



Future Made in Australia (Production Tax Credits and Other Measures) Act 2025

No. 9, 2025

**An Act to amend the law relating to taxation and
Indigenous Business Australia, and for related
purposes**

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(<https://www.legislation.gov.au/>)

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**An Act to amend the law relating to taxation and
Indigenous Business Australia, and for related
purposes**

[Assented to 14 February 2025]

The Parliament of Australia enacts:

No. 9, 2025

*Future Made in Australia (Production Tax Credits and Other
Measures) Act 2025*

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1 Short title

This Act is the *Future Made in Australia (Production Tax Credits and Other Measures) Act 2025*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 February 2025
2. Schedule 1, Part 1	The later of: (a) the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent; and (b) the first 1 January, 1 April, 1 July or 1 October to occur after the day the <i>Future Made in Australia (Guarantee of Origin) Act 2024</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
3. Schedule 1, Part 2	The later of: (a) the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent; and (b) the first 1 January, 1 April, 1 July or 1 October to occur after the day the <i>Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Act 2024</i>	1 April 2025 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, Part 3	The later of: (a) at the same time as the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of the provisions covered by table item 5. However, the provisions do not commence at all if the event mentioned in paragraph (a) does not occur.	
5. Schedule 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 April 2025
6. Schedule 3	The day after this Act receives the Royal Assent.	15 February 2025

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Hydrogen production tax incentive

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Section 13-1 (after table item headed “housing”)

Insert:

hydrogen production

..... Division 421

2 Section 67-23 (before table item 30)

Insert:

29 hydrogen production incentive the *tax offset available under Division 421

3 At the end of Part 3-50

Add:

Division 421—Hydrogen production tax incentive

Table of Subdivisions

Guide to Division 421

421-A Tax offset for hydrogen produced in Australia

421-B Certification of production profiles

421-C Other matters

Guide to Division 421

421-1 What this Division is about

A company may be entitled to a refundable tax offset in respect of hydrogen produced in Australia between the start of 1 July 2027 and the end of 30 June 2040.

One requirement for entitlement to the offset is that the company must have created a certificate (called a PGO certificate) that relates to the hydrogen. The certificate is created under the *Future Made in Australia (Guarantee of Origin) Act 2024* and it must be registered under that Act.

Another requirement is that 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 Clean Energy Regulator under this Division. The hydrogen must also have been produced during a particular period (which is called an offset period, and which cannot be longer than 10 years) that is associated with production at the facility in accordance with the production pathway.

The amount of the tax offset is \$2 per whole kilogram of hydrogen (though this may be reduced in certain circumstances).

Subdivision 421-A—Tax offset for hydrogen produced in Australia

Table of sections

421-5	Company entitled to refundable tax offset for hydrogen produced in Australia
421-10	Amount of hydrogen production tax offset
421-15	When hydrogen is produced
421-20	Production emissions intensity
421-25	Grid matching requirements
421-30	Offset period
421-35	Initial reconciliation period for registered PGO certificate
421-40	Correction notice for registered PGO certificate

421-45 HPTO community benefit rules

421-5 Company entitled to refundable tax offset for hydrogen produced in Australia

- (1) A company is entitled to a *tax offset under this section (the *hydrogen production tax offset*) for an income year in respect of a kilogram of hydrogen produced in Australia during the income year if:
- (a) the income year:
 - (i) starts on or after 1 July 2027; and
 - (ii) ends before 1 July 2040; and
 - (b) there is a *registered PGO certificate that relates to the kilogram of hydrogen and which states:
 - (i) that the kilogram of hydrogen was produced at a particular facility that is specified in a *production profile, in accordance with a particular *production pathway that is specified in that production profile; and
 - (ii) that the kilogram of hydrogen has a *production emissions intensity that is less than or equal to 0.6 kilograms of carbon dioxide per 1 kilogram of hydrogen (see section 421-20); and
 - (iii) if the facility is connected to an electricity grid—that the electricity (if any) that the facility obtained from the grid and used to produce the kilogram of hydrogen satisfies the *grid matching requirements (see section 421-25); and
 - (c) at the time when the kilogram of hydrogen was produced, the production profile mentioned in subparagraph (b)(i) of this subsection was certified in relation to the facility and the production pathway under Subdivision 421-B; and
 - (d) the kilogram of hydrogen was produced during the *offset period for the facility and the production pathway (see section 421-30); and
 - (e) the *initial reconciliation period for the PGO certificate has ended (see section 421-35); and
 - (f) no *correction notice for the PGO certificate is in force (see section 421-40); and
-

(g) the company satisfies the requirements in subsection (2) of this section.

Note 1: For paragraph (c), when a production profile is certified, or a certification of a production profile is revoked, under Subdivision 421-B, the certification or revocation may have retrospective effect.

Note 2: The hydrogen production tax offset is a refundable tax offset (see section 67-23).

(2) The company satisfies the requirements in this subsection if:

- (a) the company is a *constitutional corporation; and
- (b) the company was the person who created the *registered PGO certificate under the *Future Made in Australia (Guarantee of Origin) Act 2024*; and
- (c) the company created the PGO certificate in the course of carrying on an enterprise in the indirect tax zone; and
- (d) at each time when the company carries on that enterprise in the indirect tax zone during the income year, either:
 - (i) the company is an Australian resident and has an *ABN; or
 - (ii) the company is a foreign resident and has a *permanent establishment in Australia and an ABN; and
- (e) the company is not an *exempt entity; and
- (f) if *HPTO community benefit rules under paragraph 421-45(1)(a) of this Act apply to the company for the income year—the company meets the conditions specified in those rules.

(3) In subsection (2), ***carried on in the indirect tax zone*** and ***indirect tax zone*** have the same meaning as in the *GST Act.

421-10 Amount of hydrogen production tax offset

(1) If a company is entitled to the *hydrogen production tax offset for an income year in respect of one or more kilograms of hydrogen, the amount of the offset for the income year is \$2 in respect of each whole kilogram of hydrogen.

(2) However, if:

- (a) *HPTO community benefit rules under paragraph 421-45(1)(b) apply to the company for the income year; and
 - (b) circumstances specified in those rules exist for the company;
- then the amount of the *hydrogen production tax offset is reduced by the proportion specified in those rules for those circumstances.

421-15 When hydrogen is produced

- (1) For the purposes of this Division, a kilogram of hydrogen is taken to be produced at a facility at the time when the last part of the batch of hydrogen that contains the kilogram leaves the production gate (within the meaning of the *Future Made in Australia (Guarantee of Origin) Act 2024*) for hydrogen at the facility.
- (2) However, if:
 - (a) the production of the batch of hydrogen commenced before 1 July 2027; and
 - (b) the last part of the batch of hydrogen leaves the production gate for hydrogen at the facility on or after 1 July 2027;then, for the purposes of this Division, each kilogram of hydrogen contained in the batch is taken to be produced at the facility before 1 July 2027.

Note: A company is not entitled to the hydrogen production tax offset in respect of hydrogen produced before 1 July 2027: see paragraph 421-5(1)(a).

421-20 Production emissions intensity

- (1) This section applies if there is a *registered PGO certificate that:
 - (a) relates to a particular quantity of hydrogen (for example, a particular kilogram of hydrogen); and
 - (b) states that the quantity of hydrogen was produced at a particular facility in accordance with a particular *production pathway.
- (2) The *production emissions intensity* of the quantity of hydrogen is the emissions intensity of that quantity of hydrogen taking into account all, and only, greenhouse gases emitted in relation to that quantity of hydrogen from production emissions sources for the *production pathway.

- (3) In subsection (2), *emissions intensity*, *greenhouse gas* and *production emissions source* have the same meaning as in the *Future Made in Australia (Guarantee of Origin) Act 2024*.

421-25 Grid matching requirements

The *grid matching requirements* are the requirements prescribed by the Minister by legislative instrument for the purposes of this section.

421-30 Offset period

Notice of offset start date

- (1) The *holder of a *registered production profile may, by notice given to the Commissioner in the *approved form, specify for the purposes of this section a date (the *offset start date*) in relation to the production of hydrogen:
- (a) at a particular facility specified in the profile; and
 - (b) in accordance with a particular *production pathway specified in the profile.
- (2) The offset start date specified in the notice:
- (a) must be the first day of an income year for the *holder of the *registered production profile; and
 - (b) must not be earlier than the first day of the income year for the holder of the registered production profile in which the notice is given; and
 - (c) must be:
 - (i) on or after 1 July 2027; and
 - (ii) before 1 July 2040.
- (3) A notice given under subsection (1) cannot be varied or revoked.
- (4) If a notice has been given under subsection (1) in relation to a facility and a *production pathway, then no further notice may be given under that subsection in relation to the facility and the production pathway.

Offset period

- (5) If a notice has been given under subsection (1) in relation to a facility and a *production pathway, the **offset period** for the facility and the production pathway is the period that:
- (a) starts at the beginning of the offset start date specified in the notice; and
 - (b) ends at the earlier of the following:
 - (i) the end of the period of 10 years starting on the offset start date;
 - (ii) the end of 30 June 2040.

Exception—where production pathways at same facility are not substantially different

- (6) However, if:
- (a) two or more notices are given under subsection (1) in relation to the same facility (whether the notices are given at the same time or at different times); and
 - (b) the Clean Energy Regulator determines under subsection (7) that a group consisting of 2 or more of those notices should be treated together for the purposes of subsection (5);
- then subsection (5) applies in relation to each notice in the group as if the offset start date specified in the notice was the earliest of the offset start dates specified in any of the notices in the group.

Note: If this subsection applies, the effect is that there will be a single, common offset period for the facility and each of the production pathways specified in the notices in the group.

Determination by Clean Energy Regulator

- (7) If 2 or more notices are given as mentioned in paragraph (6)(a), the Clean Energy Regulator may, in writing, determine that a group consisting of 2 or more of those notices should be treated together for the purposes of subsection (5).
- (8) The Clean Energy Regulator may do so only if it is satisfied that production at the facility in accordance with the *production pathway specified in any one of the notices in the group is not substantially different from production at the facility in accordance

with a production pathway specified in any other notice in the group.

