

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

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31 May 2019

Dear Assistant Director General

**Review of the *Aboriginal Heritage Act 1972 (WA)* - Rio Tinto Iron Ore response to Phase Two Consultation Paper**

Thank you for providing Rio Tinto Iron Ore (**Rio Tinto**) with the opportunity to contribute to Phase Two of the review of the *Aboriginal Heritage Act 1972 (WA)* (**AHA**).

This review presents an exciting opportunity to modernise Western Australia's legislation in a way that acknowledges, respects and protects Aboriginal heritage while also delivering consistent, transparent, timely and effective outcomes for all stakeholders in relation to the ongoing economic development of the State.

The effectiveness of legislation also relies heavily on it being administered in a consistent and efficient manner. This is an important aspect for consideration in the implementation of any changes to the legislative framework to ensure that complementary and clear guidance is provided to all interested parties and appropriate resourcing is prioritised.

**About Rio Tinto**

Rio Tinto Iron Ore's heritage team is one of the largest and most experienced of its kind in the resources industry. Our professionals include qualified archaeologists, anthropologists, specialists in cultural heritage management, Geographical Information Systems, information management and community liaison, all of whom collectively facilitate the management of Aboriginal cultural heritage across our iron ore tenements and mining leases in Western Australia.

Our comprehensive cultural heritage management systems and programmes ensure identification and appropriate management of Aboriginal heritage through engagement with Aboriginal Traditional Owners, including their active participation in our cultural heritage processes.

As part of our heritage programme, we partner in the research and analysis of significant sites. This research has included archaeological excavations in rock shelters in the inland Pilbara which have contained evidence of occupation by Aboriginal people over 40,000 years.



### **Rio Tinto's submission**

Rio Tinto supports the submissions that have been made by the Chamber of Minerals and Energy of Western Australia (**CME**).

Rio Tinto provides the following responses, structured in line with the proposals in the *Review of the Aboriginal Heritage Act 1972 Consultation Paper* (March 2019). A response has not been provided in respect of Proposal 9.

This submission is intended to be read in conjunction with the CME submission and draws from Rio Tinto's long-term and comprehensive engagement with Traditional Owners on heritage matters in Western Australia.

For further information on this response please contact Scott Edwardes, A/Manager – Strategy and Support on 0476 848 626 or via email at [scott.edwardes@riotinto.com](mailto:scott.edwardes@riotinto.com).

Yours sincerely

A handwritten signature in black ink, appearing to be "LD" followed by a long horizontal stroke.

Linda Dawson  
GM Communities & Communications

| # | Proposal   | Rio Tinto's submission  |
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| 1 | <p><b>Repeal the <i>Aboriginal Heritage Act 1972 (WA)</i> and replace it with modern legislation, regulations and policies</b></p> | <p>Rio Tinto supports the replacement of the <i>Aboriginal Heritage Act 1972 (WA)</i> with new Aboriginal heritage legislation that balances meaningful Aboriginal stakeholder engagement and protection and management of Aboriginal heritage values with the delivery of certain, timely and efficient outcomes for stakeholders.</p> <p>Rio Tinto supports allocation of sufficient funding and resourcing for the development and delivery of this legislation, as well as sufficient consultation with stakeholders, including industry, given the significance of the changes proposed.</p>   |
| 2 | <p><b>Update definitions and scope of new Aboriginal heritage legislation</b></p>  | <p>Rio Tinto supports the extension of the scope of the new legislation to include ancestral remains. Rio Tinto has long recognised that ancestral remains are highly significant to Aboriginal people, and that prompt and appropriate consultation is necessary.</p> <p>Rio Tinto appreciates the difficulties and complexities associated with managing intangible heritage values. In allowing for the recognition of such values, Rio Tinto strongly supports the development of a clear framework for delineating 'intangible heritage' or 'cultural landscapes', and for managing changes within cultural landscapes. Rio Tinto also supports formal procedural fairness processes to ensure sufficient and clear notice is given to affected proponents and landholders prior to introducing sites covering large areas. This is essential to ensure the process allows for necessary adjustments or approvals facilitating continuation of existing or proposed land uses.</p> <p>Rio Tinto supports the CME's submissions in respect of transitional arrangements, including that the Department provides an opportunity for all stakeholders to review and comment on proposed transition arrangements prior to the Phase Three Draft Bill, and that existing section 18 consents have the same status as land use approvals granted under the new Act. Particularly in light of the potential broadening of the definition of 'place', consideration should be given to how existing land uses will be managed and whether exemptions should apply to existing lawful activities, to avoid the need for complicated assessments and potentially additional approvals to facilitate continuation of an existing use.</p> <p>Rio Tinto urges the Department to ensure that transition arrangements take into account the often long lead times involved in culturally appropriate consultation in relation to land use proposals.</p> |

