

# RIO TINTO

LEIGH CLIFFORD  
CHIEF EXECUTIVE ENERGY

21 May 1998

Mr John Cosgrove  
Presiding Commissioner  
Inquiry into the Australian Black Coal Industry  
Productivity Commission  
LB2 Collins Street East  
Melbourne VIC 8003

Dear Mr Cosgrove,

## **Inquiry into the Australian Black Coal Industry**

In publishing its Draft Report, the Industry Commission sought comment on a number of issues. I attach further submissions from Rio Tinto Energy in relation to that invitation.

I should take this opportunity to indicate to you that Rio Tinto Energy is broadly and strongly supportive of the findings of the Draft Report and generally of the recommendations, with some exceptions noted in our latest submission.

One further issue I would like to raise is what the Commission might recommend to the Treasurer regarding how the Federal Government might implement the Commission's recommendations. This is a particularly important issue as many of the recommendations are not necessarily within the direct control of the Federal Government to implement.

With that in mind, I suggest the Commission make recommendations along the following lines:

- that the Prime Minister ask each Federal Minister to identify the recommendations which fall within his or her portfolio responsibilities and to develop a plan to implement the recommendations; in particular, Ministers should be asked to identify mechanisms of Federal/State cooperation through which the Commission's recommendations can be pursued
- that the Federal Government provide for ministerial oversight of the Government's response
- that the ministers responsible be serviced by a team led by a Departmental Deputy Secretary and located within the Prime Minister's Department
- as an initial step, the Federal Government should seek the broad agreement and cooperation of the States by way of a discussion of the Government's response to the Commission's report at a meeting of the Council of Australian Governments.

Rio Tinto Limited(ACN 004458404) 55 Collins Street Melbourne 3000 Australia  
Postal Address: GPO Box 384D Melbourne 3001 Australia  
*Telephone 603) 9283 3445 Fax (03) 9283 3419*

Finally, as an important part of the response to Commission's report requires action by the States of New South Wales and Queensland, the Commission should make specific recommendations about the actions required by those States, emphasising the need for heads of governments to lead the reforms needed.

Yours sincerely,

## **RIO TINTO ENERGY**

### **COMMENT ON ISSUES RAISED BY THE INDUSTRY COMMISSION DRAFT REPORT ON THE AUSTRALIAN BLACK COAL INDUSTRY**

#### **The suitability of continuing the separate role of the Coal Industry Tribunal of Western Australia**

RTE stands by its original submission that the special treatment afforded the black coal industry has isolated it from the industrial relations mainstream. While that isolation appears less pronounced under the institutional arrangements in WA, RTE sees no reason to continue separate arrangements for the WA coal industry.

#### **The continuing existence of the Coal Mining Qualifications Board and the Queensland Board of Examiners**

The Commission's Report notes that a range of legislative forces impact training in the industry. The rationale for the legislative structure and detailed training and assessment arrangements has been the prescriptive regulation of safety within the industry.

As noted elsewhere, RTE strongly supports the introduction of safety legislation focussed on the application of safety management systems incorporating duty of care principles. It would be contrary to the thrust of such a system to dictate a single management structure which all companies are compelled to implement.

The coal mining industry qualification bodies in Queensland (and New South Wales) are a product of the current prescriptive framework and would have no place in a new system based on duty of care principles.

Consistent with this duty, companies should have the capacity to establish management structures that provide both safe and effective means of operation. It is for that reason that qualifications bodies would have no place in a new system and not because they duplicate a quality assurance role available under the National Training Framework. It is critical for the success of any new system that this be widely understood.

#### **A Training Package and Traineeship for mining generally rather than specifically for black coal**

RTE has no objection to companies and unions in the coal industry developing whatever training arrangements they believe suit their needs, whether on a multiemployer or some other basis and whether or not such arrangements purport to be for the coal mining industry or for coal mining only.

However, neither of RTE's Australian coal mining businesses, Rio Tinto Coal and Pacific Coal, are participating in the development of multiemployer training arrangements and have no plans to do so. Both businesses would prefer to be able to select and train current and future employees on a more flexible, merit and site-needs basis than might be permitted by participation in a multiemployer training package.

