

13 August 2021

Hon Ms Libby Mettam MLA
Chairperson
Community Development and Justice Standing Committee
Parliament House
PERTH WA 6000

Dear Chair

INQUIRY INTO SEXUAL HARASSMENT AGAINST WOMEN IN THE FIFO MINING INDUSTRY

Thank you for the opportunity to make a submission to the inquiry into sexual harassment against women in the FIFO mining industry (**Inquiry**) by the Community Development and Justice Standing Committee (**Committee**).

The safety of our people is our top priority. Sexual misconduct does occur in the FIFO mining industry, including within Rio Tinto's operations, and this is unacceptable. We are making the changes required to create safer workplaces for everyone.

Before the commencement of this Inquiry, Rio Tinto was taking actions across our Western Australian and global operations to address sexual harassment. These actions are included in our submission. In the past 12 months, we have spent time reflecting on the type of organisation Rio Tinto is and what we aspire to, including our responsibility to society. We strive to act with humility, respect, and with a clear purpose. We acknowledge we have much more work to do. We are committed to improving as we seek to be a leader in this area. We welcome this Inquiry and we continue to encourage all of our people to speak up if they have experienced sexual harassment.

Being a leader requires a disruptive shift in this area. With this aspiration in mind:

1. We are rethinking our approach to the prevention of sexual harassment, through the lens of safety and health, and in particular creating a positive onus to prevent such conduct. We are working to strengthen preventative strategies.
2. We acknowledge that all of us have a duty to prevent and respond to sexual harassment. We are engaging leaders across our global business to help them understand the nature and drivers of sexual harassment.
3. We support implementing respectful transparency to help drive foundational change.
4. We are working to empower our people (those directly impacted as well as bystanders) to speak up and take action.
5. We are listening to our people and thinking of new ways to provide support for anyone who has been impacted.

While there is much we must do as a business, there is also much we can do in partnership with government and the industry.

The Respect@Work Report, issued by the Australian Human Rights Commission, found that the legal and regulatory frameworks guiding the systems used to manage workplace sexual harassment are complex and difficult to navigate.¹ In our view, it is in everyone's interests for the legislative regime to be simple, people-centric, to focus on prevention and support, and to work harmoniously across jurisdictions. In addition, we support characterising and treating sexual harassment as a safety issue.

We strongly believe that with a clear and consistent legislative and regulatory framework and the right focus from industry, sexual harassment can be eliminated. We are committed to playing our part.

The enclosed submission describes our organisation and our views on the Inquiry's terms of reference. In doing so, we outline the initiatives Rio Tinto has, and is, implementing.

We would welcome the opportunity to discuss any aspect of our submission further.

Yours sincerely

Simon Trott

Chief Executive Iron Ore

¹ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> p.14

Submission

Parliamentary Inquiry into sexual harassment against women in the FIFO Mining industry

Introduction

Rio Tinto appreciates the opportunity to make a submission to the inquiry into sexual harassment against women in the FIFO mining industry (**Inquiry**) by the Community Development and Justice Standing Committee (**Committee**).

This submission has three parts:

- **Part A** – An overview of Rio Tinto's operations in Western Australia, including its FIFO facilities;
- **Part B** – Rio Tinto's responses to the Inquiry's terms of reference; and
- **Part C** – Closing remarks

Part A:

About Rio Tinto

While this submission includes information from across our WA businesses (Iron Ore, Dampier Salt Limited, Argyle Diamonds Limited and Rio Tinto Exploration), much of the information is provided from Rio Tinto Iron Ore (**RTIO**), which is our largest business unit in WA.

Globally, Rio Tinto operates in 35 countries, with operations in Australia spanning more than a century. We produce iron ore, bauxite, alumina, aluminium, uranium, diamonds and salt.

Across our global footprint, five core values underpin the way we work – respect, safety, teamwork, integrity and excellence. To truly live and enable these values, we must have a safe, respectful, and inclusive workplace, every day, for everyone.