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| <p><b>3A</b></p> | <p><b>Local Aboriginal Heritage Services (LAHS)</b></p> | <p>Rio Tinto supports the promotion of culturally appropriate consultation, but notes the effective and efficient operation of LAHS will depend on appropriate resourcing, funding and capacity building, particularly for LAHS in areas of high development, to ensure LAHS' ability to fully participate in consultation and approvals processes and contribute to the protection of heritage values to a sufficient standard and within appropriately agreed timeframes.</p> <p>Rio Tinto supports clear statutory timeframes for LAHS processes, and clarity on the processes in place to ensure consistency in fulfilment of LAHS functions and mechanisms to allow the Department to perform these functions whenever it is not possible for a LAHS to do so.</p> <p>Rio Tinto recommends the Department provide further clarification as to how 'geographical area of responsibility' will be defined given there may be multiple Traditional Owner groups within a broader claim or determination area, and how each LAHS will maintain confidentiality of cultural information. Furthermore, clarification is required as to how this will operate where traditional owner groups already have their own Prescribed Body Corporate. This will require careful consideration to ensure it does not create an additional or competing layer of consultation and complexity, and further uncertainty on the necessary process and timeframes to obtain approvals when required.</p> |
| <p><b>3B</b></p> | <p><b>The Aboriginal Heritage Council (AHC)</b></p>     | <p>Rio Tinto supports the delegation from the Minister to the AHC of decisions on land use proposals with no to low impact on heritage values. However, Rio Tinto reinforces that the AHC should only be empowered to facilitate approval decisions in these circumstances. Where the assessment of the AHC is that such proposals do not meet the specified criteria, including acceptability to the relevant Aboriginal people, the AHC's role should be limited to provision of advice and it should be for the Minister to make the ultimate decision.</p> <p>Given the broad role of the AHC, Rio Tinto recommends the Department ensure appropriate resourcing and funding to the AHC to ensure efficient outcomes in a timely manner for all stakeholders.</p>   |
| <p><b>3C</b></p> | <p><b>The Minister's Role</b></p>                       | <p>Rio Tinto supports the proposal that the Minister retains overall accountability and decision making-powers for the Aboriginal heritage system in Western Australia.</p> <p>Rio Tinto requests that the Department provide further clarity regarding when a decision will be made on whether a land use proposal has a significant impact on Aboriginal heritage values or involves a project of State significance, and on what basis, and provide the opportunity for industry feedback on this issue prior to the release of draft legislation.</p>   |

