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The Research Director  
Finance and Administration Committee  
Parliament House  
George Street  
Brisbane Qld 4000



1 August 2012

Dear Sir / Madam

**Re: Inquiry into the Operation of Queensland's Workers' Compensation Scheme.**

Rio Tinto has welcomed the opportunity to make a submission to the Finance and Administration Committee (the **Committee**) in response to the parliamentary inquiry into the operation of the Queensland workers' compensation scheme (the **Queensland Scheme**).

Overall, Rio Tinto considers that the Queensland Scheme performs well. Furthermore, Rio Tinto firmly believes that a robust, competitive and financially stable workers' compensation scheme, which adequately and fairly compensates injured workers, provides employers with competitive premiums and flexibility in risk financing options is key to maintaining a strong Queensland economy. In this regard, Rio Tinto considers that more in the way of financing options should be offered to employers which in turn would help to encourage business development, growth and employment opportunities in the State.

Rio Tinto's attached submission addresses the key issues it recommends the Committee should consider as part of its review. Rio Tinto would welcome the opportunity to discuss any matters raised in its submission with the Committee or to assist by providing further written clarification where necessary.

If you have any queries relating to Rio Tinto's submission, please do not hesitate to contact Peter Tight (General Manager, Global Injury & Illness Compensation) directly on (07) 3625 5010 or peter.tight@riotinto.com.

Yours sincerely

A handwritten signature in blue ink, appearing to be "Graham Reid", written over a light blue circular stamp.

Graham Reid  
Acting Managing Director, Rio Tinto Australia

**1. *The performance of the Queensland Scheme in meeting its objectives under section 5 of the Workers Compensation and Rehabilitation Act 2003 (the Act).***

Rio Tinto believes that the Queensland Scheme meets many of the objectives under section 5 of the Act, except in relation to Section 5(4)(e), which requires “flexible insurance arrangements suited to the particular needs of industry”. In this regard, Rio Tinto considers that the current approach to assessing premium rates is restrictive and does not provide employers with options or flexibility. The Queensland Scheme currently only provides one other option for alternate risk financing, that is self insurance, which is also restrained by legislation and regulations.

**2. *How the Queensland Scheme compares to the scheme arrangements in other Australian jurisdictions.***

**Short Tail Scheme**

In Rio Tinto’s experience the Queensland Scheme performs much better than in other States where long tail schemes exist, such as Northern Territory, South Australia and Tasmania. The Queensland Scheme is a short tail scheme which focuses on return to work (RTW) systems and high levels of benefits are provided to workers. Rio Tinto considers that the Queensland Schemes’ success is largely due to the importance placed on RTW, the collaborative arrangements between workers and employers in managing work injury and the existence of the Medical Assessment Tribunals (MAT), which contribute significantly to ensuring claims durations and costs are controlled.

**Regulatory Functions**

The positive performance of the Queensland Scheme is for the most part attributable to the legislation and regulatory processes in place. Q-COMP is effective in managing the regulatory processes, such as reviews and appeals, insurer management and MAT. These regulatory processes have been in place for many years and have provided an efficient and effective method of dealing with statutory claim issues without, in the main, involving protracted legal argument and procedures. Many similar regulatory processes are now being implemented by the New South Wales government following its recent review of the workers’ compensation scheme.

Rio Tinto also suggests that the Committee review the organisational structure and regulatory framework of QComp and Workplace Health and Safety (WHS) to assess whether there might be cost and administration efficiencies to be gained by combining the two organisations into one authority, such as the WorkCover Authorities which exist in other States.



## Insurance Premiums

Rio Tinto would like to see increased risk financing options within the Queensland Scheme to allow employers greater choice and flexibility to suit business needs. Restricting the Queensland Scheme to the current 'Experience Based Rating' system, used by WorkCover Queensland or self insurance, limits the options available to employers only to those programs, which may not be the best risk financing option for many employers.

Rio Tinto notes that other States and countries have successfully provided the following variety of options:

- i. New South Wales – Scheme formula, self insurance and retro-adjusted premiums;
- ii. Victoria – Scheme formula and self insurance;
- iii. Western Australia, Tasmania, Australian Capital Territory and Northern Territory – These States and Territories are privately underwritten and provide both conventional and retro-adjusted options for employers, as well as employer based premium arrangements based on commercial agreement between the parties.

These States outsource the claims management to private insurers allowing for commercial arrangements in relation to claims management; and

- iv. In other countries such as Canada, there are options to self insure / increase risk retention by the employer and therefore reduce the insurable risk and resultant premiums. This allows greater control over claims management and costs, without exiting from the scheme as is the case with self insurance.