## **The adjustment issues likely to be faced by coal industry employees**

There are likely to be many adjustment issues for coal industry employees as the industry adapts to the new competitive environment.

RTE recommends that the Industry Commission address this issue by proposing to governments some mechanisms for identifying and dealing with the adjustment issues. One possible approach would be for Federal, State and local governments, acting in concert, to draw coal producers and their organisations, unions, community groups and others into a regionally based process for identifying issues and possible solutions.

## **Possible changes to improve the performance of coal waterfront facilities in the Port of Newcastle**

It is unfortunate the Commission was receiving submissions at a time when PWCS was experiencing long ship queues and this has, consequently, been a major topic for comment. The queues were mainly a result of an unforeseen increase in coal shipped in 1997, which was 19% greater than in 1996. The port throughput had been growing at around 7% for some years and this was the PWCS Board approved forecast for 1997.

To manage the surge in throughput experienced in mid 1997, PWCS would have needed more capacity than was available. The PWCS stage 3 expansion had been delayed by the terminal being slower than planned in reaching capacity following the previous expansion and the delay in receiving planning approval for the stage 3 expansion. The queue is now down to normal levels and forecast to stay there.

There is always a judgement to be made about the trade off between how much to spend on new capacity and the risk of over investment. As was pointed out in the quote in the report from the NSW Minerals Council, the PWCS Board "agonised long and hard" about when to add capacity and on this occasion did not get it quite right. On the other hand, PWCS has very low loading charges at \$2.80 per tonne.

A number of features of PWCS make it difficult for the Board to forecast demand accurately and to increase the efficiency of the terminal. Many of these arise because it is a "common user" facility. They are

- PWCS has an obligation to ship all coal presented, while shippers have no obligation to advise PWCS of the tonnages they intend to ship- while shippers do give PWCS forecasts, they exceed the tonnage actually shipped. There are no penalties incurred by shippers if their forecasts are not accurate. If PWCS increases capacity to meet a forecast which proves to be optimistic, the cost of the surplus capacity is borne by all shippers rather than those whose forecast is optimistic. Conversely, a shipper is entitled to ship more than its forecast without penalty other than demurrage, even if the terminal does not have capacity
- the Board of PWCS makes judgements about capacity based on the best information available to it. It is relatively easy to plan for increased shipments as a result of production from new projects because their existence is known well in advance. It is almost impossible to plan for increased shipments as a result of incremental production from existing mines which was the major contributor to the increase in 1997. Shippers are able to produce incremental coal at short notice and ship it whether there is capacity at PWCS or not

- there is a single charge for each tonne of coal shipped through the terminals, regardless of the level of service provided. Differential charges reflecting the level of service would almost certainly lead to changes which would improve the efficiency of the terminals.

What needs to change are the restrictions, perceived or real, which inhibit the actions of the Board, rather than the Board structure. These restrictions do not apply to other coal terminals and are the major factor in the differences between PWCS and other terminals.

While there is little doubt competition in the Port of Newcastle would be beneficial, the structure of charges at PWCS is a major impediment to the development of a new terminal. The capital cost of new capacity at PWCS is spread over all tonnage shipped through the terminal, rather than the additional tonnage shipped. The capital cost of a new terminal must be spread over the new tonnage shipped through the new terminal. This makes it very difficult for a new terminal to offer a charge which is competitive with PWCS.

### **Resource rent royalty**

Rio Tinto is opposed to the introduction of a resource rent royalty.

Administration of such a royalty would be complex and costly for both government and producers. I would need to take into account resource quality and costs on a mine by mine basis and compare these with the market price. The regime would also have to specify a rate of return, above which the tax is levied.

Any change to the royalty structure would have to be demonstrably not to the detriment of existing producers or it would risk damaging the credibility of Australia as a place to invest. A resource rent royalty regime will result in widely fluctuating returns for governments due to market price variations and possible inefficiencies of producers. This would produce a boom or bust scenario for governments.

