

**SUBMISSION TO THE
SENATE EDUCATION,
EMPLOYMENT AND
WORKPLACE RELATIONS
COMMITTEE**

**Inquiry into the Workplace Relations
Amendment (Transition To Forward With
Fairness) Bill 2008**

February 2008

The Rio Tinto Group in Australia

Rio Tinto is a world leader in finding, mining and processing the earth's mineral resources - metals and minerals essential for making thousands of everyday products that meet society's needs and contribute to improved living standards.

The Group's major Australian products include, iron ore, coal, aluminium, copper, diamonds, uranium, salt and talc and as one of Australia's largest exporters and employers, contributes significantly to the Australian economy.

Rio Tinto's mining operations are commonly undertaken at remote locations in Northern Western Australia, Northern Territory, 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

The Senate Education, Employment and Workplace Relations Committee has established an Inquiry into the *Workplace Relations (Transition to Forward With Fairness) Amendment Bill 2008* with specific reference to the following matters:

- a. economic and social impacts from the abolition of individual statutory agreements;
- b. impact on employment;
- c. potential for a wages breakout and increased inflationary pressures;
- d. potential for increased industrial disputation;
- e. impact on sectors heavily reliant on individual statutory agreements;
and
- f. impact on productivity.

Rio Tinto does not seek to make a public presentation to the Committee.

Rio Tinto Contact

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Rio Tinto Overview

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 relationships that recognised contribution, effort and opportunity.

The Company currently uses all forms of statutory employment agreements provided by the *Workplace Relations Act*. The use of a form a statutory individual agreement within Rio Tinto extends for over fifteen years, having initially been used in the West Australian State system and since 1997, the Federal system.

Rio Tinto's use of the different forms of employment arrangement varies significantly across the Group and follows consideration of:

- the history of the site;
- the level of maturity of the employment relationships;
- external factors; and
- the wishes of employees

The breakdown of employment arrangements across the Group is as follows:

	Per cent
Australian Workplace Agreements	22
Employee Collective Agreements	15
Union Collective Agreements	8
Common law Contracts	55
Total	100

The Transition Bill

The Transition Bill, if passed would:

- Abolish access to make new Australian Workplace Agreements (AWAs);
- Introduce a new form of individual employment agreement with limited application Individual Transition Employment Agreements (ITEAs);
- Introduce revised approval conditions for agreements, including a “No Disadvantage Test” and operative date provisions;
- Provide for the extension of “old system” agreements and NAPSAs;
- Facilitate the commencement of the Award Modernisation Process.

Rio Tinto will make comment on each of the other dot points above.

The Government has also released in Exposure Draft form, the proposed new statutory minimum standards, the National Employment Standards. Comments on the Exposure Draft are being made through a different process and do not form part of this Submission.

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Abolition of Access to AWAs

Rio Tinto has a long history with individual statutory agreements. Businesses in Western Australia commenced using this form of employment arrangement in the early 1990's. AWAs have been in place in some businesses since they were introduced as part of the enactment of the *Workplace Relations Act 1996* and West Australian businesses transferred to the federal system following the enactment of the WA Labour Relations Reform Act 2002

AWAs have met the needs of both Rio Tinto and our employees.

Whilst the agreements may override the application of more detailed award provisions, Rio Tinto provides its employees with a competitive salary package in mining industry terms and a very generous package when viewed across the economy as a whole.

Rio Tinto has not used individual statutory agreements as a device to reduce the level of salaries and benefits payable to an employee.

AWAs (where used), have formed part of an integrated approach to employment arrangements at a site. In many cases, this approach has also incorporated an enterprise award (other than coal mining where an industry award applies).

Rio Tinto is currently reviewing its employment arrangements to cater the removal of access to AWAs.

Rio Tinto welcomes the Government's decision to allow existing AWAs to continue beyond the nominal expiry date with agreement of the parties.

We also welcome the exemption of enterprise awards from the Award Modernisation process.

Introduction of ITEAs

Rio Tinto supports the introduction of ITEAs as a necessary and practical mechanism, particularly at a site that has used AWAs.

We have a number of concerns regarding the detailed provisions of the Bill. These relate to:

- The inability to use an ITEA for a former employee;
- The inability to offer an ITEA to an existing employee, not on an AWA or equivalent;

- The delay in operation of ITEAs for existing employees (this is part of a broader concern regarding the changes to the date of operation of all agreements);
- Delays in final approval of agreements by the Workplace Authority (this is also part of a broader concern and is covered later in this Submission).