Rio Tinto in Western Australia

Rio Tinto's WA operations include RTIO, Dampier Salt Limited, Argyle Diamonds and Rio Tinto Exploration. RTIO is Australia's largest iron ore producer. Our Pilbara operations have been operating for more than 50 years, and encompass a network of 16 mines, four independent port terminals, a 1,700-kilometre rail network, and related infrastructure.

As at July 2021, Rio Tinto globally employs more than 46,000 people. Rio Tinto's WA workforce comprises of more than 16,000 employees, and the total number of contractors working on our sites is, on average, almost 30,000 people each year. About 59 per cent of our employees in Western Australia are on FIFO arrangements. Through focused investment and well-structured initiatives, we have seen an increase in female participation in Rio Tinto's WA operations from 19.2 per cent in January 2019 to 21.7 per cent in July 2021.

Working alongside our employees is a significant contractor base. A number of these contractors service the wider Western Australian mining industry in a range of roles, including major construction work through to minor works.

Our FIFO Accommodation – Our “Villages”

Our RTIO operations are supported by more than 25 FIFO villages. In a year, more than 50,000 people, including contractors, visit our sites in the Pilbara. Villages provide single occupancy and couple rooms, dining options, fitness and recreation facilities, small shops, social areas, and personal amenities such as laundries. Across our villages there are more than 17,000 rooms and, on average, 11,000 people are accommodated each night. Our FIFO villages vary in size, with the smallest accommodating fewer than 100 people and larger villages containing more than 1,700 people.

Our History of Improving the Workplace

Rio Tinto has been working to create a more diverse, respectful, and inclusive workplace for a number of years.

For more than 10 years, Rio Tinto has had a global Employee Assistance Programme (**EAP**), which offers confidential, free counselling and trauma support to its employees and their family members.

Over eight years ago, to supplement efforts to maintain a mentally healthy workplace, RTIO established a peer support programme in partnership with our EAP provider. This programme was established after recognising employees may need workplace support outside of traditional leadership and formal channels, and through a mechanism that may feel more personal than the EAP. To date, we have about 700 volunteers across our sites and Perth-based offices. These volunteers provide guidance on ways to access reporting and support mechanisms.

As mentioned earlier, Rio Tinto has five core values of respect, safety, teamwork, integrity and excellence. These were communicated across Rio Tinto globally in 2017. Supporting behaviours (named Rio Tinto Behaviours) were then communicated in 2019. These values and behaviours are at the core of who we are and how we work. They are outlined in employee inductions and are integral to selection, performance review and performance management processes.

In 2018, Rio Tinto was awarded White Ribbon accreditation.¹ This accreditation is internationally recognised and reflects our commitment to take a stand against harassment and violence in all its forms, both in the workplace and broader community. This work has set the foundations for the cultural change we know is needed, and are working to achieve, to address the forms of disrespect that can lead to behaviours such as sexual harassment and gendered violence.

In addition, Rio Tinto was a founding member of the Champions of Change Coalition, formerly known as the Male Champions of Change.² We draw our insights into our practices and approach to sexual harassment from the Champions of Change Coalition Impact Report.³ This report calls upon organisations across Australia to work together to create a more gender-equal world. This coalition believes the effective response to disrespectful behaviour starts with the most senior leaders.

In March 2021, after considering the findings and recommendations of the Respect@Work Report,⁴ Rio Tinto established a working group, the Everyday Respect Taskforce (**Taskforce**) with a mandate

¹ Rio Tinto, 'Rio Tinto recognised by White Ribbon Australia for its commitment to family and domestic violence change' (Media Release, 2 March 2018) <<https://www.riotinto.com/en/news/releases/White-Ribbon-Australia-recognition>>

² Champions of Change Coalition, 'Champions of Change Founding Group' (Website, 13 August 2021) <<https://championsofchangecoalition.org/groups/founding-male-champions-of-change/>>

³ Elizabeth Broderick, *Champions of Change Impact Report 2020* (Report, 11 December 2020) <<https://championsofchangecoalition.org/resource/champions-of-change-coalition-impact-report-2020/>>

⁴ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> p.14

to prevent, and guide the organisation to respond to, inappropriate workplace conduct, including sexual harassment, bullying and racism.