- (9) In deciding whether to make a determination under subsection (7), the Clean Energy Regulator may have regard to any matters that the Clean Energy Regulator considers relevant, including:
- (a) the nature of the facility; and
 - (b) the nature of the *production pathways specified in the notices; and
 - (c) if some of the notices are given at different times—the nature of any changes to the facility made between those times.

421-35 Initial reconciliation period for registered PGO certificate

- (1) The *initial reconciliation period* for a *registered PGO certificate is the period that:
- (a) starts immediately after the end of the financial year (the *registration year* for the certificate) in which the certificate was registered; and
 - (b) ends at the time specified by subsection (2) or (3), whichever is later.
- (2) If:
- (a) a person is given a statement under section 60 of the *Future Made in Australia (Guarantee of Origin Act) 2024*; and
 - (b) the statement relates to PGO certificate activity (within the meaning of that Act) in connection with the *registered PGO certificate in the registration year for the certificate;
- then the time specified by this subsection is the latest time by which such person is required, under section 61 of that Act, to give the Clean Energy Regulator a declaration in relation to such a statement.
- Note: If more than one person is given such a statement, different people may be required to give the Clean Energy Regulator declarations by different times. The time specified by this subsection is the latest of those times.
- (3) If:

- (a) a person is given a statement under section 60 of the *Future Made in Australia (Guarantee of Origin Act) 2024* (the ***Guarantee of Origin Act***); and
- (b) the statement relates to PGO certificate activity (within the meaning of the *Guarantee of Origin Act*) in connection with the *registered PGO certificate in the registration year for the certificate; and
- (c) after the end of the registration year, and at or before the time specified by subsection (2) of this section, the person gives the Clean Energy Regulator declarations and information of the kind mentioned in paragraph 61(b) of the *Guarantee of Origin Act*; and
- (d) the declarations include a declaration that particular information stated in the registered PGO certificate is not accurate or complete;

then the time specified by this subsection is the latest time at which the Clean Energy Regulator may decide, under section 62 of the *Guarantee of the Origin Act*, to correct the registered PGO certificate in response to declarations and information given by a person as mentioned in paragraphs (c) and (d) of this subsection.

Note: If more than one person gives the Clean Energy Regulator declarations and information as mentioned in paragraphs (c) and (d) of this subsection then, for each such set of declarations and information, there will be a last time at which the Clean Energy Regulator may correct the PGO certificate in response to that set of declarations and information. The time specified by this subsection is the latest of those last times.

421-40 Correction notice for registered PGO certificate

- (1) The Clean Energy Regulator must issue a notice (a ***correction notice***) for a *registered PGO certificate that relates to a kilogram of hydrogen if:
 - (a) the *initial reconciliation period for the PGO certificate has ended; and
 - (b) the PGO certificate states:
 - (i) that the kilogram of hydrogen has a *production emissions intensity that is less than or equal to 0.6 kilograms of carbon dioxide per 1 kilogram of hydrogen; and

- (ii) if the facility that produced the hydrogen is connected to an electricity grid—that the electricity (if any) that the facility obtained from the grid and used to produce the kilogram of hydrogen satisfies the *grid matching requirements; and
 - (c) the Clean Energy Regulator is satisfied that one or both of the conditions in subparagraphs (b)(i) and (ii) are not met.
- (2) The *correction notice must state that the Clean Energy Regulator is satisfied that one or both of the conditions in subparagraphs (1)(b)(i) and (ii) are not met.
- (3) The *correction notice is in force until it is revoked under subsection (4).

Revocation of correction notice

- (4) The Clean Energy Regulator may, in writing, revoke a *correction notice for a *registered PGO certificate that relates to a kilogram of hydrogen if the Clean Energy Regulator is satisfied that:
 - (a) the *initial reconciliation period for the PGO certificate had not ended at the time when the correction notice was issued, and that period has still not ended; or
 - (b) the PGO certificate does not state that the conditions in subparagraphs (1)(b)(i) and (ii) are met in relation to the kilogram of hydrogen; or
 - (c) the conditions in subparagraphs (1)(b)(i) and (ii) are met in relation to the kilogram of hydrogen.

Copies of correction notice and revocation

- (5) If the Clean Energy Regulator:
 - (a) issues a *correction notice under subsection (1) for a *registered PGO certificate that relates to a kilogram of hydrogen; or
 - (b) revokes such a correction notice under subsection (4);then the Clean Energy Regulator must give copies of the correction notice or the revocation to the following:
 - (c) each person who is, at the time the correction notice is issued or revoked, the *holder of a *registered production profile

that specifies the facility at which the hydrogen was produced;

(d) the Commissioner.

Other matters

- (6) Subsection (1) and paragraph (4)(c) do not impose a duty on the Clean Energy Regulator to:
- (a) seek information about whether the conditions in subparagraphs (1)(b)(i) and (ii) are met; or
 - (b) consider whether the Clean Energy Regulator is satisfied that those conditions are, or are not, met.
- (7) The issuing of a *correction notice for a *registered PGO certificate does not have any effect on the content or status of the PGO certificate under the *Future Made in Australia (Guarantee of Origin Act) 2024*.

421-45 HPTO community benefit rules

- (1) The Minister may, by legislative instrument, make the following rules (the *HPTO community benefit rules*):
- (a) rules that:
 - (i) apply to companies within a specified class for an income year; and
 - (ii) specify conditions that must be met for such a company to be entitled to a *hydrogen production tax offset for the income year;
 - (b) rules that:
 - (i) apply to companies within a specified class for an income year; and
 - (ii) specify circumstances that, if they exist for such a company, will reduce the amount of the company's hydrogen production tax offset for the income year by a specified proportion.

Note: For subparagraph (b)(ii), different proportions may be specified for different circumstances (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (2) In making the *HPTO community benefit rules, the Minister must have regard to the community benefit principles (within the meaning of subsection 10(3) of the *Future Made in Australia Act 2024*).
- (3) When having regard to those principles, the Minister is to treat the *hydrogen production tax offset as if it were Future Made in Australia support (within the meaning of the *Future Made in Australia Act 2024*).
- (4) This section does not apply if the *Future Made in Australia Act 2024* has not commenced.

Subdivision 421-B—Certification of production profiles

Table of sections

421-50	Application for certification
421-55	Certification of production profile
421-60	Capacity of facility to produce hydrogen
421-65	Revocation of certification
421-70	Requests for further information etc.

421-50 Application for certification

- (1) The *holder of a *registered production profile for hydrogen may apply to the Clean Energy Regulator for the profile to be certified:
 - (a) in relation to a particular facility, and a particular *production pathway, specified in the profile; and
 - (b) from a particular time.
- (2) The time specified in the application, as mentioned in paragraph (1)(b), must not be later than the start of the day when the application is made (and may be any time before the start of that day).
- (3) The application is taken not to be made unless:
 - (a) it is in a form (if any) prescribed under subsection (5); and
 - (b) it is accompanied by any information, documents or other materials prescribed under subsection (5); and
 - (c) without limiting paragraphs (a) and (b) of this subsection—it is accompanied by an eligibility statement for the *registered

production profile that relates to the facility and the
*production pathway.

- (4) For the purposes of paragraph (3)(c), an *eligibility statement* for the *registered production profile that relates to the facility and the *production pathway is a statement by the *holder of the profile to the effect that there are reasonable grounds to believe that, if the profile is certified, a company will be entitled to the *hydrogen production tax offset for an income year in respect of one or more kilograms of hydrogen produced at the facility in accordance with the production pathway.
- (5) The Clean Energy Regulator may, by notifiable instrument, do any of the following:
- (a) prescribe a form for the purposes of paragraph (3)(a);
 - (b) prescribe information, documents or other materials for the purposes of paragraph (3)(b).

421-55 Certification of production profile

Certification

- (1) If:
- (a) the Clean Energy Regulator receives an application for a *registered production profile to be certified in relation to a facility and a *production pathway from a particular time (the *start time*); and
 - (b) the Clean Energy Regulator is satisfied that:
 - (i) the condition in subsection (3) was met at the start time, and has continued to be met since that time; and
 - (ii) the conditions in subsections (5) (if applicable) and (7) are met;
- then:
- (c) Clean Energy Regulator must, in writing, certify the registered production profile in relation to the facility and the production pathway; and
 - (d) the instrument of certification must state that the certification has effect from the start time.

Exception—failure to provide information etc.

- (2) However, the Clean Energy Regulator may refuse to certify a *registered production profile under subsection (1) if:
- (a) the Clean Energy Regulator has given the *holder of the production profile a notice under section 421-70(1) that relates to the application for certification, requesting that the holder give the Clean Energy Regulator specified information, documents or other materials before a specified time; and
 - (b) the holder of the production profile does not comply with the request before the specified time.

Condition relating to facility and production pathway

- (3) The condition in this subsection is that:
- (a) the facility is located on a single site in Australia; and
 - (b) the facility has a capacity to produce hydrogen, in accordance with the *production pathway, that is at least equal to that of an electrolyser with a nameplate capacity of 10 megawatts; and
 - (c) the production pathway does not involve producing hydrogen using any of the following:
 - (i) coal gasification;
 - (ii) steam reformation of natural gas (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*);
 - (iii) a process prescribed by the regulations for the purposes of this subparagraph.

Note: The Clean Energy Regulator may prescribe circumstances in which a facility is taken to have the capacity mentioned in paragraph (b) (see section 421-60).

Condition relating to early investment

- (4) Subsection (5) applies if the start time for the certification (see subsection (1)) is on or after 1 July 2030.
- (5) The condition in this subsection is that a final investment decision was made before 1 July 2030 to:

- (a) construct the facility with a capacity to produce hydrogen, in accordance with the *production pathway, that is at least equal to the nominal capacity of the facility to produce hydrogen in accordance with the production pathway; or
 - (b) upgrade the facility so that it has a capacity to produce hydrogen, in accordance with the production pathway, that is at least equal to that nominal capacity.
- (6) For the purposes of subsection (5), the **nominal capacity** of the facility to produce hydrogen in accordance with the *production pathway is the capacity of the facility, at the start time, to produce hydrogen in accordance with the production pathway.

