HYDROGEN ALERT - UPDATES TO HYDROGEN POLICY AND FUNDING IN AUSTRALIA

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There have been a number of policy and funding developments applicable to the hydrogen energy industry in Australia since the release of K&L Gates' *The H_2 Handbook* in October last year. These developments have come at both commonwealth and state level and highlight the current governmental appetite to foster the emerging Australian hydrogen industry and to position Australia as a global hydrogen leader.

This article reflects on the state of play across Australia, providing a high level consolidated overview of these updates and supplementing the Australian chapter of *The H_2 Handbook*, which can be accessed here.

AUSTRALIAN POLICY UPDATES

New South Wales

In March 2021, the New South Wales (NSW) Government published the NSW Net Zero Industry and Innovation Program (Program) as part of the NSW Net Zero Plan Stage 1: 2020-2030, which aims to achieve a 35 per cent reduction in emissions compared to 2005 levels. AU$750 million will be invested under the Program by 2030 to help realise that aim.

The Program has three areas of focus:

1. Clean Technology Innovation - supporting the development of emerging clean technologies, including hydrogen. AU$195 million has been earmarked for this area.
2. New Low Carbon Industry Foundations - creating the foundations for low emissions industries by building infrastructure and expanding the capability of supply chains. AU$175 million in funding has been allocated for this objective.
3. High Emitting Industries - using low emissions technologies to reduce the emissions associated with high emitting industrial facilities. AU$380 million is available for this purpose.

While the Program is technology-neutral, it facilitates the development of the hydrogen industry as the funding offered could apply to hydrogen projects.

As part of the Program's aim to establish low carbon industries, the NSW Government has already announced AU$70 million in funding to support the establishment of hydrogen hubs in the Hunter and Illawarra regions. Developing hydrogen hubs which allow hydrogen participants to use common infrastructure aligns with the creation of Renewable Energy Zones under the NSW Electricity Infrastructure Roadmap and *Electricity Infrastructure Investment Act 2020 (NSW)*.

Northern Territory

In late 2020, the Northern Territory Government published its Renewable Hydrogen Strategy (NT Strategy). The Northern Territory has a target of net-zero emissions by 2050 and it is anticipated that hydrogen could play a critical role in achieving this aim. The NT Strategy outlines a five-point plan which underpins the transition to renewable hydrogen:

4. Local industry development to facilitate the adoption of a hydrogen-based industry.
5. Resource management to optimise the Territory's resources and infrastructure to facilitate the development of a hydrogen industry.
6. Grow and harness demand for hydrogen to maximise domestic use and international export opportunities.
7. Support innovation and emerging renewable hydrogen technologies.
8. Implement responsive laws and regulations.

Queensland

In November 2020, the Queensland Labor Government appointed Mick de Brenni as Minister for Energy, Renewables and Hydrogen, Australia's first dedicated minister for hydrogen. The designation of a dedicated minister indicates the importance that the hydrogen industry is expected to play in the Queensland economy.

Shortly after his appointment, the Minister appointed two new Hydrogen Champions, Member for Mundingburra Les Walker and Member for Rockhampton Barry O'Rourke, who are responsible for spearheading the development of the Queensland hydrogen industry.

South Australia

In March 2021, the South Australian Government and the Port of Rotterdam Authority in the Netherlands signed a memorandum of understanding to explore the feasibility of exporting green hydrogen produced in South Australia to Europe's largest port.

This partnership builds on the hydrogen export pre-feasibility study and online modelling tool and prospectus, released by the South Australian Government in October 2020 as part of South Australia's Hydrogen Action Plan. The online modelling tool provides an indicative view of the possible hydrogen export supply chain arrangements in South Australia. The prospectus outlines the benefits of investing in clean hydrogen in South Australia and addresses the current investment in green hydrogen in South Australia, the regulatory landscape and potential locations for hydrogen production and export supply chain opportunities.

Victoria

In February 2021, the Victorian Government published its Renewable Hydrogen Industry Development Plan (Plan). The Plan sets out how Victoria will develop its renewable hydrogen sector.

The Plan identifies 18 outcomes across three focus areas to develop the Victorian hydrogen sector in various ways, from research and development to export. The key focus areas and some of the respective outcomes for these areas include:

Foundation for renewable hydrogen

- Accelerating innovation through research and development of hydrogen technologies.
- Continuing the development of clear regulations, standards and codes to ensure that hydrogen is fit for purpose.