A key factor in establishing this initiative was the need for direct and visible leadership support and commitment to taking a stand against disrespectful behaviour. The Taskforce introduces topics and conditions for discussion that encourage our leaders to actively work against disrespectful behaviour. This also instils the need to live a people-centric approach, with the person at the centre of the way we think and feel about the work we do, no matter what it is.

The Taskforce is working with leaders and employees across our business to seek input and shape recommendations for change, leveraging best practice research from the Australian Human Rights Commission, the Champions of Change Coalition, and other experts in the Australian context. The Taskforce will make recommendations as to the systems, symbols and behaviours that must be disrupted to end disrespect in all its forms. We anticipate receiving the Taskforce's recommendations by November 2021.

We have also actively committed to respectful behaviours in various industry gatherings, including our recent commitment with the Diversity Council of Australia through the *#IStandforRespect* campaign.¹

Part B:

Term of Reference (i) - Is there a clear understanding of the prevalence, nature, outcomes and reporting of sexual harassment in FIFO workplaces?

When it comes to sexual harassment (and sexual misconduct as a whole), we are taking a health and safety management lens. We are learning about the nature and the drivers of sexual harassment because this is critical to deploying appropriate preventative practices.

Sexual harassment and sexual assault are generally under-reported in Australia and internationally. National data collected in 2018 by the Australian Human Rights Commission indicates that fewer than one in five people said they made a formal complaint in relation to sexual harassment,² and almost half (45 per cent), said nothing was changed in the workplace as a result of their complaint.³

According to the Australian Human Rights Commission, the reasons for under-reporting include shame, fear of retribution, lack of knowledge of how to report, and a lack of confidence that reporting will lead to a satisfactory result.⁴ With that knowledge, we are proactively seeking to understand the factors that contribute to under-reporting within our business.

¹ Diversity Council of Australia, '#IStandForRespect' (Website, 13 August 2021) <<https://www.dca.org.au/campaigns/istandforrespect/>>

² Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> p.37

³ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> p.70

⁴ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> p.172 et seq

Reporting

Rio Tinto maintains records of reported instances of sexual harassment in its workplace. Incidents of sexual harassment can be reported by impacted people and bystanders through several mechanisms such as reporting to a leader or Human Resources, or through the mechanisms described below.

Since 1 January 2020, within our FIFO operations, we have had one reported case of sexual assault which has been substantiated and 29 reported cases of sexual harassment which have been substantiated. There is one allegation of sexual assault which is under investigation and 14 reports of sexual harassment under investigation. Eight reports of sexual harassment were unable to be substantiated.

The trend towards greater reporting is encouraging as it reflects that those impacted, as well as bystanders, are increasingly comfortable to report an incident. This enables us to take appropriate action to address the behaviour.

myVoice & the Business Conduct Office

For many decades, Rio Tinto had a formal channel for workers to confidentially report all manner of complaints. In February 2021, Rio Tinto refreshed this whistle-blower programme. It was re-branded and re-launched as “myVoice”, with the aim of promoting its use for all types of workplace issues. In addition, the Business Conduct Office was created and resourced to manage sensitive incidents, including reports of sexual harassment.

The Business Conduct Office triages complaints (anonymous or otherwise) and refers any case involving sexual harassment to independent investigators. In some cases, external investigators work on complex cases.

People who have made a report are supported throughout the investigation by the Business Conduct Office, their leader if appropriate, and Human Resources. Those who make a report are also provided with counselling support (either of their choosing or through the Employee Assistance Programme), or other support that the person feels best meets their needs. The organisation is flexible in offering support in whatever shape best meets the individual's needs.

The Everyday Respect Taskforce

As mentioned above, in March 2021, Rio Tinto's group (global) executive committee established the Taskforce to improve how we prevent and respond to a range of matters including sexual harassment, as well as bullying and racism at work.

