

Critical Minerals Production Tax Incentive

Submission of The Australian Workers' Union

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Introduction

The Australian Workers' Union (AWU) is one of Australia's largest and most diverse unions. We represent over 76,000 workers across the length and breadth of the country. This includes thousands of workers throughout the critical mineral supply chain: from mining to processing and refining of many critical minerals, as well as downstream in manufacturing and construction of renewable energy infrastructure.

This membership affords us a deep interest in the future of the critical minerals sector. We believe that despite the sector's valuable contribution to date, Australia is not close to tapping its critical minerals potential. Domestic processing, refining and more advanced manufacturing using critical minerals are especially underdeveloped. Our country holds unsurpassed reserves of many such minerals and important comparative advantages to exploit them. This includes our large and experienced industrial, mining, and mining equipment technology and services workforces. It extends further to high-quality energy resources necessary for processing, refining and manufacturing. Australia will produce renewable energy cheaper than most of our trade partners and other major economies across the medium and long-term.¹ The country's gas and potential hydrogen resources also offer an invaluable source of process heat.

Despite our advantageous position to develop advanced, locally integrated industries, Australia's critical minerals sector skews heavily towards 'dig and ship' - low value-added exporting of unprocessed ores. While such activity does drive revenue and employment, it also comes with an opportunity cost: a job in processing or refining that wasn't created, a downstream supply opportunity not provided, an energy sector not expanded and an innovation ecosystem not supported. 'Dig and ship' also increases Australia's vulnerability to economic shocks to the resources sector. As recent history with the COVID-19 pandemic demonstrates, the impact of such events will often be difficult or impossible to avoid.

Making better use of Australia's critical minerals can deliver a larger, more resilient sector and a bounty of quality jobs. Retaining Australia's market share of critical minerals supply while processing just half domestically would see skilled jobs in the sector rise to 48,000 in 2030 and over 90,000 by 2040.² The current critical minerals project pipeline alone could deliver around 21,000 ongoing jobs in the coming years if successfully developed.³ Such outcomes would further support tens or even hundreds of thousands of indirect jobs in construction, energy, chemical supply and transportation.

We further recognise that better use of our critical minerals resources is a strategic imperative. Australia's *List of Critical Technologies in the National Interest* includes a multitude of products reliant on critical minerals – with key energy technologies such as solar panels, wind turbines and batteries especially notable.⁴ These resources are also important in defence and semiconductor manufacturing. For instance, realising both the submarine and 'advanced capability' pillars of the AUKUS pact will require vast quantities of critical minerals.⁵ However, the global critical minerals supply chain is heavily concentrated in China.⁶ This poses a clear risk, particularly given China's tendency to exploit such arrangements in the service of geostrategic goals. AWU members in agriculture have been impacted by such action in the recent past, and China has used critical minerals to these ends in longstanding disputes with the US and Japan.⁷

Australia's trade and security partners are looking to it to diversify and de-risk supply - as the abundance of bilateral and plurilateral agreements and statements on the subject made in recent years reflects.⁸

Critical minerals can thus be a driving force of employment, development and sovereign capability. But though Australia is uniquely placed, this is not a future that the market will deliver alone. Certainly not in an optimal manner, as our history reflects. The mining boom of the 2000s was not accompanied by a jobs boom because the minerals were mostly exported unprocessed, rather than treated domestically and used to supply Australian manufacturing. The mining industry today provides employment for just 2.1% of the workforce.⁹ Moreover, the total wages paid to all workers in the industry has grown at low rates for nearly a decade, with profits increasing eight-fold in just the last six years.¹⁰ In addition, private capital will flow to where the totality of conditions, including in relation to public policy, are most advantageous.¹¹ Industry policy in pursuit of energy and strategic goals is eroding Australia's critical minerals advantage. China, the United States and Indonesia all exemplify this trend.¹²

Thus, Australia's latent potential promises much but guarantees nothing beyond a "*foot in the door*", as the Minister for Resources has characterised it.¹³ The Australian Government must play an active role in turning abstract possibility into active production of higher value products. Equally plain is the need to move quickly.

To this end, the AWU recognises the importance of existing measures under the *Future Made in Australia* (FMIA) program and *Critical Minerals Strategy*. But we especially welcome the proposed Critical Minerals Production Tax Incentive (CMPTI). Designed well, this can be a demonstrably effective tool for driving rapid deployment of capital to increase the value of our mineral assets.¹⁴ The CMPTI must be designed to facilitate as much investment in value-adding processing, refining and manufacturing as possible. For reasons of both value and social licence, it also requires provisions that will maximise returns to workers and the broader community.

