 Depreciation

We recommend that depreciation be included as an eligible category of costs, rather than an excluded one. Establishment of critical mineral processing facilities is capital intensive and reflect the investment needed to refine minerals to high purities and grades. Excluding depreciation from the eligible expenditure will disincentivise capital investment to develop the infrastructure needed to refine these minerals. It may also have the effect of distorting behaviour and biasing non-capital spend, potentially impacting project productivity. As Australia is a high-cost jurisdiction, it would be expected that efficient resource use will be heavily weighted towards capital costs. As such, the CMPTI should support the establishment of advanced, capital-intensive facilities needed for additional downstream critical minerals processing in Australia.

Depreciation is also relevant in ensuring that projects are treated consistently under the CMPTI with regards to their sourcing of power, and that the CMPTI does not distort normal market behaviour in relation to this area. As an example, if a company decides to operate their own power system, then depreciation on the assets acquired for this would be ineligible. However, if a company purchased power from a provider, then this would be eligible. This is especially important given that some companies are choosing to develop their own renewable energy power facilities.

Recommendation:

- ▶ The eligible project expenditure for the CMPTI should include depreciation on plant, equipment and cost of any utilities used in the processing of critical minerals.

2.2.1.2 Integrity Rules

It is also important that the CMPTI funds are spent appropriately, and that eligible expenditure is not subject to inflated or incorrect markups. As such, we would suggest that all eligible expenditure needs to be based on arm's length, commercial terms, or market rates. As such, we would also suggest that no non-commercial markups are allowed and where appropriate, it may be useful to consider transfer pricing or other principles as appropriate to the design.

Recommendation:

- ▶ Establish integrity measures to identify related party expenditure being claimed as part of the CMPTI submission and ensure that all related party dealings claimed as expenditure under the CMPTI reflect arms-length rates when related parties are involved.

2.2.1.3 Associated costs

Waste Disposal

We recommend that the expense associated with waste disposal be considered an eligible expenditure item for the CMPTI. There are several reasons for this:

- ▶ The processing (and refining of) critical mineral products will result in and require a greater proportion of waste to be reprocessed or stored in Australia, contributing a significant portion to the cost of the overall process. In consideration of Australia's high environmental standards, key considerations should be given to waste disposal and encourage companies to optimise and spend in areas to drive innovative and new ideas around waste recovery and waste treatment.
- ▶ A credit for waste treatment and disposal under the CMPTI can also encourage the recovery of waste via reprocessing, which may make it economical to recover additional critical minerals from a resource.
- ▶ The stringent requirements around the treatment and disposal of waste in Australia reflects Australia's status as a developed mining jurisdiction - credits provided through the CMPTI will

enable Australian producers to be cost-competitive with overseas projects that do not operate in accordance with environmental best practices.

Recommendation:

- ▶ Waste treatment and disposal costs should be made eligible for the CMPTI. Eligible waste treatment and disposal costs can be in the form of either cost of running onsite treatment and disposal facilities or onsite treatment provisions for offsite disposal of waste.

Royalties / Intellectual Property:

This is a complex area, and could create integrity issues for the program. As such, we would suggest that any claims for royalties / IP be made on a clear arms-length basis, and that if this can't be established, that these amounts are excluded. This is particularly the case for international transactions with related parties, where we would suggest that clear arms-length rules (such as those found in transfer pricing) are used.

Recommendation:

- ▶ Royalty / IP payments should only be claimable as eligible expenditure under the CMPTI where there is a clear arms-length value. Particular caution should be taken in relation to related party transactions, where we would suggest that clear arms-length rules, such as those found in transfer pricing are used.

2.3 Eligible outputs/production

CMPTI Question 12-19 / HPTI Question 7-12 - while industry will be better placed to address many of the questions raised, there are specific points in the consultation paper where we have provided feedback on the structure of the proposed administration of the program.

