



Electrical Trades Union

Hydrogen Production Tax Incentive Consultation

JULY 2024

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About the ETU

The Electrical Trades Union of Australia ('the ETU')¹ is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty-thousand workers around the country. ETU members make up a critical pillar of the licensed electrical workforce responsible for delivering the Australian Government's commitments to provide a more efficient, affordable, and secure emissions-free energy network. This includes responsibility for installing the renewable energy generation and transmission necessary for the production of green hydrogen, as well as the electricians employed to work in hydrogen plants.

The ETU sits National Hydrogen Strategy Advisory Group.

Acknowledgement

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples today.

Background

The ETU welcomes this opportunity to make a contribution to this consultation regarding the design of the Hydrogen Production Tax Incentive. ETU members will be engaged in hydrogen projects and are also directly responsible for the rollout of transmission and generation required to enable these projects. As an affiliate member of the Australian Council of Trade Unions, the ETU also supports and has made contributions to the ACTU's submission to this consultation.

In making this submission, we draw on the experience of our members working across government financed projects, where we have observed a range of issues of non-compliance, including non-payment or underpayment of wages and superannuation, and unsafe working conditions.

In addition to instances of non-compliance, the ETU has members on government financed projects where wages and conditions are well below industry-norms and/or employers are failing to employ apprentices. This includes projects that are critical to delivering the government's decarbonisation and emissions reductions targets, such as Project Energy Connect or the Hunter Power Project.

This is contributing to a loss of social licence for these projects and resulting in ongoing shortages in the electrical workforce. Jobs and Skills Australia (JSA) predicts that Australia will have a shortage of 42,500 electricians under a "Renewable Energy Superpower" scenario. Attracting, training, and retaining the clean energy workforce is critical to both a range of government priorities and, indeed, Australia's energy transition. Put simply, the failure of government projects to require minimum apprentice ratios and industry-standards places the achievement of the government's renewable energy superpower policy objectives at risk.

The proper embedding of 'community benefit principles' as a core eligibility criterion for the HPTI is,

¹ Being a division of the CEPU, a trade union registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

in this context, not a 'nice to have'. They are critical to ensuring that any projects facilitated through this scheme are delivering on a wide range of policy objectives.

As discussed in this submission, the ETU supports the ACTU's proposal for a system of "base" and "stackable" credits. Similar to the US IRA Act, CHIPS Act, and Bipartisan Infrastructure Law, stackable credits should be designed to act as an incentive bonus that reward socially beneficial outcomes. The approved activities should have a clear binary nature to provide clarity and consistency.

Properly structured, this system can be used to prevent non-compliant proponents from receiving government financing, while incentivising a race to the top on a variety of community benefit principles to deliver substantial policy outcomes through this investment and ensure ongoing social licence for the transition.

Recommendations

Recommendation: Community Benefit Principles must be integrated into the project and proponent eligibility criteria.

Recommendation: the incentive amount should be determined by a set of base and stackable credits that directly reference each of the community benefit principles set out in the Future Made in Australia Act. These criteria should be clear, specific and falsifiable.

Recommendation: the government should establish the quantum of base and stackable credits that will properly incentivise socially beneficial outcomes through a thorough analysis of the benefits to companies and the broader community.

Recommendation: the government must establish an effective monitoring and compliance system that includes giving the Fair Work Commission additional powers to handle effective compliance, as it relates to industrial relations issues.

Eligibility criteria

The ETU notes that while the consultation documents refer to "community benefit principles", these principles are not specifically included as either a project or proponent eligibility criteria. In line with the ACTU, the ETU supports the inclusion in the HPTI of eligibility criteria that align with the Community Benefit Principles in Future Made in Australia (FMA). To succeed, these criteria will have to be specific and falsifiable, with a clear metric to determine whether a project proponent is compliant.

Furthermore, we support the introduction of a two-gate system of base and stackable credits, whereby the first stage sets a set of baseline entry requirements against the community benefit principles established in the Future Made in Australia Act. The fulfilment of base criteria would make a project eligible to receive a tax credit. Entities deemed eligible to receive the incentive then proceed to a second stage whereby the size of the tax credit increased based on the fulfilment of broader standards of labour, social & community conditionalities.

These stackable conditionalities must directly instantiate the FMA Community Benefit Principles, including as they are set out in any FMA plans and rules to be developed in future.

Recommendation: Community Benefit Principles must be integrated into the project and proponent eligibility criteria.

Base and stackable credits

The ETU supports the ACTU's proposal for base and stackable credits. Namely, for an entity to be

eligible to receive the HPTI, it must fulfill the following baseline criteria:

- Compliance with Australian tax law, including as laid out in the consultation paper;
- No outstanding breaches of Australian industrial or work health and safety law;
- Payment of current industry wages and conditions;
- Where applicable, registration of an Indigenous Land Use Agreement (ILUA) with the National Native Title Tribunal; and
- Any contracting entity of the applying entity fulfills the same baseline criteria.

If an entity meets the above eligibility criteria, it proceeds to the second stage where the fulfilment of conditionalities reflecting the FMA Community Benefit Principles confer stackable credits. The satisfaction of these conditionalities would incrementally increase the size of the credit awarded to the applicant. Below is the set of “stackable” conditionalities that should determine the quantum of the incentive. They have been designed to be clear, falsifiable, specific, and to directly reflect each of the Community Benefit Principles set down in the Future Made in Australia Act 2024.

