

Australian Conservation Foundation

Submission to: Future Made in Australia Community Benefits Principles: Draft
Public Guidance

Addressed to: Department of Industry, Science and Resources

Submission from: Australian Conservation Foundation

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**Nature
needs us,
now**



About the Australian Conservation Foundation

The Australian Conservation Foundation is Australia's national environment organisation. Since 1965, we've protected the nature we all love – our unique wildlife and our beautiful beaches and bush.

Driven by the power of people, we won World Heritage listing for the Great Barrier Reef and Kakadu National Park, and returned precious water to the rivers of the Murray-Darling.

We influence governments and businesses to protect the animals, rivers and reefs close to our hearts and hold decision-makers to account without fear or favour. Everything we do is evidence-based and helps nature and people thrive for generations to come.

We won't give up until Australia's nature is protected and regenerated.

The Australian Conservation Foundation acknowledges that First Nations Peoples of Australia hold unique knowledge and rights inherited from their ancestors and Country and have cared for this country since time immemorial. We pay our respect to First Nations Peoples of Australia, past, present and future. We respect their leadership in caring for Country and support their rights to continue to do so. We recognise that sovereignty was never ceded, and that colonisation was unjust, often violent and continues to adversely impact on First Nations Peoples today. As Australia's national environment organisation, we understand we have a responsibility to help right this historical wrong. We support their authority to speak for Country, right to self-determination and recognise that rightful recognition of and genuine reconciliation with First Nations Peoples is fundamental to protecting nature in Australia. We support First Nations-led campaigns that protect Country and seek win-win outcomes for our environment and for the rights, wellbeing and advancement of First Nations Peoples.

To find out more about the Australian Conservation Foundation's work visit www.acf.org.au



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Introduction

ACF welcomes the opportunity to make a submission to the *Future Made in Australia Community Benefits Principles Public Guidance* consultation by the Department of Industry, Science and Resources (DISR), informing the federal government's development of Future Made in Australia Rules (FMIA rules) and associated instruments, as well as to inform the application of community benefits principles (CBPs) to relevant Future Made in Australia (FMIA) production tax incentives.

With appropriate government support and regulation, Australia is well placed transition to an economy driven by clean energy, galvanised by the growth of five priority clean export industries: critical minerals, green iron and steel, batteries, green hydrogen and ammonia, and green alumina and aluminium.¹ These industries alone could, by 2040, add \$100 billion in value to the economy per annum and support over 400,000 jobs, the majority of which would be located in regional centres. However, to fully embrace this opportunity requires governments to prioritise the swift diversification and transition of Australia's manufacturing and export industries away from fossil fuel extraction, and further, to embed a clearly articulated vision in the FMIA rules that guides the public-private partnerships embodied within Australia's potential green energy industries of the future.²

The FMIA rules must ensure the delivery of broad and meaningful community benefits commensurate with the scale of public sector investment in FMIA sectors

At the outset, ACF emphasises the clear legislative intent of the *Future Made in Australia Act 2024* (Cth) (FMIA Act) to provide a new framework that governs the implicit contract between public investment in the private sector (especially ss 10-12 of the Act), leveraging the net zero transition as a once in a generation opportunity to reimagine Australia's economy and industry.³ The Albanese government's FMIA agenda marks a new chapter for Australian industrial policy, one that conceives of the government as a shaper and co-creator of markets, not merely a neutral regulator, and where public investment in private sector innovation is accompanied by the public experiencing the benefits, not just the risks, of that private sector activity.⁴ However, to move beyond mere aspiration of benefits-sharing to practice "requires the public sector to establish a clear vision" that "guides the collaboration and innovation of both private and public actors", put succinctly, conditionalities.⁵ Without conditionalities attached to public investment,

¹ Accenture, *Sunshot in 2023: Accelerating towards Australia's renewable exports opportunity* (2023, report commissioned by ACF, ACTU, BCA and WWF) and Accenture, *Sunshot: Achieving global leadership in clean exports* (2023, policy roadmap).

² *Ibid*, 7.

³ Explanatory Memorandum, Future Made in Australia Bill 2024 (Cth).

⁴ M Mazzucato, *Mission Economy: A Moonshot Guide to Changing Capitalism* (2021, Penguin UK); and A Goulden and R Kattel, *Designing and implementing mission-oriented policies: Tools and resources from the field* (2024, UCL Institute for Innovation and Public Purpose, Policy Report No. 2024/01).

⁵ M Mazzucato and D Rodrik, *Industrial Policy with Conditionalities: A Taxonomy and Sample Cases* (2024, UCL Institute for Innovation and Public Purpose, Working Paper 2023/07), 4-5.



the FMIA agenda risks becoming another example of corporate welfare and wealth transfer.⁶

At its heart, conditionalities are a mechanism for recognising and articulating social contracts between the public and private sectors – they are designed to “empower” governments, not constrain them.⁷ The focus of the FMIA rules must be on articulating high standards for benefits sharing, that empower federal decision-makers to push for meaningful worker and community outcomes. In their taxonomy of conditionalities, Mazzucato and Rodrik identify commonalities across a range of jurisdictions that have successfully leveraged public expenditure to deliver mission-oriented economic outcomes and benefits-sharing, including:⁸

- Clear identification of conditions associated with firm behavior, to influence private conduct such as directionality (directing private sector activity towards a socially desirable goal)⁹ or reinvestment obligations;
- Mechanisms for risk and reward sharing between public and private sectors, particularly mechanisms for excess profit sharing not just de-risking potential failure; and
- The need for measurable performance criteria and monitoring, which should be explicit, quantitative and/or measurable to monitor ongoing compliance with a condition.

The FMIA rules are clearly intended to be the primary regulatory mechanisms for explicating the conditionalities embedded in the FMIA Act, as such, ACF recommends several reforms to the *Future Made in Australia Community Benefits Principles Public Guidance* and contemplated FMIA rules to better embed strong conditionalities.

Scope of the FMIA Act and attendant regulations

In accordance with s 10(2)(d) of the FMIA Act, the Commonwealth has power to prescribe any financial support a Future Made in Australia support (FMIA support) under the rules, bringing that support under the FMIA Act umbrella. In response to consultation question 7, ACF strongly recommends that all listed supports set out at page 17 of the public guidance be designated as FMIA supports in the rules.