Note: The Clean Energy Regulator may prescribe how the capacity of a facility to produce hydrogen is to be determined (see section 421-60).

Condition relating to eligibility statement

- (7) The condition in this subsection is that, on the basis of information that the Clean Energy Regulator possesses at the time when the instrument of certification is made, it would not be reasonable for the Clean Energy Regulator to believe that the eligibility statement for the *registered production profile that accompanied the application for certification (see paragraph 421-50(3)(c)) is incorrect.

Note: The Clean Energy Regulator does not have a duty to seek information about whether the eligibility statement is correct (see subsection (9)).

Notification of certification

- (8) If the Clean Energy Regulator certifies a *registered production profile with effect from a particular time (the **start time**), the Clean Energy Regulator must notify the following of the certification:
- (a) the person who applied under section 421-50 for the certification;
 - (b) the person who was the *holder of the production profile at the start time;
 - (c) each person who was a holder of the production profile at any time between:
 - (i) the start time; and
 - (ii) the time when the instrument of certification is made;

(d) the Commissioner.

No duty to seek information about eligibility statement

- (9) This section does not impose a duty on the Clean Energy Regulator to seek information relevant to assessing whether the eligibility statement for the *registered production profile is incorrect that goes beyond:
- (a) information possessed by the Clean Energy Regulator at the time when the Clean Energy Regulator received the application for certification of the registered production profile; and
 - (b) information that was contained in, or that accompanied, that application.

421-60 Capacity of facility to produce hydrogen

The Clean Energy Regulator may, by legislative instrument, prescribe any of the following:

- (a) how the capacity of a facility to produce hydrogen is to be expressed for the purposes of section 421-55;
- (b) how the capacity of a facility to produce hydrogen is to be determined for the purposes of section 421-55;
- (c) without limiting paragraph (a) or (b) of this section—circumstances in which a facility is taken, for the purposes of subsection 421-55(3), to have a capacity to produce hydrogen that is at least equal to that of an electrolyser with a nameplate capacity of 10 megawatts.

421-65 Revocation of certification

- (1) This section applies if a *production profile has been certified in relation to a facility and a *production pathway with effect from a particular time (the *original start time*).

Revocation—substantive grounds

- (2) The Clean Energy Regulator may, in writing, revoke the certification if:

- (a) on or after the original start time, the registration of the *production profile is suspended, cancelled or surrendered under the *Future Made in Australia (Guarantee of Origin) Act 2024*; or
 - (b) there is a time, on or after the original start time, when the condition in subsection 421-55(3) of this Act (condition relating to facility and production pathway) is not met in relation to the facility and the *production pathway; or
 - (c) at the time when the instrument of revocation made, the Clean Energy Regulator reasonably believes that the eligibility statement for the production profile that accompanied the application for certification (see paragraph 421-50(3)(c)) is incorrect.
- (3) A revocation under subsection (2) has effect from the time (the ***new end time*** for the certification) specified in the instrument of revocation, which must be:
- (a) if the certification is revoked under paragraph (2)(a)—the time when the registration of the *production profile was suspended, cancelled or surrendered; or
 - (b) if the certification is revoked under paragraph (2)(b)—the earliest time, on or after the original start time, when the condition in subsection 421-55(3) is not met in relation to the facility and the *production pathway; or
 - (c) if the certification is revoked under paragraph (2)(c)—no earlier than the time when the instrument of revocation is made.

Note: If the certification is revoked under paragraph (2)(a) or (b), the revocation will have retrospective effect.

Revocation—failure to provide information etc.

- (4) In addition, the Clean Energy Regulator may, in writing, revoke the certification if:
- (a) the Clean Energy Regulator has given the *holder of the *production profile a notice under section 421-70(2) that relates to the certification, requesting that the holder give the Clean Energy Regulator specified information, documents or other materials before a specified time; and

- (b) the holder of the production profile does not comply with the request before the specified time.
- (5) A revocation under subsection (4) has effect from the time (also the ***new end time*** for the certification) specified in the instrument of revocation, which must not be before the time specified in the notice mentioned in paragraph (4)(a).

Note: A revocation under subsection (4) may be given retrospective effect.

Consequences of revocation

- (6) If the new end time for the certification is the same as the original start time, then the certification is taken never to have been in effect.
- (7) If the new end time for the certification is later than the original start time, then:
- (a) the certification is taken to have been in effect for the period that:
 - (i) begins at the original start time; and
 - (ii) ends at the new end time; and
 - (b) the certification is taken not to have been in effect after the new end time.

Note: The operation of subsections (6) and (7) may affect whether paragraph 421-5(1)(c) (which sets out a condition for entitlement to the hydrogen production tax offset) is satisfied in a particular case.

- (8) If a certification of a *production profile that relates to a particular facility and *production pathway is revoked, that does not prevent:
- (a) an application later being made for a new certification of the production profile, including a certification that relates to the same facility and production pathway; or
 - (b) the Clean Energy Regulator subsequently issuing such a new certification of the production profile.

Notification of revocation

- (9) If the Clean Energy Regulator revokes a certification of a *production profile, the Clean Energy Regulator must notify the following of the revocation:

- (a) the person who was the *holder of the production profile at the original start time for the certification;
- (b) each person who was a holder of the production profile at any time between:
 - (i) the original start time for the certification; and
 - (ii) the time when the instrument of revocation is made;
- (c) the Commissioner.

421-70 Requests for further information etc.

Request before certification

- (1) If the Clean Energy Regulator has received an application for a *registered production profile to be certified, the Clean Energy Regulator may, before making a decision about whether to certify the profile under section 421-55, give a written notice to the *holder of the profile:
 - (a) requesting that the holder give the Clean Energy Regulator, before a specified time, specified information, documents or other materials that are relevant to making that decision; and
 - (b) stating that, if the request is not complied with before the specified time, the Clean Energy Regulator may refuse to certify the production profile.

Request after certification

- (2) If the Clean Energy Regulator has certified a *registered production profile under section 421-55, the Clean Energy Regulator may give a written notice to the *holder of the profile:
 - (a) requesting that the holder give the Clean Energy Regulator, before a specified time, specified information, documents or other materials that are relevant to deciding whether to revoke the certification under subsection 421-65(2) (revocation on substantive grounds); and
 - (b) stating that, if the request is not complied with before the specified time, the Clean Energy Regulator may revoke the certification.

Subdivision 421-C—Other matters

Table of sections

421-75	Review of decisions by the Administrative Review Tribunal
421-80	Information sharing
421-85	Period for amending assessments

421-75 Review of decisions by the Administrative Review Tribunal

Applications may be made to the *ART for review of the following decisions made by the Clean Energy Regulator:

- (a) a decision under subsection 421-30(7) to make a determination;
- (b) a decision under subsection 421-40(1) to issue a *correction notice;
- (c) a decision under subsection 421-40(4) to revoke a correction notice;
- (d) a decision under section 421-55 to certify a *registered production profile;
- (e) a decision under section 421-55 not to certify a registered production profile (after an application to certify the profile has been made under section 421-50);
- (f) a decision under section 421-65 to revoke a certification of a *production profile.

421-80 Information sharing

- (1) Each of the following regulators:
 - (a) the Clean Energy Regulator;
 - (b) the Commissioner;

may request the other regulator to provide them with information held by the other regulator that is reasonably necessary or convenient for the requesting regulator's administration of this Division.

- (2) The other regulator must comply with the request.

Note: The request could be an ad hoc or standing request, and the information requested could be general or specific.

421-85 Period for amending assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an entity's assessment for the purposes of giving effect to this Division for an income year if:

- (a) the Clean Energy Regulator:
 - (i) issues, or revokes, a *correction notice under section 421-40; or
 - (ii) makes an instrument under section 421-65 revoking a certification of a *production profile, with effect from a specified time (which may be different from the time when the instrument is made); and
- (b) as a result, there is a change to:
 - (i) whether the entity is entitled to a *hydrogen production tax offset for the income year; or
 - (ii) the amount of hydrogen production tax offset that the entity is entitled to for the income year; and
- (c) the amendment of the entity's assessment is made during the period of 4 years starting on the day when the Clean Energy Regulator issues or revokes the correction notice, or makes the instrument revoking the certification of the production profile (whichever applies).

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.

4 Subsection 995-1(1)

Insert:

correction notice, in relation to a *registered PGO certificate, has the meaning given by section 421-40.

grid matching requirements has the meaning given by section 421-25.

holder, of a *registered production profile, means the holder of the profile under the *Future Made in Australia (Guarantee of Origin) Act 2024*.

HPTO community benefit rules (short for “hydrogen production tax offset community benefit rules”) means the rules made under section 421-45.

hydrogen production tax offset has the meaning giving by subsection 421-5(1).

initial reconciliation period, for a *registered PGO certificate, has the meaning given by section 421-35.

offset period has the meaning given by section 421-30.

production emissions intensity has the meaning given by section 421-20.

production pathway has the same meaning as in the *Future Made in Australia (Guarantee of Origin) Act 2024*.

production profile has the same meaning as in the *Future Made in Australia (Guarantee of Origin) Act 2024*.

registered PGO certificate: a PGO certificate (within the meaning of the *Future Made in Australia (Guarantee of Origin) Act 2024*) is a **registered PGO certificate** if the Clean Energy Regulator:

- (a) has decided to register the certificate under section 56 of that Act; and
- (b) has not invalidated the certificate under section 64 of that Act.

registered production profile: a *production profile is a **registered production profile** if:

- (a) the Clean Energy Regulator has decided to register the profile under section 33 of the *Future Made in Australia (Guarantee of Origin) Act 2024*); and
- (b) the registration of the profile has not been:
 - (i) cancelled under section 45 of that Act; or
 - (ii) surrendered under section 48 of that Act.

