

# SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XG3K-A

## Organisation

Rio Tinto

## Attachment provided?

Yes

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Yes – with my organisation

## SUBMISSION RESPONSES

**This submission was provided as an attachment only. The attachment is provided on the following pages of this document.**

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24 April 2020

**EPBC Act review – Rio Tinto Submission**

Dear Professor Samuel

Rio Tinto welcomes the opportunity to participate in the second independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act** or **the Act**).

This review of the EPBC Act provides opportunities to examine options to reduce duplication, unnecessary complexity and uncertainty that exists between Commonwealth and State / Territory processes for environmental impact assessment (EIA), approval, and post-approval. This would streamline and reduce timeframes while ensuring the objects of the EPBC Act are met, improve environmental outcomes and instil greater community confidence in the processes.

Rio Tinto has been operating in Australia for more than 100 years. We produce iron ore, bauxite, alumina, aluminum, uranium, diamonds and salt at sites and processing plants around the country. Our operations employ over 19,000 Australians directly and we paid \$8.9 billion<sup>1</sup> in taxes and royalties in Australia in 2019.<sup>2</sup> We are also proud to employ over 1,400 Indigenous Australians (around 7 per cent of our workforce).<sup>3</sup> Given the impact of the COVID-19 crisis on Australia's economy, including on the unemployment rate as well as government revenue and expenditure, the ongoing and significant economic contribution of the mining sector has arguably never been more important to the country.

***Rio Tinto's approach to sustainability, environment and climate change***

At Rio Tinto, we produce materials essential to human progress. Achieving this purpose requires us to work in remote locations and sensitive environments, often on Traditional Owner lands.

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<sup>1</sup> All values, unless otherwise indicated, are in Australian dollars.

<sup>2</sup> Rio Tinto, *Rio Tinto discloses details of the (US)\$7.6 billion taxes paid in 2019*, 8 April 2020

<sup>3</sup> Rio Tinto, January 2018

Our values, experience and history tell us that we must work in a way that delivers real, lasting benefits. We must care for our employees, respect and care for the environment when we explore, build and operate, and re-purpose or rehabilitate the land when our operations come to an end, and we have a strong track record in doing so. We must contribute our fair share to local and national economies, including through the payment of taxes and royalties, and do so transparently. This is done in a way that preserves the profitability of our own business, not only so we can meet our commitments to our shareholders, but so that we can continue to invest in areas important to our other stakeholders, including safety, climate change mitigation and workforce training. These beliefs are the foundation of our views on sustainability.

Rio Tinto is committed to minimising and mitigating adverse impacts on the environment, and we work closely with local communities who have interests in and depend on these environments. In particular, Rio Tinto maintains regular engagement with Traditional Owners throughout the life of projects, including identifying and consulting on potential impacts of proposed activities, and in many instances formally engages Traditional Owners to monitor and conduct other land management activities where appropriate. The company is directly involved with Indigenous heritage research and management. With an active research partnership with University of Western Australia, Rio Tinto in collaboration with relevant Native Title representative bodies, is involved in a number of significant rock art research projects. This includes the investment of \$6.75 million in relation to the Dampier Archipelago including Burrup Peninsula National Heritage Place.

Rio Tinto is committed to improving our knowledge, environmental management and conservation methods, including through our partnerships with third parties, universities and other institutions. For example, in 2019 Rio Tinto, with Professor Longbin Huang at the University of Queensland and Queensland Alumina Limited (**QAL**), won the University of Queensland *Partners in Research Excellence Award* for the projects at QAL, Yarwun and Gove focusing on “in situ engineering red mud into functional soil – a new technology for cost effective rehabilitation of red mud”.<sup>4</sup>

Further, as a member of the Proteus Partnership, Rio Tinto partners with the United Nations Environment Program – and other civil society organisations – to address the common challenges associated with land stewardship, biodiversity protection, water stewardship and impacts associated with climate change.<sup>5</sup>

Rio Tinto provides ongoing support to environmental research, management and stewardship across Australia. This includes providing funding and engaging with organisations such as the Western Australian Biodiversity Science Institute, the Western Australian Herbarium, University of Queensland, University of Western Australia, Charles Darwin University, Australian Wildlife Conservancy, Queensland Department of Environment and Science, Sharks and Rays Australia and the Gladstone Healthy Harbour Partnership. These organisations, among others supported by Rio Tinto, provide direct research and facilitate stewardship of threatened species that are listed under the EPBC Act and other biodiversity conservation legislation in Australia.

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<sup>4</sup> The University of Queensland, *Dam good – new technologies to rehabilitate dams into useful land*, 6 April 2018

<sup>5</sup> Rio Tinto (2019), *Sustainability*, riotinto.com

We also report externally and transparently on our greenhouse gas and other air emissions, waste and tailings, and our water stewardship practices. Our climate change ambition is to reach net zero emissions across our operations by 2050. Our 2030 targets are to reduce our carbon intensity by a further 30 per cent and our absolute emissions by a further 15 per cent. We have committed to invest US\$1 billion in climate-related projects, including research and development and projects to reduce emissions and enhance the resilience of our business.<sup>6</sup>

### ***Importance of supporting investment to Australian economy***

Rio Tinto's operations, and the resources sector generally, make a significant contribution to Australia's economy. Resources commodities, including iron ore and aluminum produced by Rio Tinto in Australia, make up six of the country's top ten goods. Resource and energy export earnings reached a record \$290 billion in 2019.<sup>7</sup> The Office of the Chief Economist at the Department of Industry, Science, Energy and Resources forecasts that Australia's resources and energy exports are expected to reach \$299 billion in the 2019-20 financial year.<sup>8</sup> Key to this is the current second surge in iron ore export revenue, making it likely that in 2019-20, iron ore will be the first commodity to exceed \$100 billion in export earnings over a single year.

Since 2005, the resources sector has invested around \$720 billion in Australia, accounting for more than 40 per cent of total investment over this period.<sup>9</sup> Together with mining services, the resources sector makes up over 8 per cent of Australia's economy.<sup>10</sup>

Rio Tinto's Australian operations are a significant part of our global portfolio and are important contributors to the Australian economy, particularly as large employers in regional Australia. Investment in mining projects creates jobs and delivers royalties and economic benefits for the whole country. However, in a global economy where the competition for capital investment from other resource-rich economies is intense, we need to continue to position Australia to attract investment.

By reducing the regulatory burden while ensuring that the objects of the EPBC Act are met, particularly by removing areas of duplication that do not enhance protection, improved timeframes will help to see the economic benefits of capital investments flowing to Australians sooner – from jobs to increased revenue from taxes and royalties. These issues have been recognised by the Commonwealth government and the Productivity Commission's draft report into the *Inquiry into Resources Sector Regulation* also addresses some of these issues.<sup>11</sup>

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<sup>6</sup> Rio Tinto (2019), *Our Approach to Climate Change*, riotinto.com

<sup>7</sup> Minerals Council of Australia, *Resource exports reach record \$290 billion*, 6 February 2020 [Accessed 17 February 2020].

<sup>8</sup> The Commonwealth Department of Industry, Science, Energy and Resources, Office of the Chief Economist (2020), *Resources and Energy Quarterly* - March 2020 [Accessed 1 April 2020].

<sup>9</sup> Australian Bureau of Statistics (2018). *Private New Capital Expenditure and Expected Expenditure, Australia, Sep 2018, Table 3B: Actual Expenditure, By Type of Industry - Chain Volume Measures \$m*. Canberra.

<sup>10</sup> The Commonwealth Department of Industry, Science, Energy and Resources, Office of the Chief Economist (2018). *Resources and Energy Quarterly—December 2018*. Canberra, p.iv.

<sup>11</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020.

For example, the Amrun bauxite project, which began construction in 2015 and started producing in 2018, took nearly six years to gain government approvals.<sup>12</sup> The Commonwealth Government approved the Environmental Impact Statement for the project under the EPBC Act in May 2013, 4½ years after its initial referral (October 2008). Lengthy timeframes such as this suspend the flow of benefits to Australians and can risk project investment decisions, as economic conditions can change, especially in a cyclical industry like mining.

The Productivity Commission’s 2017 *5 Year Productivity Review* estimated that implementing its regulatory reform recommendations would gain \$220 million annually in avoided costs for major projects.<sup>13</sup> Similarly, the Minerals Council of Australia has identified that approval delays to a major project can cost up to \$1 million every day.<sup>14</sup>

Rio Tinto continues to invest in Australia with new and expanded mining operations with substantial investment in particular required to sustain production from our iron ore business. This means that just to maintain production and the associated economic benefits for Australia, Rio Tinto will require State and Commonwealth approvals for a level of investment that is reflective of a business in an expansion phase. This is production that contributes to Australia’s exports, that results in more tax and more royalties will be paid to the Commonwealth and State and Territory governments. And it means more jobs in remote and regional areas of Australia.

For example Rio Tinto is investing \$3.5 billion in the Koodaideri iron ore mine in Western Australia, with around \$3 billion spent with Australian-based businesses and creating around 2,000 jobs during construction alone. In addition we have approved a US\$98 million investment in a new solar plant at the Koodaideri mine, as well as a lithium-ion battery energy storage system to help power our entire Pilbara power network. The 34 megawatt solar photovoltaic plant is expected to supply all of Koodaideri’s electricity demand during peak solar power generation times and approximately 65 per cent of the mine’s average electricity demand.