Furthermore, ACF urges the government to designate all major funding streams administered by the Commonwealth’s suite of Specialist Direct Investment Vehicles (SIVs) as FMIA supports under the rules. Extending common community benefits-sharing rules across all SIVs will ensure greater consistency between all government investment vehicles, provide clarity to the private sector and better align all SIVs with the Commonwealth’s policy priorities. Indeed, such an extension would be consistent with the Commonwealth’s articulated priorities for SIVs, which includes delivery on “both policy and commercial goals, including socio-economic”.¹⁰

This submission provides feedback with a focus on answering, in the following order, questions 2, 4-5, 6, 8-12 (in section one of this submission), questions 3, 16 and 19-21 (in section two of this submission) and questions 22-24 (in section three of this submission).

⁶ See further F Bulfone, T Ergen and M Kalaitzake, “No strings attached: Corporate welfare, state intervention, and the issue of conditionality” (2023) 27(2) *Competition & Change* 253.

⁷ M Mazzucato and D Rodrik, *Industrial Policy with Conditionalities: A Taxonomy and Sample Cases* (2024, UCL Institute for Innovation and Public Purpose, Working Paper 2023/07), 6.

⁸ Ibid.

⁹ J Ahokas, P Jarvensivu and T Toivanen, “Ideas behind transformative innovation policy: Economists confronting missions and sustainability transition in Finland” (2024) 53 *Environmental Innovation and Societal Transitions* 100927.

¹⁰ Department of Finance, *Specialist Investment Vehicles (SIVs)* (July 2024, RMG 127), <<https://www.finance.gov.au/government/specialist-investment-vehicles>>.





Recommendations

Recommendation 1: Expand the community benefits principles to protect climate and nature

ACF recommends that the Future Made in Australia rules adopt two additional community benefits principles, in accordance with s 10(3)(b) of the *Future Made in Australia Act 2024* (Cth), to promote the achievement of Australia's greenhouse gas emissions reduction targets and to promote nature positive outcomes.

Recommendation 2: Implement eligibility and merit criteria to incentivise best practice compliance with the community benefits principles

ACF recommends the introduction of eligibility and merit criteria, replacing the proposed minimum and threshold criteria set out in the public guidance. This enables the government to articulate consistent and transparent minimum obligations for eligibility to seek FMIA supports (via eligibility criteria), and further, to empower government decision-makers to select projects best aligned with community benefits-sharing outcomes in competitive application processes (via merit criteria).

Recommendation 3: Adopt the ACTU's recommendations to strengthen worker, workforce development and local supply chain outcomes (principles 1, 2 and 5)

ACF endorses the recommendations made by the Australian Council of Trade Unions to strengthen outcomes associated with the promotion of safe and secure jobs (s 10(3)(a)(i) of the *Future Made in Australia Act 2024* (Cth)), development of a more skilled and inclusive workforce (s 10(3)(a)(ii)) and the strengthening of domestic industrial capabilities (s 10(3)(a)(iv)).



Recommendation 4: Adopt clearly defined and quantitative benefit-sharing obligations to strengthen outcomes for local communities (principle 3)

ACF recommends the introduction of new eligibility and merit criteria to assess compliance with community benefits principle 3, regarding local communities (s 10(3)(a)(iii) of the *Future Made in Australia Act 2024* (Cth)), as follows:

- Compliance with, at a minimum, the 'empower' category of the IAP2 Spectrum of Public Participation;
- Compliance with minimum targets for financial benefits-sharing to the community, at least equal to 2% of annual gross revenue (for eligibility criteria) and at least 5% of annual gross revenue (for merit criteria);
- Compliance with any government imposed regional planning or coordination obligations regarding community engagement, to minimise duplication and engagement fatigue; and
- Merit criteria relating to community co-ownership or co-investment.

Recommendation 5: Adopt broader and stronger consultation, co-management, employment and economic benefits-sharing obligations for First Nations communities (principle 4)

ACF recommends the introduction of new eligibility and merit criteria to assess compliance with community benefits principle 4 (s 10(3)(a)(iii)-(iiia) of the *Future Made in Australia Act 2024* (Cth)), regarding First Nations communities. Prior to the development and introduction of new eligibility and merit criteria, ACF urges government to undertake specific and target consultation with First Nations organisations, including Traditional Owner groups and grassroots organisations.

ACF endorses the recommendations of the First Nations Clean Energy Network to this consultation and recommends the development of eligibility and merit criteria for principle 4 that reflect the following:

- Meaningful consultation obligations, including adoption of free, prior and informed consent standards and two-way consultative dialogues that are ongoing over all phases of the project;
- Meaningful employment outcomes that make provision for workforce development and training for First Nations people, enabling economic self-determination; and
- Mechanisms to enable and incentivise profit-sharing and co-management of projects with local First Nations communities. Including at least minimum 10% equity sharing obligations for projects located in remote Australia.

Recommendation 6: If threshold requirement 4.3 is maintained, ensure all relevant First Nations interests are recognised

In the alternative, if ACF's previous recommendations with respect to First Nations communities are not adopted, ACF nonetheless urges specific amendment to threshold requirement 4.3, regarding consultation. Given the broad range of First Nations interests that may be relevant to a project, it is appropriate to expand the language of threshold requirement 4.3 to include all relevant Traditional Owner groups and First Nations communities, as well as local First Nations people.



Recommendation 7: The threshold for Future Made in Australia plans should be lowered to \$5 million in cumulative support

ACF recommends that the threshold for Future Made in Australia plans be lowered to \$5 million in cumulative support, from the \$20 million threshold proposed in the public guidance at Appendix D.

Recommendation 8: Significantly reform the monitoring and enforcement scheme for compliance with community benefits principles, to consistently and comprehensively empower government decision-makers to monitor and enforce compliance with outcomes.

ACF is concerned by the current weakness and loopholes embedded in the monitoring and enforcement regime contemplated by the public guidance. ACF strongly recommends major reforms to these elements of the public guidance to inform the Future Made in Australia rules, as follows:

- All entities seeking FMIA supports above \$5 million should be required to develop and comply with a Future Made in Australia plan, as the central legislative mechanism for support-specific reporting, monitoring and enforcement of the community benefits principles; and
- Ensure that compliance with FMIA planning obligations is a standard contractual term in all FMIA supports that are administered via contractual arrangements or other relevant agreements (such as grants), via the public guidance.

