

9 September 2020

STATEMENT ON RIO TINTO BOARD ACCOUNTABILITY AND AGREEMENTS WITH TRADITIONAL OWNERS

Accountability for the destruction at Juukan Gorge should rest at the highest levels of Rio but a larger, systemic issue of how the company and the mining sector negotiates agreements with Traditional Owners needs to be urgently addressed.

HESTA is calling for an independent, comprehensive and transparent review of all current agreements Rio has negotiated with Traditional Owners.

Mining companies that fail to negotiate fairly and in good faith with Traditional Owners expose the company to reputational and legal risk. These risks increase the longer these agreements are in place. Without an independent review, we cannot adequately assess these risks and understand how they may impact value.

Our concern is reinforced by the submission from the National Native Title Council to the recent Parliamentary Inquiry into the destruction of the Juukan Gorge, raised serious concerns about Western Australian agreements between companies and Traditional Owners, suggesting that – “There has been a long-standing concern amongst legal advisors to native title groups in Western Australia that these kinds of restrictive contractual obligations are unlawful, or that inclusion of them in a contract may itself be an offence.”ⁱ

Rio’s public statements to the Parliamentary Inquiry indicate that agreements do exist with clauses requiring the surrender of certain legal rights, past and future, and they remain currently in use.ⁱⁱ

A change in the ranks of Rio’s senior leadership won’t mitigate this risk for investors. Only a broader review of current practices and the agreements with Traditional Owners will provide certainty to investors that these risks are properly managed by Australia’s mining industry with fair outcomes for all.

Rio’s internal review function has failed to address this. As an investor, we have lost confidence that the company can do this on their own. It is time for an independent review of these agreements.

We encourage the Rio Board to consider this at their upcoming Board meeting. We have contacted Professor Allan Fels AO who we believe is an appropriate expert to consider matters pertaining to good faith negotiations.

ⁱ *Submission to Inquiry into the Destruction of the Juukan Gorge in the Pilbara region of Western Australia*. National Native Title Council, 31 July 2020. Pg11. Cited <https://nntc.com.au/wp-content/uploads/2020/07/FINAL-submission-Senate-Inquiry-Into-Juukan-Gorge.pdf>

ⁱⁱ *Rio Tinto responses to Questions on Notice (hearing dated 7 August 2020)*. Rio Tinto Limited, 4 September 2020. Pg 3-5 & pg21. Cited: <https://www.aph.gov.au/DocumentStore.ashx?id=3491f7db-a6f0-45e3-a5f0-4e20d3dbbd9c&subId=690644>