

RIO TINTO

16 February 2005

Mr John Carter
Secretary
Employment, Workplace Relations and Education Committee
Department of the Senate
Suite SG.52
Parliament House
CANBERRA ACT 2600

By Email: eet.sen@aph.gov.au

Dear Mr Carter

Workplace Relations Amendment (Right of Entry) Bill 2004

Rio Tinto Limited welcomes the opportunity to express its views to the Senate Committee on the Workplace Relations Amendment (Right of Entry) Bill 2004. Our submission is attached.

Yours sincerely



Sam Walsh
Chief Executive – Rio Tinto Iron Ore

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004

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**RIO
TINTO**

**THE WORKPLACE RELATIONS
AMENDMENT (RIGHT OF ENTRY)
BILL 2004**

**SUBMISSIONS BY
RIO TINTO LIMITED TO THE
SENATE EMPLOYMENT,
WORKPLACE RELATIONS AND
EDUCATION COMMITTEE**

FEBRUARY 2005

Introduction

Rio Tinto has been at the forefront of changes to workplace relationships as it has pursued greater productivity through improved flexibility, direct relationships with employees and initiatives to encourage people to work to their potential. Significant progress was made in the 1990s as artificial barriers were removed and Rio Tinto operations moved to direct relationships that recognised contribution, effort and opportunity.

The political environment in recent years has limited the opportunities for significant ongoing reform that is required to lift productivity and release the potential benefits from buoyant export markets. Rio Tinto supports the need for future reform and one important area for reform is in relation to right of entry.

Current laws have caused difficulties for operations

Right of entry laws current exist in both the State and Federal jurisdictions. Recent Court decisions have added uncertainty to an area that has traditionally been difficult to manage. Union officials utilise this uncertainty to their advantage and are not always concerned to ensure that they comply with the requirements on them under the Act.

The *Workplace Relations Amendment (Right of Entry) Bill 2004* will assist to remove some of the confusion created by recent Court decisions. However, existing federal law requires further amendment to overcome issues that arise on sites when union officials seek to gain access. For example, safety and other issues are used as a veil to enter workplaces to conduct membership drives or disrupt employer initiatives.

The existing right of entry provisions were drafted in a era of significantly higher union membership and at a time when workplaces operated very differently. Union penetration in the private sector is now at such a low level that at many sites most, if not all employees do not seek representation by a union. The notion of access at meal times is also outdated. Fixed meal breaks for all are no longer a feature of Rio Tinto operations. Breaks are staggered and at many sites the timing of the break may vary (within bounds) based on work requirements of the day.

The laws can be structured in a way to reduce confusion and ensure right of entry is carried out in a structured way for legitimate purposes only. Examples of Rio Tinto's experience in relation to right of entry are outlined in the following case studies.

Case Study : West Angelas

Employees at the West Angelas site in Western Australia had been provided with a draft s170LK Agreement and were in the cooling off period prior to the vote.

The AMWU alleged that the Company had breached the *Workplace Relations Act 1996* and sought right of entry to the site to investigate the alleged breaches:

Once on site, the Official refused to provide the Company with any detail of alleged breaches.

The Official was provided with a room to conduct interviews and was also escorted on a tour of the site and introduced to employees who were invited to meet with him.

No employee met with the Official who upon further questioning still refused to provide any details of the alleged offences.

After two hours, the Official left the site.

After the Official had left the site, it was found that the Official had deposited "Vote No" pamphlets in some crib rooms and toilets.

Right of entry had been obtained under false premises. They did not investigate a suspected breach of the Act but wished access to site for purposes not allowed under the Act.

Case Study : Yandicoogina

The Yandicoogina mine of Pilbara Iron in Western Australia is currently being expanded to meet the Chinese demand for iron ore and there are approximately 250 workers engaged on construction.

Recently, the three main construction unions in Western Australia, the CFMEU, AMWU and CEPU sought right of entry to the construction site claiming rights under both State and Federal laws, although the purpose of entry was to finalise a Federal Certified Agreement to cover construction workers at the site.

The conduct of the union organisers amounted to a significant abuse of their right of entry and an abuse of the processes put in place to ensure orderly right of entry to a remote construction site on a mining lease. The facts are summarised in a letter sent by Pilbara Iron to the State Secretary of the CFMEU. Similar letters were sent to the AMWU and the CEPU.

