

# **NATIONAL EMPLOYMENT STANDARDS**

## **Rio Tinto Comments on the Exposure Draft**

**April 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.

## **Rio Tinto Contact**

Questions or requests for information regarding this Submission should be directed to:

Paul Davies  
Chief Advisor Employee Relations  
Rio Tinto Limited  
Telephone: (07) 3029 2674 or 0428 457 179  
Email: [paul.davies@riotinto.com](mailto:paul.davies@riotinto.com)

## Rio Tinto Overview

Rio Tinto seeks to establish a direct relationship with every employee, irrespective of their employment arrangement. Our experience is that the effectiveness of this relationship is critical in building employee engagement, providing benefits for both the individual and the business

For the employee, it encourages people to work to their potential by recognition of contribution, effort and through the opportunity for wider or deeper experience.

For the business, the outcomes have been improved productivity and safety, greater flexibility to adapt to change, whilst also assisting attraction and retention.

The Company currently uses all forms of statutory employment agreements provided by the *Workplace Relations Act*. This 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
<b>Total</b>	<b>100</b>

The significant percentage of employees on common law contracts needs to be considered in the design of statutory minimum standards for general application across the economy.

## **Introduction**

The Federal Government has released an Exposure Draft of the proposed National Employment Standards (NES) and invited comments. This paper incorporates Rio Tinto's comments on the Exposure Draft.

The Paper is divided into two sections:

1. General Comments regarding the Standards;
2. Specific comments, where necessary, in relation to the content of a particular Standard.

## **General Comments**

The Discussion Paper indicates that the proposed NES are intended to be:

- as simple as possible;
- contain only those application and machinery rules that are essential to the effective operation of the entitlement; and
- capable of industry relevant detail to be added by the AIRC to ensure NES entitlements provide fair minimum safety net conditions in particular industries.

Rio Tinto strongly supports the first two of these dot points and supports the third dot point in general, subject to the comments below.

It is recognised that the third dot point is an enabler of the first two dot points. That said, in a number of Standards Rio Tinto believes that important issues have been left to the AIRC (such as averaging and leave entitlement) that should be addressed within the Standard.

Rio Tinto believes that this could be done through the addition of a small amount of additional detail in the Standard. This approach will ensure that true "minimum standards" apply across the economy.

The other factor that supports this approach is that the Standards need to contain sufficient clarity to enable them to apply to award free employees.

## Specific Comments

### *Maximum Weekly Hours*

Rio Tinto supports the principle that employees should not be required to work unreasonable additional hours. This is implemented within Rio Tinto through our approach to safety and the application of maximum weekly working hours.

Rio Tinto acknowledges the comments made earlier this week by the Deputy Prime Minister to the AMMA Conference recognising the importance of current rostering flexibilities for the resource sector.

The following comments highlight issues of concern to Rio Tinto that would not maintain existing arrangements.

### *Issues*

The Discussion Paper and the Draft Standard provide for the working of additional hours that are not unreasonable. A list of factors is provided to determine whether additional hours are reasonable or unreasonable.

Most Rio Tinto sites operate on a 24 hour / 7 day per week cycle. Employees work roster cycles that incorporate an amount of overtime to ensure continuous operation. The roster also requires employees to work ordinary shifts on public holidays. This method of operation has been in place for a long period of time and is well understood by employees. Employees receive a salary and benefits package that compensates them for working ordinary shifts at weekends and on public holidays.

There is a need to protect employees from a requirement to work unreasonable hours. There is also a need to recognise and provide for shift work arrangements in continuous operations.

***Paragraph 9(1) of the Standard would be assisted by the addition of the word “ordinary” to the phrase “... an employees hours of work...”. This addition supports the simple understanding of the intention of the Standard.***

***Paragraph 9(2) should be amended to include the additional words: “This may include additional hours that are routinely worked as part of a roster cycle”.***

Paragraph 9(6) refers the issue of averaging, both as to application and extent to the AIRC for potential inclusion in a modern award.

This is a critical issue and not one that should be left to the AIRC in the award modernisation process. Greater flexibility in working arrangements has been in workplaces across Australia over the past 10 – 15 years. A common feature has been the introduction of standardised pay arrangements through averaging. This has provided benefits to business in payroll system design

and implementation and benefits to employees through a smoothing of what can be significant differences in payments between pay periods.

A failure to provide for averaging that enables annual salaries to be paid would potentially undo common application of one payroll system across sites re-introducing differences between award and non award employees and cause significant cost increases for business in having to adjust payroll systems to cater for different averaging regimes.

The significant number of Rio Tinto employees on common law contracts makes it critical that this matter is dealt with within the Standard.

*Paragraph 9(6) should be amended to provide for averaging of salaries over a period of not more than 12 months.*

## **Requests for Flexible Working Arrangements**

This Standard is supported and flexible working hours arrangements are already in place at many sites.

We will continue to work with our employees to address these issues. At times, given the remoteness of our operations and the associated transport requirements (at some sites), there is a reasonable business limit to the extent of flexibility that is possible.

