

# Energy Transition

## INSIGHTS

May 25, 2023

## Australia – United States Climate, Critical Minerals and Clean Energy Transformation Compact

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On May 20, 2023, the President of the United States of America and the Prime Minister of Australia issued a Joint Statement (the “Joint Statement”) announcing the Australia – United States Climate, Critical Minerals and Clean Energy Transformation Compact (the “Compact”), which has the following objectives:

- accelerate the expansion and diversification of clean energy supply;
- promote responsible, sustainable and stable supply of critical minerals;
- drive the development of emerging battery technologies; and
- support the development of emerging markets for clean hydrogen and its derivatives.

While detailed information about the implementation of the Compact has not yet been determined, the U.S. and Australia have agreed to establish the Clean Energy Industrial Transformation Forum (the “Forum”) to set the core objectives of the Compact and the Australia-United States Taskforce on Critical Minerals (the “Taskforce”) to drive implementation of the described objectives. The two countries intend to identify concrete actions toward the objectives laid out in the Compact within 12 months, which may require legislation or regulatory rulemaking in either or both countries. Australian participants in the critical minerals and clean energy sector are likely to benefit significantly if the Compact’s objectives of removing barriers to investment and implementing additional incentives for investment are realized.

### Enhanced Cooperation

Under the Compact, the United States and Australia commit to enhance bilateral cooperation and establish climate and clean energy as a central pillar in their bilateral relationship. In addition to the Forum, the Compact anticipates closer cooperation through ministerial level dialogue, as well as participation in multilateral forums such as the Minerals Security Partnership, Conference on Critical Materials, the Energy Resource Governance Initiative and the Senior Officials Working Group on Climate Security Risk.

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The commitment to increased cooperation under the Compact is intended to reduce the cost of clean energy technologies and lay the foundation for the global clean energy economy. The U.S. and Australia acknowledge that this will require significant expansion in renewable energy generation, clean energy technologies manufacturing and critical minerals supply. The Joint Statement outlines potential areas for increased cooperation for each of the Compact's objectives. These include:

- coordinating development of clean energy industrial bases,
- use of financial instruments and incentives to promote integration of clean energy supply chains,
- sharing information to enable coordination of critical minerals supply,
- cooperating to identify solutions for the responsible and efficient mining and processing of critical minerals, and
- coordinating approaches on hydrogen research, innovation, deployment, markets and supply chains.

The Joint Statement also identifies key actions intended to achieve the Compact's objectives:

- **Engaging with the critical minerals and clean energy industries to identify and address barriers to development and deployment of critical minerals and clean energy** in the two countries, which is intended to enhance investment flows between the two countries and may involve government-sponsored investment agencies.
- **Collaborating on projects and standards for clean energy supply chains** to support domestic policy agendas and support the production of clean energy products that are competitive in the global market.
- **Promoting robust emissions accounting methodologies for key sectors and products**, including hydrogen, hydrogen derivatives and green metals, with a view to aligning standards.
- **Identifying areas where additional skills and training support** are required to advance the goals of the Compact and support workforce development and critical minerals and critical technologies.

### Potential Benefits for Australia

The Joint Statement does not define "critical minerals" or "clean energy". Solar, wind and hydrogen are specifically mentioned in the Joint Statement along with energy storage. It has been publicly reported that the U.S. President may seek to designate Australia as a "domestic source" under the U.S. Defense Production Act of 1950 (the "DPA"). Designation of Australia as a domestic source under the DPA would remove significant barriers for U.S. investment in Australian sources of minerals on the U.S. critical minerals list. It could also provide Australian suppliers of critical minerals to U.S. loan and guarantee programs, as well as other U.S. incentives. The list of critical minerals published by the U.S. government includes cobalt, lithium, nickel, tantalum, titanium, zirconium and other minerals mined in Australia. Australian participants in the critical minerals and clean energy sector are likely to benefit

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significantly if the Compact's objectives of removing barriers to investment and implementing additional incentives for investment are realized.<sup>1</sup>

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<sup>1</sup> Australia is already designated as a free trade agreement partner country for the purpose of determining whether electric vehicles meet the critical minerals requirements for tax credits under 26 U.S. Code § 30D. See [Proposed Guidance on the US Clean Vehicle Credit: Critical Minerals and Battery Component Requirements](#).

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Questions regarding the matters discussed in this publication may be directed to [Waldo D. Jones Jr.](#), [Chris Beatty](#), [John Anselmi](#), [Connor Schillerstrom](#) or [Ben Fleming](#) or any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. Additional S&C resources about energy transition matters may be found [here](#).

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