

The Rio Tinto logo consists of the words "RioTinto" in a white, sans-serif font, centered within a solid red rectangular background.

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane QLD 4000

8 March 2018

Re: Submission on Mineral and Energy Resources (Financial Provisioning) Bill 2018

Rio Tinto operates bauxite mines around Weipa on Cape York, the Kestrel underground coal mine near Emerald, and the Hail Creek open-cut coal mine west of Mackay. We welcome the opportunity to present a submission on the Mineral and Energy Resources (Financial Provisioning) Bill 2018 (the Bill). Our submission concentrates on several key points relating to the financial provisioning aspects of the Bill and the rehabilitation scheduling aspects. Rio Tinto has worked with the Queensland Resources Council (QRC) on the preparation of the QRC's very detailed submission and concurs with the content of that submission. The recommendations QRC has made to the Committee are appended here and these recommendations are supported by Rio Tinto.

Financial Provisioning

The essence of the new financial provisioning scheme, as explained in the Explanatory Notes for the Bill, is that it incorporates risk management principles such that environmental authority holders are allocated to risk categories of very low, low, moderate or high. The category will determine whether the holder will be required to provide a contribution to the pooled scheme fund, or give a surety. Queensland Treasury Corporation, in their *Review of Queensland's Financial Assurance Framework* (April 2017), was explicit in noting "...operators with an acceptable risk profile would pay an annual contribution based on their estimated rehabilitation cost at a rate that reflects their financial risk",

However, the Bill is completely silent on this fundamental risk management principle. As the Bill currently stands the "**prescribed percentage**, for an authority, means the percentage prescribed by regulation for the authority" (Schedule 1 Dictionary). It is disappointing and unfortunate that the draft regulation is not yet publicly available and so Rio Tinto is unable to comment on the relationship between the proposed prescribed percentage and the risk category, nor on how the financial provisioning scheme will affect our mining operations. We note there is nothing constraining the regulation setting the same prescribed percentage for different risk categories, contrary to risk management principles.

Rio Tinto considers that the Bill should explicitly state that the prescribed percentage for the very low risk category will be less than that for the low risk category, which in turn will be less than that for the moderate risk category.

Currently, under section 295 of the Environmental Protection Act 1994, the administering authority decides the amount and form of Financial Assurance, however that amount cannot be "*more than an amount that (in the authority's opinion) represents the total of likely costs and expenses that may be incurred in taking action to rehabilitate or restore and protect the environment because of environmental harm that may be caused by the activity*". The Financial Assurance is based on the current rehabilitation liability. However, wording of Clause 8 of the current Bill is ambiguous and can be read as expanding the matters covered by the "estimated rehabilitation cost" to include costs for

prevention of future environmental harm, which is inconsistent with the purpose of assessing current rehabilitation liability. Rio Tinto recommends that the ambiguity be removed by changing the wording of Clause 8 back to that originally proposed in the 2017 version of the Bill.

Progressive Rehabilitation and Closure Plan Schedule

The Bill requires the preparation of a Progressive Rehabilitation and Closure Plan (PRCP) and preparation and approval of a PRCP Schedule which stipulates rehabilitation milestones and management milestones throughout the life of the mine leading up to final mine closure. These milestones will be enforceable. Rio Tinto operates mines which operate for many decades. It is a fact of life in mining that mine plans are dynamic and subject to change due to range of factors such as customer requirements, market prices of products, evolving orebody knowledge, technological advances and extreme weather events.

It is inevitable that milestones in a PRCP Schedule shall have to be varied from time to time and therefore it is essential that the Schedule amendment process is practical and efficient. The amendment process set out in the current Bill will trigger a “major amendment” requiring public notification for objections if an application is made to (a) extend by any amount a Schedule milestone day by which “rehabilitation of land to a stable condition” is to be achieved, or (b) extend by more than 5 years a rehabilitation milestone or a management milestone. The Bill does allow the administering authority a very restricted ability to deem a “minor amendment” applies under certain circumstances related to (a) above if, and only if, it is considered “adequate community consultation” has occurred.

