Rio Tinto

Environmental Protection Act 1986 Amendment Consultation

By email: EPActamendments@dwer.wa.gov.au

28 January 2020

Dear Sir/Madam

Environmental Protection Act 1986 (WA) - Exposure Draft Bill 2019

Rio Tinto welcomes the opportunity to make a submission to the Department of Water and Environmental Regulation (DWER) on the proposed and potential amendments to the *Environmental Protection Act 1986* (WA) (EP Act).

This submission provides comments on both the Exposure Draft Bill and the 'Further issues for consideration' section identified in the DWER's paper entitled *'Modernising the Environmental Protection Act'* (October 2019) (Discussion Paper).

Rio Tinto's operations in Western Australia require ongoing development of both existing and future projects to maintain production levels and export volumes. This means that in the coming years we will require approvals more reflective of a business in an expansion phase, with significant investment required to sustain our iron ore business in Western Australia. With all of our operations we have sought, and continue to seek, ways to minimise our environmental impact while achieving timely approvals for our development plans.

Rio Tinto is supportive of amendments that will streamline the environmental approval and regulatory processes under the EP Act, while maintaining a strong level of protection to the environment, as well as a robust and transparent assessment and decision-making regime.

We appreciate that numerous amendments have been proposed that intend to improve the efficiency of the existing processes under the EP Act, including the key impact assessment, approval and licensing processes under Part IV and Part V.

However, noting the EP Act is over 30 years old and has been subject to multiple amendments over time (making it unnecessarily complex and unwieldy in many places), Rio Tinto considers that in order for there to be more significant improvement of environmental regulation in Western Australia there should be a more substantial review and revision of the EP Act in conjunction with reviews of the various other Acts and regulatory processes that interact with, and often duplicate, processes under the EP Act.

For example, in order to develop any project a proponent is required to engage and interact with multiple agencies and regulatory systems, often on numerous occasions for the one project, and this has been increasing in recent years. This has led to significant duplication and regulatory burden, but not necessarily

improved environmental outcomes. A comprehensive review and removal of unnecessary duplication can lead to improved processes, whilst maintaining robust environmental protections. We welcome the current 'Streamline WA' initiative and suggest that separate to the current proposed amendments to the EP Act addressed below there should be an opportunity for a more comprehensive review and reform of the EP Act and related legislation regulating the resources sector in Western Australia.

In making this submission, Rio Tinto has had regard to the COAG principles of best practice regulation.

Exposure Draft Bill

Part II (Environmental Protection Authority)

Duties of Chairman

The proposed changes to the operation of the Environmental Protection Authority (EPA) to make processes more efficient are supported, in principle. However, we note that in proposing to enable the role of the Chairman to be part-time, it is imperative that any appointment of a Chairman on a part-time basis does not compromise the independence of the EPA or otherwise limit the level of service and availability of the EPA to perform its statutory functions under the EP Act.

Meetings and decisions of EPA

While the changes to Part II of the EP Act to allow increased flexibility for the EPA to perform its functions are supported, this flexibility should be underpinned by robust operating procedures to ensure that all meetings and decisions of the EPA are consistent with legislative requirements, properly recorded and legally sound.

Part IV (Environmental Impact Assessment)

As noted earlier, we appreciate that numerous amendments have been proposed that are intended to improve the existing processes within Part IV of the EP Act. However we consider that for there to be comprehensive improvement of environmental regulation in Western Australia there would need to be a comprehensive review and revision of the EP Act, particularly Part IV, within the context of a review of the various other regulatory processes and legislation that interface with, and often duplicate, processes under the EP Act.

Section 38 (Referral of proposals to Authority)

The proposed changes to section 38 which provide additional flexibility for proponents to amend or withdraw a proposal prior to a decision on assessment (without impacting the right to refer the proposal in future) are supported. In relation to section 38(5j)(a) we submit that the drafting should read 'under section 38AB, a referral of the proposal is taken to have been withdrawn'.

Section 38AA (Proponent may amend a referred proposal)

The proposed changes to section 38AA would expressly allow a proponent to seek the EPA's approval to amend a proposal at any time prior to an assessment decision. The EPA retains a discretion to refuse to approve the amendment of a proposal.

