FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Rio Tinto Limited (No 2) [2022] FCA 184

File number(s):	NSD 290 of 2018
Judgment of:	**YATES J**
Date of judgment:	7 March 2022
Catchwords:	**CORPORATIONS** – admitted contravention of s 674(2) of the *Corporations Act 2001* (Cth) – continuous disclosure obligations – contravention of a financial services civil penalty provision – appropriate penalty in all the circumstances
Legislation:	*Corporations Act 2001* (Cth) ss 111AL, 674, 676, 677, 1317DA, 1317E, 1317G *Evidence Act 1995* (Cth) s 191 ASX Listing Rules r 3.1
Cases cited:	*Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68 *Australian Competition and Consumer Commission v Universal Music Australia Pty Ltd (No 2)* [2002] FCA 192; 201 ALR 618 *Australian Securities and Investments Commission v Hochtief Aktiengesellschaft* [2016] FCA 1489; 117 ACSR 589 *Australian Securities and Investments Commission v Newcrest Mining Ltd* [2014] FCA 698; 101 ACSR 46 *Australian Securities and Investments Commission v Westpac Banking Corporation* [2018] FCA 1701; 131 ACSR 585 *Australian Securities and Investments Commission, in the matter of Chemeq Limited (ACN 009 135 264) v Chemeq Limited (ACN 009 135 264)* [2006] FCA 936; 234 ALR 511 *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482 *Flight Centre Ltd v Australian Competition and Consumer Commission (No 2)* [2018] FCAFC 53; 260 FCR 68

Division:	General Division
Registry:	New South Wales
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Number of paragraphs:	60
Date of hearing:	28 February 2022
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Solicitor for the First Defendant:	Ashurst Australia
Counsel for the Second Defendant:	Mr N Hutley SC and Mr J Hutton
Solicitor for the Second Defendant:	Jones Day
Counsel for the Third Defendant:	Mr J Sheahan QC and Mr D Blazer
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ORDERS

NSD 290 of 2018

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**RIO TINTO LIMITED ACN 004 458 404** First Defendant
	THOMAS ALBANESE Second Defendant
	GUY ELLIOTT Third Defendant

ORDER MADE BY: **YATES J**

DATE OF ORDER: **7 MARCH 2022**

THE COURT DECLARES THAT:

1. The first defendant contravened s 674(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) on one occasion on and from 21 December 2012 continuing until 17 January 2013, in circumstances where:

   (a) on 21 December 2012, the first defendant became aware of the Orebody Information;

   (b) the Orebody Information was not generally available within the meaning of s 676 of the Corporations Act and for the purpose of s 674(2)(c)(i) of the Corporations Act;

   (c) the Orebody Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on the price or value of the first defendant's securities, within the meaning of s 677 of the Corporations Act and for the purpose of s 674(2)(c)(ii) of the Corporations Act;

   (d) in the period between 21 December 2012 and 17 January 2013, the first defendant was obliged by Rule 3.1 of the listing rules of the ASX and s 674(2) of the Corporations Act to notify the ASX of the Orebody Information; and

(e) in the period between 21 December 2012 and 17 January 2013, the first defendant did not notify the ASX of the Orebody Information.

THE COURT ORDERS THAT:

2. Pursuant to s 1317G(1A) of the Corporations Act in respect of the contravention the subject of the above declaration, the first defendant pay a pecuniary penalty to the Commonwealth of Australia in the sum of $750,000.
3. The first defendant pay the plaintiff's costs of and incidental to these proceedings.
4. The proceedings against the first defendant otherwise be dismissed.
5. The proceedings against the second and third defendants be dismissed on the basis that there be no order as to costs as between the plaintiff and the second and third defendants.

In this order, **Orebody Information** means, in relation to mining and exploration assets the first defendant held (through subsidiaries) in the Moatize Basin in Mozambique, known as the RTCM Coal Projects and the Minjova Tenements, and which it operated through a business unit called Rio Tinto Coal Mozambique (**RTCM**), information that:

(a) there was a reduction in expected recoverable and mineable volumes of coking coal, or reduced degree of confidence in the potential economic extraction of the coal deposits, in respect of the RTCM Coal Projects and the Minjova Tenements; and

(b) the quality and quantity of the coal resources in respect of the RTCM Coal Projects and the Minjova Tenements were not what had previously been expected,

such that:

(c) RTL's coal projects in the Moatize Basin were not highly prospective;

(d) the RTCM Coal Projects and the Minjova Tenements did not provide an opportunity to grow and develop a world class basin of high quality coking coal; and

(e) the RTCM Coal Projects and the Minjova Tenements were no longer economically viable as long-life, large-scale, Tier 1 coking coal resources.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

YATES J:

INTRODUCTION

1 On 2 March 2018, the plaintiff, Australian Securities and Investments Commission (**ASIC**), commenced this proceeding against the defendants alleging various contraventions of the *Corporations Act 2001* (Cth) (the **Act**). The first defendant, Rio Tinto Limited, has admitted one contravention of s 674(2) of the Act.

2 ASIC no longer seeks to bring its proceeding against the second defendant, Mr Albanese, or the third defendant, Mr Elliott, who were, at relevant times, respectively, the first defendant's Chief Executive Officer and the first defendant's Chief Financial Officer. The proceeding is to be dismissed against Mr Albanese and Mr Elliott on the basis that there be no order as to costs between ASIC and them.

3 The proceeding is now before the Court for the granting of relief against the first defendant. The form of that relief has been agreed between ASIC and the first defendant, although it remains for the Court to be satisfied that the relief is appropriate in all the circumstances of the case.

4 The Court's consideration of that question has been assisted by the filing of Joint Submissions and a Statement of Agreed Facts and Admissions dated 8 February 2022. The Statement of Agreed Facts and Admissions has been made pursuant to s 191 of the *Evidence Act 1995* (Cth).

5 Two matters should be stressed. First, the Joint Submissions are the joint submissions of ASIC and the first defendant. Secondly, the Statement of Agreed Facts and Admissions reflects facts that have been agreed between ASIC and the first defendant, and admissions made by the first defendant, only for the purpose of this proceeding. The statement does not reflect facts that have been agreed between ASIC and either the second defendant or the third defendant. Further, no admissions have been made by either the second defendant or the third defendant who, at all times, have denied any wrongdoing on their part.

