A high performance workplace is a more productive workplace. It is one that delivers value to shareholders and to customers. And it does this by liberating employees, so that they too benefit, both materially and in terms of work satisfaction.

When enough enterprises do this consistently, we create the economic conditions that allow society to pursue sustainable social, cultural, environmental and business goals.

My purpose today is simple: It is to give an overview of the changes that have improved business performance in Rio Tinto, and then to examine what more needs to be done.

My views are shaped by a lifetime spent in the mining industry, both in Australia and elsewhere. Also, having worked with the BCA’s taskforce on workplace reform over the past 18 months, I am convinced that the qualities that make a high performance workforce are pretty much the same, whether you work in primary industry, manufacturing or in the services sector.

In Australia, workplace reforms in the 1980s and 1990s have enabled some movement to high performance workplaces, particularly for industries which have taken the hard decisions and which have developed workplace cultures focused on performance improvement and business success. The proposed WorkChoice legislation reforms provide a basis for Australian businesses to move further down the path to high performance workplaces.

In pursuing the objective of increased prosperity through high performing workplaces and other reforms, it is important to understand that:

- It is the business of business to earn profits and generate wealth. Regulations which frustrate this focus will inevitably impact wealth generation.
- It is the business of government to ensure key protections are in place – either through common law or through sensible statute.
- It is the business of government to spread prosperity throughout society in a constructive and effective way. This includes the taxation system as well as other systems to encourage skills development and participation in employment.

Looking at what is required for high performing workplaces, one realises that Australia’s potential has been held back by an industrial relations system that has ignored the
fundamental requirements of competitiveness, international trade and long term wealth creation in the supposed interest of social equity.

Ironically, the current industrial relations system, that well meaning people devised to protect the weak from the strong, has widened the gap between capital and labour, between manager and employee, and has frustrated wealth generation.

The financial cost of excessive and inappropriate regulation is something we all understand.

However, there is another sort of cost that isn’t included in a company’s accounts although it can bring an enterprise or an industry to its knees. It is the cost of driving a wedge between management and workforce, to the point that they do not share the same goals.

An example that I and my colleagues in Rio Tinto are all familiar with is the astounding development of the iron ore industry in Western Australia. That development was a direct consequence of Japanese economic growth in the 1950s and 1960s.

The rapid construction of large mines and their infrastructure in the remote Pilbara region was a feat on a par with the Snowy River Scheme. And it helped to transform the economy of WA in the process.

However, by the end of the 1970s industrial unrest had become endemic to the Pilbara and had grown to the point where it seriously threatened the company’s reputation as a reliable supplier. Managers and workers were not working together with the shared objective of a high performing workplace contributing to business success.

Asian steel producers depended on that reliability and, when it could no longer be assured, they supported the development of other suppliers. One benefactor was Brazil, where CVRD’s large Carajas iron ore mine began exporting to Japan in 1986.

Australia’s iron ore exports were directly affected by this, yet the lesson was not sufficient to bring about a change in the industry’s antagonistic IR culture.

Nor, I should add, was this behaviour limited to iron ore operations.

You may remember that owning a coal mine was once a similarly frustrating experience. Employees made money, equipment suppliers made money, yet shareholders in coal companies did not. The term ‘profitless prosperity’ was rightly applied to an industry where the IR culture pitted management against employees and where restrictive work practices reached extraordinary heights.

The result, for the minerals industry as a whole, was that capital and recurring costs were higher than they should have been. Productivity increases were the result of technological advances, and were dearly bought. Reliability was not guaranteed. The future did not look bright.

Centralised wage setting, seen as an expression of Australia’s ‘fair go’ ethos, has had unintended consequences. A plethora of IR institutions and jurisdictions has discouraged cooperation and initiative in the workplace as well as hindering efficiency and
competitiveness. Overmanning, restrictive work practices and chronic industrial
disputation made a high performance workplace an impossible goal.

In the 1980s, our political leaders acknowledged that Australia’s economic future required
reforms to the nation’s inward looking, heavily regulated economy. Financial sector
deregulation, the floating of the Australian dollar, reduced tariffs; all occurred under a
Labor government. But it wasn’t until the 1990s that another Labor Prime Minister dared
to suggest reforms of similar worth to Australia’s industrial relations system. Mr.
Keating’s vision found expression in the Industrial Relations Act 1993, which broke with
tradition by encouraging workplace agreements at the enterprise level.