Given that this provision applies only in the limited period preceding an assessment decision under section 39A (cf. section 43A), the preferred approach would be for proponents to have full flexibility to amend their proposals if so required, to ensure the decision to be made by the EPA under section 39 is based on the

most accurate information available and to avoid delays and costs associated with withdrawal and re-referral.

Section 38A (Request for further information)

The proposed amendment to section 38A(1) introduces a new power for the EPA to prescribe a time limit for the provision of additional information requested in relation to a proposal. The EPA would have a complementary power to declare a referral to have been withdrawn if the information is not provided strictly in accordance with the prescribed period (proposed section 8A(3)).

This proposed amendment may present difficulties for proponents. There are many reasons why providing additional information within the time specified in a notice may be problematic (e.g. availability of consultants, site access limitations, due consideration of the implications of new information). An arbitrary time limit which carries this risk may result in some proponents providing information to the EPA with undue speed, in circumstances where more time is likely to produce a better quality submission (which would reduce the EPA's administrative burden). In any event, we suggest that using this power to effectively send a proposal back to the starting line at this stage will not provide any environmental benefit or reduce the EPA's workload.

Therefore, Rio Tinto respectfully submits that the existing stop-the-clock mechanisms are sufficient, as they leave the onus on the proponent to comply before the assessment can progress and before the EPA (and related decision-making authorities (DMAs)) are required to undertake further work.

For these reasons, Rio Tinto submits that the proposed amendment is not required and risks creating a further administrative burden on the EPA, other DMAs, the community and the proponent. However, if such an amendment is to be progressed, a minimum 'prescribed period' should be included in the legislation (of not less than six months) and the EPA should be expressly empowered to extend the period prescribed in the notice from time to time.

Section 39A (Authority to decide whether to assess referred proposals) and Section 44 (Report by Authority on assessment of proposal)

Proposed section 39A(3), which confirms that the EPA, in making an assessment decision on a proposal, may take into account other decision-making processes that will mitigate potential impacts of the proposal on the environment, is supported insofar as it will reduce duplication in the assessment process and with those other processes.

Proposed section 44(2AA), which explicitly empowers the EPA to consider other statutory decision-making processes in undertaking its assessment is also supported for the same reasons.

Section 39B (Strategic assessments and derived proposals)

The proposed amendments to section 39B includes minor changes to what constitutes a 'derived proposal'. However, there has been no substantial change to the provision that allows the EPA to refuse to declare a proposal to be a 'derived proposal' if it considers environmental issues raised by the proposal were not adequately assessed in the strategic assessment, where there is significant new information or where there has been a significant change in the environmental factors since the assessment.

Rio Tinto suggests there be further consideration of the implications of section 39B(4) and how provisions could be introduced into the EP Act to improve the longevity and effectiveness of strategic assessments.

By way of context, strategic proposals for resource operations may have a life of 50-100 years while the state of the environment, our collective knowledge of environmental values and processes and our

approach to impact assessment are all constantly evolving. Therefore, it is considered highly likely that the criteria in section 39B(4) (summarised above), that allow the EPA to refuse to declare a proposal to be a derived proposal will be met within a much shorter timeframe (potentially within 10 years).

To illustrate, there have been three new/revised environmental factors introduced by the EPA in the last twenty years; subterranean fauna, social surroundings and greenhouse gas emissions (in progress). Therefore, all current mining proposals would be unlikely to be declared 'derived proposals' if a strategic assessment had been conducted twenty years ago.

The considerable risk that future proposals will not be considered 'derived proposals' decreases the value and utility of the strategic assessment process for both proponents and Government. Currently, if a referred proposal is not declared a derived proposal, then the operation of the Act requires the proposal to be referred under section 38, effectively starting a new impact assessment process.

To improve the utility of the strategic assessment process, Rio Tinto suggests the following reforms:

- provision for strategic assessments and conditions to be updated if significant new information becomes available (excluding derived proposals that had already been approved). This would allow the strategic assessment to be kept up to date in terms of environmental factors, new information and new projects and would increase the likelihood that a new referral would be declared a derived proposal;
- in circumstances where the criteria in section 39B(4) are met, a process could be introduced that confines the assessment to the relevant new issues, information or change. This would allow any new issues to be assessed but ensure the issues already addressed in the strategic assessment would not need to be re-assessed; and
- a provision to be included providing a statutory timeframe for the EPA to declare whether a referred proposal is a derived proposal or not.

