Rio Tinto

THE FAIR WORK AMENDMENT BILL 2012

Rio Tinto Submission to the Senate Education, Employment and Workplace Relations Legislation Committee

November 2012

About Rio Tinto

Rio Tinto is a leading international mining group, combining Rio Tinto plc, a London listed public company headquartered in the UK, and Rio Tinto Limited, which is listed on the Australian Stock Exchange, with an executive office in Melbourne and corporate offices in Perth and Brisbane. The two companies are joined in a dual listed companies (DLC) structure as a single economic entity, called the Rio Tinto Group.

Rio Tinto's interests are diverse both in geography and product. Most of our assets are in Australia and North America, but we also operate in Europe, South America, Asia and Africa. Our businesses include open pit and underground mines, mills, refineries and smelters as well as a number of research and service facilities.

Wherever Rio Tinto operates, health and safety is our first priority. All our Group businesses put sustainable development at the heart of their operations, working as closely as possible with host countries and communities, respecting their laws and customs. For Rio Tinto it is important that the environmental effects of its activities are kept to a minimum and that local communities benefit as much as possible from operations.

Rio Tinto's operations in Australia

Rio Tinto operations in Australia include iron ore, salt and diamonds in Western Australia, coal mines in Queensland and New South Wales, bauxite mines and alumina refineries in the Northern Territory and Queensland, aluminium smelters in Queensland, NSW and Tasmania, and a copper-gold mine in New South Wales. Rio Tinto is also the major shareholder in Energy Resources of Australia (ERA) which produces uranium at the Ranger Mine in the Northern Territory.

The Group directly employs approximately 25,000 employees across these operations and its support Units.

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The Inquiry

The bill is the first tranche of the government's response to the review of the Fair Work (FW) Act 2009. Amendments include:

- Changes to the relation to striking out applications to vary modern awards in certain circumstances and in relation to the parties able to apply to amend modern awards;
- Notification requirements for scope order applications, and the form of the notice of employee representational rights;
- Clarifying that opt-out terms cannot be included in enterprise agreements, that enterprise agreements cannot be made with only one employee and that a union official from one union cannot act as a bargaining representative where that union does not have coverage;
- Aligning the time limits for lodging unfair dismissal claims and general protections claims involving dismissal at 21 days, and new measures in relation to dismissing unfair dismissal applications and costs orders;
- Clarifying which union members are able to vote on and participate in protected industrial action and the conduct of protected action ballots, including allowing for electronic voting and requiring ballots to be conducted expeditiously;
- Changing the name to the Fair Work Commission (FWC);
- Providing for the appointment of the General Manager to be made on the nomination of the FWC President;
- Allowing stay orders to be made by Presidential Members;
- Allowing for the appointment of acting Commissioners;
- Creating 2 statutory positions of Vice President;
- Including a process to deal with complaints against FWC members and streamlining provisions dealing with conflicts of interest of members, and
- other minor amendments to improve the conduct of matters before the FWC.

The Bill would also amend the FW Act to give effect to the Government's response to the Productivity Commission's Report into Default Superannuation Funds in Modern Awards, including:

- Introducing new requirements in relation to modern award terms about default superannuation, and the process under which the FWC would review default fund terms every 4 years, at the same time as the 4 yearly review of modern awards; and
- Provide for the establishment of an Expert Panel, which will subsume the functions of the Minimum Wage Panel.

Submissions are to be lodged by 13 November 2012

Executive Summary

Rio Tinto welcomes the opportunity to make this Submission to the Committee.

The statutory industrial relations system is a critical piece of legislation for the economic wellbeing of Australia and the nation's capacity to fully benefit from the significant opportunities presented through the long term development of Asia. Its challenge is to provide a framework that contributes to strong business performance through enhanced productivity and the agility to adapt to changing business circumstances whilst ensuring a fair and reasonable safety net for employees.

The Group strongly believes that the statutory system should facilitate these outcomes by encouraging employers and employees to work together as part of normal daily business. The FW Act and FWC must ensure that business and productivity improvement is not something to be delayed for future negotiations.

Rio Tinto is committed to establishing a direct relationship with every employee as a foundation from which to build employee engagement irrespective of the employment arrangement under which the employee has been employed. We seek to work with employees to deliver business performance and improvement whilst ensuring employee remuneration and benefits are competitive having regard to mining industry norms and are substantially in excess of the statutory minimums.

