

# **RIO TINTO**

## **Supplementary submission to the Industry Commission**

### **Background to this Supplementary Submission**

In our principal submission, we identified a number of key considerations in the development of an appropriate occupational health and safety ("OHS") regulatory regime for the Australian black coal industry. These included:

- An essential element in the logic of OHS best practice is that the relevant legislation should lay down only broad general principles. Detailed guidance as to the application of those principles should be provided through non-mandatory codes of practice or technical guides.
- Adopting new approaches to OHS regulation will not of itself ensure the adoption of OHS best practice. Regulatory reform must be on the basis of dispassionate consideration of the commercial incentives and disincentives to achieving improved OHS performance.
- Regulatory reform must include consideration of the interaction of OHS regulation with associated regulation such as workers' compensation schemes, and of the activities of regulatory authorities.
- Regulatory authorities must have the appropriate resources and expertise to implement and monitor the operation of OHS regulation.
- Common coal mining OHS regulation across all jurisdictions has the potential significantly to reduce the cost of regulatory compliance and the establishment of best practice systems in the industry, and to improve regulatory compliance.
- There is a clear distinction between OHS priority issues and OHS performance in open-cut and underground coal mining.
- There are differences in OHS performance in the coal industry between the Australian states and between the coal mining industry and other mining industries.
- Best practice in OHS requires that proper account to be taken of the human resources and industrial relations aspects of OHS.

### **Changes proposed in Queensland and NSW**

Since making our principal submission, we have had the opportunity to examine the changes proposed to the Queensland and New South Wales regulatory regimes.

We do not believe that these proposals meet the requirements for an appropriate and effective OHS regulatory regime set out in our principal submission. In particular, we consider that the proposals fail to take adequate account of:

- the need to foster a sustained industry-wide commitment to OHS best practice by ensuring that genuine OHS performance improvement produces significant commercial benefits;
- the need to ensure that workers' compensation and rehabilitation systems and the activities of regulatory authorities provide incentives for genuine OHS performance improvements;
- the need to recognise that excessive reliance upon prescriptive regulations or mine health and safety plans, and upon the activities of enforcement agencies as a means of encouraging compliance, will inevitably compromise the integrity of best practice approaches to OHS regulation and impede the development of safety cultures within mining enterprises;
- the desirability of a common approach to the regulation of coal mining OHS across all jurisdictions;
- the distinction between OHS priority issues and OHS performance in open-cut and underground coal mining; and
- the fact that some major factors contributing to the poor OHS performance of the coal industry appear to be associated with matters unrelated to workplace hazards such as the characteristics of the coal mining workforce, coal mining work practices and the special treatment that has been accorded to coal mining in terms of regulation of OHS, industrial relations, employee training and industry supervision.

We also consider that there is a real risk that the legislative reforms proposed will result in hybrid regulatory systems where detailed prescriptive regulation is reintroduced through regulations made under the principal legislation, or in a de facto manner through the practices of regulatory authorities.

## **Recommendation**

It is clear that there are significant inadequacies in the available information on OHS performance and priorities which must be addressed before an appropriate OHS regulatory regime for the black coal industry can be developed and put into place.

While there is anecdotal material suggesting that existing OHS regulation stifles OHS best practice and the development of enterprise safety cultures, there is little data identifying the specific features of the existing regimes which give rise to these problems. Absent a systematic and objective investigation of these deficiencies, there is a real risk that new regulation will fail to achieve its objectives.

There is also insufficient information:

- to explain the differences in OHS performance in the coal industry between the Australian states and the differences in OHS performance between the coal mining industry and other mining industries;
- regarding the benefits of retaining the roles of check inspectors and the involvement of trade unions in OHS surveillance;
- regarding the interaction of OHS regulation with workers' compensation and rehabilitation systems, OHS performance monitoring and reporting systems, and the practices of regulatory agencies,
- to determine whether there is any rationale for different OHS regulation in open-cut coal mining and open-cut metalliferous mining;
- to determine whether the maintenance of separate OHS regulation for coal mining and the mining sector in general is justified; and
- to enable evaluation of the proposed changes from the view point of the commercial incentives they provide for the pursuit of OHS best practice.

We urge that these areas should be the subject of further study underwritten by the Commonwealth, and carried out in consultation with the Queensland and New South Wales Governments, industry councils, and major black coal industry employers and unions.

In the interim, we urge also that the proposed changes to the Queensland and New South Wales OHS regulatory regimes should proceed only to the extent that they address the key concerns set out in our principal submission.