Further, we recommend that as part of the reform process, clarity be provided concerning the interaction between provisions relevant to strategic and derived proposals and other key provisions in Part IV. For example, further clarity could be provided in relation to the applicability of section 41, 45C and 46 of the EP Act to referrals and decisions in relation to strategic and derived proposals.

Section 40 (Assessing referred proposals)

Proposed section 40(1A) applies to the assessment of proposals that constitute a 'significant amendment' of an 'approved proposal' and would require the EPA to have regard to the 'cumulative impacts that the implementation of the approved proposal and the significant amendment might have on the environment.'

We are unsure what the intention of this proposed new sub-section is, and there is no commentary provided in the Discussion Paper. On the face of it, the requirement for the EPA to have regard to the impacts of an 'approved proposal' in addition to the 'significant amendment' raises potential difficulties. In these circumstances, it is the cumulative impacts of the approved proposal *as amended* that are more likely to be relevant. It is recommended that the drafting of this clause be reviewed for clarity and to avoid unintended consequences, for example, a requirement for the reassessment of an already approved proposal.

If this requirement is to apply specifically to proposals that constitute a 'significant amendment' of an existing 'approved proposal', the definition of 'significant amendment' is critical.[1] The current definitions proposed in the Exposure Draft Bill mean that a significant proposal that includes any amendment (significant or otherwise) of an existing approved proposal would trigger this mandatory cumulative impact assessment requirement. This gives rise to a potential unnecessary burden on the EPA's resources.

Further, we respectfully submit that this provision is inflexible and does not provide the EPA with discretion in circumstances where only limited environmental data is available for existing proposals and in particular, proposals subject to superseded impact assessment procedures and practices. Impact assessment requirements have evolved significantly since the commencement of the EP Act such that an assessment of cumulative impacts associated with existing operations may be impossible in certain circumstances.

By way of example, consideration of cumulative subterranean fauna impacts in the assessment of a revised proposal would present a challenge in circumstances where subterranean fauna was not a factor when the original proposal was approved. In those circumstances no data would be available on the historical losses of subterranean fauna associated with the original project. Accordingly, the proposed amendment could create potential uncertainty for assessments where consideration of historical impacts is unreasonably difficult or not possible.

In any event, the impacts associated with existing and historical operations are necessarily reflected in the environmental baseline, which describes the current state of the environment and the conservation significance of species and ecological communities based on their rarity and threats (such conservation status will reflect historical impacts). Therefore, historical impacts are already taken into account in an impact assessment and there is a risk of double counting these impacts if historical impacts are included in a cumulative impact assessment (which is usually limited to reasonably foreseeable future projects).

Rio Tinto suggests that the risks outlined above could be simply addressed by changing the wording of section 40(1A) from the EPA *must*, to the EPA *may* assess amended proposals in the context of an approved proposal.

Sections 41 and 41A

The proposed amendments to section 41(5) and 41A confirm that proponents may continue to implement approved proposals while amendments are under assessment. These amendments are supported.

Section 43 (Minister may direct Authority as to assessing proposal)

Under section 43(3A) as amended, the Minister can direct the Authority to assess or re-assess a proposal more fully/publicly (based on new information or failure to consider something in the initial decision) even if the Minister has dismissed an appeal against a decision not to assess. Rio Tinto considers the preferred approach would be for any trailing risk for projects determined to not require assessment by the EPA to be closed out absolutely upon the dismissal of any appeal by the Minister. We request that the amendment is redrafted so that the Ministerial power to direct the EPA to re-assess a proposal is closed out following determination of an appeal against a not assessed decision.

[1] 'Significant amendment of an approved proposal' is defined in section 3 of the Exposure Draft Bill as *'a significant proposal, as defined in section 37B, that is or includes the amendment of an approved proposal.'*

Section 43A (Amendments to proposals during assessment)

The proposed amendments to section 43A will provide more flexibility to proponents to amend proposals during assessment irrespective of whether the change is likely to significantly increase the impact on the environment. This amendment is supported as it removes the requirement for an assessment of significance in respect of the change before assessment of environmental impacts. Given the EPA has full flexibility to reject the change, increase the level of assessment or change the scoping document (i.e. repeat its assessment functions), this change will reduce the regulatory burden associated with amendments to proposals without compromising the protection of the environment.

