



Hydrogen incentives and critical minerals sector support

Steps in the right direction

Paul Lingard, Sanjay Wavde

In its 2024/25 Budget, the Federal Government announced the Hydrogen Production Tax Incentive (HPTI) to support and incentivise renewable hydrogen production as part of the Future Made in Australia Package.

On 25 November 2024, the Government tabled the *Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024* (Production Tax Credits and Other Measures Bill) to enact the HPTI in addition to a Critical Minerals Production Tax Incentive (CMPTI). The Production Tax Credits and Other Measures Bill passed both Houses of Parliament on 11 February 2025. The Senate incorporated one change to ensure uranium is unable to be a critical mineral for the purposes of the scheme.

The Production Tax Credits and Other Measures Bill provides for a refundable tax offset worth \$2 per whole kilogram of eligible renewable hydrogen produced in Australia, which can be claimed for a maximum of 10 years.

The CMPTI, introduced by the Production Tax Credits and Other Measures Bill, creates a 10% refundable tax offset of relevant processing and refining costs for designated critical minerals, processed and refined between 1 July 2027 and 30 June 2040, for up to 10 income years per project.

It includes relevant eligibility criteria for companies to satisfy in order to benefit from the scheme.

The (Production Tax Credits and Other Measures Bill generally gives effect to the Government's *Hydrogen Production Tax Incentive Consultation Paper* of 28 June 2024.

This is an important development for the future production of renewable hydrogen in Australia and takes a key step towards maintaining the global competitiveness of both the developing hydrogen industry and the critical minerals sector.

On 28 November 2024, as a measure to support the Future Made in Australia package, the *Future Made in Australia (Guarantee of Origin) Bill 2024* (Guarantee of Origin Bill) was passed by Parliament, for the purpose of:

- verifying emissions associated with renewable energy and clean products, beginning with hydrogen
- establishing the Guarantee of Origin scheme (GO scheme) which aims to also encourage decarbonisation and investment.

The Guarantee of Origin Bill is a significant step to promote competition and protect consumers through the introduction of Product Guarantee of Origin (PGO) certificates and Renewable Electricity Guarantee of Origin (REGO) certificates.

Scheme participants will be able to create certificates for each kilogram produced which will evidence the emissions of

their product and be accessible via a public register containing profiles with details of the production, delivery and consumption.

Eligibility criteria

The HPTI will only be available to a “constitutional corporation” (that is, companies and not trusts or partnerships) subject to tax in Australia that satisfies eligibility criteria, including the following:

- The hydrogen must be produced in Australia during a particular period between 1 July 2027 and 30 June 2040, called an offset period, which cannot be longer than 10 years and commences from the first day of an income year that is notified by the holder of the registered production profile.
- The company must have created a registered PGO certificate as certified by the Clean Energy Regulator (CER) which relates to that hydrogen and confirms satisfaction of certainty of the below requirements:
 - ◊ The facility at which the hydrogen is produced, and the production pathway for the hydrogen, must be specified in a production profile that is certified by the CER.
 - ◊ The hydrogen must be produced with an emission intensity of no more than 0.6kg of carbon dioxide for each kilogram of hydrogen, and
 - ◊ If the hydrogen production uses electricity sourced from a grid, the “grid matching requirements” must be satisfied. These requirements are not addressed by the Production Tax Credits and Other Measures Bill and are to be prescribed by legislative instrument, but the extrinsic materials indicate that the intention is for grid-matching requirements to be aligned with the *Future Made in Australia (Guarantee of Origin) Act 2024*.
- Only one notice can be obtained for a particular facility and production pathway, such that it does not appear that a facility can be entitled to the offset for the entire period between 1 July 2027 and 30 June 2040.
- In order for the facility to be certified by the CER, the production facility must be a single site in Australia, with a production capacity at least equivalent to an electrolyser with 10 MW (medium voltage) capacity, and hydrogen cannot be produced using coal gasification, steam reformation or another prescribed process, and
- A final investment decision must have been made before 1 July 2030.

Amount of the offset

As mentioned, as a default rule, the amount of the offset is \$2 in respect of each whole kilogram of hydrogen that satisfies the eligibility criteria in the applicable income year.

The amount of the offset may be reduced where the hydrogen production tax offset (HPTO) community

benefit rules (as discussed in the following paragraphs) apply to the company, however, the rules relating to the reduction of the offset are yet to be released.

The offset will be provided to eligible corporations as a credit against their income tax liability. To the extent of any excess available offset (that is, where there is no income tax liability as a result of the offset or otherwise), the amount of the excess is refundable to the eligible corporation in cash.

The offset is not available for entities that are exempt from paying income tax.

Where an entity is entitled to an offset under the HPTI, the Commissioner of Taxation must make the entity’s name, Australian Business Number (ABN) or Australian Company Number (ACN) (as applicable), and total tax offset under Division 421 of the *Income Tax Assessment Act 1997* (that is, being the HPTI and CMPTI) to which that entity is available for the income year, publicly available.

