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Senate Standing Committees on Economics
PO Box 6100
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Canberra ACT 2600

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The Minerals Council of Australia (MCA) representing Australia's minerals exploration, mining and processing industry appreciates the opportunity to comment on the *Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024*.

Schedule 2 – Critical minerals production tax incentive

Australia is endowed with some of the world's largest reserves of the critical minerals that many countries will rely on for their clean-energy transitions and pursuit of net zero commitments. The Australian minerals industry produces critical minerals utilising world leading sustainability standards, including best practice environmental management and community engagement.

The Australian minerals industry is the powerhouse of the Australian economy as evidenced through record export earnings, record company tax and royalty payments and the sector's record contribution to Australia's GDP growth this century.¹ For example, in 2022-23 the minerals sector once again led the nation in tax contributions, paying a combined \$74 billion in company tax and royalties.²

The MCA are supportive of the government initiatives to promote economic resilience, reinforce supply-chain security and onshore more value-adding processing associated with future-facing sectors like agri-tech, medicine, defence and computing.

It is, however, important to note that every advanced value-adding process relating to critical minerals relies on the same first step – extraction of the mineral. The Australian critical mineral industry competes in a ruthlessly competitive global market to secure risk capital investment in exploration, prospecting, designing, building and operating mines and infrastructure. International capital is mobile and reactive; it will flow to countries that deliver the most attractive business investment conditions. This means competitive taxation settings, industrial relations settings that enhance productivity, approval processes that enable the private sector to build productive assets and energy policies that deliver a low cost, reliable and stable energy mix. These business settings are vital in order to ensure Australia mines the critical minerals that can then be processed to produce the batteries, magnets, aluminium, semi-conductors and other essential outputs. It all starts with Australian mining.

The Critical Minerals Production Tax Incentive (CMPTI) is a policy initiative to respond to government assistance provided to the critical minerals processing sector by foreign governments, particularly the USA. It should also be noted that the US equivalent measures will have been in operation for 5 years

¹ Australian Bureau of Statistics, Australian System of National Accounts, Table 6. Gross Value Added by Industry, Chain volume measures, cat. No.5206, Released 04-Sep-2024

² Ernst & Young, Royalty and Company Tax Payments, Table 3 Royalty and company tax payments, minerals sector, Published May-2024

before the CMPTI commences and the USA currently has a 21% company tax rate and accelerated business asset depreciation provisions. In addition, the USA has the comparative advantage of proximity to a domestic customer base for the processed minerals. This means that Australia must have internationally competitive business tax settings in order to realise the opportunity to attract investment in an Australian critical minerals processing industry.

The MCA engaged in consultation with Treasury in relation to the CMPTI. We are pleased that Treasury acknowledged key features that are important in the design of a CMPTI that has the objective of incentivising investment in processing critical minerals in Australia. In particular, the following provisions are contained in the CMPTI Bill that is before the Senate:

- The requirement that a Final Investment Decision (FID) be made by 30 June 2030 has been removed. This was unnecessary given the CMPTI ends in 2040 and has a maximum 10-year eligibility per project.
- Eligible processing activities are defined based on value-adding processing activity post extraction rather than on the purity of the output. This aligns with the purpose of the CMPTI, to encourage Australian investment in downstream processing activity. It also makes eligibility more straight forward and therefore reduces complexity and uncertainty.
- The Bill contains a mechanism for a company to obtain certainty in relation to eligibility for the CMPTI of a planned processing project and for the eligibility to last for up to 10 years. This is particularly important in order for a company to be able to take the CMPTI benefits into account when making a long-term investment decision.
- The Bill contains a mechanism for the company to decide when eligibility for the CMPTI commences. This is important because projects normally take an initial period of time (often 1 or 2 years) to ramp up to full production. The ability to defer the start date of the CMPTI enables the company to maximise the benefits obtained from the incentive.
- The role of the Australian Taxation Office is clarified and confined to proving the nexus of eligible costs to a project. This is important to ensure the CMPTI operates as an incentive for investment.

We understand that the requirement to comply with ‘community benefit principles’ is an overarching requirement of the Future Made in Australia Act. However, there are already extensive and rigorous approvals process that mining and mineral processing projects must adhere to makes this an unnecessary and duplicative feature of the CMPTI. It also could have the unintended consequence of creating uncertainty as to eligibility and mean that companies have to re-apply on a year by year basis for the CMPTI. This would contradict the intent of the provisions of the Bill that are intended to provide a mechanism for an investor to obtain certainty of eligibility before committing to the investment decision.