Section 45 (Procedure for deciding if proposal may be implemented)

The proposed amendments to section 45 to allow key DMAs to be identified and limit the statutory consultation requirements to those key DMAs identified by the Minister are supported. However, to ensure DMAs can proceed with their assessments immediately following the Minister's decision, an amendment of section 45(7) is requested: the requirement for the Minister to give notice to DMAs should be expressed as mandatory ('*will*') rather than discretionary ('*may*'). This is required to ensure DMAs can immediately proceed with making required decisions following notification from the Minister that they are no longer constrained by section 41.

Rio Tinto also submits that a specific statutory timeframe be included for DMAs to respond and reach agreement during the section 45 agreement and condition setting process. We submit this is reasonable given that all DMAs (or agencies related to those DMAs) would have been consulted or have inputted on several occasions during the impact assessment process.

Further, to provide consistency and transparency in the decision-making process, we recommend that the range of potential decision-makers and the circumstances in which they will be considered to have a 'major role' for the purposes of Ministerial consultation be identified in guidance material.

The proposed amendment to section 45(5AA), which confirms that Minister's power to serve a 'consolidated' statement for an approved proposal as amended is also supported.

Proposed section 45(5A) and (5B) include examples of conditions that may be imposed by the Minister. While the inclusion of examples of some types of conditions may provide additional clarity for stakeholders, Rio Tinto considers that this would be better addressed in guidance material to ensure flexibility in the future.

The proposed condition that requires the preparation, implementation and adherence to an Environmental Management System (EMS) in (5B)(h) is respectfully not supported. An EMS is a system for achieving environmental outcomes (as opposed to a specific environmental outcome) and compliance with a condition relating to the implementation of an EMS would be difficult to assess compliance with. Conditions which impose requirements to comply with or implement environmental management plans or improvement plans are more clearly auditable and linked to environmental outcomes.

Further, the proposed power to require proponents to 'substantially commence' a proposal within a specified period in proposed section 45(5B)(a) is, with respect, not reasonable and not necessary for the protection of the environment. Proponents should continue to have flexibility as to whether and when they commence an approved proposal. Such a condition may put a proponent in a position whereby it breaches a condition (which is an offence under the section 47 of the EP Act) in circumstances where it fails to 'substantially commence' a proposal by a date determined by the Minister. There are many circumstances where a proponent may need to delay the commencement of a proposal (including waiting for other regulatory

processes outside of its control to occur) If this proposed amendment is merely intended to clarify the Minister's power to impose a time limit on commencement of an approved proposal (i.e., current practice), we suggest the proposed amendment be deleted and text be included elsewhere in section 47 which simply confirms that an implementation condition may limit the period during which a proposal may be commenced (which limit can be extended by amendment to the implementation condition).

Section 45B (Implementation conditions apply to approved proposals revised by significant amendments)

Rio Tinto supports the amendments to section 45B. However, we note that, while these amendments refer to a significant amendment of an approved proposal being referred under section 38, there is no other clear provision in the EP Act regulating the referral of significant amendments. We suggest the EP Act would benefit from further clarity in respect of the referral of significant amendments, which we expect would be best addressed in section 38 to require referral of significant amendments under that section.

Section 46C (Changes to implementation conditions without inquiry or assessment)

The changes to section 46C(1A) are supported as they remove a compulsory assessment process for a change to conditions irrespective of the environmental implications of the change. The proposed test, modelled on section 45C, is practical and well understood.

Section 47A (Duration and revocation of implementation agreement or decision)

Proposed amendments to section 47A introduce a new power for the Minister to revoke an implementation agreement. This power is generally supported as it is beneficial for all stakeholders to be able to close out project approvals and obligations under them, if they are completed or never commenced, and to remove confusion between some implementation agreements if they cover numerous proposals. However, for the reasons discussed above, we do not consider it reasonable for the Minister to have the power to require a proponent to 'substantially commence' a proposal by a specified date. The Minister should **not** be empowered to revoke an implementation agreement or decision for failure to 'substantially commence' the proposal without the agreement of the proponent.

