Minerals Council of Australia

13 July 2012

The Secretary
House Standing Committee on Economics
House of Representatives
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SUBMISSION TO THE REVIEW OF THE TAX LAWS AMENDMENT (2012 MEASURES NO. 4) BILL 2012

This submission is made by the Minerals Council of Australia (MCA) in relation to the proposed changes in the *Tax Laws Amendment (2012 Measures No. 4) Bill 2012* which was presented to Parliament on 28 June 2012 to reform the living away from home allowance (LAFHA) in line with announcements made in the 2012-13 Federal Budget and the 2011-12 Mid-Year Economic and Fiscal Outlook.

The MCA appreciates the opportunity to contribute to the review by the House Standing Committee on Economics. The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies produce more than 85 per cent of Australia's annual minerals output. The minerals industry is Australia's most globalised industry accounting for nine per cent of Australia's GDP and more than 50 per cent of its export income. Access to skilled employees is critical to the industry's growth and its ongoing ability to secure Australia's future prosperity.

Mining industry skills are in high demand domestically and are internationally transferrable and the Australian industry faces intense competition for the most skilled and talented people. Since the previous peak in 2008, employment in the minerals industry has grown 59 per cent to 260,000. Skills Australia estimates that the sector will require an additional 83,000 operational workers and 19,000 replacement workers over the period to 2016. Most of these jobs are in regional and remote Australia.

For these reasons, the industry welcomed the explicit statements of successive Assistant Treasurers that the new 12 month limit to the LAFHA will not apply to fly-in-fly-out workers. Most recently in his media release of 15 May 2012, Minister Bradbury said:

> *"These reforms will not affect the tax concession for 'fly-in-fly-out arrangements, as these employees will not be subject to the 12 month time limit"*

Further, the Explanatory Memorandum to the *Tax Laws Amendment (2012 Measures No. 4) Bill 2012* states at paragraph 1.15:

> *"1.15 Employees who maintain a home in Australia for their own use, and who are required, by their employer, to live away from that home for the purposes of their employment, will be able to claim an income tax deduction for*

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reasonable substantiated expenses incurred on accommodation and food and drink (beyond 'ordinary weekly food and drink expenses'). The deduction will be limited to a period of 12 months (other than for 'fly-in fly-out' workers)."

In paragraph 1.75 it is confirmed that the exemption will also apply to drive-in-drive-out workers:

"This means that all employees who are working under fly-in fly-out arrangements or drive-in drive-out arrangements, regardless of the location of the place of employment, will not be subject to the 12-month rule."

However the MCA is concerned that the exemption to the 12 month rule will apply only to employees whose transport is employer-provided. The preceding paragraphs 173 and 174 state:

"The 12-month limitation does not apply to eligible employees who are provided with exempt transport benefits under subsection 47(7) of the FBTAA, or would be provided with exempt transport fringe benefits had the restriction on the employee's place of employment in paragraph 47(7)(a) not applied (about the place of employment needing to be in a remote location). [Schedule 1, item 1, subparagraphs 25-115(1)(e)(ii) and (iii)]

This covers employees who:
• are provided with residential accommodation, at or near their usual place of employment, by their employer or an associate of their employer; and
• on a regular basis, work for a number of days and have a number of days off, returning to their usual place of residence during the days off; and
• are provided with transport on a regular basis in connection with this travel between their usual place of residence and their place of employment, by their employer or an associate of their employer; and having regard to the location of that usual place of employment and the location of their usual place of residence, it would be unreasonable to expect the employee to travel between those places on work days on a daily basis."

Employees who self-drive, even if on similar roster patterns to FIFO and DIDO workers with employer-provided transport, will not receive equal treatment under the new LAFHA rules as the legislation currently stands. This would be an issue of significant concern to minerals industry employees in south-western Western Australia, South Australia, New South Wales and Queensland who self-drive from multiple cities and towns across those states making it logistically impractical for employers to provide the transport.

The MCA respectfully requests that the House Standing Committee on Economics review this anomaly and recommend that the Parliament addresses it before approving passage of the legislation.

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