In far north Queensland on the Cape York Peninsula, we recently completed commissioning of the \$2.6 billion Amrun bauxite mine, and we are also in the process of evaluating the copper-gold mineralisation at the Winu project in the Yeneena Basin of the Paterson Province in Western Australia.

### ***Priorities for reforming the EPBC Act – overview of Rio Tinto’s submission***

An EPBC Act that underpins a high-quality and effective environmental assessment and approvals process is critical to ensure the impacts of mining operations on the environment are minimised and mitigated, commensurate with risk and societal expectations, while delivering the significant benefits of capital investment. We believe there is scope for constructive reforms to existing environmental regulatory frameworks, including the EPBC Act, and that these could bring many benefits while delivering enhanced or equivalent environmental outcomes and achieving the objects of the EPBC Act.

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<sup>12</sup> Rio Tinto (2019). Submission to Productivity Commission’s Resources Sector Regulation study. [online] Available at: [https://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0009/247194/sub026-resources.pdf](https://www.pc.gov.au/__data/assets/pdf_file/0009/247194/sub026-resources.pdf)

<sup>13</sup> Productivity Commission (2017), *Shifting the Dial, 5 Year Productivity Review*, Canberra, p 236-237.

<sup>14</sup> The Minerals Council of Australia (2019), *Pre-budget submission 2019-20*, February 2019.

Rio Tinto values the constructive working relationship that we have with the Department of Agriculture, Water and the Environment (**Department**) through the assessment and approvals processes for our projects. The Department's staff have deep experience in environmental regulation, and as such the suggestions that we make in this submission are with the aim of improving processes under the EPBC Act and the application of these processes, and should not be taken as criticism of the important work undertaken by individual Departmental staff. We acknowledge and welcome recent funding being provided by the Commonwealth Government for the Department to assist with assessment and approvals workload, and encourage ongoing support being provided to the Department in this regard.<sup>15</sup> We acknowledge this as part of the broader efforts already underway from the Commonwealth Government to improve efficiency, including a single digital environmental approvals process and biodiversity database.<sup>16</sup>

We have responded in the attachment to the questions posed by *the Independent Review of the EPBC Act Discussion Paper* (released November 2019) and below provide a summary of the key areas that we consider are important for reform. As a proponent with numerous operations across Australia, we are well placed to provide feedback in particular on the EPBC Act's framework for referral, assessing and approving actions and associated environmental protections, and this has been the focus of our considerations.

Our submission highlights the following priorities for reform, which include maintaining current practices in some areas:

- 1. Streamlining State/Territory and Commonwealth processes and reducing duplication** – All States and Territories in Australia have detailed and robust environmental assessment processes that are generally well administered and in many cases have been accredited by the Commonwealth. However, there is currently considerable duplication between these State/Territory processes and Commonwealth processes. This does not deliver enhanced environmental outcomes, but instead in many cases causes considerable complexity, rework, inefficiencies and delays during assessment, approval and post-approval phases. In our experience this duplication has increased rather than decreased since the last review of the Act. Rio Tinto believes these issues need to be a key focus of this review, and can be resolved through a more efficient operation of the EPBC Act in the short term, and potentially reform of the EPBC Act in the longer term.

Related to this and other priorities listed below, a focus of the Commonwealth should be to ensure States/Territories regulatory frameworks are appropriate and consistently applied to meet the requirements and objects of the EPBC Act, rather than being actively involved in assessing and conditioning each project that is considered a controlled action.

- 2. Greater use of assessment and approvals bilateral agreements** – Entering into and utilising bilateral agreements for both EIA and approvals is a key solution to reducing duplication between State/Territory and Commonwealth processes, while ensuring the objects of the EPBC Act are met. There is existing provision for the Commonwealth Environment Minister, under

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<sup>15</sup> The Hon Sussan Ley MP, [Media Release](#), 21 November 2019

<sup>16</sup> The Hon Scott Morrison MP, [Address to the Business Council of Australia Annual Dinner](#), 21 November 2019

Part 5 of the EPBC Act, to make bilateral agreements with States/Territories for both assessment and approval of projects. If created and implemented as intended, bilateral agreements can meet the objects of the EPBC Act and protect the environment while at the same time ensure an efficient, transparent and consistent EIA and approvals process that can benefit both proponents and the broader community.

The Productivity Commission, in its March 2020 draft report into its *Inquiry into Resources Sector Regulation*, confirms that the Commission maintains its longstanding in-principle support for bilateral approval agreements, including that from its 2013 review into *Major Project Development Assessment Processes*.<sup>17</sup> This is despite the fact no bilateral agreements have been implemented to date, although draft agreements were prepared (but did not receive the necessary legislative changes to allow them to enter into force). Moreover, a number of companies, not just in resources, had raised this issue in their submissions.<sup>18</sup>

3. **Creation of single national lists of species and communities** – To reduce regulatory duplication a priority should be that further progress be made towards the creation of a single national list of threatened species and communities that can be used within the framework of both State/Territory and Commonwealth regimes that responds to new scientific data and is updated in a timely manner.
4. **Environmental offsets** – A gap that currently exists in national EIA and approvals processes and management of impacts is the absence of a nationally consistent approach to biodiversity offsets, particularly one which is flexible, can be applied consistently across Australia and is outcomes focused to ensure all offsets deliver a genuine conservation benefit.

Offsets can be an important mechanism that can allow key mining projects to proceed without compromising the overall environmental outcomes and mitigation efforts required. However, the Productivity Commission notes that greater environmental regulator accountability and transparency, including in offsets commitments, could ‘significantly reduce costs and improve regulated outcomes’.<sup>19</sup>

Rio Tinto supports the use of State/Territory-based schemes to deliver all offsets (including for matters of national environmental significance (**MNES**) under the EPBC Act), but recommends this sits within an overarching and consistent national framework that recognises the differences in land use and biodiversity protection regimes across Australia.

This framework should be more holistic and outcomes-based, with the opportunity to embrace research and technology when considering offsets, to enable the greatest environmental impact over time. This may include undertaking high priority or essential research to determine and inform the most appropriate on-ground actions and/or supporting conservation activities in another bioregion, where threats to the species are more acute than close to the project site.

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<sup>17</sup> Productivity Commission (2013), *Major Project Development Assessment Processes: Research Report*, 10 December 2013, pp. 31–38.

<sup>18</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020, pp. 15

<sup>19</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020, p.2

The current approach to offsets, which in our experience can be inflexible in its application, should encourage innovation and collaboration between government, industry and third parties, which would create incentives to develop better environmental outcomes.

5. **MNES** – The current suite of MNES should not be increased when considered in light of the objects of the EPBC Act and environmental protection regimes that already exist at a State/Territory level. The EPBC Act should focus on species and environmental factors of a truly national/international significance.
6. **Strategic assessments** – The use of strategic assessments and bioregional planning should continue to be considered on a case-by-case basis. Rio Tinto remains open to using strategic assessments where appropriate. However reform of the EPBC Act may be required to make these more effective over time, particularly to provide opportunities for a broader group of actions or land use scenarios such as in the context of the mining industry where multiple projects may exist and evolve over many decades. We also suggest further consideration being given to integrating State and Commonwealth strategic assessment processes, akin to assessment and approval bilateral agreements, to result in one, not two, assessments and sets of conditions.
7. **Condition setting** – A risk and outcomes-based approach for condition setting should be pursued. This approach allows for flexibility and encourages innovation to find the most efficient and best ways of meeting environmental outcomes. This is particularly important for projects that require significant investment and which operate over many decades. This includes the mining sector, which overwhelmingly is continually striving for continuous improvement and to adopt innovative practises.

Currently, assessment under the State/Territory and Commonwealth processes results in two sets of conditions for the proponent to implement, giving rise to duplication and potential inconsistency. For example, conditions requiring approval of an Environmental Management Plan imposed by both the State/Territory and Commonwealth can potentially result in a continuous cycle of review and approval if changes are requested by the Commonwealth, following approval by the State/Territory.

8. **Flexibility post approval** – A process to revise the scope of an approved action post approval should be incorporated (including in respect of strategic assessments). This would allow approvals to be kept up to date where changes would not have a significant impact on MNES. It would also result in greater clarity about when an existing approved project may require additional assessment. It is a mechanism typically included in EIA legislation, for example in section 45C of the Western Australian *Environmental Protection Act 1986* (WA).
9. **Governance models** - Governance arrangements as set out in the EPBC Act are appropriate, however in the short term we see opportunities to streamline these and enhance processes through operational changes within the current framework of the Act. While we have suggested additional measures to improve transparency and decision-making within the existing framework of the Act, we would not support fundamentally new structures or processes being introduced for project assessment or advice on approvals as we consider there are sufficient independent processes available under the EPBC Act and State/Territory based regimes.



We welcome the independent review and support efforts to improve the effectiveness and efficiency of Australia's environmental protection laws. We look forward to continuing to participate in the review.



Yours sincerely,

A handwritten signature in blue ink that reads "Brad Haynes" with a stylized flourish at the end.