Schedule 3 – Amendments relating to Indigenous Business Australia

Indigenous economic development can grow through investments in critical minerals, manufacturing and minerals processing facilities along with emerging clean energy sources such as solar and wind, hydro and other forms of battery storage, ‘providing many new opportunities for jobs and business and initiatives’.³ By continuing to listen to the local communities and entering into community led agreements, the MCA supports governments, organisations and local Traditional Custodians in their endeavours that will bring about positive and practical intergenerational opportunities for greater health outcomes and increased economic participation for Aboriginal and Torres Strait Islander Australians.

³ Commonwealth of Australia, [Indigenous Economic Development Strategy 2011-2018](#), Commonwealth of Australia, Canberra, 2011, p. 17.

The minerals industry has a strong track record in this area, as a leader in Indigenous employment and bringing Indigenous business into its supply chains.⁴ This example of working in partnership for a shared outcome should be applauded and for other land users to learn from the decades of experience within the minerals industry and Traditional Custodians. Creating the next generation of Aboriginal and Torres Strait Islander entrepreneurs requires a partnership approach across industry and across sectors.

Australia must improve the capacity for Traditional Custodians to sustainably manage native title rights and interests and provide more flexibility in leveraging income streams into finance for investments in economic advancement of Traditional Custodian communities.

Prescribed Bodies Corporates (PBC), including local lands councils, are the key means for Traditional Custodians to negotiate land access agreements and cultural heritage agreements. PBCs require certainty in funding and an ongoing increase in funding to ensure Traditional Custodians can negotiate effectively and reduce reliance on independent third-party consultants in managing engagement between PBCs and industry.

The MCA supports the investment in Indigenous Business Australia, however fundamental structural problems exist for Traditional Custodians seeking to raise the necessary capital.

The *Native Title Act 1993* (Cth) provides for certain types of Native Title Agreements (NTA) regarding the use and management of areas of land and/or waters. NTAs can also outline a compensation (royalty) element with regards to land and/or water use. As a result of a 2013 income taxation law change, native title 'benefits' are considered non-assessable non-exempt income and are therefore not subject to income tax.

Improving the capacity for Traditional Custodians to sustainably manage native title rights and interests must be seen as a high priority to delivering better outcomes for their communities and creating sustainable intergenerational wealth outcomes. This will undoubtedly create better outcomes across all Closing the Gap priority areas and targets through individual community-designed, and led, initiatives.

Strong and equal partnerships are developed and sustained where each party has in place the capability, systems and processes to support effective decision making. A partnerships approach for Indigenous people gives them a say in planning for the future.⁵

Effective local decision-making supports stability, clarity and predictability for both Aboriginal and Torres Strait Islander communities and industry on all matters associated with self-determination, reconciliation and co-design. This most often occurs where Traditional Custodian representative bodies have well developed governance and consultation structures and positive, trusted relationships with native title service providers. Access to advice, systems and capabilities to jointly implement, monitor and review agreements is another success factor. Clarity and consensus within each community about who speaks for Country is a crucial element.

The MCA is actively supporting capability development to enhance Aboriginal and Torres Strait Islander opportunities that are fit for individual community needs while working with communities to improve governance systems that will strengthen and sustain partnerships.

The MCA strongly advocates for governments having an important role in enabling strong and equal partnerships and support decision making by providing sufficient and sustained baseline funding to Traditional Custodian representative bodies.

As the MCA has worked with governments in the areas of climate, environmental stewardship, critical minerals investment, international trade and innovation policies, we are now embracing the

⁴ N Mundine AO and E Henderson, *Crafting the future Minerals industry engagement with Indigenous Australia*, Minerals Council of Australia, 2017, p. 27.

⁵ T Tiplade and MA Barclay, *Indigenous Employment in the Australian Minerals Industry*, The University of Queensland, Brisbane, 2007, p. 10.

opportunity to working in partnership with government and Traditional Custodians to reinforce the Australian mining industry's role in creating intergenerational wealth opportunities.

Aboriginal and Torres Strait Islander peoples are a core partner in the mining industry and are a major stakeholder in transforming economic and health disparities of Traditional Custodians and their communities.

Mining embraces its responsibility to support Aboriginal and Torres Strait Islander peoples to have a voice over their culture and their heritage as well as achieving their economic aspirations and wealth creation for generations to come. In doing so, Australian mining will also continue striving to achieve consensus decisions on appropriate impacts on their rights and interests.

We thank you for the opportunity to provide our views to the Senate on the critical minerals production tax incentive and the amendments to Indigenous Business Australia.

Yours sincerely,



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