The Taskforce is working with leaders and employees across our business to seek input and shape recommendations for change. To help us understand the prevalence, nature, outcomes and reporting of sexual harassment in our workplaces, the Taskforce has taken the following steps:

1) The Everyday Respect Survey

The global survey provides an opportunity for employees to confidentially share their view of the incidence of disrespectful behaviour, including but not limited to sexual harassment. It provides us with a data point to understand how many people have been impacted by this behaviour, and what happened after experiencing this behaviour. This survey is available to all employees in 10 different languages.

This information is crucial in uncovering behaviour that has been normalised, while also giving us more insight into previously unreported behaviour.

2) Listening sessions

We need to listen to the lived experiences of our employees and empower them to contribute to the solutions. We are conducting a series of company-wide 'listening sessions' led by an independent expert on discrimination against women, Elizabeth Broderick. Ms Broderick is the former Australian Sex Discrimination Commissioner and United Nations Special Rapporteur.

By November 2021, we will have completed 100 listening sessions globally, with up to 1000 people participating in seven different languages. The listening sessions have been conducted virtually given Covid-19 travel restrictions. The written submissions can come through an internal employee portal, in addition to an external portal that is accessible by anyone. This information will help us to further understand:

- people's lived experiences and perception of impacts of bullying, sexual harassment, and racism at Rio Tinto;
- where, how, and how often they are occurring, and
- how well our reporting channels are working.

The Taskforce has been engaging with senior leaders within Rio Tinto, sharing information and creating momentum for change. We will make further changes with the delivery of recommendations on the systems, symbols and behaviours that must be disrupted to end disrespect in all its forms.

Working with our Regulatory Partners

Rio Tinto is proactive in working with regulatory partners on reporting requirements. We invited the Department of Mines, Industry Regulation and Safety (**DMIRS**) to present findings of recent psychosocial risk audits to our leaders and to educate them on expectations of reporting. We will continue to support the progress of psychosocial health and safety reporting and action in WA. Rio Tinto is committed to transparency of this data in line with regulations and will partner with the regulators to ensure our obligations are met.

Working with our Contract Partners

Our learning and growth about the drivers and prevention of sexual harassment extends to our contract partners. We actively share our learnings with contractors. External resources, including the WA Chamber of Commerce and Industry, are available to provide free coaching to all construction contractor companies engaged on our sites to assist with complex psychosocial safety and people management issues.

We share with our contract partners our expectations on the conduct of their people. In addition, our contractors have access to myVoice and support mechanisms, such as employee assistance programmes.

Term of Reference (ii) – Do existing workplace characteristics and practices – including but not limited to workplace cultures, rosters, drug and alcohol policies and recruitment practices – adequately protect against sexual harassment?

We are making changes required to create safer workplaces for everyone. We are re-thinking our approach to prevention through the lens of safety and health, and in particular creating a positive onus to prevent such conduct. We are working to strengthen preventative strategies, and continuing to improve our responsive measures

Striving for Gender Equality

Overwhelmingly, our people are respectful and committed to doing the right thing. However, we know our current workplace characteristics and practices do not fully prevent sexual harassment.

A key lesson from the Respect@Work Report is that gender inequality is a driver of sexual harassment. Increasing female participation at all levels in the workforce will address the gender power imbalance.¹ Male dominance in trade-based occupations presents one of the biggest challenges for the mining industry. Rio Tinto understands the importance of demonstrating our workplaces are safe and free from sexual harassment in further growing our female workforce. As outlined in the 2020 Rio Tinto Annual Report, our goal is to increase the number of women by 2 per cent each year, and for our graduate intake to be 50 per cent women.²

Locally, as at the end of June 2021:

- More than 61 per cent of our 2021 graduate intake was female, compared to 49 per cent in 2019;
- We have increased the proportion of women in senior management roles by 4.5 per cent (to 25.7 per cent) and women in management positions by 5.7 per cent (to 33.9 per cent); and
- in our operator and maintainer workforce we have seen an increase by 2.1 per cent since 2019 (to 18.9 per cent).