**Brad Haynes**  
**Vice President – Corporate Relations**  
**Australia**  
**Rio Tinto**

**EPBC ACT REVIEW**

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**RIO TINTO SUBMISSION**

## 1. The history of the EPBC Act

**Q1: Some have argued that past changes to the EPBC Act to add new matters of national environmental significance did not go far enough. Others have argued it has extended the regulatory reach of the Commonwealth too far. What do you think?**

Rio Tinto does not support extending the current suite of matters of national environmental significance (**MNES**) as set out in Part 3 of the EPBC Act. In our submission, from a project assessment and approvals perspective, the EPBC Act should focus on particular species or environmental assets of a truly national or international significance that are recognised by Australia's international legal obligations (eg through the Biodiversity Convention or Ramsar Convention), rather than regulating particular activities that may have an impact on the broader environment that are already assessed and regulated under State/Territory biodiversity protection, environmental and land use planning laws.

In our experience these State and Territory regimes and other Commonwealth laws<sup>20</sup> are already comprehensive and robust mechanisms well equipped to regulate all development and land use proposals that may impact the environment (including MNES). We note that, like the Commonwealth, the States and Territory regulators may also be resource constrained and hence this submission includes suggested process improvements, reduction of duplication and a more focused role for the Commonwealth, which would deliver improvements to resourcing issues.

Duplication of State/Territory processes, or other Commonwealth laws, with EPBC Act processes is a significant challenge during environmental impact assessment (**EIA**) processes that unnecessarily increases costs and presents real barriers to investment. Introducing additional categories of MNES would only exacerbate this issue without necessarily resulting in additional environmental protection. We respectfully submit that a more appropriate role for the Commonwealth within the context of project development, would be to have oversight over State-based regimes that undertake assessment and approval of Commonwealth listed matters through processes such as accreditation and review, setting national standards for certain matters (see below), long term planning that is integrated with State planning processes, and providing advice on the state of Australia's environment to ensure environmental protection is being managed consistently across the country.

In respect of greenhouse gas emissions (**GHGs**), we support the outcomes of the Paris Agreement and believe that Australia's regulation of GHGs should be done in the manner that best advances the goals of the Paris Agreement. We consider this would not be best done on a project-by-project basis under the EPBC Act, as climate change is a global challenge that requires an international and national approach with solutions from many sectors which do not all necessarily interact with the EPBC Act.

## 2. What the EPBC Act Does

**Q2: How could the principle of ecologically sustainable development (ESD) be better reflected in the EPBC Act? – For example, could the consideration of environmental, social and economic factors,**

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<sup>20</sup> For example, the *Environment Protection (Sea Dumping) Act 1981* (Cth).

**which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision making?**

The principles of ESD are appropriately defined in section 3A of the EPBC Act and the promotion of these principles is an object of the EPBC Act (section 3). This object is supported by section 136 of the EPBC Act which makes the principles of ESD a 'mandatory consideration' for the Minister in deciding whether or not to approve the taking of an action. Rio Tinto considers that the existing regime provides sufficient clarity around how economic and social matters and the principles of ESD are relevant to the decision-making process.

We do not consider requiring a formal cost benefit analysis as part of the Minister's decision-making processes would be beneficial. The current known tools for environmental economic accounting and cost benefit analysis are not developed sufficiently to include other factors such as economic or social benefits of a specific project. Those factors are best considered by the Minister in their final decision on the project.

**Q3: Should the objects of the EPBC Act be more specific?**

Rio Tinto considers that the current objects of the EPBC Act are appropriate and balanced, and do not need to be expanded or made more specific. They enable consideration of the principles of ESD, the protection and conservation of Australia's biodiversity and ensuring the Commonwealth can meet all of its other environmental and relevant international legal obligations.

As noted throughout our submission, to improve the operation of the EPBC Act, there is a greater need for cooperation between the Commonwealth and the State/Territories particularly in respect to project assessment and approvals process. This is clearly contemplated in the objects of the EPBC Act, which refer to intergovernmental cooperation, minimising duplication, use of bilateral agreements, accreditation of processes, and a partnership approach to environmental protection.

**Q4: Should the matters of national environmental significance within the EPBC Act be changed? How?**

As noted for Question 1, Rio Tinto does not consider the current suite of MNES should be changed.

**Q5: Which elements of the EPBC Act should be priorities for reform? – For example, should future reforms focus on assessment and approval processes or on biodiversity conservation? Should the Act have proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?**

Rio Tinto primarily interacts with the EPBC Act via the project assessment and approvals processes under Parts 7 to 9. So these Parts are those we are best placed to comment on, and we consider these processes should be a focus for reform. There are clear opportunities for reform, primarily around how the EPBC Act is applied in practice and by utilising provisions that already exist that could streamline current processes (rather than needing significant legislative amendment) to the Act itself.

Importantly, there are a range of opportunities for the Commonwealth to better work in collaboration with their State and Territory counterparts in this regard, which is consistent with the objects of the EPBC Act as set out in Question 3 above.

The States and Territories have robust and comprehensive EIA, approval and land use regimes for regulating the environmental impacts of projects, and protecting significant environmental and heritage assets. In our experience across several jurisdictions, additional assessment and approval processes under the EPBC Act have resulted in considerable duplication, in many cases resulting in unnecessary administrative complexity, lengthy approval processes and duplicative and potentially inconsistent approval conditions, without clear additional environmental protections. Such duplication is also occurring at a time when the Department can often be constrained in terms of resources for an increasing workload.

In that regard, Rio Tinto recommends that the Commonwealth Minister utilise Part 5 of the Act to make bilateral agreements with States and Territories where appropriate to include both assessment and approval of projects.

Notably, s45 of the EPBC Act defines a bilateral agreement as an agreement between the Commonwealth and a State/Territory that can both protect the environment and ensure efficient, timely and effective EIA processes that are not duplicative. That is, if created and implemented as intended, a bilateral agreement can clearly meet the objects of the EPBC Act and protect the environment while at the same time ensure an efficient, transparent and consistent EIA and approvals process that can benefit both proponents and the broader community.

Implementing such agreements would not reduce the role or relevance of the EPBC Act, but rather enable the Commonwealth to focus on overseeing more strategic matters, such as reviewing and accrediting State processes, statutory reviews of bilateral agreements, setting standards on the management of MNES, ensuring consistency of approaches to assessments at State levels (where appropriate), developing environmental records and biodiversity databases and reporting on the state of Australia's environment.

The Productivity Commission (the Commission), in its March 2020 draft report into its *Inquiry into Resources Sector Regulation*, confirms that the Commission maintains its longstanding in-principle support for bilateral approval agreements, including that from its 2013 review into *Major Project Development Assessment Processes*.<sup>21</sup> This is despite the fact no bilateral approval agreements have been implemented to date, although draft agreements were prepared (but did not receive the necessary legislative changes to allow them to enter into force). Moreover, a number of companies, not just in resources, had raised this issue in their submissions.<sup>22</sup>

Further to the making and use of bilateral agreements for environmental assessment and approval, Rio Tinto offers a number of suggestions for how to better implement the Act in response to Question 21 below. In particular we recommend that a process to revise the scope of an approved action post approval be incorporated into the Act (including in respect of strategic assessments).

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<sup>21</sup> Productivity Commission (2013), *Major Project Development Assessment Processes: Research Report*, 10 December 2013, pp. 31–38.

<sup>22</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020, pp. 15

The draft report of the Productivity Commission's *Inquiry into Resources Sector Regulation* noted that the post-approvals process for mining projects is becoming increasingly uncertain and complex. Moreover, the Commission recognises that there are currently no assessment frameworks for post-approvals, as well as regulatory timeframes (for assessment/approval as well as duration of the offsets projects).<sup>23</sup> The Commission also recognises that project proponents may face multiple requests for information from state and Commonwealth environmental regulatory agencies.<sup>24</sup>

### 3. The performance of the EBPC Act

**Q6: What high level concerns should the review focus on? – For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?**

Rio Tinto is not unique in the resources and development sectors in experiencing lengthy, complicated and duplicative EIA processes for major projects that result in significant economic costs without significant additional environmental benefit. It recommends this issue as a key priority for the review.

Rio Tinto's operations across Australia require progressive development of current mines and future projects to maintain current production levels and export volumes. For example, significant investment is required over the next several years and beyond to sustain the production of our iron ore business in Western Australia alone. This means that in the coming years, maintaining production will require approvals for a level of investment that is typically more reflective of a business in an expansion phase.

In terms of potential economic costs of inefficiency:

- The Productivity Commission's 2017 5 Year Productivity Review estimated that implementing its regulatory reform recommendations would gain \$220 million annually in avoided costs for major projects.<sup>25</sup>
- Similarly, the Minerals Council of Australia has identified that approval delays to a major project can cost up to \$1 million every day.<sup>26</sup> This is consistent with our experience.

Accordingly, it is important that the regulatory approach is flexible and outcomes focussed, particularly for a cyclical industry that needs to respond quickly to changing market and economic circumstances. Consistent with our responses to several questions, our experience is that the approach to assessing and conditioning environmental impacts of projects are well regulated at a State/Territory level, with the current EIA and approval process under the EPBC Act providing few additional environmental benefits,

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<sup>23</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020, p. 15

<sup>24</sup> *Ibid*

<sup>25</sup> Productivity Commission (2017). *Shifting the Dial, 5 Year Productivity Review*, Canberra, pp. 236-237.

<sup>26</sup> Minerals Council of Australia (2019), *Pre-budget submission 2019-20*, 1 February 2019.

while adding to timeframes and potential duplication and inconsistency of conditions after State based assessment and approvals processes have been completed.

There is significant expertise and independence at a State/Territory agency level to integrate the assessment and regulation of MNES within existing State/Territory processes. Any improvements to environmental management to address Commonwealth matters would be best implemented at a State/Territory level with oversight from the Commonwealth.

