



Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	013
Topic	Rio Tinto
Reference	Spoken, 5 December 2022, Hansard page 61
Committee member	Senator Paul Scarr

Question

Senator SCARR: Okay. I want to talk to you about the Rio Tinto continuous disclosure breach. This is reported in the annual report on page 51. This is in relation to the Rio Tinto—and I should say that I am a Rio Tinto shareholder; it's already on the record—debacle with respect to the acquisition of Riversdale Mining in Mozambique and the continuous disclosure issues. They got hit with the penalty of \$750,000. That penalty was made by consent. I am just interested, given the size of Rio Tinto as a multinational company and that the write-off was in the billions—and don't go into the specifics of the case if you feel uncomfortable—what thought went into the discussion around what the penalty should be in terms of that \$750,000 figure, which seems light on?

Ms Court: I agree that a penalty of \$750,00 for a company the size of Rio Tinto seems light on. The challenge in that case was that proceedings were laid against Rio—and I'm saying this from recollection, so I will double-check the facts—but the contravention was for one continuous disclosure contravention and the maximum penalty for a breach of the continuous disclosure obligation at the time that this conduct was engaged in was \$1.1 million. So, the penalty was \$750,000 out of a maximum of \$1.1 million that could have been imposed, is my recollection.

Senator SCARR: Right. And that maximum has subsequently been increased. Is that correct?

Ms Court: I think it has. Are you aware, Greg?

Mr Kirk: I don't have the detail. A broad range of our penalties were increased, and I think that is one of them.

Senator SCARR: Okay. That's fine. I did note—and you might take this on notice, but I am interested—that Rio Tinto was ordered to pay ASIC's costs of the proceeding. Could you take on notice how much that was?

Ms Court: Yes, indeed I can. It was in the millions, I can recall. It was significantly more than the penalty. We can probably find out by the end of the hearing for you, to avoid taking one on notice. I'll see if we can get back to you.

Answer

Rio admitted to having committed a contravention of s 674(2) of the *Corporations Act 2001* by failing to notify the ASX of material information in the period between 21 December 2012 and 17 January 2013. At the time the contravention took place the statutory maximum civil penalty for a contravention of the provision was \$1 million.

The continuous disclosure obligations for companies and officers were amended on 10 August 2021 and s 674(2) is no longer a civil penalty provision but is a criminal offence for which an infringement notice may be issued to a disclosing entity. The maximum penalty under the current provision for a body corporate is \$1,332,000 and for an individual is 5 years' imprisonment or \$13,320.

The amendments introduced s 674A into the Act as the new civil penalty provision for continuous disclosure contraventions in circumstances where the disclosing entity has acted with "knowledge, recklessness or negligence" and carries a maximum civil penalty which is the greater of \$11,100,000 or three times the benefit obtained and detriment avoided or 10% of annual turnover up to \$555 million for corporations.

On 7 March 2022, Justice Yates ordered that Rio Tinto pay ASIC's costs of the proceedings.

ASIC and Rio Tinto reached an agreement that Rio Tinto pay \$3,750,000 in satisfaction of ASIC's investigation and litigation costs. Of that amount, \$3,000,000 was apportioned to pay ASIC's costs of the proceedings and \$750,000 was paid in respect of ASIC's investigation costs.