Recommendation 9: Significantly reform the monitoring and enforcement scheme for compliance with community benefits principles, by removing unnecessary discretion and introducing independent oversight mechanisms

In addition to concerns with FMIA beneficiary monitoring and enforcement, ACF does not support the broad discretion and lack of oversight afforded to government decision-makers under the monitoring and enforcement regime set out by the public guidance. ACF strongly recommends major reforms to these elements of the public guidance to inform the Future Made in Australia rules, as follows:

- Amend the public guidance to remove or significantly reduce government discretion in the administration of FMIA supports and reporting, including by introducing annual reporting requirements (which also supports decision-makers to complete reporting obligations under s 11A(1) of the *Future Made in Australia Act 2024* (Cth)), removing the discretion for decision-makers to vary community benefits-sharing obligations over the life of the project and provide for minimum enforcement standards and penalties; and
- Introduce an independent advisory or monitoring council, similar to the Stakeholder Panel within the Net Zero Economy Authority (see s 70 of the *Net Zero Economy Authority Act 2024* (Cth)), to review overall FMIA support and FMIA program trends and community benefits-sharing outcomes.



Recommendation 10: Significantly strengthen the eligibility and merit criteria for compliance with the community benefits principles, pursuant to the production tax incentives for hydrogen and critical minerals

ACF is dismayed by the relatively weak and procedurally-focused community benefits-sharing compliance scheme set out in the public guidance for the administration of the hydrogen and critical minerals production tax incentives. As FMIA supports administered via the tax system, the ATO has limited recourse to incentivise compliance with community benefits principles beyond the compliance regime contemplated by the legislation (see ss 421-45 and 419-145 of the *Income Tax Assessment Act 1997* (Cth)). It is therefore essential that the rules provide clear requirements for proponents to achieve substantive community benefits-sharing outcomes.

As such, ACF endorses the reforms proposed by the Australian Council of Trade Unions to introduce more rigorous criteria for all community benefits principles and calls on the government to ensure, to the greatest extent possible, harmonisation between the eligibility and merit criteria applied to all FMIA supports and those required by entities seeking the production tax incentives.

Recommendation 11: Align the proportionality assessment outlined in the legislation for the production tax incentives with substantive compliance with community benefits principles eligibility criteria

ACF recommends that the consequences for non-compliance regime set out in the public guidance for the production tax incentives, be reformed to ensure that the proportionality assessment is directed to substantive compliance or non-compliance with community benefits-sharing outcomes rather than reporting obligations, as follows:

- If the entity is compliant with all community benefits principles, then the entity receives the full benefit of the HPTI or CMPTI (0% reduction);
- For each community benefits principle that the entity fails to report compliance with, for the relevant reporting year, the benefit received by the entity should be reduced by 5% (maxing out at 30% for non-compliance with all community benefits principles and the additional tax transparency principle for the production tax incentive); and
- ACF supports different proportionality calculations for the CMPTI and HPTI, depending upon the estimated average annual benefit that government anticipates entities under each scheme will receive, noting that the CMPTI is limited to 10% of eligible expenditure whereas the HPTI is a flat \$2 per kilogram of eligible hydrogen produced refund.





Delivering genuine and widespread benefits to all stakeholders in a Future Made in Australia

The government's FMIA agenda represents a minimum \$22.7 billion investment in the sunrise clean energy industries of Australia's future. This is a significant public investment, that demands government intervention to ensure the public-private partnerships envisaged by FMIA deliver for Australia's climate and nature, local communities, First Nations and workers, and the revitalisation of Australia's manufacturing capacity and supply chains.

Committing to additional community benefits principles under the FMIA rules

ACF notes that the FMIA Act explicitly contemplates the expansion of the CBPs through the FMIA rules (see s 10(3)(b)) and urges the government to adopt more specific decarbonisation and nature positive community benefits principles to harmonise decision-making under the FMIA framework with other government priorities, namely, the achievement of Australia's climate targets and the Albanese government's nature positive agenda.

ACF strongly encourages the inclusion of the following additional CBPs in the FMIA rules:

- The promotion of the achievement of Australia's greenhouse gas emissions reduction targets in accordance with the *Climate Change Act 2022* (Cth), including by ensuring any project that receives FMIA support, irrespective of the National Interest Framework stream, invests in the lowest emissions intensity operations and technologies available to that sector; and
- The promotion of the achievement of nature positive outcomes, to ensure that projects supported by the FMIA agenda are also compatible with, and contribute to, the Albanese government's nature positive agenda.¹¹

Recommendation 1: Expand the community benefits principles to protect climate and nature

ACF recommends that the Future Made in Australia rules adopt two additional community benefits principles, in accordance with s 10(3)(b) of the *Future Made in Australia Act 2024* (Cth), to promote the achievement of Australia's greenhouse gas emissions reduction targets and to promote nature positive outcomes.

¹¹ See further B Sydes, "Albanese government's Nature Positive Plan: What's been announced and what should we expect?" (23 May 2024, *ACF Blog Article*) <<https://www.acf.org.au/albanese-governments-nature-positive-plan>>.



Redefining the nature of thresholds under the FMIA rules

ACF strongly supports the use of defined, objective and measurable thresholds/criteria for government decision-makers to assess whether FMIA beneficiaries are compliant with their CBP obligations under the FMIA Act and attendant regulations. Government conditionalities are a key mechanism for ensuring public funding contributes to wealth pre-distribution and that the private and public sectors share in both the “risks and rewards of value creation”.¹²

However, in ACF’s view the current conception of conditionalities outlined in the public guidance via minimum requirements and thresholds (Appendixes A and B), differentiated depending on whether an entity meets the requirements for an FMIA plan, is a missed opportunity to introduce both eligibility and merit criteria to the FMIA framework. The introduction of eligibility criteria (the current minimum/threshold criteria) would provide clarity to proponents on minimum viable outcomes for compliance with each CBP, whereas merit criteria would provide guidance on stretch outcomes that will guide how government decision-makers allocate funding between multiple competing proposals. This would position industry in a race to the top on achieving CBP-aligned outcomes, while enabling government decision-maker flexibility to account for the differing circumstances across sectors and FMIA supports.

Combined eligibility and merit criteria have been successfully deployed in Australia, including as part of the Capacity Investment Scheme (CIS). The CIS is the federal government’s major revenue underwriting scheme for renewable energy generation and dispatchable capacity, and it requires proponents to demonstrate compliance with several eligibility criteria and five merit criteria, including First Nations participation and benefits sharing, and social outcomes and community benefits sharing. Compliance with both eligibility and merit criteria has not undermined private sector interest or engagement with the CIS. To date, all four tender rounds have been significantly oversubscribed¹³ – enabling government to transparently select tender winners based on pre-articulated merit criteria.

The combination of eligibility and merit criteria empowers government decision-makers to prioritise projects that are most clearly able to demonstrate strong community outcomes and pushes industry to prioritise those outcomes. This recommendation aligns with question 4 of the consultation paper, regarding whether proponents should be able to negotiate additional commitments with decision-makers. ACF recommends that the taxonomy of CBPs contained in the public guidance and FMIA rules be redrafted, shifting from thresholds (or put another way, eligibility criteria) to dual eligibility and merit criteria.