## **Parental Leave**

Rio Tinto supports this Standard (with one exception noted below).

Rio Tinto already provides an amount of paid parental leave to employees. We will continue to monitor developments in this area and seek to provide parental leave arrangements that are amongst the best provided by private sector employers.

### ***Issue***

Paragraph 16(2) of the NES provides that an employee wishing to extend their parental leave must do so by a request in writing at least 4 weeks prior to the end of the standard period. This period of notice is too short and is at odds with the notice period for the initial period of leave (paragraph 17(2)).

An employer needs time to determine whether the arrangements might be possible and if so, how the employee's absence is to be covered. It is also appropriate that reasonable notice is provided to the replacement employee who may be impacted by the extension.

***Paragraph 16(2) should be amended to delete "4" and insert "10" weeks notice. This will provide consistency in notice requirements for leave.***

## **Annual Leave**

Rio Tinto provides its employees with generous leave arrangements that meet and in most cases exceed the proposed Standard.

### ***Issue***

Paragraph 26(1)(b) provides that if a modern award describes or defines the employee as a shiftworker, the entitlement is 5 weeks' leave.

Given the substantial cost implications that would arise if this provision is left as drafted and the uncertainty that arises for non award employees, the minimum entitlement should be clearly articulated in the NES.

There qualification requirement for the additional weeks leave has been long settled by industrial tribunals. This paragraph significantly broadens the category of employees who would be entitled to the additional week's leave. For example, employees who work shiftwork on a Monday – Friday basis would become entitled to an additional week's leave. This is an increase over current entitlements.

The additional week of leave was initially introduced and remains a benefit payable to employees who work continuous shift work or a shift work pattern that requires them to regularly work ordinary shifts on Sundays and public holidays.

***Paragraph 26(1)(b) should be amended to limit entitlement to employees who work continuous shift work or a shift work pattern that requires them to regularly work ordinary shifts on Sundays and holidays.***

This sets an appropriate statutory minimum Standard. Increases over that minimum standard would need to be carefully considered having regard to the nature of the roster worked and the cost implications of a grant of additional leave.

## **Community Service Leave**

Rio Tinto supports this Standard.

Rio Tinto works closely with local communities and in times of emergency provides equipment and employees to assist and support required activities.

## **Long Service Leave**

Rio Tinto generally supports this Standard.

The coal industry entitlement is based on portability of industry service and is funded by a levy prescribed by Commonwealth statute.

There is a the need for the introduction of change in the way in which long service leave entitlement is managed and provided in the coal industry.

Rio Tinto has had the opportunity of reading the Submission to this review by the NSW Minerals Council and Queensland Resources Council. Rio Tinto supports that Submission.

## **Public Holidays**

Paragraph 48 provides for an employee to be absent from work on a public holiday and sets out the criteria to be used to determine whether an employee, if requested to work, is required to do so.

In earlier comments in this Paper relating to hours of work, the point was made that most Rio Tinto employees work roster cycles that require an employee to work ordinary shifts irrespective of whether it is a Sunday or public holiday. The employee's salary and benefit package recognises this obligation. It is clearly known by employers and employees working these roster arrangements.

Where an employee has a personal reason that would prevent their attendance at work, the issue is discussed with the employee and an attempt is made to meet the employee's need. This applies to absences irrespective of the day of the week.

The requirement to work planned ordinary roster shifts on Sundays and public holidays is fundamentally different to the many Monday to Friday employees who are usually not required to work on public holidays and enjoy that day away from work.

The Standard does not take sufficient note of this fundamental distinction.

***Paragraph 48 should be amended to remove the right of refusal to work a public holiday from employees working a roster system in which it is a component of the roster design that employees will work ordinary shifts on a public holiday.***

## **Notice of Termination and Redundancy**

Rio Tinto has an issue with Paragraph 55 that provides for entitlements in mergers and acquisitions. Whilst this applies to all categories of employees, it is particularly relevant to professional employees who fall outside traditional award boundaries. The introduction of the NES in this area will impose new statutory obligations on employers in relation to these employees.

The language of the Paragraph is limited to references to the old and new employer. This limitation does not match modern business realities where company structures are significantly more complex.

The following example is provided to illustrate the point:

Company A is acquired by a Rio Tinto company.

Some employees of company A are engaged by the Rio Tinto legal entity that has acquired Company A.

It is also common for other Rio Tinto companies to offer suitable alternative employment (including recognition of past service) to other company A employees. This can occur for many reasons including different company structures, future workloads, the location of suitable alternative employment in relation to the location of Company A employees and varying needs within Group companies for particular skills and experience.

Company A employees should not be entitled to receive retrenchment pay and suitable alternative employment that recognises the employee's service with company A.

The impact of this dual entitlement will be that related companies will not offer employment to employees of company A. This places those employees without a job and leaves the Group without valuable employees with knowledge of business operations.

***Paragraph 55 should be amended to provide a definition of new employer that includes the acquiring company or a related company to the acquiring company.***

In this way the obligations on the new employer to recognise past service and to offer a form of suitable alternative employment would apply to any related company to the acquiring company.