The Queensland Scheme's premium formula currently uses five years of claims history. Other States use various periods and methods varying from three years to risk based premiums agreed by the insurer and the employer. Rio Tinto believes the long 'claims experience' used in Queensland reduces the impact good Occupational Health and Safety (OHS) and RTW systems have had on premiums.

## Insurer Regulation

The regulation of insurers focuses mainly on self insurers and does not apply many of the same rules and processes to WorkCover Queensland. Rio Tinto notes that in other States where claims and premium management are outsourced or privatised, the regulator being the WorkCover authority, regulates the insurers under a common framework. Q-COMP does not have the same legislative or regulatory authority and therefore imposes different rules on self insurers to those that apply to WorkCover Queensland. This creates inconsistency in the way claims are managed between insurers.

Rio Tinto supports less regulation and more freedom for employers to manage their business, however, considers that the same regulatory framework should apply to

WorkCover Queensland in relation to functions such as claims management, reviews and appeals and stakeholder engagement as those that apply to self insurers. This will ensure consistent and fair treatment of workers and employers across the Queensland Scheme.

#### Third Party Management

The Queensland Scheme is the only scheme which has a central claims management model through WorkCover Queensland. Other States allow for third party management of workers' compensation claims and premiums. Rio Tinto believes it is the strength of the legislation and the regulator that dictates the success of the scheme, not who manages the claims. Accordingly, Rio Tinto encourages consideration of the merits of third party claims management and would support a full and proper assessment of the actual cost/benefit to the Queensland Scheme being undertaken.

#### Self Insurance

Queensland currently has the most stringent regulatory requirements in relation to access to self insurance than any other jurisdiction, making self insurance as an alternate risk financing option prohibitive for many Queensland employers. Further comment is provided about self insurance in section 5 of this submission.

#### Return to Work

Unlike in other States, the Experience Based Rating (EBR) premium program used in the Queensland Scheme to assess employers premium rates does not provide adequate financial recognition to employers which have implemented rehabilitation and return to work programs across their organisations.

The New South Wales Coal Scheme provides an annual premium rebate to employers who meet certain benchmarks and targets in relation to return to work and claims management. Rio Tinto recommends that similar financial recognition reflected in the way premiums are set or through a process similar to the Coal Mines Insurance Scheme should be considered by the Committee.

#### Claims Decisions

The current legislation requires insurers, WorkCover Queensland and self insurers, to decide whether to accept or reject claims within 20 business days. Rio Tinto considers this timeframe to be too short in some circumstances and recommends introduction of a 'pending' decision stage for complex cases, so that further investigations can take place whilst provisional payments are made to the worker. Rio Tinto notes that a similar interim stage has been successfully implemented in other States.

### ***3. WorkCover's current and future financial position and its impact on the Queensland economy, the State's competitiveness and employment growth.***

Rio Tinto does not intend to specifically comment on WorkCover's current and future financial position, except to reinforce that it firmly believes the Queensland Scheme must be well provisioned and competitively priced. Rio Tinto acknowledges and welcomes the fact that the Queensland average scheme rate is the second



lowest in Australia and believes this position must be maintained or improved upon if possible. Rio Tinto also believes more competition and innovation in relation to risk financing, claims management and customer service options will greatly assist in achieving a strong Queensland Scheme.

**4. *Whether the reforms implemented in 2010 have addressed the growth in common law claims and claims costs that was evidenced in the Queensland Scheme from 2007-08.***

Rio Tinto supports initiatives that address the rising cost of workers' compensation common law claims and believes that workers should be adequately compensated for injuries sustained at work.

In this regard, Rio Tinto believes that the 2010 reforms which focussed on legal costs will bring about the greatest change to the Queensland Scheme. Legal costs add greatly to the cost of the scheme, but reduce the amount of compensation received by workers. However, the changes in 2010 which, amongst other changes, allowed for cost orders against plaintiffs whose cases are dismissed and increased the onus of proof on workers to prove employer fault, only go part of the way to addressing the growth in common law costs.

In particular, Rio Tinto considers that a broader review of the cost of common law claims should occur, including consideration of the investigation process undertaken and legislative timeframes required by insurers to determine a claim at the statutory level. The review of lawyer advertising protocols recommended in the 2010 reforms should also be pursued.