Recommendation 2: Implement eligibility and merit criteria to incentivise best practice compliance with the community benefits principles

ACF recommends the introduction of eligibility and merit criteria, replacing the proposed minimum and threshold criteria set out in the public guidance. This enables the government to articulate consistent and transparent minimum obligations for eligibility to seek FMIA supports (via eligibility criteria), and further, to empower government decision-makers to select projects best aligned with community benefits-sharing outcomes in competitive application processes (via merit criteria).

¹² M Mazzucato, *Mission Economy: A Moonshot Guide to Changing Capitalism* (2021, Penguin UK), 189.

¹³ DCCEEW, “Closed CIS Tenders” (Webpage, 2025), <<https://www.dcceew.gov.au/energy/renewable/capacity-investment-scheme/closed-cis-tenders>>.



For clarity, the following submission, proceeds on the basis of the introduction of both eligibility and merit criteria.

Strengthening community benefits principles for workers and the development of local supply chains (principles 1, 2 and 5)

ACF strongly supports the recommendations of the Australian Council of Trade Unions (ACTU),¹⁴ and endorses the position of the ACTU with respect to strengthening CBPs for workers and the development of local supply chains (principles 1, 2 and 5). Well paid, secure and safe jobs are the foundation of meaningful benefits sharing under the FMIA agenda – Australian workers must benefit from the growth of new manufacturing and export industries, enabling those benefits to flow through to local communities and the development of the future workforce.

We endorse the ACTU's recommendations with respect to minimum criteria for principles 1 and 2, including:

- Compliance with relevant employment, industrial relations and workplace health and safety laws. Including enabling workplaces to unions and adherence to the Safe Work Australia Code of Practice on WHS consultation, cooperation, and coordination and guidance on Worker Representation and Participation including having elected and trained Health and Safety Representatives and a functional Health and Safety Committee in place;
- Obligations to offer permanent work wherever possible;
- Ongoing monitoring and reporting on gender equity and work health and safety incidents, including historical performance reports and confirmation that the proponent is not on the non-compliant list maintained by the Workplace Gender Equality Agency (WGEA);
- Obligations to meet targets for percentage of labor hours to be completed by apprentices and trainees overall, as well as specific targets for: second and third year apprentices, women apprentices and trainees and women-in-trades apprentices and trainees; and
- Achieve a rate of at least 15% of under-represented group representation as part of the total project workforce.

Similarly, ACF endorses the threshold requirements proposed by ACTU and affirms the suitability of these requirements as merit criteria, including:

- Criteria encouraging proponents to offer any temporary workers a permanent job after no more than six months, in accordance with the minimum requirement above;
- Criteria requiring the proponent to provide evidence of genuine, ongoing and proactive promotion of job opportunities to local community members and to limit reliance on fly-in fly-out (FIFO) employment practices, where there is a regional community of more than 200 people within 125 km of the project;
- Criteria encouraging proponents to demonstrate exceedance of the minimum

¹⁴ ACTU, *Submission to the Future Made in Australia Community Benefits Principles Public Guidance* (2025).



requirements for apprentice/trainee utilization by at least 50%, and exceedance of the minimum requirements for employment of under-represented groups achieving at least 25% of total project workforce; and

- Demonstration of allocation of a portion of payroll to employee training, ACF suggests guidelines emphasise that at least 1.5% should be allocated to training.

Finally, ACF endorses and supports the ACTU's recommendations for strengthening outcomes associated with the development of local supply chains (principle 5), as set out in their submission. ACF calls on the government to adopt industry-specific targets for domestic content utilisation especially for downstream metal and manufacturing sectors, given the natural synergy between growth in the green hydrogen sector and green iron and steel.

Recommendation 3: Adopt the ACTU's recommendations to strengthen worker, workforce development and local supply chain outcomes (principles 1, 2 and 5)

ACF endorses the recommendations made by the Australian Council of Trade Unions to strengthen outcomes associated with the promotion of safe and secure jobs (s 10(3)(a)(i) of the *Future Made in Australia Act 2024* (Cth)), development of a more skilled and inclusive workforce (s 10(3)(a)(ii)) and the strengthening of domestic industrial capabilities (s 10(3)(a)(iv)).

Strengthening outcomes for local communities (principle 3)

Delivering social value involves prioritising projects that result in positive benefits to people's lives and communities. Communities are more likely to support change, such as hosting new major industries or infrastructure when they have experienced procedural fairness through quality community participation and engagement, and in circumstances where the project incorporates distributional fairness, by benefit sharing with First Nations communities and the public. Finally, projects that explicitly prioritise environmental and climate outcomes by minimising biodiversity impacts and maximising environmental co-benefits (see recommendations above), are also more likely to enjoy enduring social licence.

In ACF's view the following obligations should be introduced as eligibility criteria for FMIA supports in respect of principle 3:

- Compliance with, at a minimum, the 'empower' category of the *IAP2 Spectrum of Public Participation*,¹⁵ with demonstrable evidence that the proponent has proactively sought to identify and address community concerns and a process for participatory consultation;
- Compliance with minimum targets for financial benefits-sharing to the community in whatever form is suitable for the circumstances of that local community and sector, ACF recommends at least equal to 2% of annual gross revenue. There should be evidence that any financial benefits-sharing arrangements have been co-designed with the local community, and further, that the local community has had autonomy in how they want the funds to be invested; and
- Compliance with any government imposed regional planning or coordination obligations regarding community engagement, to minimise duplication and engagement fatigue.

¹⁵ IAP2, *Spectrum of Public Participation* (2018).



Regional planning or consultation coordination could be outlined in the FMIA rules, or pursuant to alternative regimes, such as the strategic assessment process set out under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Furthermore, merit criteria should be introduced to incentivise best practice community engagement and benefits sharing, as follows:

- Demonstrable evidence of community co-ownership or co-investment offerings, to enable genuine partnership between proponents and local host communities.¹⁶ Co-ownership or co-investment options should seek to be inclusive of vulnerable and low socio-economic communities (ACF provides recommendations specific to First Nations communities below), and that support common community goods and services; and
- Criteria encouraging FMIA beneficiaries to increase financial benefits-sharing or equity arrangements, of at least 5% of annual gross revenue.

