AMEC SUBMISSION

AMEC
Association of Mining and Exploration Companies

To: Senate Standing Committee on Economics

Re: Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024 [Provisions]

20 December 2024

Introduction

AMEC appreciates the opportunity to supply a submission to the Senate Standing Committee on Economics regarding the *Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024 [Provisions].*

AMEC only has comments regarding the Schedule 2 *Critical Minerals Production Tax Incentive and* does not represent organisations invested in the activities of Schedule 1 or 3.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 600 member companies across Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over $100 billion of the mineral exploration and mining sector's capital value.

General Remarks

AMEC supports the passage of this legislation and the introduction of a Production Tax Incentive to support the delivery of downstream critical minerals.

The commitment of $7 billion over 10 years, for 31 critical minerals on the critical minerals list, provides the assistance and incentive to industry that is required right now.

In 2023, AMEC commissioned a report by Mandala Partners that detailed the case for adopting the Advanced Manufacturing Production Tax Incentive from the United States of America's (USA) Inflation Reduction Act (IRA). That report can be read here: https://amec.org.au/ptc-resources/ and is appended to this document.

Since 2023, while most critical mineral's commodity prices have changed, the imperative has not: if Australia wants to go downstream it must compete against more established market participants.

An unavoidable reality is that the global demand for critical minerals is constantly shifting. There are new technologies entering the market, new demands and new minerals growing to prominence.

Simultaneously, ferocious competition between battery manufacturers means the demanded minerals and chemistries are also evolving. Strong and consistent Industry feedback has been that the implications is that end uses, such as battery chemistries, will continue to shift, rendering it extremely challenging to predict what upstream saleable input products will be in demand in 2030 and beyond.

Australia is operating in a fiercely competitive international environment with other jurisdictions being extremely proactive in attracting capital for critical mineral projects (US, Korea, Japan Argentina, Indonesia, etc). Australia cannot stand still, and the PTI is an essential measure to bring us somewhere into realms of competitiveness.

Globally, virtually all critical minerals are currently processed in China and East Asia. Internationally, following the height of the global COVID-19 pandemic, many nations engaged a raft of incentives to attract global capital to diversify supply chains and to decarbonise their economies. With Japan, Korea, England, the European Union and the United States of America each adopting measures to make it increasingly attractive to invest there. Industry feedback to AMEC has been that these incentives are demonstrably reducing Australia's competitiveness in attracting mobile capital. Australia still has a nascent critical minerals industry, and the competitive advantage of hosting the deposits may not suffice to entice downstream development.

A Critical Minerals Production Tax Incentive (CMPTI) will reduce the production cost disadvantage faced by Australian projects. It is however, not a "silver bullet" or panacea: Australia has long approvals timeframes, fundamental land access issues and high construction costs. Industry has noted a high-cost disparity between the Australian and international approvals processes as well as expressed frustration at immature common-user infrastructure and utilities services. A CMPTI cannot surmount those challenges, but it will make the cost of doing business, once in production, more competitive.

AMEC's commentary should be considered in light of the Production Tax Credit report that was supplied into the Commonwealth Budget process in 2023/24. This document is available on AMEC's website at: [www.amec.org.au/ptc.](http://www.amec.org.au/ptc) This report reflects the wider membership's concern that unless the Commonwealth Government seriously engage, Australia will be caught flat footed and miss opportunities to expand further downstream.

Recommendations

1. Roles of DISR and ATO need to be clear from the beginning.
2. Community Benefits Principles must be clarified so that they are:
    a. Applied across the entire tax group, not just the processing facility.
    b. Satisfied at Registration rather than annually.
    c. Consulted upon early by the ATO.
3. Clarity on the eligible inputs is needed.
4. Transport costs for feedstock and reagents need to be an eligible cost.
5. Ensure the Production Tax Incentive does not conflict with the Pillar II commitments.
6. Provision made for Franking Credits.
7. Improving the efficiency of Australia's regulatory framework remains vital.

Reducing Administrative burden

The legislation as drafted can be passed and the Production Tax Incentive could work effectively if implemented with appropriate administrative intent. However, the concern expressed by a substantial portion of industry are:

Dual Agency model

While the proposed format of the Department of Industry, Science and Resources and the Australian Tax Office co-sharing administrative arrangements is supported, there is concern regarding how it may operate in practice. This Dual agency model has been subject to numerous reviews as part of the Research Development and Tax Incentive. We recommend that the most recent review, which was undertaken by the rigorous and independent Board of Taxation is considered and applied.

Titled *Review of R&D tax incentive dual agency administrative model,* the Tax Board's position builds on the previous reviews of the Research and Development Tax incentive. It identified areas that needed consideration.