While this legislation enabled employers and employees to establish enterprise based
agreements, various provisions meant that, in practice, many constraints and limitations
continued to apply. These constraints continued to frustrate the objective of developing a
high performance workplace.

In the early 1990s, Rio Tinto, driven by the need to improve reliability and
competitiveness, set out to remove the practices which prevented a focus on performance
and which forced separation between ‘staff’ and ‘wage’ employees. This move to an ‘all
staff’ workforce was made possible in WA because the State Government had passed
industrial legislation that allowed the company to offer individual contracts.

The benefits were substantial and nearly all the iron ore workforce opted to move to the
new contracts. This was viewed with the gravest suspicion by the IR establishment. The
AIRC, in particular, saw individual contracts as inconsistent with the central role of
registered organisations. Not surprisingly, many employers clung to the old award system
rather than face the inevitable opposition from the IR industry.

Thus the goal of the high performance workplace seemed unattainable for most businesses
until a Coalition Government enacted the Workplace Relations Act 1996. One of the aims
of this Act was to focus on the enterprise or the workplace, and to put the onus on
employers and employees for workplace relationships

A critical feature of this Act was the introduction of federal AWAs that permitted
employers to make individual agreements with their employees. When, in 2002, a new
WA Government removed the right to individual contracts, Rio Tinto’s WA operations
had to offer federal AWAs to employees in order to retain systems which were focused on
performance.

That shift was time consuming and costly. However, in Rio Tinto we are in no doubt that
a high performance workplace can only happen when everyone is working towards the
same ends. Only then do you get the willingness to contribute and try new ways of doing
things. Only then can you achieve true flexibility.

Notwithstanding the ample evidence supporting workplace reform, there are those who
cling to the old, adversarial system and who are using the fear factor to try to scare off
change.
And this is happening at a time when there is an obvious need for further reform to our workplace relationships in order to improve our competitiveness and meet the challenges presented by the changing global economy.

In Rio Tinto, we think that there are several areas where there is need for further reform if we are to maximise workplace performance in Australia. I’d like to illustrate some of these areas by examples from Rio Tinto’s operations.

The first area relates to our legacy of Federal and State industrial systems. These may once have made some practical sense, given the geographic spread and the absence of communications and other integrating technologies. Today, it is harder to justify overlapping jurisdictions that generate uncertainties, delays and expense.

Let me illustrate what I mean by enlarging on my earlier remarks about changes to WA’s industrial relations in 2002. These changes included:

- the abolition of workplace agreements which underpinned the company’s direct employment arrangements;
- new provisions that increased the power of the WA Industrial Relations Commission to arbitrate pay rates, potentially reducing the flexibility and effectiveness of direct employment arrangements.

To overcome the issues associated with the State system, Hamersley Iron and Robe River sought a Federal award to cover their operations.

While this step was ultimately successful:

- the process took nearly two years and involved over 30 hearing days before single members and full benches of the AIRC;
- substantial legal costs and management time were involved;
- both companies were subject to third party intervention after little or no involvement in our workplace relationships for more than a decade.

In addition, the companies needed to defend their position in both State and Federal Commissions simultaneously, with associated costs and inefficiencies that Australia can ill afford.

The current system encourages ‘jurisdictional shopping’. This will only cease when States cede their existing powers to the Federal Government or when, as is happening, the Federal Government uses its Corporations power to extend the federal system and limit the role of state systems.

The second area of concern is the legal standing of Common Law contracts. Rio Tinto believes that the laws should be amended to give Common Law contracts legal standing to override awards and certified agreements. Such Common Law contracts would provide remuneration and benefits which, when taken as a whole, exceed those under the relevant award.

Let me give you an example of how statutory instruments can frustrate desired workplace relationships.
At the Comalco Alumina Refinery Operation in Gladstone, the company wished to introduce Salary Packaging for all employees. Employees covered by the State Awards could only sacrifice that portion of their salary that was in excess of the Award pay rates. The company was unable to negotiate a change to the Award so that employees could enjoy greater salary sacrifice flexibility. Although a solution using a s170LK Agreement was eventually implemented, significant time, complexity, effort and cost went into providing employees with a simple salary sacrifice option.

Then there is the issue of unfair dismissals.

Rio Tinto believes that the unfair dismissal provisions of the Act should be simplified.

There should be prompt and final settlement in unfair dismissal proceedings, with cases being resolved through mediation, with strict limits on access to arbitration.

Again, let me give you an example of the sort of situation we need to rectify.

In 2003, an employee at Hamersley Iron’s Tom Price mine site was terminated after he committed a serious safety breach.