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| 3D | <b>The role of the Department of Planning, Lands and Heritage</b>   | Rio Tinto supports the proposal that the Department remains responsible for the day to day operation of the Act, but notes that appropriate resourcing, structuring and funding of the Department will be critical to ensure it is able to function efficiently and effectively. This includes generating clear policies and procedures to provide consistency of interpretation, ownership and transparency of decision making and improved communication within the Department to address issues around administration of heritage legislation, transparency and interaction with stakeholders.   |
| 3E | <b>Heritage professionals – aiding selection of those with appropriate qualifications and experience and improving standards</b>            | Rio Tinto supports continued improvement in professional standards where this would lead to improved outcomes for Aboriginal heritage. Consistent with the risks highlighted in the discussion paper, Rio Tinto reiterates that, should membership of organisations be a requirement for inclusion on the proposed register, this type of accreditation must be carefully considered to ensure it does not result in material increased costs to industry, or a significant reduction in the individuals qualified to undertake the necessary work, to the detriment of both land use proponents and Traditional Owners.  |
| 4  | <b>Retain the current form and function of the register of Aboriginal Places and Objects but rename it the Aboriginal Heritage Register</b> | Rio Tinto supports the CME's recommendations in respect of this proposal, and reiterates the need to create clear and consistent standards regarding inclusion of places on the Register, and the importance of adequate resourcing and funding to facilitating the efficient and accurate functioning Register.  |
| 5  | <b>Introduce a referral mechanism to facilitate tiered assessments and approvals of proposed land uses</b>                                  | <p>Rio Tinto supports a streamlined referrals process for land use proposals with no or low impact on Aboriginal heritage values.</p> <p>Rio Tinto recommends clear regulatory criteria are established in respect of land uses with no or low impact on Aboriginal heritage values to ensure clarity, certainty and consistency in the assessment and approval of these proposals for all stakeholders.</p> <p>It is understood that the intent is to streamline low impact proposals rather than introduce additional timing or process requirements for projects with higher impacts. Rio Tinto does not support additional or rigid process steps that increase timeframes by adding to the administrative load for proponents and the Department. Flexibility is also required to facilitate approvals at all stages of a project and for activities connected to larger projects that do not lend themselves to detailed formal referrals.</p> <p>In addition, where proponents have existing consultation processes to allow incorporation of Aboriginal heritage protection where possible, these should not be cut across or replicated.</p> |

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| <p>6</p> | <p><b>Encourage and recognise agreement making</b></p> | <p>Rio Tinto supports the achievement of heritage outcomes through agreements and recognition given in the Discussion Paper that the role of the AHC should not extend to inquiring into or imposition of its views on commercial terms of agreements negotiated in good faith. Rio Tinto reiterates the CME's submission that existing agreements should not need to be "ratified" under the new Act. Rio Tinto notes that heritage agreements often form part of broader agreement suites containing commercial terms relating to a range of matters and negotiated on a confidential basis.</p> <p>Rio Tinto's existing land use agreements form the basis for meaningful Aboriginal stakeholder engagement, and protection and management of Aboriginal heritage values. These agreements also include Indigenous land use agreements registered under the <i>Native Title Act 1993</i> (Cth). Rio Tinto reiterates the CME's concern that the requirement for the ratification and assessment of existing agreements under this proposal risks implying that existing agreements are not sufficient or introducing uncertainty as to the application of existing agreements which would be detrimental to both land use proponents and Traditional Owners.</p> <p>Rio Tinto would be supportive of further consultation with relevant parties, including industry, to develop minimum requirements or model guidelines in the interests of ensuring agreements wherever possible embody best practice. However it reiterates that this should occur in a manner that does not introduce uncertainties or disruption to the implementation of existing agreements.</p> |
| <p>7</p> | <p><b>Transparency and appeals</b></p>                 | <p>Rio Tinto notes that, in order to achieve increased transparency and accountability, it is critical that clear policies, procedures, guidelines and timeframes are publicly available in respect of key decision making stages. This will require adequate resourcing and funding of the Department, the AHC and LAHS' to ensure confidence in the decision making processes, to ensure all parties can participate equally in the process and to prevent the erosion of heritage values.</p> <p>Rio Tinto considers that it is essential that clear approvals and appeals timeframes (which are not subject to extension) apply in order to provide certainty for all parties. Rio Tinto supports efficient and effective consultation prior to and during approval processes to facilitate acceptable and timely outcomes, rather than broad appeal rights that may be used to prolong approvals or appeals processes at a critical point for a project.</p>  |

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| 8 | <b>A modernised enforcement regime</b> | <p>Rio Tinto supports a modernised enforcement regime that better protects Aboriginal heritage and that recognises the serious impact of unauthorised damage to Aboriginal heritage. Such a regime will also help ensure that the value of Aboriginal heritage to Traditional Owners and all Australians is recognised, and to improve confidence that the system can prevent the erosion of heritage values.</p> <p>It is important that any changes to the current regime should not introduce uncertainty or risks to proponents that act in good faith to appropriately discharge their legal obligations, or the potential for disproportionate action particularly in respect of the potential prohibition on development of land that may affect not only the land use proponents but Traditional Owners.</p> |
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