2.3.1 Critical Minerals Production Tax Incentive

The CMPTI's output rules need to be set carefully in consultation with the industry to ensure that all critical mineral products (with value add) are considered with appropriate recognition of Australia's place in the global supply chain. There needs to be sufficient beneficiation and value add to the product via, refining and or beneficiation processes. It will also be necessary to ensure that the definitions are broad enough to include the different types of products that can be derived from these minerals (e.g., refined minerals, concentrate, pellets etc.).

We see a valuable role for Geosciences Australia to play in relation to technical expertise and consultation with industry to ensure any standards set in relation to different critical minerals specifications are updated to reflect current markets. This will be important to ensure, as the CMPTI system will need to continue to evolve in line with technology and processing breakthroughs, as we have seen in the continual change in market specification of other minerals over time (for example, an ability for end users to utilise processed minerals with lower purity specifications).

Recommendation:

- ▶ Considering Australia's current role as a raw material exporter, significant value-add can be obtained from processing these products in Australia. Output eligibility requirements for the CMPTI should be developed in collaboration with industry and Geoscience Australia to define the range and types claimable under the scheme, and these should evolve in line with evolving industry practices for critical minerals.

2.3.1.1 Apportionment of mixed-use costs

CMPTI Question 19 - There may be several expenditure items that will relate to both processing and mining activities; thus, it will be important to develop a clear set of guidelines to allow industry to readily determine what proportion of this should be claimed under CMPTI.

Recommendation:

- ▶ Industry consultation should be sought to develop guidelines for apportionment of costs incurred for a combination of eligible and ineligible production. We recommend that clear guidelines be provided to ensure that any apportioned costs have a direct nexus to the eligible CMPTI costs, as well as a basis for establishing the apportionment of costs. We recommend this basis of costs also considers including of depreciation (2.2.1.1) and waste disposal (2.2.1.3) as a direct cost.

2.3.2 Hydrogen Production Tax Incentive

HPTI Question 11-12 -The acknowledgement that hydrogen will mainly be produced via hydrolysis, but that other avenues of hydrogen production is supported is one we support, as this allows for future technologies for hydrogen production to also be eligible for the HPTI.

We also strongly agree with the approach taken on renewable energy generation such as no requirement for hourly time matching with hydrogen production. This requirement has been a barrier to uptake of the incentive by industry for overseas incentives.

We do not support the requirement that grid connected projects be required to match their hydrogen production with electricity generated by the same electricity grid. Adopting such a requirement will disincentivise some projects and be a barrier to hydrogen production in remote areas where electricity grids may not all be interconnected (such as Western Australia, the Northern Territory and parts of Queensland). Furthermore, the energy generated, and consumption capacities of hydrogen facilities may surpass local grid limits, leading to underutilisation of production potential. For a more equitable incentive, we believe there should be consideration to remove this requirement and allow offsetting (or matching) with renewables on other parts of the grid. We note that the proposed GO scheme will enable the tracking and verification of emissions associated with hydrogen production, this can be used to validate the sustainable production of hydrogen without tying producers to local grid production constraints.

Recommendation:

- ▶ Remove the requirement for grid matching as the GO scheme can be used to certify hydrogen intensity that qualifies for the HPTI, and this can be used to drive the HPTI.

2.4 Administrative arrangements

2.4.1 Dual Agency

The use of a dual regulator model to administer both the CMPTI and HPTI is supported. This allows for a balance to promote the production tax incentives along with the need to ensure integrity and enforcement is maintained. Separation of responsibilities under this model is advantageous, as it allows each regulator to specialise and focus on distinct aspects of these incentives, enhancing the effectiveness and oversight. This structure would achieve the Government's objectives of incentivising sustainable production while maintaining rigorous standards and compliance within the industry. Additionally, similar to incentive programs such as the Research & Development Tax Incentive, there needs to be optionality about choosing to claim the CMPTI and HPTI.

2.4.2 Annual Registration Requirements

To be eligible for the proposed Production Tax Incentives, it is recommended that a fixed annual deadline for eligible entities to lodge their applications be established, especially if an application is required to be processed by DISR or DCCEEW for the refundable tax credit to be accessed, for example a requirement to lodge within 10 months of a year-end.