Companies may be eligible for both the HPTI and funding under the Government’s Hydrogen Headstart Program [providing “revenue support for large-scale renewable hydrogen projects through competitive hydrogen production contracts”], however, the explanatory memorandum suggests that payments under the Hydrogen Headstart Program will be proportionally reduced to the extent of any HPTI. Consistent with this intention, the Production Tax Credits and Other Measures Bill introduces an exception from tax secrecy laws for tax officers to permissibly disclose protected information to the Australian Renewable Energy Agency (ARENA) if provided for the purpose of ARENA administering this program.

HPTO community benefit principles

Recipients of the HPTI must comply with the “community benefit principles” as set out in the overarching *Future Made in Australia Bill 2024*, passed on 29 November 2024. There is limited detail on how such principles will apply to the HPTI. It is expected the Treasurer will create HPTO community benefit rules, which align with the overarching community benefit principles. Importantly, these rules may specify an amount an offset is reduced if a company does not comply.

How is it applied

The HPTI will be jointly administered by the CER and the Australian Taxation Office (ATO). The CER will maintain a key role in certification of production profiles and registering and verifying registered PGO certificates. Once a company is certified, the HPTI will be principally administered by the ATO. Whether or not the offset is available is intended to be self-assessed by the company, with a relevant amount being included in the income year’s tax return.



Paul Lingard,
Ashurst
Australia

Paul is a partner in Ashurst’s Project and Energy Transition practice. He specialises in assisting clients in the energy and resources sector on complex M&A transactions, operational issues and large-scale development projects, particularly in the field of hydrogen and new energy initiatives.



Sanjay Wavde,
Ashurst
Australia

Sanjay is a partner in Ashurst’s tax practice. He provides practical and strategic advice on a wide range of complex tax issues, with a particular focus on funds management, M&A, and infrastructure transactions. He has practised taxation law in Australia and the US.



The quote

The GO Scheme's international alignment will allow participants to engage with global schemes.

GO Scheme

The GO Scheme establishes two types of certificates as mentioned earlier:

- **REGO certificates:** These tradable certificates will work alongside the renewable energy target certification scheme until December 2030 and will support various claims about renewable energy production in Australia.
- **PGO certificates:** These non-tradable certificates will track and verify the carbon intensity of specific products, starting with hydrogen and later including other low-emission products like green metals and low-carbon liquid fuels.

This scheme will assist parties involved in the hydrogen value chain, as developers will be able to account for the carbon intensity of their products. This will aid compliance with programs like the Hydrogen Headstart Program and HPTI. Additionally, the GO Scheme's international alignment will allow participants to engage with global schemes.

Critical minerals incentive

As mentioned, The Production Tax Credits and Other Measures Bill introduced a Critical Minerals Production Tax Incentive. This creates a 10% refundable tax offset of relevant processing and refining costs for designated critical minerals, processed and refined between 1 July 2027 and 30 June 2040, for up to 10 income years per project.

What you need to do

Prospective recipients of the HPTI should ensure they understand the relevant eligibility requirements, including the:

- creation of a CER-certified PGO certificate
- production profile and facility requirements
- emission intensity limitations
- relevant timeframe restrictions.

This also includes ensuring each prospective recipient is:

- a constitutional corporation
- a holder of a production profile relating to the hydrogen with a PGO certificate for hydrogen under the GO Scheme
- an Australian resident with an ABN or a foreign resident with a permanent establishment in Australia and an ABN
- subject to Australian tax on income derived from activities that led to the creation of the PGO certificate, and
- compliant with the rules implementing the community benefit principles for the HPTI.

Consider:

- the community benefit principles, as the HPTI is available to developers who are able to effectively align their hydrogen production with investment in local communities, domestic industry and supply chains, and the promotion of diverse workforces, secure jobs and tax transparency.
- the structure of your project to ensure alignment with

the HPTI eligibility criteria and other government incentives (such as the Hydrogen Headstart Program).

- the certification components of the GO Scheme and the production pathway of hydrogen products to determine whether PGO certification is applicable to your project. **FS**

About Ashurst

Ashurst is a leading law firm with an international client base spanning corporates, financial institutions and governments. With 31 offices in 18 countries, we offer the reach and insight of a global network, combined with the knowledge and understanding of local markets. We have a strong track record of successfully managing large and complex multi-jurisdictional transactions, disputes and projects and delivering outstanding outcomes for clients.

The firm's people are its greatest asset and bring together global integrated teams of consulting, legal and NewLaw professionals to deliver a seamless service and provide the incisive advice clients need. Our focus is on getting to the heart of clients' commercial goals and going beyond matters of the law to deliver practical, holistic solutions.