Delivery of the CMPTI will entail a years-long commitment and a very large outlay from the Commonwealth. But delivered effectively, it can go down as one of the best investments in Australian resources and industry ever made. The AWU is eager to assist in making this vision a reality - starting with our response to questions raised in the CMPTI consultation paper, below.

'Please provide feedback on the proposed eligible expenditure and eligibility criteria'

Many of the high-level eligibility criteria for the proposed CMPTI will help ensure its efficacy. These are welcome and should be implemented. For instance, that the proposed instrument will be available on costs directly associated with processing and refining activities, rather than indirect costs or fixed costs levied regardless of output, is appropriate. This will assist to maximise returns from the CMPTI by incentivising producers to invest in increased production rather than ancillary activities. Other features will assist further assist in this regard. The fact that credits will be refundable is important - ensuring the scheme can be accessed by all prospective claimants, including those with minimal tax liability.

Also of note is that critical minerals processing and refining requires very large fixed capital investment upfront. For instance, Albemarle invested around \$2 billion to bring its Kemerton

lithium hydroxide processing facility to opening.¹⁵ That the incentive will uncapped and available over a clearly defined, extended period will assist in providing investors the confidence to move forward with such projects. Short durations and 'on again, off again' delivery have deterred investors targeted by similar programs previously.¹⁶

In turn, that initial production or a final investment decision must occur by June 2030 to access credit will assist in bringing projects online rapidly. This is an important consideration in light of competition from other governments, as well as the role of critical minerals in facilitating a timely energy transition.

Setting the credit at 10% the cost of production will also position Australian projects well against equivalent initiatives in the United States. There, a credit of the same rate is available under the *Inflation Reduction Act*.¹⁷ The CMPTI should thus provide an incentive at least as valuable as in the US, though there may be provision for a larger incentive in select instances (see below).

Recommendation 1: The following proposed elements of the Critical Minerals Production Tax Incentive should be implemented:

- Assessment of the credit against direct production or refining costs;
- Refundable credits;
- The definite and extended duration of the scheme;
- The requirement that production or investment occur by June 2030; and
- The value of the credit as at least 10% of eligible costs.

End use requirements

Despite several welcome elements, some facets of the proposed CMPTI should be amended to increase the scheme's efficacy. We note in particular that eligibility for the proposed CMPTI will not depend on the end use of the output, including whether it is used domestically or exported. Such disregard for downstream usage would represent a marked failure to utilise the CMPTI to its potential.

The CMPTI should be designed to maximise value-adding activity within Australia. This should of course extend to midstream processing of minerals currently exported as raw materials. But it should also include refining and more sophisticated technology and component manufacturing using critical minerals as inputs. Indeed, given Australia's existing mineral, energy and workforce advantages, recalibrating the CMPTI in this manner could help facilitate the creation of near-complete value chains – delivering greater jobs, returns and capability than a shift from extraction to processing alone.

Prioritising domestic value-adding will further assist in earning and retaining social licence for the CMPTI. This should be a top-level consideration in delivering the incentive. Whatever its final form, the CMPTI will require a very large outlay from government. However, public sentiment that the resources sector is strongly supported by government but delivers too little in returns to workers and the community is widespread.¹⁸ Moreover, ongoing attempts by political actors to challenge

offshore wind projects by stoking local opposition highlights the real risk that community backlash poses to energy transition-related developments. The best means of securing community buy-in is through community returns, in the form of local employment and development outcomes. People should be given confidence that an FMIA project in their area will always mean jobs and opportunity for them.

Furthermore, an approach to the CMPTI that seeks to maximise domestic value-adding would be consistent with numerous parallel initiatives to catalyse downstream manufacturing of critical technologies that require such mineral inputs. This includes the \$1 billion *Solar Sunshot* program, the \$1.7 billion *Future Made in Australia Innovation Fund* and the *Battery Breakthrough Initiative*. Indeed, increasing domestic value-adding is an overarching objective of the FMIA scheme as a whole.

In our submission, a focus on building out domestic value chains is not inconsistent with the strategic objective of ensuring access to critical minerals for Australia's partners. The capacity to provide more final minerals or products that these states ultimately require would only enhance Australia's capacity to act as an alternate to current-day supply options.