Taxation Administration Act 1953

5 In the appropriate position in Part IA

Insert:

3L Reporting of information about hydrogen production tax offset

- (1) This section applies to an entity in relation to an income year if, according to information the entity gave the Commissioner, the entity is entitled under Division 421 of the *Income Tax Assessment Act 1997* to a tax offset for the income year.
- (2) The Commissioner must, as soon as practicable after the second 30 June after the financial year corresponding to the income year, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
 - (a) the entity's name;
 - (b) the entity's ABN or, if the first information the entity gave the Commissioner indicating the entity's entitlement to the tax offset does not include the entity's ABN but does include the entity's ACN (within the meaning of the *Corporations Act 2001*), the entity's ACN;
 - (c) the sum of the amounts of the tax offsets that the entity is entitled to under Division 421 of the *Income Tax Assessment Act 1997* for the income year, where the amount of each tax offset is worked out according to the first information that the entity gave the Commissioner indicating the entity's entitlement to the tax offset.
- (4) Subsection (5) applies if:
 - (a) the entity gives the Commissioner notice, in the approved form, that the information mentioned in subsection (3) contains an error; and
 - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.

- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.
- (7) An expression used in this section and in the *Income Tax Assessment Act 1997* has the same meaning in this section as in that Act.

6 Subsection 355-65(7) in Schedule 1 (at the end of the table)

Add:

- | | | |
|---|--|---|
| 3 | the Australian Renewable Energy Agency | (a) is of information relating to the entitlement of an entity to a tax offset for an income year under Division 421 of the <i>Income Tax Assessment Act 1997</i> (which is about the hydrogen production tax offset), including information about the amount of such a tax offset; and |
| | | (b) is for the purpose of administering the program known as Hydrogen Headstart. |

7 Application provision—disclosure of protected information etc.

The amendment of subsection 355-65(7) in Schedule 1 to the *Taxation Administration Act 1953* made by this Part applies in relation to the making of a record of information, or the disclosure of information, on or after the commencement of this Part, whether the information was acquired before, on or after that commencement.

Part 2—Shortfall interest charge

Income Tax Assessment Act 1936

8 After subsection 172A(2)

Insert:

Shortfall interest charge

(2A) If:

- (a) a person is liable to pay an amount under subsection (2); and
- (b) as a result, the person is liable to pay shortfall interest charge on that amount under section 280-102F in Schedule 1 to the *Taxation Administration Act 1953*;

then the shortfall interest charge is due and payable 21 days after the day on which the Commissioner gives the person notice of the charge.

Note: Shortfall interest charge is worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

9 Before subsection 172A(3)

Insert:

General interest charge

10 Subsection 172A(3)

After “liable to pay under subsection (2)”, insert “, or any amount of shortfall interest charge on the overpayment.”.

11 Paragraph 172A(3)(a)

After “the overpayment”, insert “or shortfall interest charge”.

12 Subparagraphs 172A(3)(b)(i) and (ii)

After “the overpayment”, insert “or shortfall interest charge”.

13 Application provision

The amendments of the *Income Tax Assessment Act 1936* made by this Part apply in relation to amounts a person is liable to pay under subsection 172A(2) of that Act, where the liability to pay those amounts arises on or after the commencement of this Part.

Taxation Administration Act 1953

14 Subsection 8AAB(4) (table item 10A)

After “excessive tax offset refunds”, insert “or shortfall interest charge”.

15 Subsection 250-10(1) in Schedule 1 (after table item 70)

Insert:

75 shortfall interest charge for excessive 172A(2A)
 tax offset refunds

16 Section 280-1 in Schedule 1 (after the paragraph beginning “The shortfall interest charge”)

Insert:

The shortfall interest charge also applies if an amendment of your assessment by the Commissioner reveals that excessive tax offset refunds have been credited to you and you are liable to pay the amount of the excess.

17 Section 280-50 in Schedule 1

Repeal the section, substitute:

280-50 Object of Division

The object of this Division is to neutralise benefits that taxpayers could otherwise receive from:

- (a) shortfalls of income tax, *petroleum resource rent tax, *excess non-concessional contributions tax, *Division 293 tax, *diverted profits tax, *Laminaria and Corallina

decommissioning levy, *Australian IIR/UTPR tax or
*Australian DMT tax; or
(b) excessive tax offset refunds;
so that they do not receive an advantage in the form of a free loan
over those who assess correctly.

18 Before section 280-103 in Schedule 1

Insert:

280-102F Liability to shortfall interest charge—excessive tax offset refunds

- (1) You are liable to pay *shortfall interest charge on an amount (an *amount of excess*) that you are liable to pay under subsection 172A(2) of the *Income Tax Assessment Act 1936* because the Commissioner amends your assessment for an income year.
- (2) The liability is for each day in the period:
 - (a) beginning at the start of the day on which the amount of excess was applied in accordance with Divisions 3 and 3A of Part IIB of this Act; and
 - (b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.

Note: See section 172A of the *Income Tax Assessment Act 1936* for when the amount of excess, and the shortfall interest charge, become due and payable. That section also provides for general interest charge on any part of the amount of excess (plus any shortfall interest charge) that remains unpaid after it is due and payable.

19 Paragraph 280-105(1)(a) in Schedule 1

After “or *Division 293 tax”, insert “, or the amount that you are liable to pay shortfall interest charge on under subsection 280-102F(1)”.

20 Subsection 280-110(1) in Schedule 1

Omit “or 280-102E”, substitute “, 280-120E or 280-102F”.

21 Application provision

The amendments of the *Taxation Administration Act 1953* made by this Part apply in relation to amounts a person is liable to pay under subsection 172A(2) of the *Income Tax Assessment Act 1936* (as mentioned in subsection 280-102F(1) in Schedule 1 to the *Taxation Administration Act 1953*), where the liability to pay those amounts arises on or after the commencement of this Part.

Part 3—Schemes to reduce income tax

Income Tax Assessment Act 1936

22 Subsection 177A(1)

Insert:

hydrogen production tax offset has the same meaning as in the *Income Tax Assessment Act 1997*.

23 After paragraph 177C(1)(be)

Insert:

; or (bf) a hydrogen production tax offset being allowable to the taxpayer in relation to a year of income where the whole or a part of the offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out;

24 At the end of subsection 177C(1)

Add:

; or (j) in a case to which paragraph (bf) applies—the amount of the whole of the hydrogen production tax offset or of the part of the hydrogen production tax offset, as the case may be, referred to in that paragraph.

25 At the end of subsection 177C(2)

Add:

; or (h) a hydrogen production tax offset being allowable to the taxpayer in relation to a year of income the whole or a part of which offset would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out, where:

(i) the allowance of the offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise

of an option by any person, being a declaration, agreement, election, selection, choice, notice or option expressly provided for by this Act; and

- (ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.

26 Subsection 177C(3)

Omit “or (g)(i)”, substitute “, (g)(i) or (h)(i)”.

27 After paragraph 177C(3)(cd)

Insert:

- ; or (ce) the allowance of a hydrogen production tax offset to a taxpayer;

28 At the end of subsection 177C(3)

Add:

- ; or (k) the hydrogen production tax offset would not have been allowable.

29 At the end of subsection 177CB(1)

Add:

- ; (h) the whole or a part of a hydrogen production tax offset not being allowable to the taxpayer.

30 After paragraph 177F(1)(g)

Insert:

- or (h) in the case of a tax benefit that is referable to a hydrogen production tax offset, or a part of a hydrogen production tax offset, being allowable to the taxpayer in relation to a year of income—determine that the whole or a part of the offset, or the part of the offset, as the case may be, is not to be allowable to the taxpayer in relation to that year of income;

31 After paragraph 177F(3)(h)

Insert:

or (i) if, in the opinion of the Commissioner:

(i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a hydrogen production tax offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a hydrogen production tax offset to the relevant taxpayer; and

(ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a hydrogen production tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a hydrogen production tax offset to the relevant taxpayer;

Schedule 2—Critical minerals production tax incentive

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Part 3-45

Add:

Division 419—Critical minerals (tax offset for Australian production expenditure)

Table of Subdivisions

	Guide to Division 419
419-A	Tax offset for expenditure for producing critical minerals in Australia
419-B	CMPTI expenditure
419-C	Registering activities and facilities for the CMPTI tax offset
419-D	Integrity rules
419-E	Review of certain decisions
419-F	Other matters

Guide to Division 419

419-1 What this Division is about

Companies may be entitled to a refundable tax offset for expenditure incurred in carrying on processing activities at facilities in Australia that substantially transform feedstock containing critical minerals into purer or more refined forms of the critical minerals that are chemically distinct from the feedstock.

This offset is designed to support the growth of these processing activities in Australia.

One of the requirements for entitlement to the tax offset is for a company to hold a registration certificate for these processing activities and for the Australian facilities where the activities are to be carried on. The Industry Secretary will decide whether to issue the certificates. A registration can be in force for 10 income years during the period starting on 1 July 2027 and ending on 30 June 2040.

The amount of the tax offset is 10% of the company's expenditure on these processing activities.

Subdivision 419-A—Tax offset for expenditure for producing critical minerals in Australia

Table of sections

419-5	Company entitled to refundable tax offset for expenditure incurred in producing critical minerals in Australia
419-10	Amount of CMPTI tax offset
419-15	Meaning of <i>critical mineral</i>
419-20	Meaning of <i>CMPTI processing activity</i>

419-5 Company entitled to refundable tax offset for expenditure incurred in producing critical minerals in Australia

Entitlement to the tax offset

- (1) A company is entitled to a *tax offset under this section (the **CMPTI tax offset**) for an income year if:
- (a) the company is a *constitutional corporation; and
 - (b) the income year:
 - (i) starts on or after 1 July 2027; and
 - (ii) ends on or before 30 June 2040; and
 - (c) there are one or more *registered CMPTI processing activities for the company and the income year; and
 - (d) the company incurs *CMPTI expenditure for the income year in carrying on any of those activities; and
 - (e) the company is not an *exempt entity; and

- (f) if *CMPTI community benefit rules under paragraph 419-145(1)(a) apply to the company for the income year—the company meets the conditions specified in those rules; and
- (g) the company satisfies the residency requirements in subsection (2) for the income year.