Rio Tinto has achieved these results through programs designed to encourage females from school age to working professionals with transferable skills to consider careers in mining. We actively promote gender equality in candidate selection, targeting areas which have historically had limited equality. Other initiatives include:

- Our support for the University of Western Australia Girls in Engineering program, which engages years 7-10 students in science, technology engineering and maths. This program was a finalist in the 2017 Chamber of Minerals and Energy Women in Resources Awards.³
- Our 'Pathways to Mining' recruitment campaign. We initially sought to recruit 100 women – including those without mining experience – for site-based operational roles and traineeships. The response to the campaign exceeded our expectations, with more than 2,500 applications. These employees fill roles such as trade assistants, laboratory technicians, and drill and blast operators.

¹ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> p.229

² Rio Tinto, *Annual Report* (22 February 2021) <<https://www.riotinto.com/en/invest/reports/annual-report>> pp.67

³ Chamber of Minerals and Energy 'Getting the Balance Right Today for our Workforce of Tomorrow' (Website, 18 February 2018) <<https://wira.net.au/getting-the-balance-right-today-for-our-workforce-of-tomorrow/>>

Enabling a Culture of Empowerment

Rio Tinto's cultural tendency has been to use our formal processes as an avenue for complaint. While these processes will continue (and, indeed, have been refreshed through myVoice), we need our people to talk openly, at all levels, about all aspects of their work.

To this end, we are implementing across Rio Tinto a new approach to how we work, with a focus on behaviourally enabled change – the Rio Tinto Safe Production System. This way of working enables input and collaboration by everyone about how work is done, and how problems are solved. We believe this will drive greater employee engagement, as employees are supported to speak up about their work, contribute to solving problems, and collaborating effectively. In time, we expect, that this will build a culture where it is natural to speak up and challenge others when they behave inappropriately.

Psychosocial Safety at Work

We are learning more about being proactive in eliminating psychosocial hazards. We are aware that situations of power imbalance can lead to sexual harassment and gender-based disrespect is a common experience for women working in male-dominated areas. As a result, female trainees, female apprentices and others who may be more susceptible, will be a specific focus for proactive measures to maintain a safe workplace. This includes buddy systems, well-trained supervision, and education and training, on ways to seek advice, support and to report sexual harassment.

We have transformed the way we conduct investigations when incidents occur. We are still learning and recognise there is more to do. We are consistently questioning which aspects of our approach will be meaningful and empowering to an impacted person, and taking an approach of working with them, listening to what they need, and not being constrained by our traditional practice.

Rosters

We have been mindful of the length of time that our employees spend on our sites. Over the past two years, we have systematically shortened rosters (typically from a two weeks on/one week off to an eight days on/six days off roster).

We continue to offer a range of rosters, acknowledging that roster preferences and business requirements vary. We continue to review the impacts of roster length and type in the scope of all other work we are doing to improve our workplace.

We also acknowledge that during COVID-19 periods, extended roster cycles were leveraged to support employees commuting from the eastern states, and to maintain business continuity.

Policies and Practices

We are founding members of the Champions of Change Coalition, which calls on large companies to work together to create a more gender-equal world. This coalition believes the effective response to disrespectful behaviour starts at the top. This belief and supporting policies provide a framework which sets the tone and behavioural expectations throughout our business. Our policies and practices on discipline and performance management establish the consequences of sexual harassment. Where allegations of sexual harassment are substantiated following an investigation, a range of consequences are applied. These include termination, written warnings and disciplinary counselling.

Education

We know that education is vital to making meaningful and sustained change. Over the past 12 months, Rio Tinto has deployed leader-facilitated education and training with both FIFO and Perth-based employees on “Respectful Behaviours”. This education complements our employee Code of Conduct, which is introduced during induction of new employees, with refresher training each year. This training is highly engaging, using a case study approach to facilitate a discussion on the nuances of interpersonal relationships and where the boundaries are for acceptable and unacceptable behaviour in a real-life setting, rather than a list of behaviours that are not desirable. To date, the majority of leadership teams in RTIO have participated in these discussions.