6 The agreed facts are set out in Schedule A to these reasons.

THE ADMITTED CONTRAVENTION

7 The following facts are taken from the Statement of Agreed Facts and Admissions.

8 The first defendant is an Australian corporation listed on the Australian Securities Exchange (**ASX**) operated by ASX Limited. At relevant times, it was subject to, and bound by, the ASX Listing Rules. Rule 3.1 provided:

> **Immediate notice of material information**
>
> **General rule**
>
> 3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.
>
> …

9 At relevant times, the first defendant was, for the purposes of the Act, a "listed disclosing entity" within the meaning of s 111AL thereof. Section 674(2) applied to it:

> **674 Continuous disclosure—listed disclosing entity bound by a disclosure requirement in market listing rules**
>
> *Obligation to disclose in accordance with listing rules*
>
> …
>
> (2) If:
>
> (a) this subsection applies to a listed disclosing entity; and
>
> (b) the entity has information that those provisions require the entity to notify to the market operator; and
>
> (c) that information:
>
> (i) is not generally available; and
>
> (ii) is information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of ED securities of the entity;
>
> the entity must notify the market operator of that information in accordance with those provision.
>
> Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).
>
> Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.
>
> Note 3: An infringement notice may be issued for an alleged contravention of this subsection, see section 1317DAC.

10 The first defendant operated through a dual-listed company structure with Rio Tinto plc. Rio Tinto plc was listed on financial markets in London and New York. It is convenient to refer to this structure as the **RT Group**.

11 The first defendant is (and was at all relevant times) one of the largest mining and metals companies listed on the ASX, and one of the world's largest mining companies. It has (and at relevant times had) a market capitalisation among the largest 20 companies listed on the ASX. It conducts (and at relevant times conducted) mining operations in 35 countries.

12 For the financial year ending 31 December 2012:

(a) the first defendant's shares were principally traded on the ASX;

(b) the RT Group's consolidated sales revenue was US$50.967 billion;

(c) the RT Group's earnings before interest, tax, depreciation and amortisation was US$19.411 billion;

(d) the RT Group's net assets were US$58.021 billion;

(e) the first defendant had issued 435,758,720 shares; and

(f) the RT Group's market capitalisation was approximately US$81.97 billion.

13 As at 7 February 2022, the RT Group had a market capitalisation of approximately US$123.33 billion.

14 In 2011, a subsidiary in the RT Group acquired all the issued shares in Riversdale Mining Limited (**Riversdale**). Riversdale's business—known in the RT Group as Rio Tinto Coal Mozambique (**RTCM**)—comprised, principally, mining and exploration assets in Mozambique (**the RTCM Coal Projects**).

15 In December 2011, a subsidiary of Rio Tinto plc acquired tenements, with exploration licences, in an area adjoining the RTCM Coal Projects—the **Minjova Tenements**. The first defendant regarded the RTCM Coal Projects and the Minjova Tenements as one portfolio of mining assets for development planning purposes.

16 On about 16 March 2012, the first defendant and Rio Tinto plc released their annual report for the year ending 31 December 2011 to the ASX. The report included this statement:

> The Moatize basin in Mozambique is home to one of the best undeveloped coking coal resources in the world. Rio Tinto has the largest licence holding in that region and owns Tier 1 resources which are long life, will be cost competitive and will have substantial expansion options. Rio Tinto plans to significantly grow these assets and sees this region providing a development opportunity that is long term and will achieve sustainable growth over a 50-year-plus timeframe. Whilst saleable production will initially be constrained by existing rail and port infrastructure, feasibility studies into infrastructure solutions and mine expansions at Benga and the adjacent Zambeze Project are continuing in 2012.

17 At about the same time, the first defendant and Rio Tinto plc released, to the ASX, their annual review for the year ending 31 December 2011, which included the following statements:

> (a) We are well placed to capitalise on our leadership position. Our portfolio includes some of the world's best assets – from our world-class iron ore operations in Australia to the huge potential of our growth projects there and in Mongolia, Guinea and Mozambique;
>
> (b) During 2011 we completed the acquisition of Riversdale, which has now been renamed Rio Tinto Coal Mozambique. This provides a substantial Tier 1 coking coal development pipeline in the emerging Moatize Basin;
>
> (c) We continue to grow our world class portfolio of energy assets through the development of the recently acquired Hathor and Riversdale projects and increasing production at existing operations;
>
> (d) Our strategic investment in the highly prospective Moatize Basin in Mozambique gives us access to one of the largest undeveloped coking coal regions in the world and underlines our commitment to Africa;
>
> (e) Through the development of Mozambique's massive coal reserves we can help meet that demand and contribute to the transformation of the country's economy.

18 In the period 8 August 2012 to 17 January 2013, the first defendant made public representations (the **orebody representations**) in its half-year report for the period ending 30 June 2012 and at various seminars and presentations, namely:

(a) the first defendant's coal projects in the Moatize Basin were highly prospective;

(b) through the RTCM Coal Projects and the Minjova Tenements, there was an opportunity to grow and develop a world class basin of high quality coking coal; and

(c) the RTCM Coal Projects and the Minjova Tenements were long-life Tier 1 coking coal resources. (In this context, "Tier 1" means large, long-life and low-

cost mining operations, in the first (or lowest) quartile of the costs incurred by mining companies, relative to each other).

19 The product group of which RTCM was part was supported by a team within the RT Group — Technology & Innovation (**T&I**). This team was responsible for project development and the evaluation of resource quality and quantity.

20 T&I prepared a report (the **Orebody Report**) that set out the findings and conclusions of an orebody review. The Orebody Report was made available to executive officers of the first defendant, including Mr Albanese and Mr Elliott, on 21 December 2012. The executive officers who received the Orebody Report are no longer employed or otherwise involved with the first defendant.

21 The Orebody Report concluded that, based on qualitatively new test results just received concerning coal quantity and quality, the exploration and development potential of the RTCM Coal Projects and the Minjova Tenements was not as the first defendant had indicated in the orebody representations.