Therefore, Rio Tinto reiterates its recommendations elsewhere in this submission to adopt and use bilateral agreements in accordance with Part 5 of the Act, with the Commonwealth's role being to focus on more strategic oversight and standard setting to the extent those standards relate to MNES or there is a common environmental issue to be managed across jurisdictions.

To the extent bilateral agreements are not fully utilised, or additional Commonwealth input is required, we support the location of Commonwealth agency staff within the States to provide greater opportunities for integration, understanding of the local environment and relevant MNES, efficiency and collaboration with State agency counterparts.

We also note that this is a recommendation of the draft report of the Productivity Commission's Resource Sector Regulation review, whereby delays, duplication and inconsistency in application of the EPBC Act could also be reduced by

'improved cooperation and coordination between the Commonwealth and State and Territory regulators, including through out-posting of Commonwealth officers to jurisdictions with high application throughput, and training of State and Territory officers in EPBC Act requirements (which would help ensure that information provided in bilateral assessments meets Commonwealth requirements)'.<sup>27</sup>

Similarly, to the extent strategic assessments are pursued, the EPBC Act and its implementation in this regard needs to be flexible and adaptable to change for projects operating over many decades, with the ability for there to be one, not two, strategic approvals similar to a bilateral agreement. At present we are concerned there is not sufficient flexibility in the EPBC Act for strategic assessments to apply to all scenarios in the resources sector at both State and Commonwealth level.

Finally, we note that there is a need for greater flexibility once a project has been approved under the EPBC Act. For example, a process to revise the scope of an approved action post approval should be incorporated (including in respect of strategic assessments). This would allow approvals to be kept up to date where changes would not have a significant impact on MNES. It would also result in greater clarity about when an existing approved project may require additional assessment. It is a mechanism typically included in environmental impact assessment legislation, for example in section 45C of the Western Australian *Environmental Protection Act 1986* (WA). This would enable EPBC Act approvals to be consistent with State/Territory approvals.

**Example: South of Embley (Amrun) environmental approval**

In 2019, Rio Tinto completed commissioning of the \$1.9 billion (A\$2.6 billion) Amrun bauxite mine on the Cape York Peninsula in Queensland, Australia.

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<sup>27</sup> Productivity Commission, *Resources Sector Regulation, Draft Report*, March 2020, p.15.

Amrun will provide jobs, support businesses and contribute to growth in the region for the next 50 years, building on \$2.2 billion of contracts with local, state, and national businesses during construction.

However, the overall process for receiving environmental approval took 5 years and 8 months. The experience serves to highlight how complexity, duplication, and inconsistency between state and Commonwealth approvals processes contributes to unnecessary costs and delays for proponents. This ultimately delays or puts at risk the economic benefits of mining to Australians, including in regional communities.

A complete timeline of events, between Amrun being declared a significant project in 2008 to final Environmental Approval in 2014, is provided in Appendix 1 to Rio Tinto's Submission to Productivity Commission's Resources Sector Regulation study.<sup>28</sup>

That information highlights the following issues from the perspective of the project proponent:

The environmental assessment and approvals process is complex and lengthy.

The existing assessment and approvals framework is unable to accommodate project variation in a way that minimises assessment and approval time frames. While it can be argued that the project description should be well known in advance, the reality is often that projects are developed in parallel with the engineering pre-feasibility (PFS) study, prior to detailed feasibility. Consequently there is potential for project changes that were not foreseen during PFS that once known become significant from an assessment and approvals perspective.

The introduction of the shipping aspect as an activity requiring assessment of a new MNES was not based on risk, as the cumulative activity differed little from what was already an authorised activity.

The introduction of additional assessment and document structure, which was not initially required by the Queensland and Commonwealth governments, added additional complexity and cost and schedule impacts.

There was an inconsistent application of the "significance" test with respect to the extent and or relevancy of certain matters.

Assessment guidelines are not necessarily based on materiality of risk, but on a subjective and adhoc basis.

#### *About Amrun*

Amrun is about 40 kilometres south of Rio Tinto's existing East Weipa and Andoom mines on the Cape York Peninsula in Far North Queensland.

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<sup>28</sup> Rio Tinto (2019). Submission to Productivity Commission's Resources Sector Regulation study. Available at: [https://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0009/247194/sub026-resources.pdf](https://www.pc.gov.au/__data/assets/pdf_file/0009/247194/sub026-resources.pdf)



The mine, plant and export facility received board approval in 2015, with a targeted start date of 2019. Rio Tinto made Amrun's first shipment in December 2018. At full production, Amrun will have capacity of 22.8 million tonnes a year, with options to expand.

At the peak of construction, 1,200 people worked on site. Since project inception, close to 400 Aboriginal and Torres Strait Islander people have been employed by the project.

Rio Tinto has a long history of partnering with Traditional Owners on Cape York. Aboriginal and Torres Strait Islander people make up one in four employees at its existing Western Cape operations. The Amrun mine will continue creating opportunities for Indigenous people from Cape York and the surrounding region.

#### 4. What the future looks like

**Q7: What additional future trends or supporting evidence should be drawn on to inform the review?**  
– **Future trends noted in the paper include: Pressure on the environment will increase; the economy will continue to grow; Australia's population will grow, with changing expectations; Businesses will adapt to remain competitive**

Rio Tinto agrees with the future trends noted in the Discussion Paper and considers that our suggestions throughout our submission are consistent with addressing those challenges. In particular, any environmental assessment and approvals regime needs to be flexible, adaptable, embrace technology and be risk based and outcomes focussed. In that regard, we welcome the announcement in November 2019 by the Commonwealth Government to take steps towards a nationally consistent digital environmental assessment and approvals regime, partnering with the Western Australian Government to develop a system that will reduce approvals times, allow project proponents to submit a single application via a single online portal, track progress of the assessment and approval and access a database of biodiversity studies relevant to a project.<sup>29</sup> Other examples of these developments are:

- Western Australian EPA's Strategic Plan 2019 has a pillar of 'being innovative in environmental information and digital EIA'<sup>30</sup>.
- Western Australian Biodiversity Science Institute's 2019 'Digitally transforming Environmental Assessment – leveraging digital information to streamline EA and approvals'<sup>31</sup>.

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<sup>29</sup> The Hon Scott Morrison MP, *Address to the Business Council of Australia Annual Dinner*, 21 November 2019

<sup>30</sup> The Western Australia Environmental Protection Authority, *Strategic Plan 2019-2022*

<sup>31</sup> The Western Australia Biodiversity Science Institute and the Western Australian Marine Science Institution, *Digitally Transforming Environmental Assessment: Leveraging Digital Information to Streamline Environmental Assessment and Approvals*, October 2019.

## **5. Focus areas: How can the EPBC Act be improved?**

### **Q8: Should the EPBC Act regulate environmental and heritage outcomes instead of managing prescriptive processes?**

Rio Tinto strongly supports both risk and outcomes-based approaches to the assessment and regulation of Controlled Actions under the EPBC Act (particularly through condition setting). Reasons for this include:

- Risk and outcomes based approaches allow for flexibility and encourage innovation to find the most efficient ways of meeting environmental outcomes. This is particularly important for projects that require significant investment and which operate over long timeframes (e.g. many decades) such as those in the mining sector, which is continually striving for continuous improvement and to adopt innovative practises.
- Prescriptive processes are misaligned with an outcomes based and adaptive management approach, which is an important tenant of effective environmental management, biodiversity conservation and risk mitigation. Monitoring over time allows new data to be gathered, and a framework for responding to these data points and revising approaches is warranted to achieve better outcomes for MNES. Conversely a prescriptive approach can delay management responses when a better and / or more cost effective environmental management measure is identified.
- Prescriptive processes also risk becoming ‘tick and flick’ without achieving an environmental benefit, but instead provide a disincentive for continuous improvement and innovation (e.g. conditions requiring a fence to be installed are easily complied with, however, the intended outcome of improved grazing management or people access controls may not be met, and an incentive to find a better way to achieve the outcome is not present).
- Increasingly, State/Territory-based conditions of approval are geared towards requiring outcomes to be achieved, without prescribing methods, while retaining strong oversight to ensure outcomes are actually met. We encourage the Commonwealth to align with this approach.
- Having a mix of outcome based (at a State/Territory level) and prescriptive conditions (at a Commonwealth level) increases the risk that there are conflicts in being able to meet both sets of conditions and a duplication of effort. This is particularly true where a prescribed requirement is not delivering an environment outcome or heritage benefit and/or where flexibility in delivery of outcomes is required/beneficial.
- There is existing policy guidance under the EPBC Act regarding outcomes-based conditioning, which we respectfully submit is not being entirely implemented in practice in how conditions are actually being set.

### **Q9: Should the EPBC Act position the Commonwealth to take a stronger role in delivering environmental and heritage outcomes in our federated system? – Who should articulate outcomes? Who should provide oversight of the outcomes? How do we know if outcomes are being achieved?**

The States/Territories have robust and comprehensive mechanisms for assessing and regulating environmental impacts of projects, and to the extent that environmental and heritage outcomes need to be strengthened, this should occur at the State/Territory level. We submit that the role of the Commonwealth in this regard should be to have broader oversight of those outcomes to ensure the objects of the EPBC Act are being achieved, rather than being involved in the day-to-day project assessment and approvals process, which should be conducted by the States.