Rio Tinto considers that the process for an assessment level decision as to whether a “major amendment” or “minor amendment” to a PRCP Schedule is triggered should be consistent with the existing legislated process for Environmental Authority (EA) amendments. Section 230 of the *Environmental Protection Act* enables the administering authority to use discretion as to whether public notification of a “major amendment” EA application is required or not. The *Environmental Protection Act* does not mandate “adequate community consultation” as a prerequisite under any circumstances for a “minor amendment” EA determination. The Bill should reflect current legislation regarding EA amendments.

Rio Tinto is committed to working with Government to achieve a financial provisioning and rehabilitation-planning regime that safeguards the interests of the community, the mining industry and the Government.

Please direct any enquiries to [REDACTED].

Yours sincerely



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APPENDIX - Extract from QRC Submission

Ref.	Section	QRC Recommendation
FINANCIAL PROVISIONING		
1	Clause 8(b) s298(2)(c)(ii) s300(1)(b))	Delete Clause 8(b) and return to the version of that clause in the <i>Mineral and Energy Resources (Financial Provisioning) Bill 2017</i> . <i>Delete section 298(2)(c)(ii) and 300(1)(b) and return to the version in the Mineral and Energy Resources (Financial Provisioning) Bill 2017.</i>
2	Clause 27, 1	Amend to explicitly recognise there will be different prescribed percentages for each of the very low, low and medium risk categories which appropriately recognises the relative risk applicable to each category.
3	Clause 27, 3 to 5 Clause 32 Clause 38	Amend to the Scheme Manager <u>must</u> consider the RPCA for all applicable holders.
4	Clause 27,2(ii)	Amend so that the Scheme Manager must not only consider submissions made under Clause 28 but also be required to respond to the submissions, particularly if the submission is rejected.
5	Clause 43	Amend the notification timeframe for cessation of production from 10 days to 30 days and the very short six months for the cessation of production be extended to 12 months to align with the annual review by the Scheme Manager. In addition, Government should provide an explanation to the resources sector of how the drafting in the Bill relates to their overall position on the matter of care and maintenance mines given that companies are not relieved of their EA responsibilities simply because production may have temporarily ceased.
6	Clause 44 Clause 45	Amend the 10 business days for information provision under Clause 44(3)(b) from 10 business days to 20 business days. This extension of time also applies to Clause 45(2)(b) Scheme manager may require further information from interested entity before changed holder review decision.
7	Clause 55, 3	Amend to set the timing for the provision of sureties as 90 business days, rather than 30 business days, while retaining the Scheme Manager's discretion to extend timeframes.
8	Clause 58	Amend to require the release of surety to be within a set number of business days as it is for <i>Refund of contribution to previous holder</i> (Clause 50) and that the 30 days be reduced to 10 business days.

Ref.	Section	QRC Recommendation
9	Clause 74	Amend to include appeal rights equivalent to an 'original decision' under the EP Act for the full range of categorisation decisions made by the Scheme Manager.
10	Clauses 79 to 82	Re-consider all penalties in relation to the Scheme given the potential financial and market impacts on a company of releasing the financially sensitive and commercial-in-confidence information required for the risk categorisation system.
11	Clause 83	Amend to allow the Advisory Committee to be expanded to specifically require the representation of two resources sector representatives.
12	Part 7	Amend the transitional provisions in Part 7 to match the Government's intent not to hold both a pre-existing FA instrument and any amount paid into the Fund simultaneously, and ensure the return of such pre-existing FAs as soon as is practicable.
13	NA	Amend to clearly state that the Fund will not be used for companies who have provided sureties only, rather than leaving it to Government 'intent'.
PROGRESSIVE REHABILITATION AND CLOSURE PLAN		
14	Clause 98, s111A Clause 99, s112 Clause 104, s126C(1)(d)(i), (e), (i) Clause 104, s126D(3), (5)(a), (5)(b), (6)	Adopt or adapt definitions and terms in the Bill to reflect the recommendations in Table 2 of QRC submission.
15	Clause 104, s126C(1)(c)(iv)	Omit the provision requiring details of ongoing consultation in relation to rehabilitation to be carried out under the PRCP from the Bill given existing efforts afforded by the mining sector.
16	Clause 104, s126C(1)(d)(i)	Amend to state "... identified in the proposed PRCP schedule, <i>to the extent to which it is consistent with</i> – (i) the outcome of consultation with the community in developing the plan" given it is not possible for a proponent to fully align the post-mining land use or non-use management area 'consistent with' the outcomes of consultation with the community as there will always be differing opinions. Amend the term 'community' to 'relevant stakeholder/s' given it is too broad and casts the net too wide for the purpose of engagement for the PRCP planning part (PRC plan).
17	Clause 104, s126C(1)(d)	Remove the current rehabilitation hierarchy from any supporting guidance material, particularly as it relates to this provision, to minimise conflict with community consultation outcomes for a post-mining land use.
18	Clause 104, s126C(1)(f)	Amend to state " <i>identify the risks of a stable condition for land mentioned in paragraph (e) not being achieved, and state how the applicant intends to manage or minimise the risks, by –</i>