22 Specifically, from 21 December 2012, the first defendant was aware that:

(a) there was a reduction in expected recoverable and mineable volumes of coking coal, or reduced degree of confidence in the potential economic extraction of the coal deposits, in respect of the RTCM Coal Projects and the Minjova Tenements;

(b) the quality and quantity of the coal resources in respect of the RTCM Coal Projects and the Minjova Tenements was not as previously expected;

(c) its coal projects in the Moatize Basin were not highly prospective;

(d) the RTCM Coal Projects and the Minjova Tenements did not provide an opportunity to grow and develop a world class basin of high quality coking coal; and

(e) the RTCM Coal Projects and the Minjova Tenements were no longer economically viable as long-life, large-scale, Tier 1 coking coal resources

(together, the **orebody information**).

23 The orebody information was:

(a) not "generally available" within the meaning of s 676 of the Act, and for the purpose of s 674(2)(c)(i) of the Act;

(b) information that a reasonable person would have expected, if it had been generally available, to have had a "material effect" on the price or value of the first defendant's securities, within the meaning of s 677 of the Act, and for the purpose of s 674(2)(c)(ii) of the Act;

(c) not discoverable by anyone outside the first defendant.

24 It is accepted that, between 21 December 2012 and 17 January 2013, the first defendant carefully assessed the implications of the orebody information. On 17 January 2013, it made an announcement to the ASX which included, amongst other things, the substance of that information.

25 However, during the period 21 December 2012 to 17 January 2013, approximately 31.06 million shares in the first defendant were traded on the ASX during ordinary trading, with a total value of approximately AU$2.063 billion.

26 The first defendant accepts that, in the period between 21 December 2012 and 17 January 2013, it was obliged, by Rule 3.1 of the ASX Listing Rules and s 674(2) of the Act, to notify the ASX of the orebody information, and that it did not do so. It admits that it contravened s 674(2) of the Act, on one occasion (on and from 21 December 2012 continuing until 17 January 2013), in failing to notify the ASX of the orebody information. It accepts that this contravention was "serious" within the meaning of s 1317G(1A)(c)(iii) of the Act (as in force at the relevant time).

THE PROPOSED RELIEF

27 As between ASIC and the first defendant, the parties propose the following relief:

(a) a declaration that the first defendant contravened s 674(2) of the Act in identified respects;

(b) an order, in respect of that contravention, that the first defendant pay a pecuniary penalty to the Commonwealth of Australia in the amount of $750,000;

(c) an order that the first defendant pay ASIC's costs of and incidental to the proceeding; and

(d) an order that the proceeding be otherwise dismissed.

28 As I have noted, the proceeding is to be dismissed against the second and third defendants, with no order as to costs.

29 The making of a declaration is mandated by s 1317E(1)(jaab) of the Act (in the form it took at the time of the contravention): if the Court is satisfied (as I am) that the first defendant contravened s 674(2) of the Act, it must make a declaration of contravention.

30 At that time, s 1317E(2) provided:

> (2) A declaration of contravention must specify the following:
>
> (a) the Court that made the declaration;
>
> (b) the civil penalty provision that was contravened;
>
> (c) the person who contravened the provision;
>
> (d) the conduct that constituted the contravention;
>
> (e) if the contravention is of a corporation/scheme civil penalty provision—the corporation or registered scheme to which the conduct related.

31 As to the payment of a pecuniary penalty, s 1317G(1A), at that time, provided:

> (1A) A Court may order a person to pay the Commonwealth a pecuniary penalty of the relevant maximum amount if:
>
> (a) a declaration of contravention by the person has been made under section 1317E; and
>
> (b) the contravention is of a financial services civil penalty provision not dealt with in subsections (1E) to (1G); and
>
> (c) the contravention:
>
> (i) materially prejudices the interests of acquirers or disposers of the relevant financial products; or
>
> (ii) materially prejudices the issuer of the relevant financial products or, if the issuer is a corporation or scheme, the members of that corporation or scheme; or
>
> (iii) is serious.

32 By dint of s 1317DA of the Act, a contravention of s 674(2) was a contravention of a "financial services civil penalty provision", and so s 1317G(1A) applies in the present case (bearing in mind that a declaration of contravention will be made). The "relevant maximum amount" for a body corporate was $1 million: s 1317G(1B). As I have said, ASIC and the first defendant propose $750,000 as the appropriate penalty.

THE JOINT SUBMISSIONS

33 The Joint Submissions are comprehensive. They cover the statutory framework (including the relevant ASX Listing Rules) in which the contravention arose; an analysis of the facts which provide the background against which the contravention occurred (based on the Statement of Agreed Facts and Admissions); the first defendant's contravention; the relevant provisions of the Act pursuant to which relief is proposed; the legal principles on which relief is granted; and an analysis of the salient facts of the present case which, ASIC and the first defendant contend, support the relief they jointly propose.

34 I do not propose to summarise the Joint Submissions. I will, however, record the following overarching submissions, which I accept. When referring to "the parties" I am, of course, referring to ASIC and the first defendant only.

35 First, on the basis of the agreed facts, and the first defendant's admission, I am satisfied that the first defendant contravened s 674(2) of the Act. Thus, as the parties submit, and as I have noted, a declaration of contravention under s 1317E(1) must be made. The form of the proposed declaration conforms to the requirements of s 1317E(2) of the Act, as it existed at the time of the contravention. This declaration is otherwise in an appropriate form.

36 Secondly, the first defendant's contravention was serious: s 1317G(1A)(c)(iii). Whether a contravention is "serious" is a question of fact: *Australian Securities and Investments Commission v Newcrest Mining Ltd* [2014] FCA 698; 101 ACSR 46 (***Newcrest***) at [57]; *Australian Securities and Investments Commission v Hochtief Aktiengesellschaft* [2016] FCA 1489; 117 ACSR 589 at [98].

37 Here, the Orebody Report, which was the basis for the first defendant's awareness of the orebody information, was provided to its executive officers, including the second defendant and the third defendant; its contravention occurred over a period of time (almost a month); and,

during the period in which it was required, but failed, to notify the ASX of the orebody information, approximately 31.06 million of its shares (with a total value of approximately AU$2.063 billion) were traded on the ASX.