Offsets can be an important mechanism that can allow key mining projects to proceed without comprising the overall environmental outcomes and mitigation efforts required. However, the Productivity Commission notes that greater environmental regulator accountability and transparency, including in offsets commitments, could 'significantly reduce costs and improve regulated outcomes'.<sup>32</sup>

In that regard, Rio Tinto strongly supports both outcomes-based approaches and the making and use of bilateral agreements for the assessment and approval of projects. In this context, we suggest that a focus of the Commonwealth should be to ensure State/Territory regulatory frameworks are appropriate and consistently applied to meet the requirements and objects of the EPBC Act, working with them to set consistent outcomes for MNES and ensuring that the agreed-to processes are being followed appropriately and consistently across the country. This would remove the need for the Commonwealth to be involved in day-to-day project assessments that are already being undertaken by State/Territory agencies.

Specifically, there are some areas, where there would be significant benefit in coordination/oversight from the Commonwealth, including:

- Ensuring alignment of regulatory standards and outcomes across jurisdictions, so that environmental and heritage outcomes are being consistently applied and met. This is particularly important for MNES that are shared between States/Territories.
- A focus on delivering a consistent, national approach to offsets, under which State/Territory-based schemes can be used for implementation. This would continue the direction already underway from the Commonwealth Government in establishing a single digital environmental approvals process and biodiversity database.<sup>33</sup>

**Q10: Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve? In our federated system should they be prescribed through: Non-binding policy and strategies? Expansion of targeted standards, similar to the approach to site contamination under the National Environment Protection Council, or water quality in the Great Barrier Reef catchments? The development of broad environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?**

Within the right circumstances, Rio Tinto supports developing and applying national environmental standards and these should underpin a strongly outcomes-based approach to the assessment and approval of projects. We see scope for improvement and benefit for both proponents and the

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<sup>32</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020, p.2

<sup>33</sup> The Hon Scott Morrison MP, *Address to the Business Council of Australia Annual Dinner*, 21 November 2019

community participating in the EIA process if national standards and desired outcomes are made clear and then applied in a robust and consistent manner by both proponents and regulators.

National standards are already set for a range of environmental matters (e.g. air and water quality) via the National Environment Protections Measures framework of the Commonwealth *National Environment Protection Council Act 1994* (which then provide both a precedent and potential framework for their use with regard to biodiversity and MNES).

National standards would also be an important part of any bilateral processes, particularly for MNES that occur across jurisdictions, where standards would ensure a common outcome for a protected matter even if assessments/approvals were approached differently.

While some national standards may be useful in appropriate circumstances, we encourage caution in how national standards are approached and therefore suggest the following observations:

- Recovery plans are akin to a national standard, in that the Minister cannot make a decision to approve a project that would have outcomes inconsistent with a recovery plan. However, in our experience, recovery plans are often very research focused, without consideration of how development or major projects could support the plans' objectives.
- While they should be considered, standards or guidelines should not be treated as binding, but should be clear and underpinned by consistently adopted departmental processes in practice to limit subjective interpretation or uncertainty. For example, in our experience the current requirement that a project must be referred to the Minister under Part 7 of the EPBC Act if it will or is likely to have a significant impact on MNES, is often interpreted very differently between proponents and projects. This is despite very little difference in likely environmental impact. As such, assessing officers on the same project or working on similar projects may receive or have their own very different interpretations of how 'significant' impacts may be between projects and therefore how they should be treated under the Act. This lack of consistency and transparency can create significant uncertainty (and cost) for proponents, and a loss of confidence by the community in the broader regulatory process.
- Any standard or guidance should consider, and be sufficiently flexible to deal with, the full range of environments/geographies in which protected matters occur in, and the differences between bioregions (e.g. threats, population densities in the Eastern states contrasted to semi-arid regions of Western Australia) in order to be most useful.
- National standards should only be created in circumstances where there is a genuine absence of guidance that is required at a national level. For example, they would not be appropriate for some phases or activities of mining projects, including mine closure, that are regulated in a detailed, robust and transparent manner by the States/Territories (e.g. mine closure).

Rio Tinto has undertaken a short research exercise into where environmental standards are currently applied in jurisdictions outside of Australia. This is summarised below.

## SE STUDY – APPLICATION OF ENVIRONMENTAL STANDARDS IN OTHER JURISDICTIONS

### *European Union*

The European Union (EU) has environmental standards and objectives that relate to its environmental policies and legislation. Sustainable development is the focus of environmental management in the EU and explicit objectives are defined for areas including:

- Tackling climate change
- General provisions
- Waste management
- Air pollution
- Water protection and management
- Protection of nature and biodiversity
- Soil protection
- Civil protection
- Noise pollution
- Environment: cooperation with developing nations
- European statistics

Under these objectives there are thresholds and standards are given.

EIA is enforced via EU Directive 2011/92/EU under which an EIA for a project must consider the environmental sensitivity of the proposed area including, "areas in which the environmental quality standards laid down in Union legislation have already been exceeded".

Similarly, in regard to determining the likely significance of effects for Strategic Environmental Assessment (SEA) (enforced via directive 2001/42/EC), the directive states that, "Characteristics of the effects and of the area likely to be affected, having regard, in particular, to... (exceeding) environmental quality standards or limit values".

The EU also has a sustainable development strategy through which it has incorporated sustainable development into a range of policies, including objectives in a number of areas including conservation and management of natural resources.

Additionally, the EU had an Environmental Action Programme to 2020 (The 7th Environment Action Programme (EAP)) providing detailed guidance for environmental policy and how to achieve the desired targets in the EIA process.

### *Canada*

Canada has a 'Federal Sustainable Development Strategy (FSDS)' which is implemented as part of Strategic Environmental Assessments (SEA). The FSDS establishes sustainable development goals and targets, and the means to achieve them. These goals relate to a number of areas covering clean economic growth, ensuring healthy ecosystems, and building safe, secure and sustainable communities.

As part of Canada's SEA process, proposals are considered in regard to how they "could affect the goals and targets set out in the FSDS; therefore underpinning/supporting the environmental assessment process. One example of a goal under the FSDS is 'Healthy Coasts and Oceans' which explains the current state of the relevant environmental values and provides short- and medium-term targets to achieve the overall goals. As

part of this, marine spatial planning is used to better coordinate the use and management of marine spaces to achieve ecological, economic and social objectives on a national scale (guiding where marine activities would be best located and identifying areas which would need to be avoided or require special measures for conservation or protection). This is an important point to consider, as ways to coordinate national 'environmental standards' are important for their implementation and a variety of spatial techniques would likely be required.

It is noted that there are five 'Canada-wide environmental standards' under the Canadian Environmental Protection Act (CEPA), which relates to pollution and toxic substances. These standards do not underpin EIA, which is regulated under a different act; the Canadian Environmental Assessment Act, 2012.

#### *New Zealand*

New Zealand has six 'National Environmental Standards' for:

- Air Quality
- Sources of Drinking Water
- Telecommunication Facilities
- Electricity Transmission Activities
- Assessing and Managing Contaminants in Soil to Protect Human Health
- Plantation Forestry.

National environmental standards are regulations issued under section 43 of the Resource Management Act 1991. They have the force of regulation and are implemented mainly by regional councils. Environmental management including EIA is regulated under the same Act and therefore EIA must consider these standards during the assessment process and ensure that they are met.

**Q11: How can environmental protection and environmental restoration be best achieved together? Should the EPBC Act have a greater focus on restoration? Should the Act include incentives for proactive environmental protection? How should Indigenous land management practices be incorporated?**

Rio Tinto is involved in a number of landscape-wide projects that contribute to environmental restoration (e.g. a landscape-scale feral cat control program conducted on a pastoral station in the Pilbara). Most of the legal and regulatory mechanisms that facilitate environmental protection and restoration are already in place at a State/Territory government level (e.g. through land use planning and land tenure regimes), and we consider that State/Territory based agencies are best placed to continue to regulate and oversee on-ground restoration projects. However, Rio Tinto supports any additional initiatives from a Commonwealth level that may incentivise landholders to restore land in appropriate circumstances, without pre-empting future decisions as to how those local restoration projects would evolve over time.

Regarding restoration, we make the following observations:

- When considering the design of individual projects, restoration should be considered both as part of pre-offset on-site mitigation as well as offsets for significant residual impacts after such mitigation. Both fund-based and land-based offsets can focus on environmental restoration that

deliver positive environmental benefits for protected matters that are impacted by projects, therefore contributing to their protection.

- While mining activities inevitably have impacts on the environment, operational areas can, and are, appropriately rehabilitated under State/Territory requirements for mine closure and rehabilitation. This level of rehabilitation during operations and prior to closure should be recognised in the assessment of projects under the Act, first in the mitigation hierarchy prior to consideration of the scale of further 'off-site' restoration required under any offset. In our experience this does not currently occur with any degree of consistency. This leads to offsets often being applied when they should not be warranted when relevant offset policies are taken into consideration.
- There are numerous programs that are undertaken within the mining sector, including by Rio Tinto, that are specifically directed towards restoration/protection of biodiversity. However, there are currently few, if any, mechanisms for this work to be recognised during assessment of individual projects as part of the mitigation hierarchy. Further, the project specific assessment process drives localised rather than landscape/regional scale restoration outcomes. If such mechanisms were built into, or at least recognised within, the EIA framework, incentives for these programs would be increased, thereby furthering the opportunities for broader scale restoration activities to gain industry and community support.
- There are already processes in place at a Commonwealth level for landscape scale environmental restoration projects such as the National Heritage Trust, National Landcare Project. These sit outside the EPBC Act and we believe this is the appropriate place for such initiatives.