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		<p>(i) identifying and assessing the credible and material risks of a stable condition for an area not being achieved as it relates to environmental factors that are within an applicant's ability to control or influence, and how these risks will be managed or minimised as low as reasonably practicable; and</p> <p>(ii) identifying any other risks that are not identified in 126C(1)(f)(i), noting that these risks may not be able to be assessed".</p> <p>This focuses the risk assessment scope to assess only those matters that can be controlled by a proponent as opposed to those that can only be identified.</p>
19	Clause 104, s126D(3)	Amend to clarify that the requirement where land subject of the proposed PRCP schedule will contain a void situated wholly or partly in a flood plain, the schedule must provide for rehabilitation of the land to a stable condition, is applicable to new mining projects only (following commencement of the Bill), and not existing operations.
20	Clause 104, s126D(3)	Amend (the Explanatory Notes) to remove or replace the term 'prohibition' when referencing the permissibility of voids that have achieved a stable condition in a flood plain.
21	Clause 127 (amending s205 of the EP Act)	Amend section 47C of the <i>State Development and Public Works Organisation Act 1971</i> so that the Coordinator-General has the power to state conditions for the proposed PRCP schedule.
22	Clause 143, s223	<p>Amend the definition of <i>minor amendment (PRCP threshold)</i> to "for a PRCP schedule, means an amendment that –</p> <p>(i) does not change the post-mining land use; and</p> <p>(ii) does not materially increase the disturbance footprint or have a significant additional impact on environment values beyond approved relevant activities".</p> <p>This will better accommodate the dynamic nature of mining as it responds to external variables outside business control and streamlines the amendment processes required for both proponents and Government.</p>
23	Clause 143, s223	Amend the definition of <i>minor amendment (PRCP threshold)</i> to allow for a change in post-mining land use or non-use management area without being subject to public notification and right to submissions on the when it is consistent with a government planning instrument.
24	Clause 147, s228	<p>Amend to allow the administering authority to have discretionary rights to:</p> <ul style="list-style-type: none"> Assess a major PRCP amendment as a minor amendment despite it being inconsistent with the minor amendment (PRCP threshold); or Decide whether a major PRCP amendment needs to proceed to public notification, as it currently does for major EA amendments.
25	Clause 147, s228	<p>Amend to allow:</p> <ul style="list-style-type: none"> For major and minor PRCP amendments to be consistent with existing EA amendment provisions; and