38 Further, and in any event, the first defendant admits that its contravention was serious within the meaning of s 1317G(1A)(c)(iii). In *Newcrest* at [57], Middleton J accepted an admission for that purpose.

39 Thirdly, it is appropriate that the Court receive (and, if appropriate, accept) agreed penalty proposals. In *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482 (***Commonwealth v FWBII***), the plurality (at [58]) said:

> 58 ... Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is an appropriate remedy in the circumstances thus revealed, it is consistent with principle and, for the reasons identified in Allied Mills, highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty. To do so is no different in principle or practice from approving an infant's compromise, a custody or property compromise, a group proceeding settlement or a scheme of arrangement.
>
> (Citations omitted.)

40 Of course, the Court is not bound by the parties' proposal as to the amount of the penalty. However, the question for the Court is whether the proposal fixes an appropriate amount. As fixing the amount of a civil penalty is not an exact science, there is a permissible range in which it cannot be said that one amount is, necessarily, more appropriate that another amount for the penalty. Therefore, the Court will not depart from a proposed amount (assuming it to be appropriate) merely because it might have been disposed to impose another, appropriate amount. Further, in these matters, the Court can expect that the relevant regulator (here, ASIC) will be in a position to offer informed submissions as to the effects of the contravention in question, and the level of penalty necessary to achieve statutory compliance: *Commonwealth v FWBII* at [47] – [48] and [60].

41 Fourthly, the purpose of a civil penalty is primarily, if not wholly, protective in promoting the public interest in statutory compliance. Unlike criminal proceedings, notions of retribution and rehabilitation do not have a role: *Commonwealth v FWBII* at [55]; *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017]

FCAFC 113, 254 FCR 68 (***ABCC v CFMEU***) at [98]. The object of a pecuniary penalty is to put a price on contravention that is sufficiently high to deter the contravenor (specific deterrence) and others who might be tempted to contravene (general deterrence): see *ABCC v CFMEU* at [98].

42 Fifthly, the penalties that have been proposed in other cases can provide guidance to the Court. However, that guidance should not be deployed mechanically in the sense of working backwards or forwards from other more or less serious cases. All the circumstances of the given case must be evaluated: *Flight Centre Ltd v Australian Competition and Consumer Commission (No 2)* [2018] FCAFC 53; 260 FCR 68 at [69]; *Australian Competition and Consumer Commission v Universal Music Australia Pty Ltd (No 2)* [2002] FCA 192; 201 ALR 618 at [34]. In the present case, I have been provided with a summary of prior cases where pecuniary penalties were imposed for contraventions of continuous disclosure obligations.

43 In *Australian Securities and Investments Commission, in the matter of Chemeq Limited (ACN 009 135 264) v Chemeq Limited (ACN 009 135 264)* [2006] FCA 936; 234 ALR 511, French J (at [95] – [98]) discussed the factors relevant to the imposition of penalty in a non-disclosure case. His Honour summarised this discussion at [99]:

> 99 From the preceding discussion I extract the following factors relevant to the level of penalty for contravention of the continuous disclosure provisions. The list is non-exhaustive:
>
> 1. The extent to which the information not disclosed would have been expected to and (if applicable) did affect the price of the contravening company's shares (s 674(2)(c)).
>
> 2. The extent to which the information, if not generally available, would have been discoverable upon inquiry by a third party (s 676(2)).
>
> 3. The extent (if any) to which acquirers or disposers of the company's shares were materially prejudiced by the non-disclosure (s 1317G(1A)).
>
> 4. The extent to which (if at all) the contravention was the result of deliberate or reckless conduct by the corporation.
>
> 5. The extent to which the contravention was the result of negligent conduct by the corporation.
>
> 6. The period of time over which the contravention occurred.
>
> 7. The existence, within the corporation, of compliance systems in relation to its disclosure obligations including provisions for and evidence of education and internal enforcement of such systems.

8. Remedial and disciplinary steps taken after the contravention and directed to putting in place a compliance system or improving existing systems and disciplining officers responsible for the contravention.

9. The seniority of officers responsible for the non-disclosure and whether they included directors of the company.

10. Whether the directors of the corporation were aware of the facts which ought to have been disclosed and, if not, what processes were in place at the time, or put in place after the contravention to ensure their awareness of such facts in the future.

11. Any change in the composition of the board or senior managers since the contravention.

12. The degree of the corporation's cooperation with the regulator including any admission of contravention.

13. The prevalence of the particular class of non-disclosure in the wider corporate community.

44 There are other factors that are also relevant to the imposition of penalty, such as the size and financial position of the contravening company, and whether the company has been found to have engaged in similar conduct in the past: *ABCC v CFMEU* at [104].

45 In the Joint Submissions, the parties addressed a number of these factors with reference to the Statement of Agreed Facts and Admissions, which, they say, support the conclusion that the proposed penalty of $750,000 is an appropriate penalty in all the circumstances.

46 With respect to the considerations that point towards the need for a penalty of a significant size, relative to the statutory maximum of $1 million, the parties referred to the first defendant's standing as a mining and metals company, and the RT Group's market capitalisation ([11] and [13] above; see also [12]); the fact that the contravention occurred over a period of almost one month, at which time a substantial number of the first defendant's shares were traded on the market ([24] – [26] above); and the fact that the Orebody Report (and, hence, the orebody information) was received by executive officers within the first defendant ([20] above).

47 The parties also point to a number of mitigating factors. ASIC accepts that the contravention was not deliberate or reckless; that the contravention did not arise out of a failure to exercise due care and skill; and that no officer or employee of the first defendant knowingly, wilfully, fraudulently, or dishonestly contravened any legal obligation under statute or the general law.

48 The agreed facts record that, in the period 21 December 2021 to 17 January 2013, the first defendant assessed the implications of the orebody information. As I have noted, the parties agree that the assessment was undertaken carefully. It consisted of a review of the value of the RTCM coal projects and a reassessment of the business direction of those projects. However, in undertaking its review, the first defendant did not appreciate that it was necessary to notify the ASX of the orebody information, even though it had in place processes designed to ensure that it complied with its continuous disclosure obligations.