Rio Tinto does not oppose the changes to the FWA that introduce recommendations of the Review Panel regarding the general operation of the system. Given the criticality of this piece of legislation, Rio Tinto will continue to engage in the discussion regarding future amendments to the Act and operation of the Australian industrial relations system. The Company has significant concern in relation to the Government 's decision incorporated in the Bill in relation to superannuation under modern awards.

Rio Tinto's concerns with the processes are that:

1. The two step process of approval and selection is unnecessary,,adds complexity to an already complex issue and is at odds with the concepts of transparency and simplification;

2. The company is strongly opposed to legislation that bars corporate superannuation funds, like the RTSSF, being recognised as a continuing superannuation provider for its employees. The provisions in the Bill on this issue are at odds with the Recommendations of the Productivity Commission ;

3. The package of change through MySuper and the SuperStream reforms are being introduced through a combination of legislation and Regulation. Changes are being announced without consultation. They implement very significant changes for employers, employees and fund trustees. If they are to proceed, appropriate time needs to be provided that ensures appropriate change management is undertaken with detailed communication to employees. Retirement incomes are rightly a sensitive issue for employees as they approach retirement and it is imperative that sufficient time exists for companies and trustees of corporate funds to for each of

these groups to understand these changes and the implications they will have for companies, trustees and employees.

Superannuation

Superannuation is a critical element of the total reward offering to employees. It is the single largest portion of an employee's retirement income. The current regulatory scheme is complex and subject to constant change. Whilst appropriate legislation needs to be in place to ensure oversight and compliance with minimum standards,legislation that forces change to fund membership or set benefit design for businesses (above statutory minima) should be avoided Rio Tinto has operated a corporate superannuation fund, the Rio Tinto Staff Superannuation Fund (RTSSF) or predecessor funds, for over thirty years. The majority of the Group's Australian workforce are members of the Fund. An outline of the RTSSF is contained in the Attachment to this Submission.

Rio Tinto's concerns with the processes outlined in the Bill are that:

1. The two step process of approval and selection is not necessary and adds complexity to an already complex issue which is at odds with the concepts of transparency and simplification;
2. Corporate superannuation funds, like the RTSSF, are barred from making application for approval and effective recognition as a superannuation provider for employees under modern awards. This provision is at odds with the recommendations of the Productivity Commission in its Report;
3. The package of change through *MySuper* and the *SuperStream* reforms are being introduced through a combination of legislation and Regulation. Changes are being announced without consultation. The changes implement very significant changes for employers, employees and fund trustees. Appropriate time needs to be provided for each of these groups to understand these changes and the implications they will have for companies, trustees and employees.

The Two Step Process

The Bill establishes a two-step process through which:

1. funds will be approved by an expert panel based on clear and objective legislative criteria; and
2. A Full Bench of the FWC will select between two and ten funds from the Panel's approved list for inclusion in each modern award.

In his Second Reading Speech, the Minister stated:

However, we acknowledge that awards must be simple and accessible for those who use them every day. It is not simple for an employer to choose a fund from a large generic list of funds with no indication about whether a particular fund is more suited to their industry or workforce than another. Employees will also want reassurance that default funds used for their contributions most appropriately reflect their particular characteristics and needs as workers in a particular industry. (Hansard 30 Oct page 56)

Superannuation is complex and has rigorous prudential requirements. The establishment of a process through which funds are approved against the minimum criteria by a panel of experts has some merit, particularly where the communication of fund structure,

performance, costs and benefits are supported by the use of "Plain English" and simplified Product Disclosure Statements. However, the Bill also connects approved funds and modern awards. This is not an area that should or can be effectively regulated by the FWC. Individual employees and they must be presented with simple factual information that enables them to make those choices.

The two stage process adds significant complexity to companies that work across industries and occupational boundaries as they have been defined in the modern award process. Group companies will be bound by at least ten modern awards. The Rio Tinto Group may have to work with a large number of funds in the future, rather than only two or three currently This will add complexity to the framing of offers of employment, to payrolls, to the monitoring of detailed application of each fund and of four yearly reviews.

Recommendation:

1. The two step process of selection and approval be replaced by a process through which employees are able to receive simplified "Plain English" information in a standardised Product Disclosure Statement.
2. In the event that the Committee supports the two stage process contained within the Bill, provision needs to be made for employers to make application for approval of a limited number of approved funds as the default product for that business. This will improve transparency and allow consistency across an employer's workforce, whilst limiting the increase in implementation and oversight costs.