This will ensure that entities maintain relevant documentation and prevent retrospective lodgements (“grave digging”). Additionally, as entities claiming the Production Tax Incentives may have statutory lodgement deadlines for tax, DISR and DCCEEW need to be efficient when administering and processing applications for the CMPTI and HPTI respectively, to ensure that the submission of tax returns and/or the amendment of tax returns are not routinely required for accessing these incentives. Time will be required to collate necessary information for the CMPTI and HPTI incentives after completion of the financial year, and larger companies in tax payable positions have to lodge returns within 7 months, so we recommend that applications need to be processed within a maximum of 28 days. To provide a cut-off period for applications, we recommend that similarly to the Research & Development Tax Incentive, applications must be lodged with DISR or DCCEEW within 10 months of the completion of the applicant’s financial year end.

Once a facility has established production of the eligible product, consideration could also be made for multi-year (2-3 year) eligibility to access the CMPTI or HPTI following a one-off registration with the relevant administrative body (DISR or DCCEEW). The Advanced and Overseas Finding application process can be adapted as a model to follow for this process. This will give eligible producers a level of certainty and reduce administration costs.

As the mechanism for administering the CMPTI and HPTI will be through the tax return, having the payment of any refundable credit being first offset against any existing tax debt to the ATO will ensure that an entity cannot benefit from this to the extent they have existing liabilities to the ATO, strongly encouraging compliance with tax obligations.

Recommendations:

- ▶ An annual lodgement of relevant information should be required within a defined period (e.g., 10 months of the year end). The average processing time for a CMPTI by DISR or HPTI application with DCCEEW should be 28 working days.
- ▶ Consideration be made for a multi-year approval with DISR or DCCEEW for projects with established production.
- ▶ We support the regulatory arrangements proposed, subject to our suggestions to improve the effectiveness of the program administration in 2.4.3.

2.4.3 Certifications

2.4.3.1 Critical Minerals Production Tax Incentive

CMPTI Question 20-22 - It is important that any production incentive have integrity around the products that it is supporting (that is it should be processed critical minerals) and hence have a need to have product technical specifications (e.g., purity), but that this is balanced against the need to ensure a light bureaucratic touch.

Given there are already well-established practices between sellers and buyers to establish key specification requirements, we would that where possible, industry accepted practices should be utilised. As part of existing commercial practices, sample testing is already undertaken by buyers and sellers, as well as using NATA-compliant laboratories as an independent third party in the event of a dispute between buyer and seller.

There are concerns that the proposed role for Geoscience Australia duplicates testing which is already undertaken by both the supplier and customers to establish the quality of products bought and sold - this adds both an additional expense to complying and administering the program, and duplicates testing already undertaken in the normal course of business.

Recommendation:

- ▶ Industry accepted certification (based on lab tests in house and subject to agreement with buyers and independent 3rd party NATA-compliant labs) be used to determine product specifications.

- ▶ Geoscience Australia's function should be to serve as an independent advisor to the Government, rather than being the required testing provider. Geoscience Australia can also serve as an advisor as production specifications evolve over time, to ensure that the CMPTI is facilitating critical mineral production to these standards.

2.4.3.2 Hydrogen Production Tax Incentive

HPTI Questions 13-15 - The GO scheme is an emerging program that is aimed at verifying the low emissions profile of products, including hydrogen produced in Australia. While broadly supportive of the aims of the GO scheme, there are concerns that a requirement to have GO certificates issued per kilogram of hydrogen poses a significant burden on industry participants. Therefore, further information is needed on the application of the GO scheme and consideration for whether there is a need to create GO certificates for each kilogram of hydrogen produced to be eligible for the credit.

Recommendation:

- ▶ Consider whether a more efficient method of administering the HPTI, based on periodic sampling of productions rather than every kg with frequency and size, determined on production volume and risk profile focusing monitoring on projects with a high risk of non-compliance with the HPTI. Projects with a proven track record of low emissions hydrogen production and high compliance could be subjected to less frequent sampling and reporting requirements.