Connecting the economy

- Using existing gas networks as a potential distribution pathway for renewable hydrogen.
- Advancing the integration of hydrogen within the transport sector to support decarbonisation.

Leading the way

- Enabling hydrogen pilots, projects and demonstrations through government support.
- The Victorian Government will work with companies to promote Victoria as a global trade and investment destination.

Western Australia

Western Australia's First Hydrogen Minister

The newly re-elected Western Australia (WA) Labour Government announced that Allanah MacTiernan will take on a new position as Minister for Hydrogen from March 2021. While Ms MacTiernan has led development of WA's hydrogen industry under the umbrella of her other portfolios since 2018, the designation of a dedicated minister indicates the importance of hydrogen in WA.

Renewable Hydrogen Roadmap

In November 2020, WA launched its Renewable Hydrogen Roadmap (Roadmap). The Roadmap identifies 26 initiatives that the WA Government is implementing to achieve its 2019 Hydrogen Strategy. These include developing a renewable hydrogen supply chain model, undertaking a legal framework review, developing the Oakajee Strategic Industrial Area and conducting modelling for the hydrogen storage potential of depleted gas and oil fields.

Hydrogen Strategy Update

The WA Government updated its Hydrogen Strategy in January 2021. The main update was to bring forward its goals originally set for 2040 to 2030. These goals include:

- WA's global hydrogen export market share to be similar to its share in LNG today.
- WA's gas pipelines and networks to contain up to 10 per cent renewable hydrogen blend.
- Widely using renewable hydrogen in mining haulage vehicles.
- Using renewable hydrogen as a significant fuel source for regional transportation.

Federal Government

In September 2020, the First Low Emissions Technology Statement (Technology Statement) was announced as the first major milestone of the Technology Investment Roadmap.

The Technology Statement sets out how emerging low emissions technologies can become economically competitive with and replace current high emission practices.
Clean hydrogen and carbon capture storage (CCS) are identified as some of the priority low emission technologies.

For clean hydrogen, the key goal is to reduce its price to AU$2 per kilogram, so that it becomes competitive in applications such as producing ammonia, as a fuel for transport and for firming electricity.

The Technology Statement anticipates that CCS will be critical to the development of new low emissions industries such as blue hydrogen. As such, the priority is to have CO_2 compression, hub transport and storage for CCS priced at less than AU$20 per tonne. The Federal Government considers that this would allow CCS to be competitive over the long term with other forms of emissions reduction.

AUSTRALIAN FUNDING UPDATES

New South Wales

In addition to the funding details released as part of the NSW Net Zero Industry and Innovation Program, the *Energy and Utilities Administration Act 1987 (NSW)* was amended in late 2020 to specify that AU$50 million from the Climate Change Fund established under that Act is to be spent to develop the green hydrogen sector between 2021 and 2030, including the production of hydrogen energy using renewable energy and the supply, use and export of green hydrogen.

Queensland

In December 2020, the Queensland Government committed a further AU$10 million over the next four years to its Hydrogen Industry Development Fund (HIDF), which was established as part of the Queensland Hydrogen Industry Strategy. This brings total funding of the HIDF to AU$25 million.

Applications for round two of the HIDF are currently open and submissions close on 2 June 2021. A total of AU$5 million is available in round two across two priority categories:

9. Application of hydrogen technologies in the mobility sector - projects must implement a form of hydrogen mobility using hydrogen produced from renewable sources.
10. Integration of hydrogen technologies with wastewater treatment plants (WWTP) - projects must integrate renewable hydrogen production into an existing WWTP.

South Australia

In April 2021, the Federal and South Australian Governments signed a AU$1.08 billion State Energy and Emissions Reduction Deal (Deal) to deliver reliable and affordable energy to and help reduce emissions. Under the Deal, the Federal Government will contribute AU$660 million and South Australia will provide AU$422 million. While the Deal focuses on gas, AU$400 million of the Federal funding is to be used for investment priority areas, including CCS, electric vehicles, hydrogen and other emission reduction projects.

Victoria

Accelerating Victoria's Hydrogen Industry Program

As part of the Plan, the Victorian Government announced a further AU$10 million to Accelerating Victoria's Hydrogen Industry Program for policy, research and industry developments. The key funding discussed in the Plan includes:

- AU$6.2 million to support hydrogen pilots, trials and demonstrations under the Accelerating Victoria's Hydrogen Industry Program.
- AU$1 million to support industrial users to support business cases, grants and education under the Accelerating Victoria's Hydrogen Industry Program.
- AU$0.5 million for the Australian Hydrogen Centre's gas blending feasibility studies under the Victorian Hydrogen Investment Program.