The Tax Board's recommendations are summarised on page 8 of the report, and are relevant for consideration (noting DISER is now DISR):

- Defining the roles and responsibilities of DISER and the ATO in administering the R&DTI program.
- Increased information sharing between DISER and the ATO (which is restricted due to legislative provisions) to reduce duplication between the two administrators.
- Creating greater certainty for claimants by issuing clear and relevant guidance material in a timely manner.
- Publishing clear and transparent timeframes for reviews undertaken by both DISER and the ATO.
- An Alternative Dispute Resolution (ADR) process (that involves both administrators) to resolve reviews undertaken by DISER and the ATO in an efficient, cost effective and timely manner.

AMEC advocates each of the recommendations are applied to the Production Tax Incentive before the first applications are accepted.

Annualised reporting

The legislation does not provide any clarity as to how onerous the annual reporting requirements are, as that level of granular detail is managed via the regulations and Rules. However, there is concern within industry that the reporting requirements risk outweighing the benefits. Of specific concern is the consideration of community benefits.

Community Benefit Principles

The legislation is largely silent on how the Future Made in Australia Community Benefit principles will be applied. This has led to unnecessary speculation among industry and fear that the Community Benefit Principles will be onerous to the extent they will undercut the appeal of the CMPTI.

Part 10 of the Future Made in Australia Act states that the ***community benefit principles*** are:

(a) that Future Made in Australia support should provide community benefits, in particular by:

(i) promoting safe and secure jobs that are well paid and have good conditions; and

(ii) developing more skilled and inclusive workforces, including by investing in training and skills development and broadening opportunities for workforce participation; and

(iii) engaging collaboratively with and achieving positive outcomes for local communities, such as First Nations communities and communities directly affected by the transition to net zero; and

(iv) strengthening domestic industrial capabilities, including through stronger local supply chains; and

(v) demonstrating transparency and compliance in relation to the management of tax affairs, including benefits received under Future Made in Australia supports; and

(b) any other principles specified in the rules for the purposes of this paragraph.

(4) Subsection (1) does not apply to the provision of Future Made in Australia support under a particular law:

(a) to the extent that having regard to the community benefit principles would be inconsistent with that law; or

(b) in circumstances prescribed by the rules for the purposes of this paragraph.

The community benefit principles can and are being met by each mine and downstream processing facility in Australia. Companies already must evidence each of these requirements to State and Territory regulators. However, how the Commonwealth chooses to regulate compliance with this provision may create an unintended administrative burden and uncertainty.

AMEC strongly recommends that the whole tax group is considered, rather than the specific sub-unit that is the mineral processing unit. The risk is that it can be challenging to apportion the community benefit between the mine, which will have hundreds of jobs, and the downstream processing part (which may have less, but more technical skill sets).

AMEC recommends that the satisfaction of Community Benefits principles is achieved at Registration. The intention of the CMPTI is to incentivise downstream processing of critical minerals which is currently not occurring in Australia. Instead, this downstream processing is occurring overseas. This legislation has been introduced because there has been a policy decision that it is in the community's benefit for the country to produce products further downstream from its critical minerals.

Clarity is needed on:

1. The identity of whom will decide whether the S 419-5 (1)(f) requirements are met. We consider the decision maker should be DISR, with this interpreted as a single decision made at the beginning of the process during registration.
2. At what point in time Community Benefits are measured, and how often.

3. Reporting requirements: we consider reporting requirements should be considered at a whole of tax group level once rather than at a processing unit level.

Annually reporting whether the company is meeting the eligibility criteria risks creating an administrative burden disproportionate to the stated policy goal of domestic downstream production. If the company is producing the downstream critical mineral, it should receive the CMPTI.

Both the State and Commonwealth Governments have several layers of legislation and regulation to manage the interaction of chemical processing with the landscape, environment, and community. Determining community benefit should not be role of the ATO when assessing the CMPTI – this obligation is satisfied by the other regulators.

Eligible inputs

Subdivision 419-B CMPTI expenditure is sparse on detail of what is included and what is not included as an input. A concern for industry is that the intent of the parliament is clear that downstream processing should be incentivised, that in practice certain aspects may be carved out. For clarity's sake, AMEC details three key areas that we consider should be eligible inputs.

Reagent costs

All reagents should be eligible.

Listing the reagents varies for each ore being downstream processed is extremely difficult to absolutely define as that presupposes the feedstock, the technology and the technique(s) used. Noting that reagents and utilities are not the only two costs centres that are present for downstream processing.

Coating agents should also be explicitly included, which are used in downstream processing of graphite. As discussed, graphite does not undergo a chemical process when stepping down the value chain (only a morphology change).

This can be clearly seen in the example below and the array of inputs required to take spodumene to lithium hydroxide monohydrate.