49 In this regard, the RT Group had implemented continuous disclosure standards as part of its corporate governance standards. These standards were overseen by a Continuous Disclosure Committee, which functioned as an independent management committee. It was responsible for determining whether information relating to the first defendant required disclosure. The standards required the first defendant to make immediate disclosure to listing authorities of any information that a reasonable person would expect to have a material effect on the price or value of the first defendant's securities, in accordance with the RT Group's rules.

50 In the course of oral submissions, I asked how, given these processes, the contravention occurred? Were the first respondent's compliance processes adequate or inadequate?

51 Leading counsel for ASIC, Mr Darke SC, submitted that the apparent failure of these processes, on this occasion, did not mean that, necessarily, they were inadequate. Mr Darke submitted that, given the processes described in the Statement of Agreed Facts and Admissions, it can be said that the first defendant took its compliance obligations seriously and that the contravention was the result of inadvertent error.

52 Leading counsel for the first defendant, Mr Young QC, supported this characterisation. He emphasised the agreed fact that the first defendant's assessment of the orebody information was carefully undertaken. He submitted that the receipt and consideration of the Orebody Report overlapped the Christmas and New Year period. He referred to the report as a "fairly technical document" concerning "very recent drilling results and assays". He submitted that, during the period of non-disclosure, the first defendant's focus was on understanding, and then disclosing, the full impact of the information on the carrying value of the RTCM assets and what that might mean for the direction of the company.

53 The parties also drew attention to the fact that the first defendant has made appropriate admissions regarding the facts and its contravention. This means that a lengthy trial has been avoided. It also means that the first defendant has evinced contrition.

54 In oral submissions, Mr Young submitted that I should view the first defendant's cooperation in light of the fact that the admitted contravention was not alleged until early 2022, leading to the filing, with leave, of a further amended originating process, which deleted all previous claims to relief. He submitted that the considerable work on the evidence and on trial preparation had been undertaken with respect to previous allegations of contravention that are no longer pressed. He submitted that, in these circumstances, the first defendant has, in fact, provided "full and speedy cooperation". Mr Young also drew attention to the fact that, even in these changed circumstances, and with an agreed resolution, the first defendant has agreed to pay ASIC's costs.

55 Mr Young also drew my attention to cases dealing with the significance of the maximum penalty when fixing an appropriate penalty. He submitted that the present case is not at the higher end of offending given the mitigating factors to which I have referred. He submitted that the proposed penalty of $750,000 is, nevertheless, a significant penalty keeping in mind the maximum penalty available: *Newcrest* at [56], [73], and [87]; cf *Australian Securities and Investments Commission v Westpac Banking Corporation* [2018] FCA 1701; 131 ACSR 585 at [168], [176] – [177].

56 Finally, the parties noted that the first defendant has not been found to have engaged in contravention of its continuous disclosure obligations in the past.

CONCLUSION

57 As I have said, I am satisfied that the first defendant has contravened s 674(2) of the Act, as admitted. The Court is required to make a declaration. I will make the proposed declaration.

58 Given that the proposed declaration will be made, and given that the contravention was serious, it is appropriate that a monetary penalty be imposed.

59 I have reflected on the Joint Submissions and the oral submissions advanced at the hearing on 28 February 2022. I am satisfied that the proposed penalty of $750,000 is an appropriate

penalty in all the circumstances of the case, for the reasons advanced by ASIC and the first defendant. I will impose that penalty.

60 I am satisfied that the other proposed orders should be made.

I certify that the preceding sixty (60) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Yates.

Associate: 

Dated: 7 March 2022

SCHEDULE A

For the purposes of this proceeding only, this Statement of Agreed Facts and Admissions (**Statement**) is made jointly by the Plaintiff (**ASIC**) and the First Defendant (**RTL**), pursuant to section 191 of the *Evidence Act 1995* (Cth).

This Statement is made jointly by ASIC and RTL in support of the settlement consent orders filed with this Statement.

The facts agreed to, and the admissions made, in this Statement are solely for the purpose of this proceeding and do not constitute any admission outside of this proceeding. The Statement itself is not intended for use in any manner outside of this proceeding.

A. Parties

1. The Plaintiff, ASIC, is a body corporate:

   (a) established by s 7 of the *Australian Securities Commission Act 1989* (Cth);

   (b) continued by s 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and

   (c) entitled to sue in its corporate name, pursuant to s 8 of the ASIC Act.

2. The First Defendant, Rio Tinto Limited (ACN 004 458 404) (**RTL**), at all relevant times:

   (a) was a corporation registered pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and capable of being sued;

   (b) was an Australian corporation listed on the financial market known as the "Australian Securities Exchange" (**ASX**) operated by ASX Limited, which is a "prescribed financial market" within the meaning of section 9 of the Corporations Act;

   (c) had on issue securities that:

      (i) were traded on the ASX under the designation "RIO";

      (ii) were "ED securities" within the meaning of section 111AE of the Corporations Act; and

(iii) accordingly, were "quoted ED securities" within the meaning of section 111AM of the Corporations Act;

(d) was, as the issuer of RTL securities:

(i) subject to and bound by the listing rules of the ASX (**ASX Listing Rules**);

(ii) a listed disclosing entity within the meaning of section 111AL of the Corporations Act;

(iii) subject to the requirements of section 674 of the Corporations Act; and

(iv) required by rule 3.1 of the ASX Listing Rules to notify the ASX of information of the type specified therein once RTL was or became aware of such information, for the purpose of the ASX making that information available to participants in the market.

3. At all relevant times, RTL operated through a dual listed company structure with Rio Tinto plc, which is listed on the London and New York Stock Exchanges, together the RT Group.

B. Acquisition of Riversdale

4. On or about 8 April 2011, Rio Tinto Jersey Holdings 2010 Limited (**RT Jersey**), a subsidiary within the RT Group, acquired a controlling 52.6 per cent interest in the issued share capital of Riversdale Mining Limited (**Riversdale**).

5. On or about 7 July 2011, Riversdale was delisted from the ASX following despatch of compulsory acquisition notices by RT Jersey and subsequently RT Group referred to Riversdale's business as Rio Tinto Coal Mozambique (**RTCM**).