**5. *Whether the current self insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment.***

Rio Tinto considers that self insurance should be one of a suite of alternate risk financing options available to employers to finance workers' compensation risk in Queensland. Further choice flexibility would enable employers to employ the most appropriate risk financing model to meet their organisation's requirements. Nonetheless, Rio Tinto supports the notion that only employers that have a high safety systems culture, best practice RTW systems, are financially viable and able to meet their workers' compensation liabilities should be approved to self insure.

Rio Tinto provides the following further comments about improved self insurance arrangements in relation to the provisions of Chapter 2 Part 4 of the Act - *Employer's self insurance*.

**Related Bodies Corporate**

The requirement in Section 69(3) of the Act, which requires that a self insurer include all related bodies corporate in a group licence arrangement, so that all entities within the group become '*jointly and severally liable for the liabilities of the group*' is restrictive, does not afford flexibility to employers managing their workers' compensation risk and does not allow for complex corporate structures, such as Rio Tinto's.

In particular, many large organisations have within their corporate structure companies which are large employers in their own right which operate as separate

entities. Rio Tinto recommends that this requirement is reviewed by the Committee, with a view to achieving more flexibility in the self insurance application and renewal process.

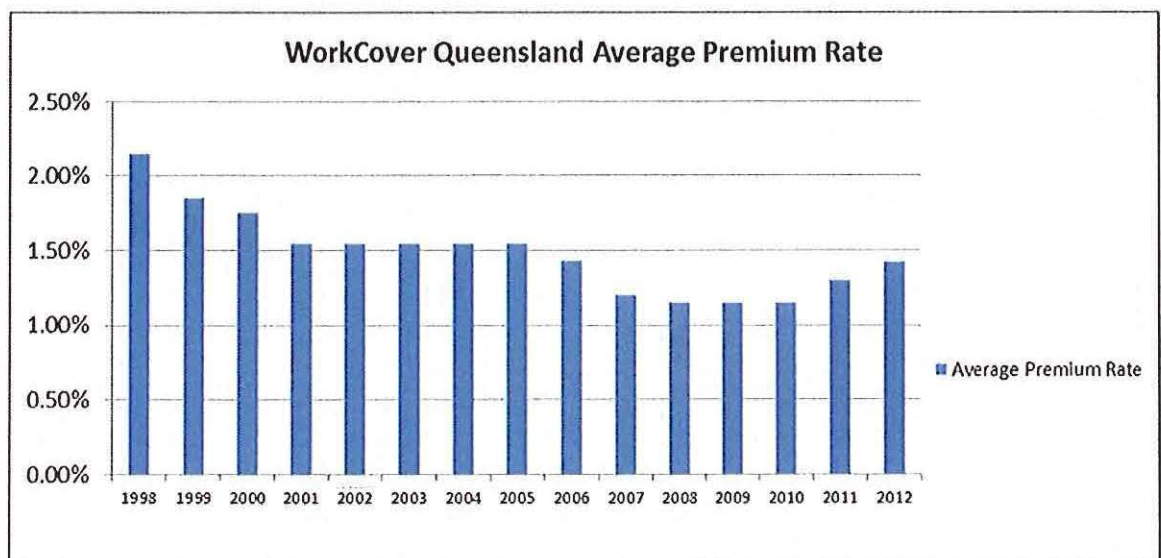
#### Number of Full Time Employees

Queensland currently has to meet the highest threshold of workers employed (minimum of 2,000) to access self insurance by a single or group employer in Australia. Rio Tinto considers that the threshold should be closer aligned to those in other States, where the threshold is 500 workers or financial viability is assessed. Such realignment will afford Queensland businesses more opportunity to self insure, provided their business meets the legislative requirement around safety, RTW and financial viability.

Other schemes across Australia use financial viability as the main indicator of an employer's appropriateness to self insure, with the number of employees as a secondary indicator. Rio Tinto regards financial viability as a more robust assessment of an employer's ability to fund and manage their risk and liabilities.

Rio Tinto notes that in the debate about the threshold number of workers, concern is often raised that WorkCover Queensland will be left as the insurer of last resort, resulting in increased premiums to those employers insured through WorkCover Queensland. However relevant data shows that the average premium rate has, since the introduction of self insurance, trended down from around 2.25 per cent in 1998 to 1.45 per cent in 2012.

While it is not Rio Tinto's position that this trend is due solely to the introduction of self insurance, as many other factors affect the average premium rate, average premiums have generally trended down since self insurance. This can be seen in the following graph. The increase in recent years seen in the graph has generally been attributed to the global financial crisis.



Source: *WorkCover Queensland - A status review 1997-2011*