<table>
<tr><th>Stage</th><th>Significant Cost Contributor</th></tr>
<tr><td>Calcination</td><td>Spodumene concentrate (including logistics)
Natural gas
Labour
Electricity
Maintenance
Water
Ancillary treatment
Grinding media
Mobile Equipment including fuel</td></tr>
<tr><td>Acidification</td><td>Sulphuric Acid
Natural gas
Labour
Maintenance
Water
Ancillary treatment
Mobile equipment including fuel</td></tr>
</table>

Leaching	• Lime • Limestone • Labour • Electricity • Maintenance • Water • Ancillary treatment
Filtration	• Lime • Limestone • Labour • Electricity • Maintenance • Water • Ancillary treatment • Mobile equipment including fuel. • Co-product transport and disposal
Caustisation	• Caustic • Electricity • Steam • Water • Labour • Maintenance
Crystallisation	• Electricity • Steam • Water • Labour • Maintenance
Purification	• Electricity • Steam • Water • Labour • Maintenance • CO_2
Packaging	• Labour • Packaging materials (bags, pallets, wrap) • Electricity • Maintenance • Water • Mobile equipment
Logistics	• Mobile equipment • Labour • Distribution (warehousing, logistics, administrative)
Other	• Labour • Administrative costs

Reagents will differ for different minerals and flowsheets. Some reagents may also be confidential due to proprietary technology in extracting the downstream product, and provision should be made to ensure this confidentiality.

Reagents will also change. There are future technologies and innovations that will occur that will amend the list of the reagents that are used. The drafting of the CMPTI rules and guidance should avoid specifying the list too narrowly, as it will inhibit any innovation that will naturally occur.

Transport costs.

There is a concern that transport costs to get feedstock and reagents to the processing facility will be excluded, unless they are explicitly included in the legislative framework.

Transport costs exist for all operations. For most critical mineral's products, the proportion of transport as a cost is much smaller than for bulk products, such as iron ore.

However, nearly all Australian mines are in remote and regional Australia and moving the feedstock, reagents and chemicals, as well as the waste to and from the processing facility are a cost.

Transporting the feedstock, reagents, ingredients, and materials to site for undertaking downstream processing should be eligible.

Transport of the product to the point of sale should be included. That may be to a port and onto a ship within Australia. Any costs associated with transport beyond the Australian shores could be excluded.

Waste

Some in industry have interpreted S 419-25 (3) as excluding waste.

Waste expenditure needs to be included. Downstream processing is not possible without creating a waste stream. The management of that waste in a socially (and Australian environmental regulatory) acceptable manner incurs a cost that is a factor in the decision to go downstream or not. All the costs associated with the waste expelled from the processing facility should be in consideration.

Excluded expenditure.

Section 419-25 (2) excludes expenditure explicitly from the CMPTI. The policy decision has been taken to exclude capital, financing costs and depreciation. Industry has noted that how the 'recycling' exclusion is interpreted may unintentionally capture re-dissolution or re-processing.

Industry has noted that under the Income Tax Assessment Act 1997 capital costs associated with rehabilitation and environmental protection activities are often immediately deductible, and as such any capital costs associated with these activities should also be eligible and included for critical minerals downstream processing.

Industry has noted that the prescriptions regarding intellectual property as no more than 10% of expenditure is appropriate in the current environment. However, that may change with technological innovation.

Industry notes that the financing of downstream processing projects is extremely challenging. Future consideration by the Government of support via the tax system to finance downstream projects would be welcome.

Review

The Budget and Government policy has currently limited the CMPTI to 10 years. However, if successful in building new industries, a future government could look to potentially extend and continue to the CMPTI. The Government has historically made similar decisions to support nascent industries in the past.

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A concern highlighted by Industry is that the current drafting and scale may unintentionally not be fit for purpose. AMEC recommends a review is put in place in 2036 to consider the CMPTI and whether it helps Australia compete to meet market demands.

As noted above, the critical minerals market is rapidly evolving and there is expected to be demand for future chemistries currently not considered. A review could provide the needed flexibility to meet those anticipated evolutions.

Other

Franking Credits

The CMPTI will reduce the corporate tax payable in Australia. For foreign-owned recipients this could represent a permanent saving in Australian tax, but for Australian resident groups who pay fully franked dividends, this could be clawed back of shareholders if dividends paid are then not fully franked. A potential legislative amendment for this inequity is to give a full franking credit as if the credit were not available, such that the credit is not effectively repaid by Australian resident shareholders.

Pillar II

On 9 May 2023, as part of the 2023-24 Budget, the Government announced it will implement key aspects of Pillar Two of the OECD/G20 Two-Pillar. The stated objective of Pillar Two is for multinational organisations to pay a minimum level of tax, which is a threshold effective tax rate of 15%, on the income arising in each jurisdiction where they operate.

How the Australian Government consider Pillar II will interact with incentives such as the Critical Minerals Production Tax Incentive is unclear. Any further information regarding what companies could anticipate because of the interaction of Pillar II with other incentives is needed.

Final Remarks

AMEC support the passage of the legislation. The commentary and recommendations above seek to ensure the implementation of the Production Tax Incentive meets the policy objectives.

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