The Future of Corporate Funds

A corporate superannuation fund is best placed to meet the criteria referenced by the Minister in the extract above. At a time when employers are not compelled to join the Company's fund, a corporate fund has had to understand the needs of its membership base and be market competitive in terms of benefit structure and investment performance. Corporate funds have the added benefit of being positioned to structure superannuation within the context of the company's total reward offering.

Rio Tinto is particularly concerned and is opposed to those sections of the Bill that deny the RTSSF access to the selection process in relation to modern awards. This statutory barrier if implemented would mean that the majority of RTSSF members who currently have selected Growth (the RTSSF default) will be forced to move to an industry *MySuper* offering effectively ending their continuing relationship with the RTSSF.

In the event that the Committee favours the retention of a two part process, Rio Tinto believes that the package of recommendations made by the Productivity Commission in Recommendations 8.1 to 8.7 is to be preferred to the process contained in the Bill.

These recommendations recognise the role of corporate funds and provide a simple means through which corporate funds can be managed.

Recommendation

In the event that the Committee supports the two part process, Corporate funds should be able to develop a default *MySuper* product as part of the fund's structure. The fund or the sponsoring company should be able to make application for approval by the Expert Panel. Corporate funds need not be listed in modern awards. Rather, modern awards should specify that employers may pay into a company *MySuper* product provided it has been assessed as meeting the legislative requirements

Change Management

The changes contemplated by the package of *MySuper* and *SuperStream* reforms have placed significant challenges in front of funds in an attempt to prepare for the introduction of these reforms from 1 January 2014. Whilst the extent of these changes is significant of itself, the release of the FW Amendment Bill fundamentally changes the ground rules under which we have been working and negates any work done to date to implement a default *MySuper* product within the existing RTSSF structure.

The implications of this change are such that it must be undertaken with great care and with significant and continual communication between the company, trustees and employees.

Whilst still assessing the impact of the FW Amendment Bill, the Government has also released the Superannuation Industry (Supervision) Regulations (SIS Regulations) on 10 November 2012. This exposure draft is open for comment for a further week, with the changes scheduled to operate from 1 July 2013. This draft if adopted will impact the design of an Ill Health benefit offered by the RTSSF and the means by which that benefit is funded.

The extent of change to the design, structure and regulation of superannuation that is all happening within the same timeframes is a matter of concern. It does not allow businesses to undertake a comprehensive change management process that includes detailed communication and discussion with trustees and fund members. This careful process is essential given that the changes will impact decisions employees have made for their retirement savings.

Recommendation

The implementation date for employees in corporate superannuation funds should be deferred until 1 January 2015. This recognises the late change to companies being made aware that their corporate fund would be unable to provide a default *MySuper* offering, the complexity of superannuation design and oversight currently underway and the likelihood that approved default *MySuper* offerings should also be known by that date.

The RTSSF

Established:	1979 as the CRA Group Staff Superannuation Fund (GSSF). Prior to 1979 the assorted companies in the Group had a number of other funds that were merged into the GSSF. The Fund name changed following the establishment of the Rio Tinto dual listed company structure in 1995.
Fund structure:	A mix of defined benefit (DB) and defined contribution funds (some of who are account based pensioners) with the DB now representing only about 3% of the membership
Membership:	33,000 made up with 72% being employed members and 28% former employees and also spouse members
Assets:	$3.7b
Trustees:	10 with equal numbers of employer and employee trustees. There are also four Trustee committees that look after specific areas being for Investments, Audit & Compliance, Communications and Health related claims
M & A	The fund has been used to cater for all the M & A activity undertaken by the business and entities that have joined include North Limited, Alcan and Queensland Alumina Limited.
Key Features:	The fund enables members to choose from a range of nine investment alternatives. Growth is the default option as selected by the Trustee. The Company meets the administration costs and the cost of basic insurance cover for all Rio Tinto employed fund members The fund currently offers an ill health benefit and it self-insures its health related benefit risks. The future of self-insurance and the ill-health benefit seems uncertain given draft regulations released in recent days There are four Total Reward Specialists who visit all Rio Tinto work sites at least annually and usually more frequently to provide information to employees regarding their total reward package. Superannuation is an important element of that package.