The existing royalty regimes in both Queensland and NSW are both simple and practical to administer in their current form. If any change is to be made, Rio Tinto would like to see royalty rates reduced, which would enhance the ability of Australian mines to compete against international competition.

### **Safety generally**

There is no statistical or other evidentiary support for the view that open cut coal mining is inherently more dangerous than any other open cut mining activity.

This suggests that open cut coal safety requires no legislative treatment beyond that applying to other open cut mining activity. The specific hazards of underground coal mining mean it cannot be regarded in the same way. These distinctions are not sufficiently recognised in the Commission's draft report.

It follows from those distinctions that:

- regulation of open cut coal mine occupational health and safety should be brought into the mainstream of mining occupational health and safety regulation as soon as practicable
- the regulatory arrangements should distinguish clearly between the needs and circumstances of open-cut and underground mining.

RTE also considers that open cut coal mining, along with other open cut mining, should be subject to best practice safety regulation. RTE submits that best practice in the Australian context includes

- occupational health and safety legislation incorporating a duty of care concept involving
  - ⇒ a shift to performance or management system based regulation
  - ⇒ core hazards continuing to be dealt with by regulation
  - ⇒ a review of existing regulatory requirements to remove obsolete and excessively prescriptive provisions
  - ⇒ periodic review of regulations
- no legislative prescription of mine site management structures
- recognition by Australian inspectorates in all circumstances of standards set by another State in relation to coal mining equipment
  - ⇒ recognition of overseas standards would need to depend upon regulatory determination of equivalence to Australian standards
  - ⇒ mine operators should be able to assume more responsibility for assessing the appropriateness of equipment for their circumstances
- workplace-based statutory provisions involving safety inspection in open cut coal should no longer be allocated by law specifically to union nominees
- avoidance of excessive legislative prescription of Mine Safety Management Plans
  - ⇒ excessive reliance upon such plans could have the effect of compromising the integrity of best practice approaches to occupational health and safety regulation and the development of more appropriate safety cultures within mining operations
- rigorous enforcement of occupational health and safety regulation, whilst recognising the practical constraints, which include
  - ⇒ a persistent failure on the part of courts and tribunals to treat breaches of occupational health and safety standards as on a par with more conventional crimes against person or property
  - ⇒ the costly and time-consuming nature of prosecution
  - ⇒ that the imposition of penalties, especially after a fatality or serious injury, does not in itself put right that which was wrong, or do anything effective about prevention for the future.
- infringement notices as a means of ensuring occupational health and safety compliance.
  - This enforcement technique has a number of significant advantages over prosecution:
    - ⇒ it ensures that that which is wrong is put right
    - ⇒ it is less resource-hungry
    - ⇒ it could overcome the reluctance of the courts to treat breaches of occupational health and safety standards on a par with more conventional crimes against person or property

There are two principal issues which were addressed in RTE's submissions which are not addressed in the Draft Report.

First, RTE suggested that there is a need for further research in relation to a number of important issues in the field of occupational health and safety regulation as an essential precondition of effective reform in this area. Specifically, it was suggested that there a need for information on issues including:

- the differences in occupational health and safety performance between the different States, and between the coal mining industry and other sectors of the mining industry
- in relation to the interaction of provision intended to prevent the occurrence of work injury and that which is concerned with compensation and rehabilitation of injured employees

- as the impact of any proposed changes in terms of the commercial incentives they provide for the pursuit of occupational health and safety best practice.

RTE urges the Commission to recommend that the Department of Workplace Relations and Small Business sponsor this and any other research in coal industry occupational health and safety.

The second issue which is not dealt with in the Draft Report concerns the need to establish mechanisms which enable non-managerial employees to be consulted about minebased safety issues, and to have concerns about aspects of safety management dealt with through those procedures. This omission is particularly regrettable in light of the emphasis (both explicit and implicit) in the Draft Report upon the need to develop solutions to occupational health and safety problems at the level of the workplace.