Note: The CMPTI tax offset is a refundable tax offset (see section 67-23).

Residency requirements

- (2) The company satisfies the residency requirements in this subsection for the income year if, at all times during the income year in which any of the activities covered by paragraph (1)(c) are carried on:
 - (a) the company:
 - (i) is an Australian resident and has an *ABN; and
 - (ii) is carrying on the activity; or
 - (b) the company:
 - (i) is a foreign resident that has a *permanent establishment in Australia and has an ABN; and
 - (ii) is carrying on the activity through that permanent establishment.

419-10 Amount of CMPTI tax offset

- (1) The amount of the *CMPTI tax offset for the income year is equal to 10% of the company's total *CMPTI expenditure referred to in paragraph 419-5(1)(d).
- (2) However, if:
 - (a) *CMPTI community benefit rules under paragraph 419-145(1)(b) apply to the company for the income year; and
 - (b) circumstances specified in those rules exist for the company; the amount of the *CMPTI tax offset is reduced by the proportion specified in those rules for those circumstances.

419-15 Meaning of *critical mineral*

- (1) Each of the following is a ***critical mineral***:
-

Schedule 2 Critical minerals production tax incentive
Part 1 Main amendments

- (a) antimony;
 - (b) arsenic;
 - (c) beryllium;
 - (d) bismuth;
 - (e) chromium;
 - (f) cobalt;
 - (g) fluorine;
 - (h) gallium;
 - (i) germanium;
 - (j) graphite;
 - (k) hafnium;
 - (l) high purity alumina;
 - (m) indium;
 - (n) lithium;
 - (o) magnesium;
 - (p) manganese;
 - (q) molybdenum;
 - (r) nickel;
 - (s) niobium;
 - (t) each of the following platinum-group elements:
 - (i) iridium;
 - (ii) osmium;
 - (iii) palladium;
 - (iv) platinum;
 - (v) rhodium;
 - (vi) ruthenium;
 - (u) each of the following rare-earth elements:
 - (i) cerium;
 - (ii) dysprosium;
 - (iii) erbium;
 - (iv) europium;
 - (v) gadolinium;
 - (vi) holmium;
 - (vii) lanthanum;
 - (viii) lutetium;
-

- (ix) neodymium;
- (x) praseodymium;
- (xi) promethium;
- (xii) samarium;
- (xiii) terbium;
- (xiv) thulium;
- (xv) ytterbium;
- (xvi) yttrium;
- (v) rhenium;
- (w) scandium;
- (x) selenium;
- (y) silicon;
- (z) tantalum;
- (za) tellurium;
- (zb) titanium;
- (zc) tungsten;
- (zd) vanadium;
- (ze) zirconium;
- (zf) a thing prescribed by the regulations.

- (2) The regulations must not prescribe uranium for the purposes of paragraph (1)(zf).

419-20 Meaning of *CMPTI processing activity*

- (1) A ***CMPTI processing activity*** is a processing activity carried on at one or more facilities in Australia that:
- (a) involves substantially transforming a feedstock containing a *critical mineral through extractive metallurgical processing into a purer or more refined form of the critical mineral that is chemically distinct from the feedstock; or
 - (b) is a processing activity that:
 - (i) relates to one or more critical minerals; and
 - (ii) is of a kind prescribed by the regulations; and
 - (iii) produces an outcome of a kind prescribed by the regulations;

if a substantial purpose for carrying on the activity is to achieve the transformation mentioned in paragraph (a) or the outcome mentioned in paragraph (b) (as applicable).

Note: To be relevant for the tax offset, the activity will need to be:

- (a) registered (see paragraph 419-5(1)(c)); and
- (b) carried on at one or more of the facilities specified in the certificate of registration for the activity (see paragraph 419-25(1)(a)).

(2) However, none of the following activities is a **CMPTI processing activity**:

- (a) mining;
- (b) beneficiation (including the grinding, crushing, floating and other mechanical processing of ores), except to the extent that such an activity is prescribed for the purposes of paragraph (1)(b);
- (c) manufacturing, except to the extent that such an activity is prescribed for the purposes of paragraph (1)(b);
- (d) an activity that is contrary to an *Australian law;
- (e) an activity of a kind prescribed by the regulations.

Note: Since subsection (1) is subject to this subsection, an activity that could be covered by both paragraphs (1)(b) and (2)(e) will *not* be a CMPTI processing activity.

Subdivision 419-B—CMPTI expenditure

Table of sections

419-25	Meaning of <i>CMPTI expenditure</i>
419-30	Expenditure to be worked out excluding GST

419-25 Meaning of *CMPTI expenditure*

- (1) **CMPTI expenditure**, of a company for an income year, is expenditure the company incurs during the income year to the extent that:
 - (a) the expenditure is incurred in carrying on one or more of the company's *registered CMPTI processing activities for the income year at facilities specified in the certificates of registration for those activities; and

- (b) the expenditure is paid during the income year, if at the time the expenditure is incurred:
 - (i) the company, and the entity to which the expenditure is incurred, are not dealing with each other at *arm's length; or
 - (ii) the entity to which the expenditure is incurred is the company's *associate.

Excluded expenditure

- (2) Despite subsection (1), **CMPTI expenditure** does not include any expenditure the company incurs to the extent that the expenditure:
 - (a) is capital, or is of a capital nature; or
 - (b) is taken into account when calculating the decline in value of an asset for the purposes of a *taxation law; or
 - (c) is incurred by way of, or in relation to, the financing of *registered CMPTI processing activities; or
 - (d) is on feedstock, whether raw materials (such as ores or mineral concentrates) or intermediate outputs from a previous processing step; or
 - (e) would result in more than 10% of the company's CMPTI expenditure for the income year being incurred on or in relation to *intellectual property; or
 - (f) is of a kind prescribed by the regulations.

Note: Similarly, subsection (1) means CMPTI expenditure does not include expenditure to the extent that the expenditure is incurred in carrying on:

- (a) a registered CMPTI processing activity at a facility not specified in the certificate of registration for the activity; or
 - (b) an activity that is not a registered CMPTI processing activity.
- (3) Despite subsection (1), if carrying on one or more of the company's *registered CMPTI processing activities results in an output that:
 - (a) would, if the output were the only output of the activities, mean the activities are not *CMPTI processing activities; and
 - (b) is disposed of, or is used to produce another output that is disposed of, in a way that:
 - (i) is for value; or

(ii) involves the company and another entity not dealing with each other at *arm's length; or

(iii) is to an *associate of the company;

CMPTI expenditure does not include so much of the company's expenditure incurred in carrying on those activities as is reasonably attributable to the first-mentioned output.

419-30 Expenditure to be worked out excluding GST

In determining an amount of expenditure for the purpose of this Division, the expenditure is taken to exclude *GST.

Subdivision 419-C—Registering activities and facilities for the CMPTI tax offset

Table of sections

419-35	Meaning of <i>registered CMPTI processing activity</i>
419-40	Notice of decision about an application for registration
419-45	Annual report about a registered CMPTI processing activity
419-50	A registration is in force for up to 10 income years
419-55	Transferring a registration
419-60	Varying a registration
419-65	Automatic suspension of a registration for failing to give an annual report or requested further information
419-70	Revoking a registration
419-75	Effect of revocations
419-80	Industry Secretary may request further information
419-85	Advising the Commissioner about a registration
419-90	Amendment of assessments

419-35 Meaning of *registered CMPTI processing activity*

- (1) A company has a ***registered CMPTI processing activity*** for an income year if:
- (a) the activity is registered for the company under subsection (2); or
 - (b) a registration of the activity is transferred to the company under subsection 419-55(2);
- and the registration is in force for the company and the income year.

Note: For when the registration is in force, see section 419-50. The registration will not be in force if:

- (a) it has already expired (see section 419-50); or
- (b) it is suspended or has been revoked (see section 419-65 or 419-70).

Initial registration

- (2) The *Industry Secretary must register an activity for a company if:
- (a) the company applies to the Industry Secretary for the activity to be registered under this subsection; and
 - (b) the application identifies:
 - (i) the activity and each facility where the activity is to be carried on; and
 - (ii) the basis on which the company considers it will satisfy the requirements to be entitled to a *CMPTI tax offset in relation to the activity; and
 - (c) the application states that the company is the legal entity that is or will be carrying on the activity at those facilities; and
 - (d) the application is in a form approved under subsection 419-150(1); and
 - (e) the Industry Secretary is satisfied that the activity is a *CMPTI processing activity; and
 - (f) the Industry Secretary has no reason to believe that:
 - (i) the information provided by the company is not true, correct and complete; or
 - (ii) the company will not satisfy the requirements to be entitled to a CMPTI tax offset in relation to the activity; and
 - (g) the company has paid the application fee (if any) prescribed by the regulations.

Note: Any revocation of the registration does not prevent the company from applying under this subsection to re-register the activity. Any re-registration will not re-start the maximum 10-year period that the activity can be registered (see subsections 419-50(4) and (5)).

419-40 Notice of decision about an application for registration

- (1) The *Industry Secretary must give written notice of a decision under subsection 419-35(2) about an application (of a company) to the company and the Commissioner.

Certificates of registration

- (2) If the decision is to register an activity for the company, the notice must include a certificate of registration that includes the following:
- (a) the company's name and *ABN;
 - (b) the day the certificate is issued;
 - (c) a description of the activity;
 - (d) a description of each facility where the activity is to be carried on;
 - (e) the matters (if any) prescribed by the regulations.

419-45 Annual report about a registered CMPTI processing activity

Content of the annual report

- (1) A company that has a *registered CMPTI processing activity for an income year must prepare a written report that is in a form approved under subsection 419-150(1).
- (2) Without limiting subsection 419-150(1), an instrument under that subsection may require the report to contain information about:
- (a) the outputs for the activity for the income year; and
 - (b) the expected outputs for the activity for the next income year; and
 - (c) any significant events that arose during the income year, or that are expected for the next income year, that could affect the company's:
 - (i) entitlement to the *CMPTI tax offset; or
 - (ii) registration of the activity.
- (3) Despite subsection 419-150(1), an instrument under that subsection must require the report to contain information about any matters prescribed by the regulations.