Recommendation 4: Adopt clearly defined and quantitative benefit-sharing obligations to strengthen outcomes for local communities (principle 3)

ACF recommends the introduction of new eligibility and merit criteria to assess compliance with community benefits principle 3, regarding local communities (s 10(3)(a)(iii) of the *Future Made in Australia Act 2024* (Cth)), as follows:

- Compliance with, at a minimum, the 'empower' category of the IAP2 Spectrum of Public Participation;
- Compliance with minimum targets for financial benefits-sharing to the community, at least equal to 2% of annual gross revenue (for eligibility criteria) and at least 5% of annual gross revenue (for merit criteria);
- Compliance with any government imposed regional planning or coordination obligations regarding community engagement, to minimise duplication and engagement fatigue; and
- Merit criteria relating to community co-ownership or co-investment.

Strengthening outcomes for First Nations communities (principle 4)

The following section serves as an endorsement of the First Nations Clean Energy Network's (FNCEN) submission on this issue and has been written in consultation with ACF's First Nations Lead, Josie Alec.

Meaningful First Nations consultation, co-management and benefits-sharing is not just appropriate and necessary to support indigenous self-determination but is also of benefit to FMIA proponents. As noted by FNCEN, "First Nations-led projects are nation-building projects. They deliver jobs, attract invest, strengthen infrastructure in regions, and reduce risk for governments and investors by embedding trust, stability and cultural legitimacy."¹⁷

In ACF's view, although the current minimum and threshold requirements for principle 4 are

¹⁶ See further A Reynolds, *Submission to the Implementation Design Paper: Capacity Investment Scheme* (March 2024, ACF Submission).

¹⁷ FNCEN, *Submission to the Future Made in Australia Community Benefits Principles Public Guidance* (2025), 3.



positive, they remain wholly insufficient to support meaningful First Nations consultation, co-management and benefits-sharing. ACF recommends the redrafting of those principles, in consultation with Traditional Owners and grassroots First Nations communities, with the view to embedding the following principles in CBP 4:

- Nothing about us, without us: at the heart of working with First Nations communities must be meaningful consultation with, and empowerment to provide (or not provide) consent. ACF strongly supports the call for the right of free, prior and informed consent (FPIC), as defined by the *United Nations Convention on the Rights of Indigenous Peoples*, to be adopted in the FMIA rules. Furthermore, FMIA beneficiaries should be required to provide evidence of the consultation and information-sharing that they have undertaken in seeking FPIC from First Nations communities;
- Ongoing consultation and co-management: for consultation and consent to be meaningful and genuine, it must be a two-way negotiation in good faith, where First Nations communities are empowered to negotiate project outcomes and benefits-sharing arrangements suitable for the circumstances of those communities. Ongoing co-management of projects is particularly important for FMIA sectors that involve major extraction or industrial projects or that impact upon land, waters or skies. First Nations communities should be empowered to work with project proponents to care for Country. As such, ACF supports FNCEN's recommendation to introduce requirements for proponents to develop Traditional Owner and First Nations Participation and Benefits Plans;
- Meaningful employment outcomes and development pathways: ACF supports introducing requirements that, for projects in remote Australia, First Nations employment must exceed 5-10% of total project workforce and meet targets of at least 4% use of First Nations suppliers in procurement activities. However, in addition to target-based metrics, ACF emphasises the importance of requiring FMIA beneficiaries to invest in genuine workforce development and training pathways for First Nations employees, that enable First Nations people to exercise economic self-determination, contributing to positive economic flow-on effects for local communities; and



- Requiring profit-sharing outcomes for extraction on Country and/or utilisation of First Nations expertise: across a range of FMIA sectors, value will be extracted from First Nations lands or via First Nations expertise. It is crucial that the value provided by First Nations communities is appropriately recognised in the FMIA rules and that profit-sharing obligations are front-loaded in the FMIA framework. ACF supports minimum requirements for profit-sharing across all FMIA beneficiaries, and for projects that are located in remote Australia to meet at least minimum 10% equity sharing with local First Nations communities obligations. How that equity or profit is spent or re-invested by the First Nations community should be a wholly autonomous decision of that community and should not be dictated by the FMIA proponent.

Recommendation 5: Adopt broader and stronger consultation, co-management, employment and economic benefits-sharing obligations for First Nations communities (principle 4)

ACF recommends the introduction of new eligibility and merit criteria to assess compliance with community benefits principle 4 (s 10(3)(a)(iii)-(iiia) of the *Future Made in Australia Act 2024* (Cth)), regarding First Nations communities. Prior to the development and introduction of new eligibility and merit criteria, ACF urges government to undertake specific and target consultation with First Nations organisations, including Traditional Owner groups and grassroots organisations.

ACF endorses the recommendations of the First Nations Clean Energy Network to this consultation and recommends the development of eligibility and merit criteria for principle 4 that reflect the following:

- Meaningful consultation obligations, including adoption of free, prior and informed consent standards and two-way consultative dialogues that are ongoing over all phases of the project;
- Meaningful employment outcomes that make provision for workforce development and training for First Nations people, enabling economic self-determination; and
- Mechanisms to enable and incentivise profit-sharing and co-management of projects with local First Nations communities. Including at least minimum 10% equity sharing obligations for projects located in remote Australia.

Finally, ACF notes the *Future Made in Australia Community Benefits Principles Public Guidance* uses the language of Traditional Owner groups in relation to the obligation to have a consultation strategy in place (threshold requirement 4.3). The restriction to Traditional Owner groups does not encompass the full range of First Nations community groups that may have cultural or spiritual obligations of relevance to a project, nor the broader socio-economic or employment interests of local First Nations communities that may be impacted by a proposed project. Nor does the restriction to Traditional Owner group account for circumstances where native title claims are contested or undecided.

For FMIA to create genuine partnership, consultation and benefit-sharing with First Nations communities, the foundational rules that govern all FMIA supports must recognise and protect the full breadth of First Nations interests and Traditional Owner groups that have a stake in future development.



As such, in the circumstance that threshold requirement 4.3 is maintained, ACF recommends that a consultation obligation for all relevant Traditional Owner groups and First Nations communities, and local First Nations people be included.

Recommendation 6: If threshold requirement 4.3 is maintained, ensure all relevant First Nations interests are recognised

In the alternative, if ACF's previous recommendations with respect to First Nations communities are not adopted, ACF nonetheless urges specific amendment to threshold requirement 4.3, regarding consultation. Given the broad range of First Nations interests that may be relevant to a project, it is appropriate to expand the language of threshold requirement 4.3 to include all relevant Traditional Owner groups and First Nations communities, as well as local First Nations people.