2.5 Community benefit principles

CMPTI Question 24-30 / HPTI Question 16-22 - Opinions and recommendations for this section include the following:

2.5.1 Obligations to be eligible for Tax Incentives

Additional obligations in support of the community benefit principles can be based off guidelines set for grant funding eligibility. Existing structures can be used to develop guidelines around eligibility for the proposed Tax Incentives, may include, but are not limited to:

- ▶ Compliance with the Workplace Gender Equality Act for Gender Equality Reporting.
- ▶ Lodgement of an Australian Industry Participation Plan.

Where possible, we recommend that additional reporting disclosures required as part of the CMPTI and HPTI leverage information already reported by businesses elsewhere, and that any specific disclosures of additional information are not onerous on the claimants of these incentives. Example disclosures for the CMPTI and HPTI may include:

- ▶ Number of employees employed at the project.
- ▶ Expenditure incurred to Australian-based contractors.
- ▶ Expenditure incurred to supply nations certified businesses.

While recipients may choose to disclose credits received, to maximise the efficiency of administering the program, reporting should be centralised by Government. As the CMPTI and HPTI credits will be partially administered by the ATO, the ATO should be responsible for public reporting of credits received, as the ATO already collates and provides tax information.

Recommendation:

- ▶ Where eligible, the refunds of the CMPTI and HPTI credits should only be paid out once current tax debts are cleared.
- ▶ Reporting should be undertaken by the ATO.
- ▶ All applications for the CMPTI or HPTI need to be lodged within 10 months of the end of the financial year for the applicant, and retrospective lodgements cannot be accepted.

2.5.2 Transparency rules

We are supportive of the need for transparency to demonstrate the value that the program represents for Australian taxpayers; however, considerations also need to be made in relation to commercial sensitivity of information released.

As the production tax credits provide direct information into the operational expenses and cost of production of an entity to refine certain materials, this information is commercially sensitive.

Additionally, in relation to the CMPTI, the commodities identified as critical minerals are on lists specifically because they are essential to modern technologies, economies and national security, are in demand from Australia's strategic partners and are vulnerable to supply chain disruption. Any disclosures beyond the value of production credits received may provide information to third parties which could be used to undermine Australian supply chains.

Recommendations:

- ▶ Transparency information on the amount of credits received through the CMPTI and HPTI should be published on a deferred basis, at least 2 years after the completion of the financial year in which the credits have been received.
- ▶ Information published on companies as part of transparency measures should be strictly limited to the value of tax credits received, the company name, and the company ABN. No information on the production specifications that the company has produced should be published by Government.
- ▶ Information should be published by the ATO, not by the recipient entity. This information should only be published for the head of the Tax Consolidated Group, at a group level, to align to other public tax transparency reporting.

2.6 Interaction with other government incentives

2.6.1 Interactions with other support programs such as the Hydrogen Headstart Program

HPTI Questions 23-26 - We acknowledge the importance of the Hydrogen Headstart (HHS) and other grant initiatives in providing support needed to scale-up a renewable hydrogen industry and for Australia to be cost-competitive in a global market. We support that the HPTI will not interact with other grant programs, Government support, or through claims made under the Research & Development Tax Incentive.

In our view, the benefits derived from programs like HHS should not adversely affect the eligibility or the level of subsidy provided under the HPTI. Companies applying for HHS have taken on additional risk as being first-movers for renewable hydrogen projects, and there should be consideration for first movers that the two hydrogen incentives should operate synergistically. HHS applicants have taken on a level of risk and scale well above the minimum 10MW electrolyser capacity required by the HPTI. The Government can reflect the support for these projects by ensuring that the HHS values do not proportionally reduce HHS payments - for clarity, an applicant should benefit in full from the HHS and HPTI programs if they are eligible for both.

Recommendations:

- ▶ Clarification be given that grants, direct government support, and the Research & Development Tax Incentive will not impact on the value of the HPTI.
- ▶ Eligible applicants for the HHS program can receive the value of both the HHS and the HPTI in full. The total amount received by successful applicants of Hydrogen Headstart should not impact the HPTI value.