- A current enterprise agreement with a union and over 90% of employees in secure jobs.²
- Union induction for all new employees and 5 days paid leave to attend training per year for all workplace delegates.
- Meets or exceeds Australian Skills Guarantee targets for apprenticeship utilisation and hiring women, and minimum First Nations employment targets as stipulated by the First Nations Clean Energy Network “Powering First Nations Jobs in Clean Energy” report.
- Participation in an Energy Industry Jobs Plan Community of Interest as a “Receiving Employer” under the NZEA Act if the activity is located within an NZEA region, or contribution to a community benefit fund if located elsewhere.
- Meets or exceeds minimum level of local content in the capital / construction stage of the project.

For the final conditionality above, further analysis would need to be conducted to set an ambitious but achievable local content requirement fit for the industry, with the potential for this bar to ratchet upward over time as factors including this conditionality strengthen local supply chains.

The NSW RESB provides a best practice example of the rigorous setting of base and stretch targets for local content, to incentivise the growth of local industries.

Recommendation: the incentive amount should be determined by a set of base and stackable credits that directly reference each of the community benefit principles set out in the Future Made in Australia Act. These criteria should be clear, specific and falsifiable.

Proposed mechanism for determining quantum of tax incentive

The ETU supports the ACTU’s proposal to determine the quantum of the tax incentive awarded to projects, based on a combination of base and stackable credits. Specifically, we believe that the proposal in the consultation paper to only award a flat credit with no additional incentives “provided for meeting community benefit criteria or emissions intensity thresholds” will fail to deliver stretch targets for community benefits or emissions reductions. It would, furthermore, stand in contrast to the successful mechanism adopted in the IRA and recent Canadian clean energy tax credits that rejects a flat rate in favour of an adjustable rate based on conditionality fulfillment.

² Including through the provision of portable entitlements.

The ACTU has provided an example of how incentives could be calculated based on multiple stackable credits, that award socially beneficial outcomes.

Recommendation: the government should establish the quantum of base and stackable credits that will properly incentivise socially beneficial outcomes through a thorough analysis of the benefits to companies and the broader community.

Dual legislative mechanism for determining eligibility and monitoring compliance

The ETU proposes mirroring the dual track mechanisms already used in existing tax incentives to determine eligibility for the HPTI base and stackable credits (i.e. the *Research and Development Tax Incentive* and the *Producer Tax Incentive* for the local film production industry). Eligibility for the *Research and Development Tax Incentive* requires eligibility confirmation by AusIndustry, while the *Producer Tax Incentive* requires Screen Australia to issue a final certificate for the film in relation to the producer tax offset.

The dual track approval mechanism is proven and will help underpin the development of new value adding industries in Australia that will create jobs and long-term economic prosperity for the country.

As suggested in the consultation document, eligibility for the HPTI would mostly likely be determined by DCCEEW, who would issue a “Clean Energy Incentive Certificate” indicating whether or not an entity is eligible and, if eligible, how many stackable conditionalities that entity fulfills. DCCEEW would transmit this certificate to the Australian Tax Office (ATO), which would pay out the credit based on the assessment of the department.

In the case of the payment of industry terms and conditions, it is suggested that DCCEEW would consult with the Fair Work Commission (FWC) to determine project compliance with industrial law and industry conditions.

Interactions with other government incentives

The ETU notes that projects may be able to access other forms of government financing or funding, specifically, Hydrogen Headstart, with the consultation document noting that:

Payments under the Hydrogen Headstart will proportionally reduce if a project is receiving HPTI. This means that the total amount received from Hydrogen Headstart and the HPTI will remain consistent with the initial agreement under Hydrogen Headstart.

Where projects are accessing both Hydrogen Headstart and the HPTI, the clawback of funding should only apply to the value of the base credits. Additional financing achieved through the stackable credits should remain payable to the project, to ensure that there is no disincentive for projects to achieve stretch community benefits targets.

Enforcement and Compliance

The consultation document does not provide advice on the monitoring, compliance and enforcement of community benefits. The ETU believes that there must be clear and consistent guidance provided to the assessing agency on how they should monitor and enforce compliance with these principles, in determining both payment of the tax credit and ongoing eligibility each year that the credit is due to be awarded.

Effective compliance will necessarily involve regular monitoring of an entity’s performance, as well

as the option of an interested party bringing a complaint and securing an effective remedy in the event of non-compliance.

We support the ACTU's proposal for a monitoring and compliance system that provides the ability for an interested party (including employees and their trade unions) to raise a complaint alleging non-compliance with conditions; and regulator able to address the complaint through both conciliation in the first instance and potential via a form of arbitration. Under this proposal, the relevant Government department administering the Tax Credits be responsible for monitoring, while the Fair Work Commission be given additional powers to handle effective compliance, at least as it relates to industrial relations issues.

This second set of changes would likely require legislative change which is beyond the scope of this immediate consultation. Nevertheless, any system of tax credits should be designed to work with this proposed system and not cut across it.

Recommendation: the government must establish an effective monitoring and compliance system that includes giving the Fair Work Commission additional powers to handle effective compliance, as it relates to industrial relations issues.