6. On or about 1 August 2011, RT Jersey completed its acquisition of 100% of the share capital of Riversdale.

7. RT Jersey paid cumulative consideration for Riversdale of US$4.168 billion.

8. As at the date of acquisition of Riversdale, RTCM's principal mining and exploration assets, which were all located in Mozambique, were as follows:

(a) a 65% shareholding in Riversdale Mozambique Limitada, which owned an asset described as the Benga asset (**Benga asset**);

(b) a tenement located adjacent to Benga called Zambeze (licence 946L) (**Zambeze asset**); and

(c) a tenement located adjacent to Benga called Tete East which comprised *inter alia* exploration licences 945L, 948L, 937L and 935L (**Tete East asset**)

(together, the **RTCM Coal Projects**).

9. Adjoining the RTCM Coal Projects were tenements with exploration licences 1173L, 1174L and 834L (**Minjova Tenements**).

10. Rio Tinto Mining and Exploration Ltd, a subsidiary of Rio Tinto plc, acquired interests in the Minjova Tenements in December 2011.

11. At all relevant times, RTL regarded the Minjova Tenements and the RTCM Coal Projects as one portfolio of mining assets for development planning purposes.

12. RTCM was a business unit and was allocated to the Rio Tinto Energy (**RTE**) product group.

13. RTE was supported by Technology & Innovation (**T&I**), the central team within the RT Group that was responsible for *inter alia* project development and the evaluation of resource quality and quantity.

C. 2011 Annual Report and 2011 Annual Review

14. On or about 16 March 2012, RTL and Rio Tinto plc released their annual report for the year ending 31 December 2011 to the ASX (**2011 Annual Report**).

15. The 2011 Annual Report stated *inter alia* that:

> "The Moatize basin in Mozambique is home to one of the best undeveloped coking coal resources in the world. Rio Tinto has the largest licence holding in that region and owns Tier 1 resources which are long life, will be cost competitive and will have substantial expansion options. Rio Tinto plans to significantly grow these assets and sees this region providing a development opportunity that is long term and will achieve sustainable growth over a 50-year-plus timeframe. Whilst saleable production will initially be constrained by existing rail and port infrastructure, feasibility studies into infrastructure solutions and mine expansions at Benga and the adjacent Zambeze Project are continuing in 2012."

16. The term "Tier 1" was typically used within the mining industry, including by RTL, to describe large, long-life and low-cost mining operations, in the first (or lowest) quartile of the "cost curve". The cost curve is a measure of the costs incurred by mining companies, relative to each other.

17. On or about 16 March 2012, RTL and Rio Tinto plc released their annual review for the year ending 31 December 2011 to the ASX (**2011 Annual Review**).

18. The 2011 Annual Review stated *inter alia* in respect of the RTCM Coal Projects and the Minjova Tenements that:

    (a) "We are well placed to capitalise on our leadership position. Our portfolio includes some of the world's best assets – from our world-class iron ore operations in Australia to the huge potential of our growth projects there and in Mongolia, Guinea and Mozambique";

    (b) "During 2011 we completed the acquisition of Riversdale, which has now been renamed Rio Tinto Coal Mozambique. This provides a substantial Tier 1 coking coal development pipeline in the emerging Moatize Basin";

    (c) "We continue to grow our world class portfolio of energy assets through the development of the recently acquired Hathor and Riversdale projects and increasing production at existing operations";

    (d) "Our strategic investment in the highly prospective Moatize Basin in Mozambique gives us access to one of the largest undeveloped coking coal regions in the world and underlines our commitment to Africa";

    (e) "Through the development of Mozambique's massive coal reserves we can help meet that demand and contribute to the transformation of the country's economy".

D. 2012 Half-Year Report

19. In 2012, RTL's financial half-year was the six months ending 30 June 2012 (**2012 Half-Year**).

20. On 8 August 2012, RTL signed and lodged with the ASX a report for the 2012 Half-Year which contained the interim financial statements for the 2012 Half-Year (**2012 Half Year Report**).

21. The 2012 Half Year Report stated *inter alia* that:

    (a) RTCM "owns and operates a number of exploration and early development stage projects, specialising in coal opportunities in southern Africa"; and

(b) the RTCM Coal Projects "are located contiguously in the Tete and Moatize provinces of Mozambique. RTCM also has several prospective exploration tenements in the region".

22. On 8 August 2012, during the presentation to analysts about the release of the 2012 Half Year Report, RTL stated in respect of the RTCM Coal Projects and the Minjova Tenements that:

(a) "Meanwhile, we're continuing exploration activity with promising results. Early indications are the exploration potential is far higher than anticipated just a year ago and beyond that of coking coal. Significant additional tonnes may be delivered. However, it is likely it will take longer to develop its infrastructure than previously planned due to the timing approvals and internal constraints on our capital. Discussions continue with the Mozambique government on a range of future infrastructure solutions";

(b) "But we have to recognize our strategy and look for the best global resources around the world. … Mozambique for coking coal would be actually putting our hands on the best quality assets in the world";

(c) "If you think about the quality of our interest in Escondida or ownership in Kennecott Utah Copper, you think about the emerging quality of what will be the Moatize Basin in terms of the next big coking coal business. … These are all quite good businesses in their own right. And any other mining company would just get their – they'd give their eye teeth for a company or a business of that quality. This is a tremendous group of assets. These are all first tier assets";

(d) "in Mozambique we have flagged that we would expect about 400,000 tonnes of production of coking coal. It's been a good quality coking coal that we've been delivering so far this year";

(e) "this is truly a world-class basin deposit".

23. On 8 August 2012, during another presentation to analysts about the release of the 2012 Half Year Report, RTL stated in respect of the RTCM Coal Projects and the Minjova Tenements that:

(a) "We have some of the best quality projects in the world and the flexibility to phase investment plans";

(b) "Benga, Zambeze and the regional area that we've got in the Moatize, if anything, is more prospective than … a year ago as we look at the full range of opportunities, not just in coking coal, in other opportunities in the basin. … it is truly a unique opportunity to have, without a doubt, a first tier world-class basin of high quality, low vol[atility], hard coking coal, which is, I believe, going to be harder and harder to come by in the years to come. … this is a truly valuable asset with a lot of optionality."