Giving the annual report

- (4) The company must give the report to the *Industry Secretary within the period determined under subsection (5) that starts at the end of the income year.
- (5) The *Industry Secretary may, by legislative instrument, determine a period of at least 30 days for giving reports under this section that starts at the end of each income year.
- (6) The *Industry Secretary must give the Commissioner a copy of each report given under this section.

419-50 A registration is in force for up to 10 income years

Usual case

- (1) The registration of a company's *registered CMPTI processing activity is in force for the 10-year period starting at the start of the income year chosen under subsection (2).
- (2) The company may choose:
 - (a) the income year in which the *Industry Secretary receives the company's application for registration of the activity under subsection 419-35(2); or
 - (b) a later income year.

The way the company prepares its *income tax returns is sufficient evidence of the making of the choice.

- (3) A choice under subsection (2) is irrevocable.

If the registration is a transfer or re-registration

- (4) Despite subsection (1), if the registration of a company's *registered CMPTI processing activity:
 - (a) results from a transfer under subsection 419-55(2) of a registration that has already come into force; or
 - (b) will not be the first registration of the activity under subsection 419-35(2) that has come into force for any company;

the registration of the company's registered CMPTI processing activity comes into force at the start of the income year that includes the day the *Industry Secretary receives the application that results in that registration.

- (5) The registration ceases to be in force at the same time that the first registration of the activity:
- (a) under subsection 419-35(2); and
 - (b) that came into force for any company;
- would have ceased to be in force if that first registration had continued in force for its full 10-year period.

If the activity is similar to another registered activity

- (6) Despite subsections (1), (4) and (5), if the *Industry Secretary decides that:
- (a) the company's *registered CMPTI processing activity (the **current activity**) is similar to another activity that is or was a registered CMPTI processing activity of any company; and
 - (b) the registration of the other activity is the first to have come into force;
- then:
- (c) unless paragraph (d) applies—the registration of the current activity ceases to be in force at the same time that the registration of the other activity ceases to be in force; or
 - (d) if the registration of the other activity has already ceased to be in force—the current activity is taken, for the purposes of this Division, never to have been registered for the company and any income year.
- (7) The *Industry Secretary must take the following into account in deciding under subsection (6) whether an activity is similar to another activity:
- (a) the extent to which the assets and facilities used in carrying on one activity are used in carrying on the other activity;
 - (b) the extent to which the processes and operations undertaken as part of one activity are the same as those undertaken as part of the other activity;
 - (c) the extent of similarity between the inputs to and outputs of the activities;
-

- (d) if the activities are carried on by different companies, the nature of any arrangements between those companies in respect of the activities;
- (e) it is irrelevant if the other activity is no longer being carried on;
- (f) any other criteria prescribed by the regulations.

The 10-year registration period is subject to revocation

- (8) Nothing in this section prevents a company's registration from being revoked under section 419-70.

419-55 Transferring a registration

- (1) This section applies if a *constitutional corporation (the **acquirer**):
 - (a) acquires one or more of the facilities used in carrying on an activity that is a *registered CMPTI processing activity for another company (the **disposer**); and
 - (b) the acquirer commences carrying on the activity at those facilities at or after:
 - (i) the time the disposer ceases carrying on the activity at those facilities; and
 - (ii) the time the disposer's registration of the activity comes into force (see section 419-50); and
 - (c) the acquirer seeks a transfer of the registration of the activity after the day of the acquisition.

Note 1: Transferring the registration will not re-start the maximum 10-year period that the activity can be registered (see subsections 419-50(4) and (5)).

Note 2: If the disposer's registration of the activity has not come into force (for example, by the disposer not having made a choice under subsection 419-50(2)), the acquirer should instead apply to register the activity under subsection 419-35(2).

- (2) The *Industry Secretary must transfer the registration of the activity to the acquirer if:
 - (a) the acquirer requests the transfer by applying to the Industry Secretary before the end of the period determined under subsection (3) that starts on the day of the acquisition; and
 - (b) the application identifies:

- (i) the activity and each facility where the activity is to be carried on; and
 - (ii) the basis on which the acquirer considers it will satisfy the requirements to be entitled to a *CMPTI tax offset in relation to the activity; and
 - (c) the application states:
 - (i) that the acquirer is the legal entity that is or will be carrying on the activity at those facilities (after the disposer ceases to do so); and
 - (ii) the time the acquirer is to commence carrying on the activity at those facilities, and the time the disposer is to cease to do so; and
 - (d) the application is in a form approved under subsection 419-150(1); and
 - (e) the Industry Secretary has no reason to believe that:
 - (i) the information provided by the acquirer is not true, correct and complete; or
 - (ii) the acquirer will not satisfy the requirements to be entitled to a CMPTI tax offset in relation to the activity; and
 - (f) the acquirer has paid the application fee (if any) prescribed by the regulations.
- (3) The *Industry Secretary may, by legislative instrument, determine a period of at least 30 days for requesting transfers under this section. For each such request, the period starts on the day of the relevant acquisition.
- (4) The *Industry Secretary must give written notice of a decision under subsection (2) to the acquirer, the disposer and the Commissioner.
- (5) If the decision is to transfer the registration, the notice must include a certificate of registration that reflects the transfer.

419-60 Varying a registration

Variations on application

- (1) The *Industry Secretary must decide whether to vary the registration of a *registered CMPTI processing activity of a company if:
 - (a) the company applies to the Industry Secretary for a variation of the registration; and
 - (b) the application is in a form approved under subsection 419-150(1); and
 - (c) the company has paid the application fee (if any) prescribed by the regulations.

Variations on the Industry Secretary's own initiative

- (2) The *Industry Secretary may, on the Industry Secretary's own initiative, vary the registration of a *registered CMPTI processing activity of a company.

Matters relevant to such a decision

- (3) In deciding under subsection (1) or (2) whether to vary the registration of an activity, the *Industry Secretary:
 - (a) in the case of an application under subsection (1)—must consider if there is any reason to believe that the information provided by the company is not true, correct and complete; and
 - (b) in every case:
 - (i) must have regard to any proposed changes relating to the activity; and
 - (ii) must have regard to the matters prescribed by the regulations; and
 - (iii) may have regard to any other matter that the Industry Secretary considers relevant.

Notice of such a decision

- (4) The *Industry Secretary must give written notice of a decision under subsection (1) or (2) to:
-

- (a) the company to whom the certificate of registration was issued; and
 - (b) the Commissioner.
- (5) If the decision is to vary the registration, the notice must include the varied certificate of registration.

419-65 Automatic suspension of a registration for failing to give an annual report or requested further information

- (1) The registration of a *registered CMPTI processing activity of a company is suspended if (and while) the company fails to:
- (a) give a report under section 419-45 during an income year about the activity; or
 - (b) comply with a request, given under subsection 419-80(2) during an income year, for further information about the registration.

Note 1: The registration may be automatically revoked if the report or requested information is not given before the end of an extended period (see subsections 419-70(1) to (3)).

Note 2: Suspending the registration will not suspend the maximum 10-year period that the registration of the activity can be in force (see section 419-50).

- (2) For the purposes of this Division (other than this section), the activity is taken:
- (a) during the period of the suspension, never to have been registered for the company and the income year mentioned in paragraph (1)(a) or (b); but
 - (b) if that period ends, to have been registered during that period for the company and the income year.

Paragraph (b) of this subsection is subject to the registration being revoked under section 419-70.

Note: This means that if an assessment of a company's income tax for the income year is made on the basis that the company is entitled to the CMPTI tax offset for the activity, during the suspension the assessment may be amended to take account of the fact that the company was never entitled to the offset for the activity (see section 419-90).

419-70 Revoking a registration

Automatic revocation if annual report or requested information is not given before the end of an extended period

- (1) The registration of a *registered CMPTI processing activity of a company is revoked at the start of an income year if the company:
 - (a) is required during the income year to give a report under section 419-45 about the activity (for the previous income year); and
 - (b) fails to do so before the end of the income year.
- (2) The registration of a *registered CMPTI processing activity of a company is revoked at the start of an income year if the company:
 - (a) is required to comply with a request, given under subsection 419-80(2) during the income year, for further information about the registration; and
 - (b) fails to do so before the end of the 60-day period starting at the end of the period mentioned in that subsection for complying with the request.
- (3) However, subsection (1) or (2) is taken never to have applied for a failure mentioned in that subsection if:
 - (a) the company eventually gives the *Industry Secretary:
 - (i) for subsection (1)—a report about the activity for the previous income year that complies with subsections 419-45(1) to (3); or
 - (ii) for subsection (2)—the requested further information in a way that complies with subsection 419-80(4); and
 - (b) the company applies to the Industry Secretary for the late report or information (the *late material*) to be accepted; and
 - (c) the application is in a form approved under subsection 419-150(1); and
 - (d) the Industry Secretary decides to accept the late material because the Industry Secretary is satisfied that the delay in giving the late material was due to exceptional circumstances beyond the company's control; and
 - (e) the company has paid the application fee (if any) prescribed by the regulations.

Revocation on other grounds

- (4) The *Industry Secretary may decide to revoke all registrations of a *registered CMPTI processing activity if the Industry Secretary:
- (a) is satisfied that the first registration of the activity under subsection 419-35(2) for any company:
 - (i) was based on untrue, incorrect or incomplete information; or
 - (ii) was obtained by fraud or serious misrepresentation; or
 - (b) is satisfied that no company ever satisfied the requirements to be entitled to a *CMPTI tax offset in relation to the activity.

Note: This subsection can apply to a registration a company used to hold before it was transferred to the current holder.

