

# RIO TINTO

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## IRON ORE

CHIEF EXECUTIVE

21 July 2006

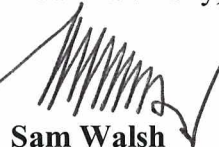
Secretary  
Senate Employment, Workplace Relations and Education Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir

**Inquiry into the provisions of the Independent Contractors Bill 2006 and  
Workplace Relations Legislation Amendment (Independent Contractors) Bill  
2006**

Please find attached the Submission by Rio Tinto Ltd on behalf of its Australian  
Business Units.

Yours faithfully,



**Sam Walsh**  
Chief Executive

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the provisions of the Independent Contractors Bill 2006 and Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006**

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*Note: If the Committee has any queries regarding  
this Submission, please contact Paul Davies, Chief  
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# **RIO TINTO**

## **RIO TINTO SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE**

### **INQUIRY INTO THE INDEPENDENT CONTRACTORS BILL 2006 and the WORKPLACE RELATIONS AMENDMENT (INDEPENDENT CONTRACTORS) BILL 2006**

July 2006

## **Introduction**

Rio Tinto is a leader in finding, mining and processing mineral resources. Major products include aluminium, copper, diamonds, energy products (coal and uranium), gold, industrial minerals and iron ore. The group's activities span the world but are strongly represented in Australia and North America with significant businesses in South America, Asia, Europe and Southern Africa.

In Australia, Rio Tinto's mining operations are commonly undertaken at remote locations in Northern Western Australia, North and Central Queensland and regional areas of New South Wales. Large industrial processing operations are conducted in regional industrial centres such as Gladstone, Queensland, Kwinana, WA and Bell Bay, Tasmania.

## **The Inquiry**

This submission is made to the Senate Employment, Workplace Relations and Education Legislation Committee as part of its Inquiry into proposed legislative reforms relating to independent contracting in Australia.

Rio Tinto wishes to make the following written submission to the Inquiry. Rio Tinto does not seek the opportunity to appear at the public hearings being held as part of the Inquiry process.

## **Rio Tinto Support for the Legislative Reform**

Rio Tinto supports the enactment of the Independent Contractors Bill (the IC Bill) and the proposed amendments of the Workplace Relations Act (WRA) for the following reasons:

**1. *The use of independent contractors is a recognised and legitimate way that business uses to perform work.***

Rio Tinto is no different to other employers in this regard with independent contractors being used as a source of necessary skills and / or to position the company to flexibly adapt to changing demands for labour.

Independent contractors are also use to enable the company to access intellectual capital that is required in the design of new systems, new approaches to work organisation, to introduce new concepts and to help foster innovation. Independent contractors are also heavily used on major projects such as mine development or expansion and to provide engineering and other specialist input.

As a significant business in each of the locations in which it operates Rio Tinto engages a large number of direct employees together with the services of a large number of local businesses. The services provided by businesses include labour, equipment and combinations of the two. Rio Tinto uses large and small specialist contractors, independent contractors and labour hire contractors. These contractor arrangements allow the company to have access to necessary skills and equipment while providing flexibility to provide specialist services and cover peaks and troughs in labour requirements. The independent contracting arrangements used by Rio Tinto provide advantages to the company and the independent contractors.

The proposed legislation will provide clarity in relation to independent contracting arrangements by providing a single, national legislative scheme that is specifically directed to the issues that currently face by both client companies and the many independent contractors.

Rio Tinto supports the provisions in the IC Bill that override both State industrial relations and unfair contract laws. Rio Tinto would oppose any amendment to this reform package, that would increase the likelihood of independent contractors being regulated by employment or industrial relations law.

**2. *The legislative scheme that is necessary to underpin the use of independent contractors is fundamentally different to the legislative scheme required to support employment relationships.***

Independent contractors are engaged under contracts for services that establish a commercial relationship between the client business and the contractor. These contractual arrangements are commercial in nature and are fundamentally different to employment contracts. That said, Rio Tinto recognises that a facility needs to exist for the resolution of issues relating to these contracts, particularly where concern exists that the contract may be unfair.

Rio Tinto supports the inclusion of the provisions in the IC Bill that provide a mechanism for the resolution of disputes over unfair contracts.

**3. *Suitable protections are provided for individuals through the proposed provisions contained in the IC Bill and the WRA amendment.***

These provisions establish appropriate penalties against employers who seek to force employees into “sham” independent contracting arrangements or penalise employees who refuse an offer of an independent contracting arrangement.

**4. *The proposed legislation retains the continuing application of common law principles and does not add a further statutory definition of independent contractor.***

Courts have little difficulty using existing common law principles to determine the proper status of an individual as an employee or contractor, particularly when the parties have the necessary formal, commercial arrangements in place. Applying the common law definition provides business with clarity and avoids the imposition of additional complexity that would come from the introduction of a further, different definition.