Victorian Hydrogen Hub

In February 2021, the Victorian Government granted Swinburne University of Technology AU$10 million to develop the Victorian Hydrogen Hub (VH2) in partnership with Australia's Commonwealth Scientific and Industrial Research Organisation. The grant was part of the Victorian Higher Education State Investment Fund, which was created in response to the impact of the COVID-19 pandemic on Victorian universities.

VH2 is a key component of the Victorian Government's Renewable Hydrogen Industry Development Plan. VH2 will involve researchers, industry partners and businesses exploring new business models and the application of hydrogen, investigating regulatory and safety requirements and developing new and emerging hydrogen technologies. Construction of VH2 will begin in early 2022 and a twin facility is planned for Stuttgart in Germany.

Western Australia

Renewable Hydrogen Fund 2.0

In January 2021, applications opened for the second round of the Renewable Hydrogen Fund, which aims to support the development of the state's renewable hydrogen industry in accordance with the WA Renewable Hydrogen Strategy. As part of the second round a further AU$5 million of funding is available to support feasibility studies (up to AU$300,000) and capital work projects (up to AU$5 million). Submissions closed on 26 March 2021.

Standalone Power Systems and Powering Remote Sites

In February 2021, the WA Labour Government made a pre-election promise to deliver AU$218 million of investment to manufacture and install over 1000 standalone power systems in regional WA. These power systems will include hydrogen electrolysers, solar panels and batteries.

This work will build on projects that the WA Government is already supporting in Denham, where Horizon Power is developing a remote microgrid using renewable hydrogen generation. The WA Government has committed AU$5.7 million in funding for this project, with the Australian Renewable Energy Agency (ARENA) contributing a further AU$2.6 million.

Federal Government

2021 - 2022 Federal Budget

In April 2021, the Federal Government announced new investments in clean hydrogen and carbon capture technologies as part of its 2021 - 2022 Budget (Budget). The Budget will invest AU$539.2 million in new clean hydrogen, carbon capture, use and storage (CCS/CCUS) projects including:

- AU$275.5 million over five years for the development of four new clean hydrogen hubs in regional Australia and implement a clean hydrogen certification scheme.
    - Potential locations for the hubs include Bell Bay in Tasmania, the Pilbara in WA, Gladstone in Queensland, the La Trobe Valley in Victoria, the Eyre Peninsula in South Australia, the Hunter Valley in NSW and Darwin in the Northern Territory.
- AU$263.7 million over 10 years for the development of CCS/CCUS projects and hubs.

Carbon Capture, Use and Storage Development Fund

Applications for the AU$50 million Carbon Capture, Use and Storage Development Fund (CCUS Fund) closed on 29 March 2021. The CCUS Fund provides businesses and government agencies with grants from AU$500,000 up to AU$25 million for pilot or pre-commercial projects engaged in carbon capture, use and storage technologies.

While the CCUS Fund is not specific to hydrogen, the objectives of the CCUS Fund include:

- Reducing emissions across energy generation, natural gas or hydrogen production and heavy industries.
- Fostering existing, pilot or pre-commercial carbon capture, use and storage facilities that could form part of a regional hub of such facilities in the future.

ARENA Renewable Hydrogen Deployment Funding Round

In 2020, ARENA announced that it had shortlisted seven projects to compete for a share of AU$70 million of ARENA grant funding under the Renewable Hydrogen Development Funding Round. The seven projects chosen are well developed and propose to produce hydrogen at large scale (10MW+ of electrolyser capacity) for a variety of end uses, including transport, gas injection, renewable ammonia production, power and industrial use. Four of the projects are based in Western Australia and one each in Queensland, Tasmania and Victoria.

Final applications from the seven projects were due on 20 January 2021. ARENA is expected to announce their preferred projects and funding allocations in the coming months.

Other

In September 2020, National Energy Resources Australia (NERA) opened applications for the Regional Hydrogen Technology Clusters Seed Funding Program which provides each project up to AU$100,000 to develop a hydrogen technology cluster. In February 2021, NERA announced a network of 13 regional hydrogen technology clusters with a total investment of AU$1.85 million. The regional clusters have been established around key hydrogen projects and technology supply chains, including four clusters in Victoria, three in Western Australia and one cluster in each other State and Territory.