FMIA Plans

ACF urges the Albanese government to reflect upon this moment – Australia is on cusp of rolling out the most significant shift in government industrial policy and investment in a generation. The vision that underpins FMIA is one of ambition – where governments and the private sector are rallied around major nation-building causes, including the transition to net zero, and where governments are recognised as market shapers and empowered to redistribute the wealth and gains of this clean technological revolution. It is essential that this policy vision is properly served by meaningful reforms to the still largely neoliberal bureaucratic decision-making process that will be needed to operationalise FMIA.

As outlined by The Next Economy in *The Economy We Could Have (2025)*, some of the most significant hurdles to reimagining Australia's economic future are located within the machinery of government. Namely, decision-making practices such as monitoring and enforcement, that are "biased towards the status quo" and that reflect a "narrow mindset" which gives primacy to "immediate costs" over "future benefits", and the continued actual and perceived "power of vested interests".¹⁸ ACF is deeply concerned that these biases are evident in the lax monitoring and enforcement regime set out in the public guidance, framed as if decision-makers should be reticent to enforce community benefits-sharing outcomes lest private sector actors reject the significant funding anticipated by FMIA supports. We urge the government to recognise that this is a ludicrous proposition. The federal government is one of the most powerful actors in any economy, and its capacity to shape markets and de-risk industrial development should be strongly leveraged to deliver meaningful public outcomes.¹⁹

Across the globe and in Australia, strong and enforceable conditionalities have not undermined private sector interest in seeking support from government. As noted above in this submission, the CIS, a prime example of strong federal conditionalities, has been significantly oversubscribed for each of its four tender rounds. Overseas, strong conditionalities have been used by governments to drive specific policy or social goals. For example, The United States of America's *Creating Helpful Incentives to Produce Semiconductors Act 2022 (US) (CHIPS Act)*, authorised both direct government funding and credit incentives to support research and manufacturing scale-up of semi-conductors in the US with strong conditionalities including onshoring, workforce development and inclusion obligations, and restrictions on company buybacks. Over USD\$50 billion in private sector investment has been crowded in by the CHIPS Act (as of 2024).²⁰

¹⁸ K Trebeck and J Wakefield, *The Economy We Could Have (2025, The Next Economy Report)*, 55.

¹⁹ M Mazzucato, *Mission Economy: A Moonshot Guide to Changing Capitalism (2021, Penguin UK)*.

²⁰ M Mazzucato and D Rodrik, *Industrial Policy with Conditionalities: A Taxonomy and Sample Cases (2024, UCL Institute for Innovation and Public Purpose, Working Paper 2023/07)*, 34.



Aligning the thresholds for FMIA plans with dual eligibility and merit criteria

As set out above, ACF urges DISR to revise the minimum and threshold requirements framework and instead adopt eligibility and merit criteria. We recognise that FMIA supports are intended to be disbursed to a wide range of sectors and economic activities from research and development up to commercial-scale operations.

Benefits-sharing obligations must be widely applicable to all FMIA supports if government is to effectively redefine and enforce the public-private social contract embedded in a Future Made in Australia. Specifying benefit-sharing obligations – whether as minimum and threshold requirements or eligibility and merit criteria – should establish broad, minimum standards for private entities to participate in, and benefit from, FMIA supports. Consistently applicable criteria achieves greater transparency and consistency across government-decision making, ultimately saving private actors time and uncertainty.²¹

As such, ACF recommends that the full list of eligibility criteria apply to all FMIA beneficiaries that are seeking \$5 million or more in cumulative funding. For supports or applicants that do not reach the \$5 million threshold, then eligibility criteria should be reduced to account for the expected circumstances of that sector (e.g. for small-scale research and development focused supports, it may be appropriate to reduce community benefits-sharing obligations). All FMIA beneficiaries should be able to demonstrate compliance with merit criteria to incentivise benefits-sharing outcomes in competitive application processes, empowering government decision-making.

In ACF's view the current financial threshold for FMIA plans of \$20 million in cumulative support is far too high and misaligned with the broad financial discretion afforded FMIA support decision-makers in existing supports. ACF notes that across the majority of existing and earmarked FMIA supports, there is no minimum threshold for monetary support and some schemes, such as Round 1 of Solar Sunshot (maximum \$5 million), impose maximum limits of \$20 million or less. To date, there has been a general trend that FMIA beneficiaries applying for funding of \$5 million or less have been seeking funding for research and development, feasibility or small pilot projects. Above \$5 million tends towards commercial-scale projects. Given this trend, and the society-wide benefit of supporting research and innovation spillovers, ACF is of the view that the thresholds for FMIA plans and comprehensive eligibility criteria should be redefined to \$5 million in cumulative support.

Recommendation 7: The threshold for Future Made in Australia plans should be lowered to \$5 million in cumulative support

ACF recommends that the threshold for Future Made in Australia plans be lowered to \$5 million in cumulative support, from the \$20 million threshold proposed in the public guidance at Appendix D.

²¹ Note discussion of benefits of eligibility and merit criteria in relation to the design of the CIS: DCCEEW, *Capacity Investment Scheme Public Consultation Paper* (August 2023), 15.



Monitoring and enforcement of compliance with community benefits principles

ACF is deeply concerned by the current proposed scheme for monitoring and enforcing compliance with CBPs. The draft guidance is almost entirely reliant on discretionary decision-making to monitor and enforce FMIA obligations, which will result in the inconsistent and non-transparent application of CBPs. Without strong, consistent and transparent enforcement, the allocation of government funding pursuant to FMIA risks being perceived as, and becoming in practice, vulnerable to influence and reduced to corporate welfare. This undermines the clear government intent of FMIA and will erode public confidence in this program.²² Equally, inconsistent and unclear monitoring and enforcement regimes undermines private sector certainty, and therefore, confidence in FMIA supports – reducing the capacity of individual FMIA supports to maximise private sector capital crowd-in.

To address these concerns, ACF first recommends that FMIA plans be required for all applicants seeking FMIA support, or in the alternative, all FMIA recipients seeking cumulatively \$5 million or more in funding. Section 11 of the FMIA Act establishes FMIA plans as the sole recipient-specific reporting mechanism that is common across FMIA supports and capable of underpinning centralised and comprehensive reporting on FMIA outcomes. While s 11(1) of the FMIA Act states that FMIA plans are only required in the “circumstances prescribed by the rules”, given the intended role of the plans, ACF is of the view that the most appropriate rule is for the broadest application of FMIA planning obligations possible.