The letter was in these terms:

"Last week your organiser, Mr Bob Wade, sought right of entry to visit this site commencing on 31 January 2005. In accordance with normal arrangements made for visiting union officials, the right of entry notice was sent to the site office of CCIWA. In turn, arrangements were then made with CCIWA to meet Mr Wade and organisers from the AMWU and the CEPU off-site and to drive them to site, arrange for their site induction, and then escort them around the site as they visited contractors and union members in accordance with their right of entry. These arrangements are made because of the Registered Mine Managers' directions which require DTEC certified drivers and specially equipped 4WD vehicles on the mining lease, and also to meet site safety and induction requirements that apply at the construction site.

Upon arriving at the site, Mr Wade and the other union officials refused to undertake a site induction, then organised an unauthorised mass meeting which resulted in an unlawful 48 hour strike by employees of Downers Engineering and Monadelphous.

Mr Wade and the other union officials organised a report back meeting on 2 February 2005 at the wet mess of the Yandicoogina camp. They were advised by a representative of CCIWA that union meetings were not permitted in the wet mess

at the camp, that they were not permitted to drive on the mining lease which includes the camp, and that any meeting would need to be held outside the security gate. This advice by CCIWA was ignored.

On 2 February 2005 Mr Wade and the other union officials drove on to the Hamersley lease in a Ford Falcon sedan and proceeded directly past the security gate to the wet mess of the camp. This was a breach of the directions of the Registered Mine Manager and site entry requirements.

Mr Wade and the other union officials were told that they had no right to be in the camp, that they were trespassing and they were required to leave. Mr Wade claimed his entry was based on his State and Federal right of entry permits, however neither of those permits authorise the actions he took nor gave him right of entry to the construction camp which is not a workplace for members of any of his or the other unions concerned.

We are currently investigating our legal options in relation to this illegal entry and trespass at Yandicoogina”.

The letter to the unions also outlined the approach taken by Rio Tinto Iron Ore in relation to right of entry and stated:

“Right of Entry at Rio Tinto Iron Ore Expansion Projects Construction Sites

We appreciate and respect that your union has legal rights of entry under State and Federal industrial laws to visit contractors on its sites. At the same time, we are the occupier of the site and have responsibilities for the health and safety of all those who visit those sites which in turn means that visitors must be properly inducted, wear appropriate safety equipment and are escorted on the mining lease and construction site. In turn, we have ensured that CCIWA facilitates the right of entry in accordance with the legislative provisions by:

- providing a single contact point for union officials,
- programming meetings with contractors;
- providing transport and escorting the union officials around the site to visit their members, the contractors and to conduct meetings; and
- ensuring that union officials are properly inducted and wear the required safety equipment.

In the circumstances, the actions of Mr Wade demonstrate a disregard of the goodwill we provide by facilitating the right of entry and amount to illegal entry and trespass.

We are most concerned that this type of conduct by Mr Wade is not repeated and request that action be taken to ensure that right of entry always meets legal requirements and the arrangements for site entry made with CCIWA are followed”.

Rio Tinto Position

The solution is to strengthen the *Workplace Relations Act 1996* to ensure loopholes are closed, overlaps are minimised and union and employer accountabilities are clear. This can be achieved by:

- Legislating to ensure federal right of entry laws prevail to the exclusion of State laws;
- Defining entry parameters including union and employer responsibilities:
 - prior notification of the visit to include details of the purpose of the visit (including the details of any alleged breaches of the Award / Act by the Company);
 - a requirement for union officials to comply with the obligations on all visitors to the business (eg compliance with the site's health and safety system);
 - an obligation on employers to recognise an official from a union with coverage who is appointed by an employee as their representative;
 - the employer to set aside a place with appropriate privacy and confidentiality for discussions between an employee and the union official;
 - an obligation on employers to accede to right of entry requests and to make available information that the union official has a legitimate right to peruse.

Strengthening sanctions to enable enforcement of abuse of Right of Entry laws including cancellation of permits.

The *Workplace Relations (Right of Entry) Bill 2004* is an important step in achieving a clearer set of parameters for union right of entry, and Rio Tinto Limited supports the Bill.



Sam Walsh
Chief Executive
Rio Tinto Iron Ore