TAX UPDATES

As a result of the funding provided by the Federal and State governments (discussed above), which has attracted investors including both financial investors and energy operators, the Australian hydrogen industry is currently seeing substantial inbound foreign investment.

An important element in inbound foreign investment is the tax treatment of that investment in the relevant jurisdiction. If the tax treatment of an investor is not conducive to ensuring they get a reasonable return on their investment, then, generally, the investor will look elsewhere.

Both the Federal and State tax systems need to be considered in determining the tax enforced on inbound foreign investments.

Federal Tax and the Foreign Investment Review Board (FIRB)

The structuring of an investment is critical for offshore investors. Whether offshore investors come in by way of debt or equity will impact significantly on the cost of their returns.

Recently, there has been more of a focus on debt-funded investment from offshore investors. The reasons for this are twofold:

11. FIRB generally does not have to approve debt type funding into Australia
12. The tax considerations are generally more straightforward for debt financing.

The structure of the investment should be one of the first considerations when looking to invest in Australia. The jurisdiction of the investor will also be a significant factor, as those residing in jurisdictions with which Australia has a double tax treaty will be able to structure new investments in a way which ensures there is no double taxation of income on gains.

The Federal Government has recently made several major changes to the FIRB regime, taking effect from 1 January 2021. These major changes include (but are not limited to):

- Reinstating the monetary screening threshold for acquisitions involving 'notifiable' and 'significant' actions, which - in light of COVID-19 - had been temporarily set to AU$0 between 29 March 2020 and 31 December 2020.
- Introducing 'notifiable national security actions', a new FIRB approval requirement applying where an entity is seeking to start, or acquire an interest in, a 'national security business'.
- Introducing a new 'last resort power', enabling FIRB to order a divestment, impose new conditions or vary existing conditions after FIRB approval has been granted over a transaction.
- Introducing a new 'call-in power', enabling the Treasurer to review actions, in a range of circumstances, at any time within 10 years of an action.
- Changing the definition of 'foreign government investor' to provide additional relief for passive investors.
- Introducing a new 'extension power', enabling the Treasurer to extend a decision period by up to 90 days and make an interim public order prohibiting an applicant from undertaking a transaction for up to 90 days.

Tax and FIRB considerations will inevitably drive the structuring of inbound foreign investment. In particular, it is difficult to change the tax structure chosen once employed. Therefore, an upfront focus is very important. Please contact us if you require assistance with structuring your investment.

State Taxes

In addition to Federal tax laws, where investments involve transfers of land or interests in vehicles that hold land, there are State taxes, primarily transfer duty and landholder duty, which need to be considered in respect of inbound offshore investment. These tax costs vary between the States, and can be a very important consideration to structure investments around, in order to ensure that investors are not being double taxed, and importantly, to ensure the timing of the payment of these taxes is appropriate, particularly where a project is likely to take time to complete.

Victoria

In March 2021, the Victorian Government - through the *Zero and Low Emission Vehicle Distance-based Charge Bill 2021 (Vic)* - proposed the introduction of a new distance-based tax on electric and hydrogen vehicles to combat falling revenue from the federal fuel excise brought about by the increased use of electric and hydrogen vehicles, which, if passed, would apply from 1 July 2021. The new tax is proposed to apply to Victorian-registered pure electric and hydrogen vehicles, as well as plug-in hybrid electric vehicles. The rate of the tax is to be indexed, annually, to the Consumer Price Index, and will not apply to heavy vehicles.

South Australia

In November 2020, the South Australian Government also proposed a similar distance-based tax on hydrogen and electric vehicles, with most of the proceeds to be used for road maintenance. It was proposed that this tax would apply from 1 July 2021. However, as of March 2021, after further consideration, the South Australian Government has decided to postpone the introduction of this tax for a period of 12 months, such that it is now planned to apply from 1 July 2022. The postponement was to enable the South Australian Government to monitor tax developments in other states, like Victoria, to ensure some degree of "national consistency", and to conduct industry consultations.

There are also longer-term plans for the Federal Government to remove the current fuel excise and replace it with a mass-distance charge, which would apply to all vehicles, including electric and hydrogen vehicles.

Research and Development (R&D) Incentives

While the current Research and Development Tax Incentives (R&D Tax Incentives) provided by the Federal Government are very favourable, it is likely that we will see further increases in the number of available R&D Tax Incentives in the future, potentially creating the opportunity for further tax concessions for the hydrogen industry.

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