This training also introduces and emphasises the role of bystanders as a critical dimension for maintaining a safe workplace. We want to have a culture that is self-correcting and ensure bystanders are supported if they challenge disrespectful behaviours and speak up.

Further, Rio Tinto has engaged Griffith University to enhance employees’ capability about behaviour when they witness or observe misconduct. This virtual bystander training¹ is being completed by our WA employees, and we continue to refresh this as our workplace culture becomes better attuned to recognising and preventing sexual harassment. To date, 500 employees have registered or completed for the training, and we are seeing greater evidence of bystander intervention in not just cases of sexual harassment, but in misconduct more broadly.

Recruitment Practices

When recruiting employees, we have traditionally deployed various pre-selection checks, including psychometric instruments and approaches to assess a future employee’s suitability for a role. We assess candidates for their ability to work collaboratively and cooperatively in simulated work tasks in assessment centres and in interviews.

Probity checks continue to be an integral part of our selection practices. Reference checking is the dominant approach used. Criminal checks are used for those roles where there is a direct link between conduct and suitability for a role.

The use of criminal checks more broadly is complex. We consider this is an area that would benefit from an industry-wide approach so there is a uniform acceptable standard across the mining industry.

Creating a Safe Environment for our Employees

Rio Tinto strives to ensure our employees and contractors are safe mentally and physically at all times, including within our FIFO villages. Rio Tinto recognises that some village facilities have not met our standards and a significant program of work is underway to improve our villages to build a safe, respectful and community-focused culture.

We have recently changed our service of alcohol. Since 26 July 2021, there has been a four-drink mid-strength daily limit at all Rio Tinto Iron Ore sites, including takeaway alcohol.

Environmental design plays a significant role in our people having a safe experience in our FIFO villages and helps in preventing disrespectful behaviour. Rio Tinto Iron Ore is executing a capital renewals program of its villages that is focused on improvements to security within the villages, the provision of services and the village infrastructure. The security review includes upgrade works such

¹ Griffith University, Motivating Action Through Empowerment (MATE) Bystander Program <<https://matebystander.edu.au/>>

as secondary door-locking mechanisms on all rooms, upgrades to village lighting, and additional security personnel. It also extends to the design of the villages and mechanisms to improve communications with security when required. We will extend specialist training to security personnel or other first responders (such as site medics), to effectively manage incidences of sexual harassment.

We have used community and social psychologists to help us understand the psychological impacts of village, room and amenity design, as well as the psychology of people who are living away from home. Where possible, we seek to create the feel and psychology of a “home away from home” for FIFO village residents. We believe this will, in turn, create safer and more harmonious village environments.

Each FIFO village has access to a healthy lifestyle coordinator, who has a role to manage health and well-being activities and programs on site. These are designed to promote physical movement, reduce social isolation and encourage a sense of community within each village.

Term of Reference (iii) – Are current legislation, regulations, policies and practices adequate for FIFO workplaces in Western Australia?

Rio Tinto believes it is our responsibility to ensure our workplaces are safe, but we believe there are opportunities to partner with government and industry to achieve lasting change. We believe that sustaining change comes from the combination of supporting foundational legislation, and a true commitment by organisations to create and maintain the right culture.

First and foremost, we do not want anyone in our business to experience sexual harassment. If there is an instance of it, we believe that the applicable legislative regime must come from a people-centric construct and aim to improve, rather than impede, the healing of the person.

Legislation plays a key role in addressing sexual harassment in the workplace and we are supportive of the changes to the *Fair Work Act 2009* (Cth) and the *Sex Discrimination Act 1984* (Cth) which will be implemented through the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*. The *Respect@Work* Report recommended amending the *Fair Work Act* to clarify that sexual harassment can be conduct amounting to a valid reason for dismissal. We support this recommendation, which we understand formed part of the *Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021*.