**Q12: Are heritage management plans and associated incentives sensible mechanisms to improve? How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?**

We provide the following responses in respect of the specific questions asked. However, as has been said previously, Rio Tinto generally considers it most appropriate that the relevant State/Territory cultural heritage legislation should have primacy.

Rio Tinto recognises the primacy of Australia's Indigenous peoples in relation to cultural heritage; as such, any mechanism or legislative framework must include Traditional Owners in its management and protection. Across Australia, engagement with relevant and appropriate Aboriginal people are determined by State/Territory regulatory regimes and structure of Indigenous representative organisations.

In this regard, there is always scope to develop and improve upon heritage management plans, with inclusion of Indigenous oversight and consideration of cultural practices important considerations. The Productivity Commission notes that there currently is a lack of a 'consistent and comprehensive data' on Indigenous heritage.<sup>34</sup>

They are a reflection of whatever is "best practice" at any given time, and as such any regulatory regime should be adaptable and flexible to enable such plans to be amended as required. The current review

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<sup>34</sup> Productivity Commission (2020), *Resources Sector Regulation, Draft Report*, March 2020, pp. 20

of the *Aboriginal Heritage Act 1972* (WA) is already considering for Western Australia how Cultural Heritage Management Plans can be constructed such that they are fit for purpose for facilitating agreements with Aboriginal groups concerning proposed impacts to heritage.

Identification, protection and management of places of National and World Heritage significance is one of the purposes of the EPBC Act. In the case of Rio Tinto's Dampier operations, the establishment of a conservation agreement under Part 14 of the Act has provided a suitable mechanism in this regard. It is place based, although it is the National Heritage Values which are the focus in providing effectiveness in recognising, protecting and conserving the cultural heritage of the Dampier Archipelago, including Burrup Peninsula. However, the conservation agreement is specific to Rio Tinto operations although we have extended understanding of the wider areas through collaborative work with University of Western Australia and Murujuga Aboriginal Corporation<sup>35</sup>.

The formulation of the Act and administrative process has very much been focused on heritage as a place with physical cultural values. Both nationally and internationally, there is a growing awareness of intangible heritage and cultural values of landscape features. Traditional practises and cultural beliefs form an integral part of the cultural landscape and must be incorporated in to any management process.

However, implementing something new concerning management of heritage places under the EPBC Act that may not be consistent with the State/Territory provisions, or which doubles the burden of provision of evidence to meet conditions under multiple Acts, would be difficult to navigate and would lengthen timeframes.

**Q13: Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?**

While Rio Tinto supports strategic assessments under Part 10 of the EPBC Act remaining as one of the various options for the assessment of projects, they should not become a mandatory requirement. In our view the EPBC Act should provide a flexible suite of assessment and management tools that can be applied according to the particular circumstances.

While strategic assessments under the EPBC Act provide a useful mechanism for assessing multiple new projects over a broad landscape, we submit that further reforms are necessary to enable better use of strategic assessments. In that regard, our suggestions include:

- Under the current EPBC Act it is unclear as to how strategic assessments can be best managed and applied in circumstances where there are multiple existing operations that need to be revised or continually expanded, and definitions of exclusions from that strategic assessment are not easily defined in practice.
- There is no apparent provision to alter an "MNES Program" once endorsed. This risks causing significant challenges given that long life, integrated mining operations change over time and

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<sup>35</sup> The University of Western Australia, [\*New agreement to preserve, protect and study WA rock art\*](#), 24 July 2019



particularly if the program and assessment covers a substantive timeframe. There should be provision incorporated for programs to be updated.

- We suggest there is a need for a mechanism in the EPBC Act to change the scope of the proposal and/or conditions (as appropriate in the circumstances) over time.
- The ability for there to be one, not two, strategic assessments to cover both Commonwealth and State environmental assessment and approvals regimes, so only one set of conditions is applied.

**Q14: Should the matters of national significance be refined to remove duplication of responsibilities between different levels of government? – Should states be delegated to deliver EPBC Act outcomes subject to national standards?**

Rio Tinto strongly supports removing all duplication of responsibilities and assessment of environmental factors, and an effective “delegation” to the States (by way of accreditation of processes) to achieve the objectives of the EPBC Act, with standards relevant to the Act to be set and monitored by the Commonwealth in consultation with the States. This can be achieved in several ways, without the lowering of standards or environmental outcomes.

For example, as noted elsewhere in this submission, the EPBC Act currently provides for the making and use of both assessment and approval bilateral agreements, which minimise duplication and the risk of inconsistency in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory. This is clearly contemplated in the objects of the EPBC Act. We consider there are greater opportunities for both assessment and approval bilateral agreements to be used in appropriate circumstances, without removing the role of the Commonwealth in overseeing the protection of MNES, nor the objectives of the EPBC Act being met. This would not require the current suite of MNES to be refined, as said earlier.

Initiatives such as the Commonwealth Government’s announcements at the end of 2019, aimed at improving timeframes and to reduce duplication are consistent with the objects of the EPBC Act and should continue to be pursued within the framework of the EPBC Act<sup>36</sup>. This includes:

- Partnership with the Western Australian Government to lodge online environmental applications, to improve the efficiency of the EIA and approvals process and reduce timeframes.
- Establishment of a biodiversity database, and other data management to support assessments.
- Appropriate resourcing of the Department, as well as locating staff undertaking work relevant to the assessment of projects under the EPBC Act within the jurisdiction relevant to the project, to ensure collaboration and efficiencies between Commonwealth and State agencies. This also ensures that the assessment is undertaken by those with expertise specific to the region and the relevant MNES and the types of projects in that jurisdiction.

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<sup>36</sup> The Hon Sussan Ley MP, *Media Release*, 21 November 2019; The Hon Scott Morrison MP, *Address to the Business Council of Australia Annual Dinner*, 21 November 2019

The “Common Assessment Method”, is an initiative which seeks to streamline the listing process for threatened species and communities. While we support this initiative, a priority should be that further progress be made towards the creation a single national list of threatened species and communities that can be used within the framework of both State and Commonwealth regimes that responds to new scientific data and is updated in a timely manner.

**Q15: Should low-risk projects receive automatic approval or be exempt in some way? – How could data help support this approach? Should a national environmental database be developed? Should all data from environmental impact assessments be made publicly available?**

We presume that “low risk” projects are those which by definition will not have a significant impact on MNES, or can otherwise be managed according to an accepted management regime. If so, there are already mechanisms within the EPBC Act that either “exempt” such projects from approval (when determined as “not controlled actions”), or else provide a short form approval (“particular manner” decisions). However, in our experience these processes are have not been utilised effectively, namely that the Department may be reluctant to make “not controlled action” or “particular manner” decisions, even where the action is unlikely to have a significant impact on a MNES. We encourage use of these provisions for projects that pose a lower environmental risk. They provide proponents with greater certainty in implementation, while at the same time encourage referral of projects to the Department which enables greater oversight and transparency.

However, our recent experience is that some controlled action decisions, and the assessments and approval decisions that occur as a result, deviate from targeted assessment of MNES into other environmental factors or impacts that should more appropriately be assessed (and are currently already being assessed) at a State level.

In that regard, we suggest that more robust Departmental guidelines be made publicly available to guide what project impacts are considered to be genuinely “significant” at a national level. This will help to provide more consistency in decision making and ensure that only those projects require assessment, and the assessment focus only on the MNES. Such guidelines would also ensure more targeted Commonwealth oversight, leaving broader environmental impacts to be appropriately assessed and conditioned at a State level. More robust departmental guidelines would provide proponents with greater clarity about the significance of their impacts, as well as assisting the Department in maintaining the focus of the assessment (and therefore reduction in duplication of assessments that properly occur at a State level).

With respect, the current publicly available guidelines on significance of impact have criteria that are open to broad interpretation and do not encourage consistent decision making consistent with the objects of the EPBC Act.

In terms of projects that a proponent has identified should not require referral at all, a useful example of departmental guidelines that we understand work well in supporting an “exemption approach” for low risk projects is *EPBC Act Policy Statement 2.1 - Interaction between offshore seismic exploration and whales: Industry guidelines*. These guidelines provide clear advice to proponents as to how seismic exploration of offshore oil and gas should be undertaken for the project to be considered ‘not significant’ under the Act. Proponents can then either apply the guidance with a greater degree of confidence, or refer a project if the guidance cannot be followed and risks are therefore considered higher. These

guidelines also provide useful parameters for proponents and the Department for considering other projects which will result in similar impacts to the environment, thereby providing certainty about environmental outcomes.

We also submit that amendments are made to the EPBC Act for:

- A requirement that the Department provide reasons for making a controlled action decision, this would encourage consistency in decision making and provide proponents and the public with greater certainty of decisions made under the Act.
- Inclusion of provisions allowing 'minor or preliminary' work to continue while EIA is occurring (similar to s 41A(3) (WA) EP Act).

In terms of public availability of data, as a principle we have no concerns with data being made publicly available, subject to any data that may be commercial in confidence or protected by intellectual property regimes.