Section 48AA (Fees and charges relating to referral and assessment of proposals)

Rio Tinto generally supports cost recovery for referral and assessment of proposals under Part IV of the EP Act on the basis that recovery of these costs will support robust and efficient assessments. We note that the intention is, and hence the implementation should ensure, that Part IV related cost recovery goes directly to providing additional resources for Part IV processes. There should be full transparency for how costs are calculated and applied and the efficiency gains that result from this. As the detail of these fees and charges, and the circumstances in which they are to be imposed, is to be deferred to regulation, Rio Tinto would like a reasonable opportunity to review the Regulations before they are finalised.

Part V (Environmental Regulation)

Rio Tinto supports the proposed amendments to Part V regarding clearing permits and licensing, subject to further comment below on specific elements.

However, it is noted that aspects of the reform package are to be deferred to regulation. For that reason, Rio Tinto requests a commitment to rigorous consultation on regulations and other subordinate instruments, with key stakeholders afforded early and reasonable opportunities to contribute. It will be important to ensure that these reforms are introduced and the amended regimes operate effectively in practice.

Part V – Division 2 – Clearing permits

Section 51B (Declaration of environmentally sensitive areas by regulation)

Section 51B as amended provides for declaration of environmentally sensitive areas (ESAs) by regulation, removing the need for ESAs to be declared by Ministerial notice and subsequent gazettal. Rio Tinto supports the objective of ensuring ESAs remain current and relevant; however is concerned the process of regulation-making needs appropriate checks and balances. Therefore, the amendment should clarify that consultation is still to occur and should only be foregone when it has already occurred under another Act.

Section 51DA (Referral of proposed clearing to CEO for decision on whether a clearing permit is needed)

The introduction of a requirement to refer proposed clearing under section 51DA appears to be a useful amendment in providing certainty in some circumstances and avoiding unnecessary assessment of trivial levels of clearing. Conversely, there is the potential for the referral process to be an extra step in the approval process, potentially extending timelines. This may cause unnecessary delays, particularly when there is a high degree of certainty that the proposed clearing would require assessment.

Accordingly, Rio Tinto suggests that an option for proponents to elect to proceed straight to a clearing permit assessment and not wait 21 days for a referral decision be considered when it is clear that an assessment and a permit is required. This may involve inclusion with the application of a brief pre-assessment against the four criteria described in section 51DA(4) to demonstrate full assessment is warranted, in which case subsections 51DA(2), (3) and (8) may all require adjustment.

Section 51F (Effect of referred proposal on decisions about clearing)

This proposed new section precludes the grant of permits that are related to a 'referred proposal', which is not separately defined. The purpose of this new section is not clear. We can see numerous circumstances where a clearing permit may be required for clearing that could be said to be somehow related to a referred proposal, but which clearing is primarily for multiple other purposes and hence should not be subject to a blanket restriction but should be considered on its merits under the existing provisions, including sections 41 and 41A which are sufficient.

Other Minor Amendments

The removal of reference to the *Soil and Land Conservation Act 1945* in section 51I(2)(c) and inclusion of related replacement provisions are supported as practical changes.

Rio Tinto supports the modernising and practical amendments to section 51R regarding the use of digital imagery.

Rio Tinto submits that section 51M(1B) should use ‘may’ instead of ‘must’.

Similar to exemptions afforded under the *Mining Act 1987* (WA) for low impact activities (eg approved Programmes of Work for exploration activities), an exemption to the requirement for a clearing permit where there is an approved Mining Proposal in place should apply. We consider this is reasonable given the level of rigour from an environmental perspective undertaken by the Department of Mines, Industry Regulation and Safety through the Mining Proposal assessment process.

Part V Division 3 – Licences

Broadly, Rio Tinto supports the intention of significant reform represented by the proposed amendments to licensing provisions. Combining prescribed activities and controlled works should benefit operations, and

reduce administrative burden and duplication by enabling the move from completion of works straight to activity, with conditions set up front rather than needing to wait for these to be issued post works. The change linking licences to activities rather than to premises introduces a practical flexibility which Rio Tinto expects will benefit operational management and improve management of the risks of environmental harm.

Rio Tinto suggests that the interchangeable use of the terms 'controlled work' and 'work' in the proposed amendments be carefully reviewed for clarity, given each of these terms is separately defined.