Additionally, compliance with FMIA planning obligations and commitments should be a standard legal obligation included in all relevant contracting or grant agreements between relevant FMIA support decision-makers and the recipient. This enables government decision-makers to monitor and enforce FMIA plan compliance in accordance with existing and well understood contractual arrangements. ACF notes that it is typical for commercial arrangements to account for unexpected non-compliance, via *force majeure* clauses, allowing for government decision-makers and FMIA beneficiaries to manage unexpected or uncontrollable non-compliance with CBP commitments.

Recommendation 8: Significantly reform the monitoring and enforcement scheme for compliance with community benefits principles, to consistently and comprehensively empower government decision-makers to monitor and enforce compliance with outcomes.

ACF is concerned by the current weakness and loopholes embedded in the monitoring and enforcement regime contemplated by the public guidance. ACF strongly recommends major reforms to these elements of the public guidance to inform the Future Made in Australia rules, as follows:

- All entities seeking FMIA supports above \$5 million should be required to develop and comply with a Future Made in Australia plan, as the central legislative mechanism for support-specific reporting, monitoring and enforcement of the community benefits principles; and
- Ensure that compliance with FMIA planning obligations is a standard contractual term in all FMIA supports that are administered via contractual arrangements or other relevant agreements (such as grants), via the public guidance.

²² See, e.g., M Heinzl et al, “Public Support for Green, Inclusive, and Resilient Growth Conditionality in International Monetary Fund Bailouts” (2025) 69(2) *International Studies Quarterly* 18.



Second, ACF recommends significant strengthening of the overall monitoring and enforcement regime proposed in the *Future Made in Australia Community Benefits Principles Public Guidance* (section 3.4), as follows:

Proposed in guidance	ACF recommendation for reform	Justification
Reporting at discretion of decision-maker	ACF recommends at least annual reporting obligations for all FMIA beneficiaries, assisting government compliance with s 11A(1) of the FMIA Act.	Clear, minimum reporting standards ensures transparency and consistency across FMIA supports and contributes to government compliance with the FMIA Act. Ongoing monitoring and reporting enables decision-makers and FMIA recipients to proactively identify emerging compliance issues.
Discretionary variation of requirements over life of project	This loophole should be removed. Standard contractual terms are sufficient to account for changes over the life of projects.	It undermines the intent and purpose of the CBPs, if decision-makers are empowered – beyond standard contractual arrangements – to vary obligations over the life of the project. CBPs are the primary mechanism to ensure benefits-sharing occurs and should be consistently enforced.
Enforcement at discretion of decision-maker	The guidance document should provide clarity to decision-makers that all non-compliance will attract enforcement, and further, provide for minimum enforcement obligations.	While it is appropriate for decision-makers to retain discretion with respect to enforcement, the guidance document should set out minimum enforcement obligations and penalties. This can include reference to existing penalty regimes in other relevant primary legislation. Non-compliance with CBPs must be treated as seriously as non-compliance with any other contractual term included in government funding, otherwise FMIA beneficiaries will not consistently uphold CBPs.



Third, ACF recommends the adoption of a specific advisory or monitoring council, modelled off the successful Stakeholder Panel within the Net Zero Economy Authority (see s 70 of the *Net Zero Economy Authority Act 2024* (Cth) (NZEA Act)), to seek feedback and receive ongoing advice on community benefits sharing outcomes and trends as FMIA supports are rolled out.

This provides for an alternative monitoring and enforcement mechanism that improves accessibility for the public, and that enables the collation and analysis of trends within specific FMIA supports and across the government's overall FMIA agenda. Such a panel could also be tasked with specific monitoring and enforcement powers, enabling independent and consistent oversight of CBP compliance across FMIA supports.

Recommendation 9: Significantly reform the monitoring and enforcement scheme for compliance with community benefits principles, by removing unnecessary discretion and introducing independent oversight mechanisms

In addition to concerns with FMIA beneficiary monitoring and enforcement, ACF does not support the broad discretion and lack of oversight afforded to government decision-makers under the monitoring and enforcement regime set out by the public guidance. ACF strongly recommends major reforms to these elements of the public guidance to inform the Future Made in Australia rules, as follows:

- Amend the public guidance to remove or significantly reduce government discretion in the administration of FMIA supports and reporting, including by introducing annual reporting requirements (which also supports decision-makers to complete reporting obligations under s 11A(1) of the *Future Made in Australia Act 2024* (Cth)), removing the discretion for decision-makers to vary community benefits-sharing obligations over the life of the project and provide for minimum enforcement standards and penalties; and
- Introduce an independent advisory or monitoring council, similar to the Stakeholder Panel within the Net Zero Economy Authority (see s 70 of the *Net Zero Economy Authority Act 2024* (Cth)), to review overall FMIA support and FMIA program trends and community benefits-sharing outcomes.





Applying meaningful community benefits principles obligations to the production tax incentives

By 2040, Australia's critical minerals mining and processing sector could contribute up to \$121 billion in revenue per annum to the Australian economy, while green hydrogen and ammonia could contribute up to \$32 billion in revenue per annum (not including revenue associated with the green metals sector).²³ These sunrise clean energy industries could also generate over 150,000 jobs, predominantly concentrated in regional Australia.²⁴

ACF welcomed the inclusion of tax incentive-specific community benefit rules in the *Future Made in Australia (Production Tax Credits and Other Measures) Act 2025 (Cth)* (FMIAPTC Act) to ensure that the broad community benefits principles articulated in the FMIA Act, are applied and enforceable. This is particularly important, as the production tax incentives (PTIs) are estimated to be the two largest monetary supports offered under FMIA to date, estimated at \$13.7 billion in support between the Hydrogen Production Tax Incentive (HPTI) and the Critical Minerals Tax Incentive (CMPTI).

We also note that as supports enshrined under the *Income Tax Assessment Act 1997 (Cth)*, the HPTI and CMPTI can be claimed by all eligible entities for eligible expenditure. The nature of the PTI is distinct from other expected FMIA supports (grants, loan, indemnities, equity investments etc.), in that the Australian Tax Office (ATO) does not have recourse to contractual mechanisms or grant agreements to enforce compliance with the CBPs and other obligations. This distinction is explicitly recognised in the Explanatory Memorandum for the FMIA PTC Act:²⁵

The community benefit principles are the principles set out in the Future Made in Australia Bill 2024. For grants programs and other spending initiatives that are designated Future Made in Australia supports, the Future Made in Australia Bill requires decision makers to have regard to these principles in deciding whether to provide these supports, allowing appropriate enforcement of community benefits. While the hydrogen production tax offset is provided through the tax system rather than being a spending initiative, it has been designed with regard to the community benefit principles.