The CMPTI could support local value-adding by offering a larger incentive to producers that prioritise offtake by domestic firms over exporting. Larger incentives for local supply could be provided according to a tiered scheme. This could reflect the proportion of a site's total output supplied to downstream operators within Australia. Government could assist in making this process less onerous for industry by making available resources such as industrial, commercial, labour and skills intelligence reports to the sector and prospective local suppliers.

We further suggest that there should be a role for resources firms in this space. Despite the predominance of raw commodity exporting, Australia is still home to several examples of close and successful integration of mining operations with local processing and refining. Thus, in addition to increased CMPTI incentives for downstream supply, the Commonwealth should implement a system of tax incentives for resources operations that invest in domestic downstream capabilities for their commodities. This would provide concessions on the tax payable on surplus exports after domestic demand is satisfied.

Recommendation 2: The Critical Minerals Production Tax Incentive should include a system of increased incentives based on the proportion of supply provided to domestic offtakers.

Recommendation 3: The Commonwealth should provide concessions on taxation payable on exports for resources operations that invest in domestic downstream capabilities.

Technology neutrality

A technology neutral CMPTI will assist to maximise investment catalysed by the incentive and ensure that the resulting output is cost effective. Any technology-specific requirements, by contrast, would entrench systems preferred by the regulation – restricting investment and risking support for sub-optimal technology.¹⁹

In this regard, the AWU acknowledges that critical minerals processing and refining is distinct from many other activities supported under the *FMIA* scheme. Critical minerals are an essential enabler of decarbonisation. Without adequate supply, Australia and its partners will be unable to deploy the technologies required to meet their emissions abatement goals. However, processing and refining of critical minerals is typically emissions-intensive and likely to remain so in the near and medium-term. For example, refining of products such as lithium and nickel relies on high process heat that can currently be supplied by natural gas only.

In our submission, the CMPTI must be designed to support decarbonisation by maximising local output of value-added critical mineral products - not by driving lower-emissions production methods of critical minerals themselves. Moreover, most processing and refining operations will also be required to manage their emissions under the Safeguard Mechanism. The regulatory instruments implementing the CMPTI should thus make explicit that all relevant processing and refining systems are eligible for the incentive.

Recommendation 4: The regulation implementing the Critical Minerals Production Tax Incentive should provide that all processing and refining processes are eligible for the incentive.

‘What obligations should be imposed on potential recipients of the CMPTI to ensure the community benefit principles are met?’

It is critical that the CMPTI maximises returns to the workers whose labour will deliver it and the communities that will host and help pay for it. This should be reflected not only in the abovementioned provisions incentivising domestic offtake, but through regulation requiring producers that utilise the incentive to deliver safe, secure and highly paid jobs.

To this end, the AWU applauds the government’s high-level objective to ‘promote safe, secure, well-paid jobs and more skilled and inclusive workforces’ via all programs delivered under *FMIA*. However, the provisions of the *Future Made in Australia Bill 2024* intended to deliver such outcomes²⁰ appear unclear and very difficult to effectively enforce. The Commonwealth risks repeating past incidences of well-intentioned but inadequate programs in this space, such as the *Australian Industry Participation Plans* scheme.

Rather than lenient guidance, firm regulation is needed to realise the government’s goals in relation to quality jobs and workforce development. Such rules should be developed and implemented as a matter of priority.

The AWU sees particular merit in a ‘two gate’ system similar to the tendering models implemented by the ACT and Victoria governments in recent years.²¹ Ideally, this would take the form of the planned *Secure Australian Jobs Code* and apply broadly across the Commonwealth’s procurement and industry policy activity – including all *FMIA* programs and all investments made through its Specialist Investment Vehicles.

The system would require all firms to demonstrate a commitment to positive worker outcomes as a threshold requirement to be considered for support under a particular program, including the

CMPTI. Businesses would be required to obtain and hold a certificate verifying their commitment to such outcomes. This would be issued by an independent authority following an assessment of the firm. The certificate would affirm the business' commitment to quality jobs and skills outcomes, including:

- The existence of an enterprise agreement with a relevant union between the firm and its workforce, or a willingness to enter into such an agreement;
- The firm's history of compliance with industrial law, workplace health and safety standards and other legal obligations to its workforce;
- Its commitment to engaging staff on a permanent basis wherever possible;
- Its efforts to engage trainees and apprentices; and
- Where subcontractors are engaged, the use of firms that also hold such a certificate.

After demonstrating it held a certificate, businesses could be assessed for support against the criteria of the particular program or investment vehicle.