- (5) The *Industry Secretary may decide to revoke the registration of a *registered CMPTI processing activity of a company if the Industry Secretary:
- (a) becomes satisfied that information provided by the company to the Industry Secretary during an income year in relation to the registration involved fraud or serious misrepresentation by or on behalf of the company; or
 - (b) reasonably believes:
 - (i) that, for an income year, the registration is not based on true, correct and complete information; or
 - (ii) that the company does not satisfy the requirements to be entitled to a *CMPTI tax offset in relation to the activity and an income year.

Notice of decisions

- (6) The Industry Secretary must, within 30 days after making a decision under paragraph (3)(d) or subsection (4) or (5), give written notice of the decision to:
- (a) the company, or each company, that holds or held a registration affected by the decision; and
 - (b) the Commissioner.

419-75 Effect of revocations

- (1) If the registration of a *registered CMPTI processing activity of a company is revoked under subsection 419-70(4), the activity is taken, for the purposes of this Division, never to have been registered for the company and any income year.

Note: This means that if an assessment of a company's income tax for an income year is made on the basis that the company is entitled to the CMPTI tax offset for the activity, the assessment will be amended to take account of the fact that the company was never entitled to the offset for the activity (see section 419-90).

- (2) If the registration of a *registered CMPTI processing activity of a company is revoked under subsection 419-70(1), (2) or (5), the revocation applies in relation to the income year referred to in that subsection and each later income year.
- (3) Subsection (1), or subsection (2) to the extent that it relates to a revocation under subsection 419-70(5), does not apply for the purposes of:
- (a) the operation of section 419-70, this section or Subdivision 419-E; or
 - (b) a review by a court or the *ART of the decision to revoke the registration.

419-80 Industry Secretary may request further information

- (1) The *Industry Secretary may request an applicant under:
- (a) subsection 419-35(2) (about registrations); or
 - (b) subsection 419-55(2) (about transfers); or
 - (c) subsection 419-60(1) (about variations); or
 - (d) subsection 419-70(3) (about late material);
- to give specified information, or specified kinds of information, to the Industry Secretary about the application.
- (2) The *Industry Secretary may request a company that has a *registered CMPTI processing activity to give specified information, or specified kinds of information, to the Industry Secretary about the registration within:
- (a) the 30-day period starting when the request is given; or
 - (b) such longer period as the Industry Secretary allows.

The request must mention that the registration will be suspended and then revoked if the request is not complied with.

- (3) The *Industry Secretary need not consider an application while waiting for information requested under subsection (1) about the application.
- (4) A request under subsection (1) or (2) may be for the information or kinds of information to be given in a form approved under subsection 419-150(1).

419-85 Advising the Commissioner about a registration

Based on all information the *Industry Secretary has about a company's registration of a *registered CMPTI processing activity for an income year, the Industry Secretary must advise the Commissioner:

- (a) whether the activity is being carried on in accordance with the registration; and
- (b) whether the company is carrying on any *CMPTI processing activities during the income year that are not registered CMPTI processing activities; and
- (c) whether the company is carrying on any other activities during the income year that the Industry Secretary believes may be relevant to the Commissioner's administration of this Division.

Note: Such advice could be based on information from sources including:

- (a) applications under sections 419-35, 419-55 and 419-60; and
- (b) annual reports given under section 419-45; and
- (c) requests made under section 419-80.

419-90 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment given to a company for the purposes of giving effect to this Division for an income year if the registration of a *registered CMPTI processing activity for the company is transferred, varied, suspended or revoked.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the periods within which assessments may be amended.

Subdivision 419-D—Integrity rules

Table of sections

419-95	Expenditure incurred while not at arm's length
419-100	Reducing a company's CMPTI expenditure to reflect mark-ups within the company's group
419-105	Disregarding registration of an activity that a company is paid to carry on

419-95 Expenditure incurred while not at arm's length

If:

- (a) a company incurs *CMPTI expenditure to another entity in carrying on all or part of a *registered CMPTI processing activity; and
- (b) either:
 - (i) when the company incurs the expenditure, the company and the other entity do not deal with each other at *arm's length; or
 - (ii) the other entity is the company's *associate; and
- (c) the expenditure exceeds the *market value of the relevant activity or part (as appropriate);

for the purposes of this Division (other than this section), the company is treated as if the amount of expenditure it incurred in carrying on the relevant activity or part (as appropriate) were equal to that market value.

419-100 Reducing a company's CMPTI expenditure to reflect mark-ups within the company's group

- (1) This section applies to a company if:
 - (a) the company is entitled to a *CMPTI tax offset for *CMPTI expenditure in carrying on one or more of the company's *registered CMPTI processing activities; and
 - (b) some or all of that expenditure (the **group expenditure**) is incurred to another entity (the **group entity**) for goods or services provided in relation to those activities when:
 - (i) the group entity is *connected with the company; or
 - (ii) the group entity is an *affiliate of the company or the company is an affiliate of the group entity.

Reducing the company's CMPTI expenditure by group mark-ups

- (2) For the purposes of this Division (other than this section), disregard so much of the company's group expenditure as exceeds the actual cost to the group entity of providing those goods or services.

Note: This section can apply more than once if the company incurs CMPTI expenditure to more than one group entity.

419-105 Disregarding registration of an activity that a company is paid to carry on

If:

- (a) a company is or will be paid by another entity for carrying on an activity during an income year that is a *registered CMPTI processing activity for the company and the income year; and
- (b) the activity is or could be a registered CMPTI processing activity for any of the following for the income year:
- (i) the other entity;
 - (ii) a *constitutional corporation *connected with the other entity;
 - (iii) a constitutional corporation that is an *affiliate of the other entity;
 - (iv) a constitutional corporation of which the other entity is an affiliate;

for the purposes of section 419-5 (about entitlement to the *CMPTI tax offset), disregard that registration of the activity for the company and the income year.

Subdivision 419-E—Review of certain decisions

Table of sections

419-110	Reviewable decisions
419-115	Notice of reviewable decision and internal review rights, and requesting statement of reasons
419-120	Applications for internal review of reviewable decisions
419-125	Internal review of reviewable decisions
419-130	Matters relevant to internal review decisions
419-135	External review by ART of internal review decisions

419-110 Reviewable decisions

Each of the following decisions of the *Industry Secretary is reviewable under this Subdivision (a *reviewable decision*):

- (a) a decision under subsection 419-35(2) (about registering an activity);
- (b) a decision under subsection 419-50(6) (about whether an activity is similar to another activity);
- (c) a decision under subsection 419-55(2) (about transferring the registration of an activity);
- (d) a decision under subsection 419-60(1) or (2) (about varying the registration of an activity);
- (e) a decision under paragraph 419-70(3)(d) (about refusing to accept late material);
- (f) a decision under subsection 419-70(4) or (5) (about revoking the registration of an activity);
- (g) a decision under subsection 419-120(3) (about refusing to allow a further period to apply for review).

419-115 Notice of reviewable decision and internal review rights, and requesting statement of reasons

- (1) When making a reviewable decision affecting a company, the *Industry Secretary must give written notice to the company of the following things:
 - (a) the making of the decision;
 - (b) the company's right to have the decision reviewed under this Subdivision.
- (2) If written notice of either of these things is given to the company under another provision of this Division, notice of the thing does not have to be given twice.
- (3) The company or the Commissioner may request, in writing, the *Industry Secretary to give a statement of reasons for the decision. The Industry Secretary must comply with the request.
- (4) A failure to comply with this section does not affect the validity of the decision.

419-120 Applications for internal review of reviewable decisions

Applications by affected companies

- (1) An application for review of a reviewable decision affecting a company may be made by or on behalf of the company.
- (2) The application must be in a form approved under subsection 419-150(1).
- (3) The application must be made within:
 - (a) 28 days after the company is notified of the decision under this Division; or
 - (b) such further period as the *Industry Secretary allows.

Applications by Commissioner

- (4) The Commissioner may, at any time, apply to the *Industry Secretary for review of a reviewable decision.

419-125 Internal review of reviewable decisions

- (1) After receiving an application for review of a reviewable decision, the *Industry Secretary must review the decision.
- (2) The *Industry Secretary may request the applicant to give specified information, or specified kinds of information, to the Industry Secretary about the application.

Making internal review decisions

- (3) After reviewing the reviewable decision, the *Industry Secretary must make a decision (an ***internal review decision***):
 - (a) confirming the reviewable decision; or
 - (b) varying the reviewable decision; or
 - (c) setting aside the reviewable decision and substituting a new decision.

Note: An internal review decision is reviewable by the ART (see section 419-135). Under the *Administrative Review Tribunal Act 2024*, notice of the internal review decision must be given to any person whose interests are affected by the decision.

Deemed internal review decisions

- (4) If the *Industry Secretary does not make a decision under subsection (3) before the end of the 60-day period that:
- (a) starts on the day the Industry Secretary receives the application for review; and
 - (b) pauses while the Industry Secretary waits for any information requested under subsection (2) about the application for review;
- the Industry Secretary is taken, at the end of that period, to have made a decision (also an *internal review decision*) confirming the reviewable decision.
- (5) However, an internal review decision (the *deemed decision*) is taken not to have been made under subsection (4) if:
- (a) after the end of the period referred to in that subsection, the *Industry Secretary makes a decision under subsection (3) about the applicable reviewable decision; and
 - (b) an application has yet to be made under section 419-135 to the *ART for review of the deemed decision.

419-130 Matters relevant to internal review decisions

- (1) For the purposes of this Act, an internal review decision takes effect on the day the relevant reviewable decision took effect.
- (2) The *Industry Secretary must give the Commissioner written notice of the making of an internal review decision.
- (3) The applicant or the Commissioner may request, in writing, the *Industry Secretary to give a statement of reasons for the internal review decision. The Industry Secretary must comply with the request.
- (4) A failure to comply with this section does not affect the validity of the internal review decision.

419-135 External review by ART of internal review decisions

- (1) An application may be made to the *ART for review of an internal review decision of the *Industry Secretary.

- (2) Subsections 108(2) and (4) of the *Administrative Review Tribunal Act 2024* have effect for the purposes of this Act for:
- (a) an internal review decision as varied by the *ART under section 105 of the *Administrative Review Tribunal Act 2024*;
or
 - (b) a decision made by the ART under that section in substitution for an internal review decision.