**Q16: Should the Commonwealth's regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?**

Consistent with our responses to other questions, Rio Tinto considers that the focus of the Commonwealth's regulatory role should be on specific MNES, with habitat management at a landscape scale being managed by the States and Territories under the existing regime of land use planning, tenure and biodiversity conservation laws. We consider there are sufficiently robust mechanisms within these State/Territory laws for such protection, with the Commonwealth's role to be that of having oversight of specific MNES, preferably through State/Territory based mechanisms to reduce duplication or overlap of regulation.

Further, from a project assessment and approvals perspective, leveraging state-based EIA processes (e.g. via bilateral agreements) would allow for consideration of individual species, as well as gaining broader landscape benefits.

**Q17: Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?**

As recommended throughout our submission, Rio Tinto supports any measures to reduce duplication by which the effective State based environmental assessment and approval processes are used to manage and regulate matters that fall under the EPBC Act, such as through the making and use of bilateral agreements as currently provided for under Part 5 of the Act.

The benefits of more efficient or streamlined project approvals are significant, and these can be realised via the use of bilateral agreements. In terms of potential economic costs of inefficiency:

- The Productivity Commission’s 2017 5 Year Productivity Review estimated that implementing its regulatory reform recommendations would gain \$220 million annually in avoided costs for major projects.<sup>37</sup>
- Similarly, the Minerals Council of Australia has identified that approval delays to a major project can cost up to \$1 million every day.<sup>38</sup>

**Q18: Are there adequate incentives to give the community confidence in self-regulation?**

We submit that there are adequate incentives and mechanisms within State and Commonwealth environmental protection regimes to provide the community confidence in self-regulation, and further incentive based mechanisms are not required.

In particular there are several stage-gates in State and Commonwealth regimes that provide the community with public notification and the ability to comment on and influence a project’s design and environmental outcome (for example during the EIA process if the proponent has not appropriately applied the mitigation hierarchy in the project design to minimise environmental impact). In our experience if the community has not been provided with sufficient, and genuine, consultation, then there is a real risk of project approval delay as well as possible reduced community confidence in the project, which will impact the company.

For Rio Tinto, our relationship with affected communities and Indigenous landowners is of central importance. Operating in a mature industry, we implement strict internal standards and practices in line with – and sometimes beyond – domestic and international regulations. On a related note, some of our key lessons for effective engagement in agreement-making are highlighted in Q19. Our environmental standards require all of our sites to involve local communities in monitoring activities and to share performance with stakeholders on a regular basis. For example, at our operations in Cape York, we bring together experienced technical staff with scientific knowledge and local Indigenous people with traditional knowledge and methods, to preserve the cultural heritage and ecosystem.

**Q19: How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management? How can we best engage with Indigenous Australians to best understand their needs and potential contributions? What mechanisms should be added to the Act to support the role of Indigenous Australians?**

We acknowledge Indigenous Peoples’ unique and important interests in lands, waters and environment as well as their history and traditions. We seek to operate consistently with the United Nations Declaration on the Rights of Indigenous Peoples. In line with this, we understand that the best approach

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<sup>37</sup> Productivity Commission (2017). *Shifting the Dial, 5 Year Productivity Review*. Canberra, p 236-237.

<sup>38</sup> Minerals Council of Australia (2019), *Pre-budget submission 2019-20*, 1 February 2019

to engagement with and understanding the needs and contributions of Indigenous Peoples would be best informed by Indigenous peoples and their representative bodies.

With this in mind, we offer contributions from Rio Tinto's experience of supporting and engaging with Indigenous Australians regarding environment and heritage management. Rio Tinto engages with Indigenous Australians as part of our core business, including through the key stages of the EIA processes at both State and Commonwealth level. In order to ensure fit-for-purpose, transparent and informed engagement, the level of engagement and any issues of concern are determined on a project-by-project basis.

In our experience as a proponent engaging with Indigenous Australians across the life of a project, we have found that there is no single one size fits all process. Reflecting on agreement-making the common dimensions critical to effective engagement include: inclusive engagement, knowing and understanding the local context, planning, implementing to the plan and monitoring, evaluating, reviewing and improving as required. We share and explore our plans with Traditional Owners in a format and language they understand.

We are committed to protecting environment and heritage throughout the life of our operations. By understanding the value of affected ecosystems – including through working alongside local Indigenous Australians who possess unique knowledge and perspectives - we can better manage potential impacts on biodiversity and the natural resource dependencies of host communities in the regions that we operate. Rio Tinto also works closely with Indigenous people to understand their physical, spiritual and cultural connection with the local environment. We seek Traditional Owner active engagement in monitoring and managing cultural heritage impacts.

Our relationships with Traditional Owners are not contained to environment and heritage only, and are informed by broader agreements entered into between Rio Tinto and Traditional Owner groups. These relationships are developed voluntarily and over time and are stronger for this.

Our environmental standards guide us to identify and manage risks to the environment. We work closely with local communities and Indigenous peoples to plan for, and monitor, potential impacts from our operations and carry out mitigation activities. Where applicable, Rio Tinto formally engages Traditional Owner groups to conduct or participate in ecological and heritage surveys, as well as ongoing on-ground management.

Some examples of our engagement with Indigenous Australians:

- At Amrun bauxite mine in Cape York, for example, we set up the Land and Sea Management programme, which employs Traditional Owners to help monitor and manage cultural heritage, plants and land and marine wildlife to ensure minimal disruption.
- With a number of our Australian operations close to the coast, we invest in marine research to assess and address possible impacts. For example, our Cape Lambert operation is next to Bells Beach, a regionally significant mainland rookery for the threatened flatback turtle (*Natator depressus*). We have implemented extensive monitoring and management programmes both within our operations and at the beach since 2002. Rio Tinto does this in partnership with the local communities, regulators and Cape Lambert's Traditional Owner group, Ngarluma.

- Within the Dampier Archipelago, in Western Australia, we have worked with local Indigenous groups to help record more than 32,000 rock art motifs – some of which are up to 40,000 years old – as part of our conservation agreement net benefit activities.
- We are also working at various locations with Indigenous people to rehabilitate land using local seeds.

Further references to lessons we have learned from agreement-making are outlined in our *Why Agreements Matter* publication. This outlines the importance of inclusive engagement, which includes ensuring all relevant community members are provided an opportunity to be involved in agreement processes and consulted on impacts and opportunities.<sup>39</sup> We also outline factors that support good engagement, including operating in good faith and:

- Addressing logistical constraints.
- Interacting proactively, early and often.
- Listening actively to community views.
- Communicating openly about the company and proposals.
- Providing adequate resources for engagement activities.
- Investing in relationships for the long-term.
- Integrating engagement across our own business.
- Respecting cultural protocols.
- Adopting various strategies to hear the full diversity of views and interests.<sup>40</sup>

We also refer you to Commitment 3 in the ICMM Position Statement on Mining and Indigenous Peoples.<sup>41</sup>

‘Engaging and consulting with Indigenous Peoples in a fair, timely and culturally appropriate way throughout the project cycle.

Engagement will be based on honest and open provision of information, and in a form that is accessible to Indigenous Peoples. Engagement will begin at the earliest possible stage of potential mining activities, prior to substantive on-the-ground exploration. Engagement, wherever possible, will be undertaken through traditional authorities within communities and with respect for traditional decision-making structures and processes.’

We support the current processes continuing, without the need for any specific amendments to the EPBC Act.

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<sup>39</sup> Rio Tinto (2016), *Why Agreements Matter*, p.34.

<sup>40</sup> Rio Tinto (2016), *Why Agreements Matter*, p.40.

<sup>41</sup> ICMM (2010), *Good practice guide: Indigenous peoples and mining*, p.16.

**Q20: How should community involvement in decision making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision-making bodies be increased?**

The community has several opportunities to be involved in project-related decision making under the current EPBC Act framework, including accredited State/Territory processes, including providing formal submissions. Rio Tinto considers the current framework to be sufficient, however, we also acknowledge community concern for greater transparency generally, including accessible and digestible information.

We have recommended process improvements for transparency, including the public disclosure of decision making information (refer to details in question 21). We have also referred to our own processes to ensure transparent and informed community engagement at questions 18 and 19, where we acknowledge that the needs of Indigenous Peoples are most appropriately and best advised by their Indigenous representative bodies.

**Q21: What is the priority for reform to governance arrangements? The decision-making structures or the transparency of decisions? Should the decision makers under the EPBC Act be supported by different governance arrangements?**

Rio Tinto supports the current decision-making structures for Part 9 approvals under the EPBC Act, whereby the decision is made by the Minister or their delegate, or through a bilateral approval process. We consider that the current framework provides for sufficient opportunities for public participation.

However, we consider there is a clear need and several opportunities to improve decision making and transparency under Parts 7 – 9 of the Act, which would give confidence to both the community and proponents, including:

- As noted elsewhere in this submission, provision of improved departmental guidance on the thresholds for significance of impacts and information requirements to demonstrate these conclusions.
- Capacity for greater levels of consultation for proponents with government on determinations of significance and the development of project assessment guidelines/terms of reference.
- Consistency in decision making across projects, protected matters and jurisdictions.
- Increase alignment with State/Territory decisions and conditions of approval.
- Clarify the types of conditions that can be set and give consideration to model conditions (e.g. as done by Environmental Authorities in Queensland).
- Provide statements of reasons (or similar) to the proponent and the public, stepping out the rationale for decision making, such as a controlled action decision, as well as the intent and objectives of approval conditions. This will improve transparency and give proponents and the community better confidence in decisions.
- Ensure assessment and approval timeframes are met (particularly statutory timeframes), with reporting back to Government in circumstances where timeframes are not met.