The development of 'Best Practice Industry Conditions' (BPICs) for critical minerals processing and refining, respectively, offer another potential means to achieve similar ends. These would prescribe minimum wage and conditions for workers at any projects that receive government support.

Moreover, we suggest that either of these processes could support 'binary' assessment of eligibility for the CMPTI required for its intended implementation via the tax system. Assessment under the two-gate system would be against whether or not the potential recipient held the requisite certificate period for which the incentive was claimed. A BPIC system could include a similar prequalification process – allowing those administering the CMPTI to assess compliance on a 'yes-no' basis.

Recommendation 5: The Commonwealth should prescribe strong, enforceable regulation that requires all projects receiving support under *Future Made in Australia* (including the Critical Minerals Production Tax Incentive) to deliver safe, secure, well-paid jobs and worker upskilling.

'What information do you think should be reported publicly on the recipients of the CMPTI and the amount of credit received?'; 'Who should the importing requirements be imposed on?'

Transparency around beneficiaries of the CMPTI and the quantum of assistance provided will further assist in ensuring social licence and taxpayer value for the scheme. In addition, the timely and accessible publication of such information will assist unions, industry and other stakeholders to monitor the implementation and efficacy of the CMPTI.

For ease of access and to support analysis of the scheme as a whole, such information such be published via a single source operated by the Commonwealth. This database should clearly link benefits provided through the incentive to production sites, their volume of output and key

workforce data - including total workers and the proportion of permanent and labour hire employees engaged therein. This information should be maintained via updates on an annual basis.

Recommendation 6: The Commonwealth should publish a resource providing data concerning benefits provided through the Critical Minerals Production Tax Incentive, the output of recipient sites and their workforce.

Looking ahead

The Australian Workers' Union is committed to supporting the development of a critical minerals sector befitting Australia's potential and maximising benefits to workers and the community. Seeing the nation realise its potential in downstream manufacturing using critical minerals is part of this vision.

Widespread manufacturing dependent on critical minerals could see market dynamics shift in the long-term. The AWU firmly supports the approach of government to building the sector at this stage. But we recognise that Australia could conceivably find itself in a position where its manufacturing sector required a large portion of domestic output of a certain critical mineral. This would give rise to a need to consider regulation that ensured, rather than merely incentivised, reliable access to that mineral. Australia must never repeat its mistakes with the gas industry, where a failure to meaningfully regulate supply has exposed local industry to uncertainty and high prices despite the country's unsurpassed resources.

More information

We welcome the opportunity to contribute further to the consultation or respond to any queries regarding this submission.

References

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² Forecast based on the forecast consumption growth rates from the International Energy Agency, Australia maintaining its current market share in key critical minerals markets, and state proportions of lithium, rare earth elements and nickel processed in Australia.

³ Forecast based on operational jobs estimates provided by proponents of critical minerals mining, processing and refining projects:
<https://www.industry.gov.au/sites/default/files/2023-12/resources-and-energy-major-projects-2023-data.xlsx>

⁴ <https://www.industry.gov.au/publications/list-critical-technologies-national-interest>;

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⁵ <https://www.nbr.org/publication/a-cleaner-australia-u-s-alliance-ensuring-that-post-ira-cooperation-outranks-competition/>

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⁷ <https://www.lowyinstitute.org/the-interpreter/china-s-dominance-over-critical-minerals-poses-unacceptable-risk>

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https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/FlagPost/2023/December/Employment_by_industry_2023

¹⁰ <https://www.abs.gov.au/statistics/economy/business-indicators>

¹¹ <https://www.sciencedirect.com/science/article/pii/S0959378024000505>, p. 15

¹² <https://www.iea.org/data-and-statistics/data-tools/critical-minerals-policy-tracker>;
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¹³ <https://www.industry.gov.au/sites/default/files/2023-06/critical-minerals-strategy-2023-2030.pdf>, p. 7

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¹⁵ <https://www.albemarle.au/kemerton>; <https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/Kemerton-lithium-hydroxide-plant-set-to-expand-20230503>

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¹⁷ <https://www.iea.org/policies/16282-inflation-reduction-act-2022-sec-13502-advanced-manufacturing-production-credit>

¹⁸ See for example, https://australiainstitute.org.au/wp-content/uploads/2020/12/QRC-Qld-Resource-Sector-Reputation-Deep-Dive-Dec-2018_0.pdf;
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²⁰ *Future Made in Australia Bill 2024* (Cth), s10(2)-(3)

²¹ That is, the ACT's *Secure Local Jobs Code* and Victoria's *Fair Jobs Code*.