Further, there remains uncertainty pending consequential amendments to the EP Regulations regarding the scope of 'controlled work' (and any exemptions that may apply) and the definitions of activities and related thresholds. Rio Tinto's preference would be for the definition of ‘controlled work’ in section 52 to expressly exclude maintenance, similar to existing section 53, rather than deferring this important exemption to the Regulations. Rio Tinto otherwise looks forward to consultation regarding the Government’s intentions in relation to all aspects of the Regulations.

Section 53D (Requirements as to applications)

In relation to the information requests, Rio Tinto suggests section 53D(3) be amended to ‘the CEO *may* decline to deal with the application’ rather than *must,* to provide for discretion in decision-making regarding the adequacy of a licence application under section 53C and minimise risk of challenges to decisions over potentially non-conforming applications.

Section 60A (Effect of referred proposal on decisions about licences)

This proposed new section precludes the grant, amendment or transfer of licences that are related to a 'referred proposal', which is not separately defined. Similar to our request in respect of section 51F (above), Rio Tinto requests that this section be amended to explicitly confirm that this provision does not apply to decisions in respect of licences that are within the boundaries of a strategic proposal that is under assessment.

Sections 61 and 61A (Licence Conditions)

Section 61 introduces the potential for conditions to require compliance with waste levies and a link with payment of levies for environmental monitoring programmes as amended in proposed Part VIIB. Rio Tinto is supportive of the concept of contributing to environmental monitoring programmes as described under the proposed Part VIIB, as we understand these relate to State or regionally significant monitoring programmes designed to remove duplicated effort by industry or government.

However, the effectiveness of this provision will depend on consequential arrangements, such as the development of appropriate governance frameworks to manage implementation. For example, Rio Tinto expects calculation and apportionment of contribution, in terms of cost or resources, from both industry and government will be scientifically robust; and contributions will be matched to proportion of known or assessed emissions, and impact or risk, and inclusive of natural or baseline conditions.

Rio Tinto also strongly submits it is appropriate for licensees required to contribute to such programs to have a right of appeal under Part VII in respect of contribution requirements, or other matters related to the monitoring programme. Consultation on the Regulations and frameworks will be important to achieve both the fairest arrangements and the most useful outcomes for each monitoring programme supported by this provision.

Proposed section 61A includes examples of conditions that may be required for licences. As discussed in relation to section 45(5A) and (5B) above, the power to impose a condition that requires the preparation, implementation and adherence to an EMS in section 61A(r) is not supported.

Section 63 (Offences as to conditions by persons other than the holder of licence)

Rio Tinto supports the clarification in proposed section 63 that both the licence holder and person undertaking the activity commit an offence if they carry out a licensed action which contravenes a condition. This is expected to assist operational management with respect to impressing on relevant third parties (e.g., contractors) their shared obligations in ensuring the licensed activity is conducted as stipulated.

Part V Division 5 – Defences

Section 74 (Defence of authority of this Act)

Rio Tinto supports the proposed amendments to the defences under section 74C and section 74D as reasonable and sensible amendments. However, the proposed section 74A(2) is, with respect, unduly narrow and potentially unworkable for licensees, and therefore should be removed until further consultation on how this section would function in practice.

Part VII – Appeals

Rio Tinto supports the proposed amendment to section 101(3)(d) which confirms that a proposal may be implemented while an appeal decision on the conditions is pending. This amendment is made in circumstances where appeals on conditions can only be made by proponents and would generally be to clarify or streamline requirements. Therefore, there is low environmental risk in the proponent implementing the proposal under the published conditions while the appeal decision is pending. This removes a potential roadblock for proposal commencement.

Section 101(3) also includes amendments regarding time limits on lodgement of appeals. Three of the four subsections have been amended to 21 days from the current 14 day window. Rio Tinto supports these changes; however, suggests that section 101(3)(e) be amended to 21 days for consistency - both with the rest of this section and with other appeals provisions of the EP Act. It is anticipated this will minimise any confusion regarding appeals timeframes.

An aspect not covered in the proposed amendments is the introduction of an express power, to be provided to the Minister or Appeals Convenor, to compel DMAs or third parties to respond to appeals within a specified timeframe (or as otherwise agreed in writing). We suggest this be included to encourage the timely resolution of appeals.

Part IXA – Bilateral agreements with the Commonwealth

Rio Tinto strongly supports the proposed amendments which would ensure the State Government is able to fully implement bilateral agreements agreed with the Commonwealth.