E. October 2012 investor presentation

24. On 9 October 2012, during the investor seminar held in London and New York (**9 October 2012 Investor Presentation**):

(a) RTL disclosed in presentation slides which were used for the 9 October 2012 Investor Presentation and lodged with the ASX on 10 October 2012, that in respect of the RTCM Coal Projects they were "[h]ighly prospective, tier one coking coal resource with first production mid-2012 and objective of 25Mtpa high quality coking coal by 2020"; and

(b) RTL stated in respect of the RTCM Coal Projects and the Minjova Tenements that: "Our focus is on large, long life assets that have options to either expand production or to extend life … If an asset is small, it must have the potential to grow to remain part of our portfolio. Interestingly, we may choose to start a greenfield development small in order to start generating income before progressively investing in growth. This is the approach taken now by several of our coal assets in Mozambique, where we've started to produce on a modest scale, but [have] a substantial resource position and multiple growth options available to us."

F. November 2012 investor presentation

25. On 29 November 2012, during a presentation given at the RTL investor seminar held in Sydney (**29 November 2012 Investor Presentation**), it was stated that there was

significant exploration activity in the Moatize Basin and RTL continued to view the Moatize Basin as a long-term opportunity with the potential to grow beyond 25mtpa.

G. Orebody Representations

26. By the 2012 Half Year Report, the presentations at the investor seminars on 8 August 2012 referred to in paragraphs 22 and 23 above, the 9 October 2012 Investor Presentation and the 29 November 2012 Investor Presentation, between 8 August 2012 and 17 January 2013, RTL made public representations that:

    (a) RTL's coal projects in the Moatize Basin were highly prospective; and

    (b) through the RTCM Coal Projects and the Minjova Tenements, there was an opportunity to grow and develop a world class basin of high quality coking coal; and

    (c) the RTCM Coal Projects and the Minjova Tenements were long-life, Tier 1 coking coal resources,

    (the **Orebody Representations**).

H. Orebody Report

27. On 21 December 2012, a report prepared by T&I, setting out the findings and conclusions of a December 2012 orebody review, was made available to executive officers of RTL, including the Chief Executive Officer and Chief Financial Officer (**Orebody Report**).

28. The Orebody Report concluded that, based on qualitatively new test results just received concerning coal quantity and quality, the exploration and development potential of the RTCM Coal Projects and the Minjova Tenements was not as RTL had indicated in the Orebody Representations, in that the Orebody Report stated *inter alia* that:

    (a) "recent drilling results" about coal quality, together with regional and local geological knowledge, "now provide a reasonably robust estimate of ultimate mineable coal and product potential";

    (b) "Potential for economic coal extraction appears limited to the coking coal region around the Moatize/Benga center, including part of the Zambeze lease to the northwest and part of the Tete East 945L lease to the southe[a]st. The three potential mining areas cover a combined strike length of approximately 25km.

To the southwest, major structures downthrow the coal measures to uneconomic depths. To the east, coal rank and product quality deteriorate and intrusives become increasingly dominant.";

(c) "Faulting is ubiquitous (Figure 4). There are frequent major faults with offsets of several hundred meters which will limit continuous mining areas to blocks of a few square kilometers. In general, a series of major ~E-W faults successively downthrows coal to the south with increasing distance from the basement, initially bringing upper seams closer to the surface, then sending the whole seam package beyond economic depths. A second series of ~NE-SW faults displaces the sediments again, forming a series of up- and downthrown blocks along the strike of the basin.";

(d) "At Benga the B seam is lower yielding overall and has a lower coking proportion than the C seam, and the interburden thickness is 50-70 meters. It is expected that the B seam will ultimately be excluded from the mine design on economic grounds, though a final decision will only be made in 2013. The B seam coal totals 84Mt ROM, containing an estimated 12Mt coking and 13Mt thermal products, and its removal from the schedule would leave 260Mt of ROM coal containing an estimated 69Mt coking (27% yield) and 36Mt thermal (14% yield) products, totaling 105Mt (40%). These figures represent the Benga base case …";

(e) "The Benga Mining Concession is now well-drilled (Figure 5) and geology and structures are well-understood. Surface mineable coal is constrained by the lease boundary and by major faults, and upside is therefore very limited.";

(f) "The Zambeze lease is well-drilled (Figure 6). The likely economic limits of mining are largely defined by basement outcrop and major structures, and upside potential is limited. Pit limits to the west are economic in nature and may change with pricing.";

(g) "Some 13 drill holes (8 fully cored) have been completed on 948L to date (Figure 9). Banded coals comprising upper seams (W - K) occur near surface in upthrown fault blocks in the western portion of the lease and at depth in the east. Geophysical logs provide coal densities generally greater than 1.8tm-3

corresponding with an ash content exceeding 40%. The well- established regional rank trend demonstrates potential for thermal coal only at open cut mining depths. The lease is consequently considered to have limited prospectivity. The westernmost limit of igneous intrusions affecting coal in the eastern Tete region leases occurs near the center of 948L.";

(h) "The 937L lease is isolated, and to the North of 948 (also Figure 9). Drilling has delineated a small (1.6km x 1.0km) area of highly banded, high-ash upper seam coal of generally similar rank to coal present in 948L. A steep coal rank gradient, attributed to localized heating of coal by intrusions, is evident in the lease area. Coal within the lease is not considered prospective.";

(i) "The 935L lease (Figure 10) adjoins Minjova, and geology and coal occurrences share similar features, including the effects of intrusions. Drilling in 2012 identified a small satellite coal deposit (~50Mt). An additional target exists at the south west corner of the lease which may continue on to 948L. The potential tonnage is small and coal will be thermal only.";

(j) "the low margin thermal product and complicated nature of the Minjova resource means it is unlikely to be economic once capital is considered";

(k) "the estimated resources on the Tete East (except 945) and Minjova leases are not expected to translate into economic reserves"; and

(l) "the Benga, Zambeze and Tete East 945 Resources in excess of the suggested mineable reserves would require different economic and physical conditions for mining to become economic".