However, a key conclusion of the *Respect@Work* Report was that the existing legal and regulatory frameworks that address workplace sexual harassment are complex and difficult to navigate.¹ Instead of a single legislative regime that deals with sexual harassment in the workplace, there are many pieces of state and federal legislation that attempt to address the issue. In Rio Tinto's view, a clear and simple legislative regime is in everyone's interests, but most importantly it would assist people who experience sexual harassment.

People who experience sexual harassment need clear and straightforward pathways to address their complaints. In our view, they may be discouraged from taking action due to current legislative

¹ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> pp. 9.169

complexity. Further, difficulties in navigating the relevant laws may add to the trauma of those who experience sexual harassment.

Clarity and simplicity are also in the interests of employers. An employer who does not understand the various legislative regimes is unlikely to appropriately support a person impacted by sexual harassment through such processes. Simplicity also ensures all employers are clear on expectations and requirements in relation to the prevention, reporting and effective management of sexual harassment.

The domestic framework also obviously needs to be considered in the context of Australia's international obligations to prevent sexual harassment and other types of gender-based discrimination and violence.

The Role of Safety Legislation

Rio Tinto believes that characterising and treating sexual harassment as a safety issue, consistent with the modernisation of national model health and safety legislation, will have a more significant impact in preventing sexual harassment in the workplace and ensuring better support for people. We are also supportive of the national model health and safety legislation in WA, the *Work Health and Safety Act 2020 (WA)* (**WHS**A), which characterises and treats sexual harassment as a safety issue.

Rio Tinto supports the positive duty obligations within the applicable safety legislation on people conducting a business or undertaking, as well as on workers. We believe that heavily prescriptive regulation may lead to a "one-size-fits-all" approach, which may cause employers to be less people-centric, process focused, and compliance driven.

From a cultural perspective, health and safety is a concept with which mining companies and workers have a high level of familiarity. For example, safety risk management processes are clearly defined, and workplace discussion about safety is normalised. The Report, *Champions of Change: Disrupting the System*, recommends the reframing of sexual harassment as a safety issue, thereby making it "everyone's business", rather than it being perceived as just a Human Resources issue.¹

Supporting People and Managing Information

Although we consider the hazard identification and elimination focus of safety regimes to be useful in preventing sexual harassment in the workplace, we do not believe sexual harassment reports or claims will necessarily lend themselves to a typical safety investigation response.

Unlike other legislative regimes, commencement of an investigation or prosecution for breach of the Mines Safety and Inspection Act (and the WHSA when it comes into force) does not require a complaint to be made. While this means that the regime is not reliant on people coming forward (and therefore takes the burden off them to make complaints), it raises fundamental questions about the way people are supported and the way information is managed. Further, the period between the event and it being reported or investigated may be prolonged, which can affect the ability of employers to identify issues, implement immediate controls, share lessons learnt and report under applicable legislation.

¹ Champions of Change Coalition, *Disrupting the System: Preventing and responding to sexual harassment in the workplace* (Report, September 2020) <https://championsofchangecoalition.org/wp-content/uploads/2020/09/Disrupting-the-System_Preventing-and-responding-to-sexual-harassment-in-the-workplace_CCI_web-FINAL.pdf> pp 33-35

In addition, details of allegations of sexual harassment are extremely sensitive. Regulators and employers will need to ensure appropriate and robust processes are in place in respect of the collection, storage, reporting and dissemination of this information. For example, information requests should be carefully considered to limit the amount of information that is required to be disclosed. Communication of these processes (as well as strict adherence to them) will be critical in providing comfort to all impacted.

The empowerment of impacted people to have choices in the way cases are managed is beneficial in rehabilitation following an incident of sexual harassment. Further legislative changes should consider how such a people-centric approach can be enabled.

Agencies and Regulators

Rio Tinto believes it is in the interests of agencies and regulators that the various legislative regimes work harmoniously and consistently. It is important that each agency understands its remit and authority, and how these intersect with others. This will ensure areas of focus and approaches are consistent, particularly in terms of interactions with those impacted. It also avoids duplication of cost and effort.