Furthermore, government explicitly contemplates the implementation of strong CBPs obligations and proportionality rules to ensure the administration of the PTIs are "aligned with the requirements relating to community benefits principles for other support under the Future Made

²³ Accenture, *Sunshot in 2023: Accelerating towards Australia's renewable exports opportunity* (2023, report commissioned by ACF, ACTU, BCA and WWF), 3.

²⁴ Accenture, *Sunshot: Australia's opportunity to create 395,000 clean export jobs* (October 2021, Detailed Report, commissioned by ACF, WWF, BCA and ACTU), 25.

²⁵ Explanatory Memorandum, *Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024 (Cth)*, 13.



in Australia agenda despite the differing legislative context."²⁶

Despite this legislative context, and the importance of establishing coherent and harmonised CBPs obligations across all FMIA supports, ACF is disappointed by the CBP obligations and compliance system for the PTIs set out in *Future Made in Australia Community Benefits Principles Public Guidance* (part 4). The current guidance contemplates a procedural-focused system – where compliance and proportionality are dictated by the extent that FMIA beneficiaries meet documentary and reporting timeline obligations.²⁷ Furthermore, it appears that the actual content of the CBPs has been weakened for the purposes of PTI compliance, compared to other FMIA supports. For example, under principle 4, FMIA beneficiaries are generally required to target a minimum of 4% employment in the public guidance, however, for PTI beneficiaries this is reduced to a mere identification of a target for First Nations employment obligation.²⁸ In ACF's view this framework is not merely ineffectual, but contrary to the intent of the FMIA framework and purpose of introducing CBPs.

The limited community benefits-sharing obligations and procedurally-focused enforcement regime contemplated by the public guidance sits in contrast to other similar tax incentive regimes deployed by comparable economies. For example, the United States of America's *Inflation Reduction Act 2022* (US) which included a tax incentive for green hydrogen production, the Clean Hydrogen Production Tax. In that scheme, to access the full credit recipients had to comply with wage and apprenticeship standards, and further, a proportionality test was introduced depending on the emissions intensity of the hydrogen produced – ranging from USD\$ 0.6 per kg of H₂ for a carbon intensity over 2.5 kg of CO₂e to the full credit for USD\$3.0 per kg of H₂ for a carbon intensity of less than 0.45 kg of CO₂e.²⁹

ACF endorses the substantive reforms proposed by the ACTU in their submission to this consultation.³⁰ Importantly, this includes amendment to the PTI Community Benefit Reports process to require objective information across all CBPs and to ensure, to the greatest extent possible, that CBP obligations are mirrored between the PTI scheme and other FMIA supports.

Recommendation 10: Significantly strengthen the eligibility criteria for compliance with the community benefits principles, pursuant to the production tax incentives for hydrogen and critical minerals

ACF is dismayed by the relatively weak and procedurally-focused community benefits-sharing compliance scheme set out in the public guidance for the administration of the hydrogen and critical minerals production tax incentives. As FMIA supports administered via the tax system, the ATO has limited recourse to incentivise compliance with community benefits principles beyond the compliance regime contemplated by the legislation (see ss 421-45 and 419-145 of the *Income Tax Assessment Act 1997* (Cth)). It is therefore essential that the rules provide clear requirements for proponents to achieve substantive community benefits-sharing outcomes.

As such, ACF endorses the reforms proposed by the Australian Council of Trade Unions to introduce more rigorous criteria for all community benefits principles and calls on the government to ensure, to the greatest extent possible, harmonisation between the eligibility and merit criteria applied to all FMIA supports and those required by entities seeking the production tax incentives.

²⁶ Ibid, 13-14.

²⁷ DISR, *Future Made in Australia Community Benefits Principles Public Guidance* (November 2024), 23-24.

²⁸ Ibid, 28 and 34.

²⁹ See further, OECD, *Case study – IRA Hydrogen/Government of the United States* (2024).

³⁰ ACTU, *Submission to the Future Made in Australia Community Benefits Principles Public Guidance* (2025), Amend the PTI Community Benefits Reports to Provide Objective Information section.



In addition to overhauling the broad application of CBPs, ACF further recommends reforms to the enforcement regime proposed by the public guidance for the PTIs. The purpose of the proportionality framework introduced in FMIA PTC Act is to incentivise best practice community benefits-sharing and compliance outcomes for PTI recipients, accounting for the enforcement levers available to the ATO compared to other decision-makers.³¹ As such, the proportionality assessment should be based upon compliance with the substantive CBPs obligations discussed above, rather than the timeliness of reporting. To ensure the proportionality test meets tax legislation obligations for objective liability that can be self-assessed, ACF recommends a binary non-compliance assessment, where an entity is deemed non-compliant with the CBP for a reporting year in the circumstance that the entity fails to report compliance with any of the substantive obligations recommended above and set out in detail in the ACTU's submission. ACF recommends:

- If the entity is compliant with all CBPs, then the entity receives the full benefit of the HPTI or CMPTI (0% reduction);
- For each CBP that the entity fails to report compliance with, for the relevant reporting year, the benefit received by the entity should be reduced by 5% (maxing out at 30% for non-compliance with all CBPs and the additional tax transparency principle for the PTI); and
- ACF supports different proportionality calculations for the CMPTI and HPTI, depending upon the estimated average annual benefit that government anticipates entities under each scheme will receive, noting that the CMPTI is limited to 10% of eligible expenditure whereas the HPTI is a flat \$2 per kilogram of eligible hydrogen produced refund.

Recommendation 11: Align the proportionality assessment outlined in the legislation for the production tax incentives with substantive compliance with community benefits principles eligibility criteria

ACF recommends that the consequences for non-compliance regime set out in the public guidance for the production tax incentives, be reformed to ensure that the proportionality assessment is directed to substantive compliance or non-compliance with community benefits-sharing outcomes rather than reporting obligations, as follows:

- If the entity is compliant with all community benefits principles, then the entity receives the full benefit of the HPTI or CMPTI (0% reduction);
- For each community benefits principle that the entity fails to report compliance with, for the relevant reporting year, the benefit received by the entity should be reduced by 5% (maxing out at 30% for non-compliance with all community benefits principles and the additional tax transparency principle for the production tax incentive); and
- ACF supports different proportionality calculations for the CMPTI and HPTI, depending upon the estimated average annual benefit that government anticipates entities under each scheme will receive, noting that the CMPTI is limited to 10% of eligible expenditure whereas the HPTI is a flat \$2 per kilogram of eligible hydrogen produced refund.

³¹ Explanatory Memorandum, Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024 (Cth), 13-14 and 39-40.