Rio Tinto understands that some parties may suggest alternate governance arrangements, such as a new “Environmental Protection Authority”. We respectfully disagree, and consider that such a model is not warranted for EIA and project approvals at a Commonwealth level because the EPBC Act is focussing on a limited set of MNES and there are sufficient independent and transparent processes, and opportunities for community participation, available under the EPBC Act and State/Territory based regimes.

**Q22: What innovative approaches could the review consider that could efficiently and effectively deliver the intended outcomes of the EPBC Act? What safeguards would be needed? For example, ecosystem services.**

There are numerous innovative approaches that could be used to more effectively deliver the objects of the EPBC Act. These could include:

- As discussed, elsewhere in the submission, providing for the greater use of risk based assessments and outcomes based conditions that would encourage proponents to innovate to achieve environmental outcomes.
- Establishing a national fund to address key threats to species, particularly where these are different to threats from projects that can be addressed via direct offsets.
- Greater use and acceptance of technology (or alternative methodologies) to undertake assessments which would reduce reliance on field based work (which is time intensive, costly and can pose a safety risk due to working in remote and challenging locations). The Government’s announcement regarding a national biodiversity database is a welcome first step this this regard. However we suggest further consideration to the use of technology for project assessments should be considered.
- Modernisation of advertising and distribution of assessment documentation (digital rather than hard-copy / print media).

**Q23: Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?**

Rio Tinto does not have any specific suggestions for new environmental markets within the framework of the EPBC Act.

**Q24: What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?**

Rio Tinto submits there is an urgent need to improve the current system of environmental offsetting under the EPBC Act. In our experience, offsets are often considered as required immediately following a controlled action decision, well before supplementary or detailed information clarifying the extent and significance of impacts have been provided to the Department, and well before the application of the mitigation hierarchy.



Well considered EIA processes that demonstrate the application of the mitigation hierarchy and robust conclusions as to the significance of impact should be made and adequately considered prior to determining the need for offsets.

In many situations, we consider that offsets are applied under the EPBC Act despite robust scientific arguments being made that the impacts from the project are not significant residual impacts (i.e. meeting the threshold for requiring offsets).

Further, in circumstances where an offset may be warranted, the current EPBC Act offsets policy requires a strict like-for-like and on-ground approach to offsetting that may overlook the key requirements for improving the conservation status of a species. The current offsets policy and its guideline are, with respect, inflexible, such that acquisition of land for conservation and on-ground conservation measures must make up at least 90 per cent of any offset package. This may not be feasible or practical for many projects, and may not provide the best environmental outcome.

We submit that a more holistic and outcomes-based approach be adopted when considering what may be appropriate as an offset. This may include undertaking high priority or essential research, such as that to determine and inform the most appropriate on-ground actions, or supporting conservation activities in another bioregion, where threats to the species are more acute than close to the project site.

The Pilbara Leaf-nosed Bat (**PLNB**) provides a good example of this. One of the national conservation objectives listed in the Approved Conservation Advice for this species is<sup>42</sup>:

‘Support coordinated research on the occurrence, population size and ecological requirements of the PLNB so best practice management options can be developed to minimise anticipated impacts from new and existing mining activity’.

Despite being both a national conservation objective and directly relevant to minimising the impacts of mining operations, we have been advised that funding research into this species as part of the overall offsets package would not be considered appropriate at any more than 10 per cent of the total offsets value. This ignores the Approved Conservation Advice highlighting this as a priority and this is research that may not otherwise be funded at the detriment of the species.

Defining and implementing appropriate land-based offsets is challenging in many parts of Australia. In the Pilbara and other regions of Australia, land acquisition as a direct offset is generally not possible as the land is not freehold. Alternative mechanisms for providing offsets in the Pilbara, particularly direct offsets, are limited and often carry a high ongoing management burden for the proponent. In recognition of this, the Western Australian Government is in the process of establishing the Pilbara Environmental Offsets Fund to provide a more effective offset funding mechanism with a lower management burden for proponents.

It is important that any EPBC Act requirements for offsets leverage from the fund to reduce duplication in offset requirements. Therefore, more effective overall offsets and a more efficient offset process

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<sup>42</sup> The Commonwealth Department of Agriculture, Water and Environment (2016), Threatened Species Scientific Committee, *Conservation Advice: *Rhinoicteris aurantia* (Pilbara form), Pilbara Leaf-nosed Bat*, 10 March 2016.

could be achieved by aligning Commonwealth and State offset requirements. Similar benefits could be achieved in other jurisdictions of Australia if such an approach were adopted.

**Q25: How could private sector and philanthropic investment in the environment be best supported by the EPBC Act? Could public sector financing be used to increase these investments? What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?**

There are numerous programs and projects that are undertaken within the mining sector, including by Rio Tinto, that are specifically geared towards conserving both environmental and heritage values outside of specific mining operations. There are currently few, if any, mechanisms for this work to be recognised during assessment of individual projects. If such mechanisms were built into the EIA framework, incentives for such programs would be increased, thereby promoting the objects of the EPBC Act and furthering the principles of ESD.

**Q26: Do you have suggested improvements to the listed principles? How should they be applied during the Review and in future reform?**

Rio Tinto supports the principles noted in the discussion paper for this question as appropriate to guide future reform at its broadest level, and many are reflected in our responses to individual questions.

We look forward to future engagement during and beyond the EPBC Act review process to better understand how these principles will translate into suggested amendments to the Act.

## **6. Broad Questions**

### **6.1 Is the EPBC Act delivering what was intended in an efficient and effective manner?**

As has been noted, there is currently significant duplication occurring under the EPBC Act and State/Territory processes, lengthy delays in decision making and condition setting following impact assessment, and overly complicated processes that in our experience do not result in improved environmental outcomes.

We suggest that these occurrences mean considerable constraints to the EPBC Act delivering what it was intended to in an efficient and effective manner. As has been stated earlier, there is opportunity for the Commonwealth to play more of an oversight role of the State/Territory processes in respect of MNES to reduce duplication and enable the objects of the EPBC Act to be better focused on.

### **6.2 How well is the EPBC Act being administered?**

As detailed in response to individual questions, the current administration of project assessments and approvals could be improved by several initiatives which would enable a reduction in duplication of process and improved consistency in decision making. In addition to this, delays to project approvals can be as a result of non-environmental factors such as resourcing limitations; changes in responsible officers; unclear or non-existent policy advice; and duplication.

Rio Tinto provides the following recommendations, which do not necessarily require changes to the Act, for improving this:

- Ensure the Department is well funded, at least commensurate with the cost recovery fees paid by proponents.
- Departmental staff are appropriately qualified and well-trained, and with some officers located in jurisdictions that they have responsibility for.
- Robust departmental guidance is developed (based on the best available science, whilst acknowledging it must be applied in a real-world setting), made publicly available, consistently applied and used in project assessments.
- Bilateral agreements for both assessment and approval are made and used, to reduce duplication of State/Territory processes.
- Ensure assessment and approval timeframes are met (particularly statutory timeframes).
- Ensure all assessment and approvals mechanisms are flexible and adaptable to different circumstances and can be amended over time to facilitate changes to projects.
- Better use of technology or the acceptance of alternative technologies, methodologies or techniques to achieve outcomes.
- Improve transparency and consistency of decision making.

### **6.3 Is the EPBC Act sufficient to address future challenges? Why?**

Rio Tinto considers that the EPBC Act is largely sufficient to address future challenges, although this should be a key consideration during each 10-year review.

As described throughout our submission, we believe there are a range of ways in which the operation of the Act could be improved, focusing largely on its administration and better application of risk and outcomes based assessments and conditions to promote innovation and use of modern technology.

### **6.4 What are the priority areas for reform?**

We repeat our comments for Question 5 and in our cover letter. From Rio Tinto's perspective, the priority for reform centres on EIA and the approval / condition setting process for controlled actions (or projects that may be a controlled action but pose a lower risk of environmental impact). As detailed elsewhere in this submission, some amendments to the Act should be considered, however fundamental reform to the Act itself is not required. Rather, we suggest there are several opportunities within the current framework of the EPBC Act for the implementation of the Act to be improved, particularly to reduce duplication by encouraging the majority of EIA and approvals to occur at a State level where the majority of land use planning and environmental regulation occurs, with broader oversight undertaken by the Commonwealth.

This is particularly important for companies such as Rio Tinto given our future development aspirations, but also more broadly to the Australian economy.

As described in detail above, Rio Tinto has suggested a number of reforms, not all of which require changes to the EPBC Act. These include:

- Utilising Part 5 of the Act to make bilateral agreements with States and Territories to include both assessment and approval of projects.
- Adopting a more risk-based approach to assessments and decision making, and greater use and acceptance of technology (or alternative methodologies).
- Focus on outcomes-based regulation for both environmental and heritage values that are relevant to the EPBC Act. Such an approach could be supported by the development of national standards.
- A nationally consistent framework for biodiversity offsets to utilise State/Territory schemes for delivery.
- The development of additional guidance material for matters including how to address ESD and levels of impact that are considered significant.
- In respect of strategic assessments, see our answer to Question 13.
- A process to revise the scope of an approved action post approval should be included (including in respect of strategic assessments). Provide statements of reasons for controlled action and approval decisions.