Ref.	Section	QRC Recommendation
		<ul style="list-style-type: none"> Re-sequencing of operations, and hence rehabilitation, be exempt under the <i>minor amendment PRCP threshold</i> allowing it to be considered a minor amendment provided it does not change the post-mining land use, and does not materially increase the disturbance footprint or have a significant additional impact on environment values beyond approved relevant activities. <p>Refer also to Items 22 and 24.</p>
26	Part 15, division 1, s316H(4)	Amend to a minimum of 20 business days for updating the rehabilitation planning part of the PRCP, consistent with existing Plan of Operations processes, or longer as agreed with the Department.
27	Clause 136, s215(2)(h) Clause 180, s318ZJA	Amend to clarify that 'other amendments' are considered minor amendments.
28	Clause 125, Section 202E	Amend so that if an EA is inconsistent with a PRCP schedule, the schedule is brought in line with the EA (as is the current requirement for a Plan of Operations).
29	Clause 163, s264A	Amend either by: <ul style="list-style-type: none"> Inserting Section 264A to distinguish the residual risk component from the final rehabilitation report and omit existing Section 264(1)(c), (d)(ii), (d)(iii) and (2) from the EP Act (as an additional amendment to the Bill) to remove duplication; or Retaining existing Section 264 and omit Section 264A from the Bill.
30	Clause 169, s275A	Amend to allow proponents to amend a PRCP schedule and planning part of the Plan (PRC plan), where a surrender application is approved, for the administering authority's assessment and decision.
31	Part 15, Division 2, s316J(2)	Amend to allow an Annual Return to outline: <ul style="list-style-type: none"> The effectiveness of environmental management <u>as it relates to the EA</u> (not the PRCP); and Progress against the PRCP schedule.
32	Part 27, s754	Amend to include a minimum timeframe (preferably 12 months) for when a holder is to provide a PRCP to the administering authority. Subsequently, amend to allow this timeframe to be listed as an Original Decision in Schedule 2, so that if an officer imposes an unreasonable timeframe there is a simple opportunity for internal review of this decision.
33	Part 27, s755(3)	Amend to: <ul style="list-style-type: none"> Replace the term 'may' with 'must' to remove the administering authority's discretion; and Extend the scope of the provision (i.e. exemption to retrospectivity) to include existing non-use management areas in flood plains for the purpose of transitioning existing operations under the new PRCP framework.
34	Pat 27, s755(6)	Amend so that the decision must have regard to existing instruments, which preserve existing rights, as opposed to

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		assessing the PRCP application for an existing operation under transitional arrangements as if it were a new project.
35	Part 27, s755(4)	Amend to include consideration of a 'written agreement between the holder and the administering authority' as provided in subsection (3)(c) in subsection (4) when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
36	Part 27, s755(3)(a),(4)	Amend to include specific reference to management plans that may be required by an EA in both subsection (3)(a) and (4) when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
37	Part 27, s755(3)	Amend to include specific reference to an EIS or equivalent, where an EA does not provide information necessary to determine if an exemption applies.
38	Part 27, s755(4)	Amend subsection (4)(a)(ii) to replace the term 'in' with 'under' as it relates to the holder's EA, Plan of Operations or written agreement between the holder and the administering authority when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
39	Part 27, s755(4)	Amend to include consideration of a Plan of Operations under subsection 4(b) when determining if an existing operation is exempt from public notification in the transition to the new PRCP framework.
40	Part 27, s755(4)	Amend subsection 4(b) to clearly specify that the provision relates to the last version of the EA that was issued prior to the PRCP.
41	Part 27, s756	Amend to allow applicants to submit a mark-up of their proposed consequential amendments to the EA (as it relates to 'rehabilitation matters') together with the PRCP to ensure there is a clear division in conditions between the two documents. The administering authority should subsequently decide both documents concurrently.
42	Clause 204	Amend to include Section 303(2) (or part of it) notice to re-apply for an ERC decision for a resource activity as an original decision.
43	Clause 204	Amend to include transitional decisions, such as Notice of the date to provide a PRCP (Section 754(1)(b)), Decision not to exempt the PRC Plan from Section 126C(1)(g) and (h) (Section 755 (3)) and Decision to remove rehabilitation matters from an EA (Section 756) as an original decision.
44	NA	Amend to include a mechanism in the Bill, which allows a PRCP schedule, and hence planning part (PRC plan, to be amended on a routine basis to refine long-term milestones. This will better accommodate the dynamic nature of mining as it responds to external variables outside business control and avoid creating a perverse environmental outcome of delayed progressive rehabilitation because of the invariable need for a company to include notable time contingencies in their milestone commitments. Further, this mechanism should not be subject to public notification or right to submissions given that it does not affect the post-mining land use outcome.

Ref.	Section	QRC Recommendation
45	NA	Amend to allow for holders to be able to submit a PRCP voluntarily, without waiting to receive a notice under Section 754, which is not currently available.
46	NA	Amend to rectify the following historical errors: <ul style="list-style-type: none">• The list of original decisions in Schedule 2 of the existing Act continues to refer to Section 233(2)(b)(ii), but this section no longer exists in the Act;• The reference in the list of original decisions in Schedule 2 to Section 234(2) should be 234(1). This error is perpetuated in Clause 204(5) of the Bill; and• Section 254 (refusal of transfer) is missing from Schedule 2.