Former Employees

The Bill proscribes the making of an ITEA with a former employee (s326 (2)(b)(i)).

Employees leave employers for a large number of reasons that can include promotion, transfer within a Group, improved conditions, the opportunity to gain wider skills and experience and a variety of personal reasons. The break in employment with the employer can be as short as a number of months or may run to many years.

In effect, the returning employee is considered by the business as no different to a new or transferring employee.

The introduction of ITEAs is recognition by the Government of the need to provide a form of agreement that operates as businesses transition to the new system. The exclusion will result in a small subset of employees in an enterprise being on a different employment arrangement.

Access to ITEAs is already significantly restricted under the Transition Bill.

Rio Tinto cannot identify anything particular about former employees that would support the need for this exclusion and ask that the Committee recommend its removal from the Bill.

Limited Access to Existing Employees

The Bill also limits access to ITEAs for existing employees who are currently employed under an AWA or designated equivalents. There are many circumstances where an existing employee may not be employed under an AWA but whose job alters in such a way that the position is in a work group or area where other employees are engaged under an AWA or ITEA. In these circumstances, the employer should not be excluded from offering the employee access to an ITEA.

As with the case of former employees, this variation would recognise that the system is in transition and it would provide certainty of entitlements for both the employee and employer.

Impact of Restriction

The two restrictions outlined above are likely to result in employees who work side by side doing the same type of work being employed under significantly different employment systems. Rio Tinto believes that such an outcome should not be mandated by legislation but left to the parties at an enterprise level.

Rio Tinto supports the removal of both restrictions.

Approval of Agreements by the Workplace Authority

The Bill retains the Workplace Authority for approval of agreements and replaces the Fairness Test with a No Disadvantage Test that is assessed against any applicable or designated award and it may include any collective agreement that would otherwise apply.

Rio Tinto is concerned that despite its best endeavours, the Authority currently has a large backlog of Agreements that are yet to be processed. This backlog has resulted in the final completion of the current review process taking a lengthy period. Unfortunately this has also been compounded by inconsistency in some outcomes. Identical agreements reviewed in different offices have been both approved and rejected.

The introduction of a new Test (which is not opposed)), will require the Authority to amend systems, develop new forms, train staff and provide communication materials for both employers and employees.

Rio Tinto is concerned that these requirements are likely to further delay the final processing of the existing backlog of agreements and new agreements as they are filed.

Whilst the current delays are of significant concern, the employer and employee can take some comfort from the fact that the Agreement is in operation throughout the delay. This will not be the case for many agreements under the Transition Bill.

Rio Tinto believes that measures need to be taken to address these delays. Options for consideration include:

Template Approval – Incorporating a provision within the Act for the Authority to approve a template agreement. Employers lodging subsequent agreements consistent with the template would have these agreements immediately approved.

A Simplified No Disadvantage Calculator that is publicly available – the return to the type of calculators for the No Disadvantage Test that are similar to those used by the Authority's predecessor in the period prior to WorkChoices. These calculators were publicly available and widely accepted.

Date of Effect of Agreements

Rio Tinto does not support the introduction of an operative date that extends beyond the date of lodgement. The new provision will have the effect of introducing substantial uncertainty and delay for employers and employees for no benefit.

It introduces the very odd position where two employees can be offered similar ITEAs, one applicable from lodgement (a new employee), whilst effective operation of the agreement for an existing employee must await approval from the Authority (currently, several months).

There is no sound reason for this distinction. Existing provisions of the Act cater effectively for operation of agreements on lodgement with subsequent rectification if the agreement fails to meet statutory requirements.

Rio Tinto believes that the existing date of operation provisions should be retained.

The Award Modernisation Process

Rio Tinto notes that enterprise awards are excluded from the Award Modernisation process. Rio Tinto strongly supports this exclusion. Enterprise awards play a fundamentally different role in the construction of an enterprise's employment arrangements than that provided by coverage under an industry award.

In these circumstances, it is not appropriate for enterprise awards to be replaced by an industry award as it will fail to identify and deal appropriately with the second order effects of such a change.

The exclusion as we understand it relates to Federal enterprise awards. Rio Tinto has a number of enterprise awards initially made in State jurisdictions. Rio Tinto would not support the removal of these enterprise awards (currently operating as NAPSAs) without further consideration of the parties to those awards.