The employee challenged the dismissal using the Unfair Dismissal provisions of the Act. This appeared to be a straightforward unfair dismissal application, yet the matter was listed for two conciliation conferences over the span of seven months. At neither conciliation conference did the employee attend (nor was there a compulsion on him to do so).

Following this, the Commission set down directions for the matter. The employee or his representative did not comply with these directions. The Commission then set down new directions, which were followed. However, following this, the Commission felt there was merit in a further conciliation conference being held before the matter was listed for arbitration.

The Commission then sought a further hearing to decide the basis for such a conciliation conference. This hearing was set down for a date nearly a year after the employee’s termination. During the hearing the Commission requested that the parties attempt to conciliate one more time and adjourned. At this third conciliation conference, the parties reached a settlement agreement.

Accordingly, the matter was finalised in June 2004 (a year after the date of termination). Despite a year having passed from the date of the employee’s termination, the matter was not even close to being listed for arbitration.

Another area of concern is the way in which the AIRC has, on occasion, used Exceptional Matters Orders (EMOs) in ways that are inconsistent with the intention of the Workplace Relations Act.

Let me give you an example. In July 1998, the Blair Athol coal mine retrenched 16 employees. In December 2002, a Full Bench of the AIRC upheld a decision that the terminations were unfair but found that reinstatement of employment was not an
appropriate remedy and that sufficient compensation had already been paid to the former employees.

In late 2002, the 16 employees unsuccessfully applied for employment at the new Hail Creek mine. This was a company that had a different ownership structure and legal identity from Blair Athol. The AIRC issued an Exceptional Matters Order requiring that Hail Creek offer the 16 employment in order of their seniority at Blair Athol.

Hail Creek spent significant time and money contesting issues of suitability of some of the 16 individuals. The Exceptional Matters Order prevented Hail Creek from recruiting the best person for a role – something taken as given in most recruitment decisions.

Rio Tinto believes that the law needs to be changed to ensure that the AIRC does not impose solutions which go beyond its intended powers. The WorkChoices legislation clarifies the role and authority of the AIRC, and will help to deal with these sorts of issues.

Now I’d like to turn to the way in which the ‘right of entry’ is sometimes abused. The abuse springs from Court decisions that have added uncertainty and complexity to the area of Right of Entry.

Safety and other issues are often used as an excuse to enter workplaces to conduct membership drives or disrupt employer initiatives.

Not long ago, employees at Robe River’s West Angelas site in Western Australia were provided with a 170LK Agreement and were in the cooling off period prior to the vote. The AMWU alleged the company had breached the Workplace Relations Act and sought entry to investigate the alleged breaches. The union official provided no information of alleged breaches and he left site after two hours. Subsequently it was discovered that the official had left “Vote No” pamphlets in some crib rooms and toilets.

And I could give you many more examples of the same sort of behaviour.

Moving on, Rio Tinto supports the workplace relations reform process as it places the focus on direct relationships and facilitates business improvement. We recognise, however, that there is much more to securing success than just legislative reform. There is a need for leaders, at all levels in business, to develop an environment where:
- Leaders throughout the organisation have the requisite skills and are able to motivate teams and help people to realise their potential.
- Systems are in place to drive and reward performance; with appropriate systems also in place to deal with under-performance and to provide for fair treatment.
- Businesses develop workplace cultures where employees feel involved and look forward to the opportunities to work together to improve performance.
- There is a high level of trust between management and workers.

I hope I have been able to convey the key elements of a high performing workplace. I am aware that some commentators have stated that there is little, if any, correlation between workplace reform and productivity improvement. I would answer this by noting that the workplace reform implemented by Rio Tinto had a key role in:
- Doubling the productivity of workers in our Pilbara iron ore operations since 1994.
• Driving safety performance improvements which have seen our lost time injury levels reduce by 67%, to levels that are one third of those applying for Australian industry.

I am convinced that workplace reform is both necessary and good for Australia. The WorkChoice changes provide a real opportunity to push forward with reforms which can add to productivity, profitability and wealth generation, and also to a better workplace where people are encouraged to use their initiative and develop their skills.

The challenge is now for the business community to pursue performance improvement in a way which provides a stimulating environment where management and employees work together to achieve business success and growth. Integral to this are leadership behaviours and employee systems that I referred to earlier.

When the high performance workplace becomes the norm, rather than the exception, I am convinced benefits will flow to society as a whole, both in this generation and the next.

And I look forward to that day.

________________ o0o ______________