Note: This means that the varied or substituted decision takes effect from the day on which the reviewable decision took effect (see subsection 419-130(1) of this Act).

Subdivision 419-F—Other matters

Table of sections

419-140	Information sharing
419-145	CMPTI community benefit rules
419-150	Forms approved by the Industry Secretary
419-155	Delegation by the Industry Secretary

419-140 Information sharing

- (1) Each of the following regulators:
- (a) the *Industry Secretary;
 - (b) the Commissioner;
- may request the other regulator to provide them with information held by the other regulator that is reasonably necessary or convenient for the requesting regulator's administration of this Division.

- (2) The other regulator must comply with the request.

Note 1: The request could be an ad hoc or standing request, and the information requested could be general or specific.

Note 2: A disclosure enabling the Commissioner to comply with such a request is within an exception to the confidentiality provisions in Schedule 1 to the *Taxation Administration Act 1953* (see section 355-50 in that Schedule).

419-145 CMPTI community benefit rules

- (1) The Minister may, by legislative instrument, make the following rules (the *CMPTI community benefit rules*):
- (a) rules that:
 - (i) apply to companies within a specified class for an income year; and
 - (ii) specify conditions that must be met for such a company to be entitled to a *CMPTI tax offset for the income year;
 - (b) rules that:
 - (i) apply to companies within a specified class for an income year; and
 - (ii) specify circumstances that, if they exist for such a company, will reduce the amount of the company's CMPTI tax offset for the income year by a specified proportion.
- Note: For subparagraph (b)(ii), different proportions may be specified for different circumstances (see subsection 33(3A) of the *Acts Interpretation Act 1901*).
- (2) In making the CMPTI community benefit rules, the Minister must have regard to the community benefit principles (within the meaning of subsection 10(3) of the *Future Made in Australia Act 2024*).
- (3) When doing so, the Minister is to treat this Division as if it were Future Made in Australia support (within the meaning of that Act).
- (4) This section does not apply if the *Future Made in Australia Act 2024* has not commenced.

419-150 Forms approved by the Industry Secretary

- (1) The *Industry Secretary may, by notifiable instrument, approve a form for the purposes of a specified provision of this Division.

Note: An instrument may approve different forms for the purposes of different provisions of this Division (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

- (2) Without limiting subsection (1), the instrument may require the form to be accompanied by specified kinds of information, documents or other materials.

419-155 Delegation by the Industry Secretary

- (1) The *Industry Secretary may, in writing, delegate all or any of the Industry Secretary's powers under this Division to an SES employee, or acting SES employee, in the *Industry Department.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the *Industry Secretary.

Part 2—Other amendments

Income Tax Assessment Act 1936

2 Subsection 177A(1)

Insert:

CMPTI tax offset has the same meaning as in the *Income Tax Assessment Act 1997*.

3 After paragraph 177C(1)(bd)

Insert:

or (be) a CMPTI tax offset being allowable to the taxpayer in relation to a year of income where the whole or a part of the offset would not have been allowable, or might reasonably be expected not to have been allowable, to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out;

4 At the end of subsection 177C(1)

Add:

; and (i) in a case to which paragraph (be) applies—the amount of the whole of the CMPTI tax offset or of the part of the CMPTI tax offset, as the case may be, referred to in that paragraph.

5 At the end of subsection 177C(2)

Add:

; or (g) a CMPTI tax offset being allowable to the taxpayer in relation to a year of income the whole or a part of which offset would not have been, or might reasonably be expected not to have been, allowable to the taxpayer in relation to that year of income if the scheme had not been entered into or carried out, where:

(i) the allowance of the offset to the taxpayer is attributable to the making of a declaration, agreement, election, selection or choice, the giving of a notice or the exercise of an option by any person, being a declaration,

agreement, election, selection, choice, notice or option expressly provided for by this Act; and

- (ii) the scheme was not entered into or carried out by any person for the purpose of creating any circumstance or state of affairs the existence of which is necessary to enable the declaration, agreement, election, selection, choice, notice or option to be made, given or exercised, as the case may be.

6 Subsection 177C(3)

Omit “or (f)(i)”, substitute “, (f)(i) or (g)(i)”.

7 After paragraph 177C(3)(cc)

Insert:

or (cd) the allowance of a CMPTI tax offset to a taxpayer;

8 At the end of subsection 177C(3)

Add:

; or (j) the CMPTI tax offset would not have been allowable.

9 At the end of subsection 177CB(1)

Add:

; (g) the whole or a part of a CMPTI tax offset not being allowable to the taxpayer.

10 After paragraph 177F(1)(f)

Insert:

or (g) in the case of a tax benefit that is referable to a CMPTI tax offset, or a part of a CMPTI tax offset, being allowable to the taxpayer—determine that the whole or a part of the CMPTI tax offset, or the part of the CMPTI tax offset, as the case may be, is not to be allowable to the taxpayer;

11 After paragraph 177F(3)(g)

Insert:

or (h) if, in the opinion of the Commissioner:

- (i) an amount would have been allowed, or would be allowable, to the relevant taxpayer as a CMPTI tax

offset if the scheme had not been entered into or carried out, being an amount that was not allowed or would not, apart from this subsection, be allowable, as the case may be, as a CMPTI tax offset to the relevant taxpayer; and

- (ii) it is fair and reasonable that the amount, or a part of the amount, should be allowable as a CMPTI tax offset to the relevant taxpayer;

determine that that amount or that part, as the case may be, should have been allowed or is allowable, as the case may be, as a CMPTI tax offset to the relevant taxpayer;

Income Tax Assessment Act 1997

12 Section 13-1 (after table item headed “corporate unit trusts”)

Insert:

critical minerals

..... Division 419

13 Section 67-23 (after table item 27)

Insert:

28 critical minerals the *CMPTI tax offset (see Division 419)
production incentive

14 Subsection 995-1(1)

Insert:

CMPTI community benefit rules has the meaning given by subsection 419-145(1).

CMPTI expenditure has the meaning given by section 419-25.

CMPTI processing activity has the meaning given by section 419-20.

CMPTI tax offset has the meaning given by subsection 419-5(1).

critical mineral has the meaning given by section 419-15.

registered CMPTI processing activity has the meaning given by subsection 419-35(1).

Taxation Administration Act 1953

15 In the appropriate position in Part IA

Add:

3K Reporting of information about CMPTI tax offset

- (1) This section applies to a company in relation to an income year if, according to information the entity gave the Commissioner, the company is entitled to the CMPTI tax offset for the income year.
- (2) The Commissioner must, as soon as practicable after the second 30 June after the financial year corresponding to the income year, make publicly available the information mentioned in subsection (3).
- (3) The information is as follows:
 - (a) the company's name;
 - (b) the company's ABN;
 - (c) the amount of the company's CMPTI tax offset for the income year.
- (4) Subsection (5) applies if:
 - (a) the entity gives the Commissioner a notice in writing that the information mentioned in paragraph (3)(c) contains an error; and
 - (b) the notice contains information that corrects the error.
- (5) The Commissioner may at any time make the information mentioned in paragraph (4)(b) publicly available, in accordance with subsection (2), in order to correct the error.
- (6) To avoid doubt, if the Commissioner considers that information made publicly available under subsection (2) fails to reflect all of the information required to be made publicly available under that subsection, the Commissioner may at any time make publicly available other information in order to remedy the failure.

- (7) An expression used in this section and in the *Income Tax Assessment Act 1997* has the same meaning in this section as in that Act.

Schedule 3—Amendments relating to Indigenous Business Australia

Aboriginal and Torres Strait Islander Act 2005

1 After paragraph 152(2)(aa)

Insert:

- (ab) to borrow money in accordance with section 183 for a purpose in connection with Indigenous Business Australia's functions;

2 Section 183

Repeal the section, substitute:

183 Borrowing

- (1) Indigenous Business Australia must not borrow money for a purpose in connection with Indigenous Business Australia's functions unless the borrowing is authorised by subsection (2) or under section 57 of the *Public Governance, Performance and Accountability Act 2013*.
- (2) Indigenous Business Australia rules (see section 189A) may prescribe:
 - (a) circumstances in which Indigenous Business Australia may borrow money for a purpose in connection with Indigenous Business Australia's functions; and
 - (b) limits or conditions on the borrowing of such money.
- (3) The Minister must not make Indigenous Business Australia rules for the purposes of subsection (2) without the written agreement of the Finance Minister.
- (4) Indigenous Business Australia rules made for the purposes of subsection (2) prevail over the following, to the extent of any inconsistency:

- (a) a written authorisation by the Finance Minister under paragraph 57(1)(b) of the *Public Governance, Performance and Accountability Act 2013*;
- (b) rules made for the purposes of paragraph 57(1)(c) of that Act.

Note: Section 57 of the *Public Governance, Performance and Accountability Act 2013* deals with borrowing by a corporate Commonwealth entity.

- (5) For the purposes of this Part, **borrow** includes raising money or obtaining credit, including by any of the following ways:
 - (a) dealing in securities;
 - (b) obtaining an advance on overdraft;
 - (c) obtaining credit by way of credit card or credit voucher.

3 Subsection 184(1)

Omit “(1)”.

4 Subsection 184(2)

Repeal the subsection.

5 At the end of Division 8 of Part 4

Add:

189A Indigenous Business Australia rules

- (1) The Minister may, by legislative instrument, make rules (***Indigenous Business Australia rules***) prescribing matters:
 - (a) required or permitted by this Division to be prescribed by the Indigenous Business Australia rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Division.
- (2) To avoid doubt, the Indigenous Business Australia rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;

Schedule 3 Amendments relating to Indigenous Business Australia

- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Indigenous Business Australia rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but Indigenous Business Australia rules are taken to be consistent with the regulations to the extent that the Indigenous Business Australia rules are capable of operating concurrently with the regulations.
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*[Minister's second reading speech made in—
House of Representatives on 25 November 2024
Senate on 4 February 2025]*

(161/24)