In Rio Tinto's view, to avoid the possibility of impacted people being re-traumatised through multiple interactions, it would be preferable, where possible, for a particular incident to be addressed once, by one skilled regulator, rather than requiring engagement with multiple regimes which may tackle sexual harassment in different ways and with different procedures and timeframes. The investigation and management of sexual assault complaints requires specialist trauma-informed skills, which are not necessarily widely available.

Guidance Materials

Appropriate guidance materials can play a practical role in assisting employers in addressing sexual harassment in the workplace. Across Australia, there is already a variety of guidance material available and we believe that caution should be taken when creating additional new, separate guidance.

There will be gaps in existing materials and these should certainly be addressed. However, consolidation of materials may be preferable to avoid the need for employers and workers to piece together information from multiple sources. There is a real opportunity to leverage the existing materials already applicable in WA and concepts from other jurisdictions.

With the current review of incident reporting guidance materials underway through statutory bodies such as the Mining Industry Advisory Committee and the Commission of Occupational Health and Safety, the resources industry has a unique opportunity to capitalise on this current process in clarifying the provisions outside altering the new upcoming regulations.

As a result of the recommendations arising out of the Respect@Work Report, the Commonwealth Government has established the Respect@Work Council as a means of improving coordination, consistency and clarity across the various regulatory frameworks on this topic. Given its remit, we believe this Council could be an important stakeholder when deciding the right outcomes of this Inquiry.

Term of Reference (iv) – What actions are being taken by industry and government to improve the situation and are there any examples of good practice?

A recommendation in the Respect@Work Report¹ was that key industry and professional groups collaborate to establish industry- and profession-wide initiatives to address sexual harassment. We agree that working collaboratively with industry is vital in eliminating sexual harassment in our sector, and we have been active in this space.

Through our membership at the Minerals Council of Australia, we have been actively involved in the establishment of the MCA's Policy on Safe, healthy and respectful behaviours and "*Industry Code on Eliminating Sexual Harassment*".² This was developed in line with the recommendations of the Respect@Work Report.

Locally, as a member of the Western Australian Chamber of Minerals and Energy, including through participation in its recently established Safe and Respectful Behaviours working group, we are collaborating to create a code for the mining industry.

PART C:

Rio Tinto acknowledges that sexual harassment can cause profound physical, emotional and psychological impacts. Many aspects of the Respect@Work Report prompted self-reflection for our business. Most significantly, this included the environment and power imbalance factors that enable sexual harassment, the under-reporting of sexual harassment incidents and the extent of ongoing trauma.

Rio Tinto acknowledges that whilst we have sought to drive our values in our workplace, our efforts have ultimately been insufficient. Rio Tinto is learning and changing. We are using the recommendations from external experts, the Respect@Work Report and the Champions of Change Coalition's Report to disrupt symbols, systems and behaviours with the aim of preventing sexual harassment in our workplace.

While legislation has a critical role to play, we do not consider that this complex issue will be resolved by legislation alone. We consider that implementing the workplace recommendations outlined in the Respect@Work Report, aligning processes and systems to encourage identification, and increased reporting will have a far greater lasting cultural impact than significant legislative intervention.

At Rio Tinto, safety is our number one priority. We understand that our workplaces will not be more safe until they are free from sexual harassment. We are committed to continuous learning and improvement as a business and working in partnership with government and industry to permanently change our workplace culture to achieve this.

Again, we thank the Community Development and Justice Standing Committee for taking action and creating public discussion on this critical issue. We are committed to change for all those involved in our industry.

¹ Kate Jenkins, Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 29 January 2020) <<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>> pp.50

² Minerals Council of Australia, *Industry Code on Eliminating Sexual Harassment*, March 2021 <https://www.minerals.org.au/sites/default/files/Sexual%20Harassment_Industry%20Code%20of%20Conduct_March%202021.pdf>