However, while the issue is not expressly articulated in the proposed amendments, Rio Tinto notes that it would not support a regime which could effectively charge proponents twice across State and Commonwealth jurisdictions for the assessment of the same project. We suggest consideration should be given to the potential for this as part of these proposed amendments.

Schedule 2 – Matters in respect of which regulations may be made

Rio Tinto does not support the introduction of a head power for accreditation of consultants without further consultation with industry on potential implications. Further detail on how such an accreditation scheme would operate, and the tangible benefits it would provide, should occur before a provision such as this be included in the proposed amendments.

Further issues for consideration

Rio Tinto has considered the "further issues for consideration" provided in the Discussion Paper. All comments on these further issues are preliminary as the implications of any future amendment will depend on the final drafting of the legislation and associated regulations.

Therefore, it is important that full public consultation on the wording of proposed amendments and regulations is undertaken.

There is one issue for further consideration identified in Section 3.6 of the Discussion Paper that Rio Tinto considers should be included in the EP Act amendments. The inclusion of a specific power to combine or split Ministerial Statements would provide flexibility for proponents to consolidate their environmental management of multiple small projects. It would also provide commercial flexibility to split projects and change proponent if required. It would not have any detrimental consequence for environmental protection.

There are several ideas that involve making assessment tools (impact assessment policies, significant impact criteria, statutory criteria for EPA recommendations) mandatory or bringing them into the EP Act. Rio Tinto does not support amendments that will reduce the discretion of the EPA to make merit-based assessments based on project specific considerations with due regard to its published guidance. The flexibility and transparency of this process, along with the appeal provisions, provides a solid basis for decision-making.

Rio Tinto would also not support making any aspect of the assessment process confidential (with the exception of the existing commercial confidentiality provisions) as suggested in section 3.5, as this would decrease the transparency of the assessment process.

Section 3.6 of the Discussion Paper includes some ideas about decreasing the potential for proposals or approval conditions (Part IV and V) to be amended. Rio Tinto considers that it is entirely appropriate for there to be flexibility to amend approvals as long as environmental impacts are not additional or different and would not support changes that increase the mandatory assessment of these types of changes. This would involve an increase in regulatory burden without any environmental benefit.

Section 3.8 of the Discussion Paper considers further reforms relevant to clearing. Rio Tinto considers the potential to move clearing provisions to a standalone part of the Act would not make a significant difference to environmental outcomes but is not opposed. Rio Tinto does not support the alternative proposal of creating a separate native vegetation Act as this would only add another layer of regulatory complexity without necessarily improving native vegetation protections. However, Rio Tinto notes there should be consideration given to how the current clearing provisions interact with the *Biodiversity Conservation Act 2016* (WA) to ensure these processes are as streamlined as possible, while not compromising environmental protections.

The Discussion Paper identifies the potential for the EP Act to require financial assurances on all approvals to protect against environmental impacts and address financial risks to the Government. The current EP Act already provides decision-makers with a discretion to require the provision of a financial assurance as a condition of an approval instrument.

This Discussion Paper also raises the possibility of a review of the EP Act's offences and defences, and identifies a suggestion that 'consideration should be given to introducing civil penalties and civil remedies and the options of third-party enforcement'. If there was to be any such review there would need to be extensive further consultation.

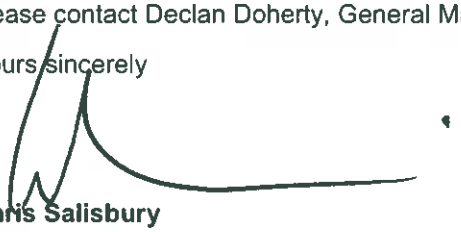
Rio Tinto submits that the wording 'accompanied by' should be amended through the EP Act, in light of the *Forrest & Forrest* High Court decision.

Rio Tinto supports the transition of business and government away from gendered terms. Therefore, there is a preference that the specific reference to an EPA Chairman in Part II is replaced with Chair, Chairperson or other non-gendered terminology.

Conclusion

Thank you again for the opportunity to comment on the proposed amendments to the EP Act, and we would welcome the opportunity to discuss this submission further with you. Should you require further information, please contact Declan Doherty, General Manager, State Agreements and Approvals.

Yours sincerely



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