29. Based on the Orebody Representations and the information in the Orebody Report, from 21 December 2012, RTL was aware that:

(a) there was a reduction in expected recoverable and mineable volumes of coking coal, or reduced degree of confidence in the potential economic extraction of the coal deposits, in respect of the RTCM Coal Projects and the Minjova Tenements; and

(b) the quality and quantity of the coal resources in respect of the RTCM Coal Projects and the Minjova Tenements were not what had previously been expected,

such that:

(c) RTL's coal projects in the Moatize Basin were not highly prospective;

(d) the RTCM Coal Projects and the Minjova Tenements did not provide an opportunity to grow and develop a world class basin of high quality coking coal; and

(e) the RTCM Coal Projects and the Minjova Tenements were no longer economically viable as long-life, large-scale, Tier 1 coking coal resources.

(together, the **Orebody Information**).

30. Between 21 December 2012 and 17 January 2013, RTL carefully assessed the implications of the Orebody Information, and on 17 January 2013, RTL made an announcement to the ASX which included, among other things, the substance of the Orebody Information.

I. Contravention of section 674(2) of the Corporations Act

31. The Orebody Information was not generally available within the meaning of s 676 of the Corporations Act and for the purpose of s 674(2)(c)(i) of the Corporations Act.

32. The Orebody Information was information that a reasonable person would have expected, if it had been generally available, to have had a material effect on the price or value of RTL's securities, within the meaning of s 677 of the Corporations Act and for the purpose of s 674(2)(c)(ii) of the Corporations Act.

33. In the period between 21 December 2012 and 17 January 2013, RTL was obliged by Rule 3.1 of the ASX Listing Rules and s 674(2) of the Corporations Act to notify the ASX of the Orebody Information.

34. In the period between 21 December 2012 and 17 January 2013, RTL did not notify the ASX of the Orebody Information.

35. RTL admits that it contravened s 674(2) of the Corporations Act on one occasion on and from 21 December 2012 continuing until 17 January 2013, in failing to notify the ASX of the Orebody Information (**the Contravention**).

J. Other agreed facts relevant to relief sought

36. It is no part of this Statement that:

    (a) the 2011 Annual Report, the 2011 Annual Review, the 2012 Half Year Report, the presentations at the investor seminars on 8 August 2012 referred to in paragraphs 22 and 23 above, the 9 October 2012 Investor Presentation and the 29 November 2012 Investor Presentation were misleading or inaccurate prior to 21 December 2012;

    (b) RTL or any officer or employee of RTL:

        (i) knowingly, wilfully, fraudulently or dishonestly contravened any legal obligation under statute or under the general law;

        (ii) was reckless in complying with any legal obligation under statute (including the Corporations Act) or under the general law;

        (iii) failed to exercise due care and skill in complying with any legal obligation under statute (including the Corporations Act) or under the general law; or

        (iv) was involved (within the meaning of s 79 of the Corporations Act) in a contravention of any legal obligation or was otherwise accessorially liable under the general law for a contravention of any legal obligation.

37. The contravention of s 674(2) of the Corporations Act referred to in paragraph 35 above is serious within the meaning of s 1317G(1A)(c)(iii) of the Corporations Act (in force at the relevant time).

Discoverable upon inquiry by a third party

38. The Orebody Information, in addition to not being generally available, was not discoverable by anyone outside RTL.

39. During the period 21 December 2012 to 17 January 2013, approximately 31.06 million shares in Rio Tinto Limited during ordinary trading were traded on the ASX, with a total value of approximately AU$2.063 billion, as set out in the table below:

Rio Tinto Limited (ASX:RIO) trading data*							
Date	Open	Close	High	Low	Volume	VWAP	Value (volume x VWAP) ($m)
21/12/2012	65.22	64.74	66.21	64.11	2,391,270	64.91	155.23 m
24/12/2012	65	64.84	65.25	64.74	366,989	64.95	23.83 m
27/12/2012	65.09	65.45	65.65	65.09	634,369	65.43	41.51 m
28/12/2012	65.89	66.53	66.68	65.81	1,281,671	66.45	85.17 m
31/12/2012	66.15	66.01	66.2	65.74	660,130	66.00	43.57 m
2/01/2013	67	67.62	67.8	66.57	1,668,548	67.26	112.22 m
3/01/2013	68.16	69.25	69.34	68.13	2,219,500	68.91	152.94 m
4/01/2013	68.04	68.55	68.72	67.6	2,090,819	68.27	142.74 m
7/01/2013	68.51	67.4	68.64	67.4	2,639,188	67.80	178.94 m
8/01/2013	67.52	66.6	67.52	66.2	2,490,236	66.66	165.99 m
9/01/2013	66.53	66.81	66.92	66.28	1,544,427	66.70	103.02 m
10/01/2013	66.9	67.1	67.31	66.26	1,737,828	66.92	116.30 m
11/01/2013	67	65.8	67.03	65.63	2,432,480	66.04	160.64 m
14/01/2013	65.74	65.99	65.99	65.04	1,559,799	65.62	102.35 m
15/01/2013	65.66	65.9	66.08	65.33	1,897,876	65.68	124.66 m
16/01/2013	65.9	65.55	65.91	65.21	1,987,131	65.50	130.15 m
17/01/2013	64.78	64.6	65.56	64.45	3,457,861	64.85	224.24 m

*VWAP means Volume-Weighted Average Price. These figures are calculated from reported information regarding trading on ASX.

Deliberateness or otherwise of the contravention

40. The Contravention was not deliberate, reckless and did not arise out of a failure to exercise due care and skill. During the period 21 December 2012 to 17 January 2013, RTL assessed the implications of the Orebody Information for RTCM (consisting of a review of the value of the RTCM Coal projects and a reassessment of the business

direction of the RTCM Coal Projects). In doing so, however, RTL did not appreciate that it was necessary to notify the Orebody Information to the ASX from 21 December 2012 to 17 January 2013.

Compliance systems at the time of the contravention

41. During the reporting periods relevant to the proceedings RTL had in place processes designed to ensure compliance with the continuous disclosure obligations in the Corporations Act. The RT Group had implemented continuous disclosure standards overseen by a Continuous Disclosure Committee (an independent management committee) and forming part of the RT Group's corporate governance standards. The Committee was responsible for determining whether information relating to Rio Tinto may require disclosure to the markets under the continuous disclosure requirements in the jurisdictions in which Rio Tinto is listed. The RT Group's standards required RTL to make immediate disclosure to the listing authorities of any information that a reasonable person would expect to have a material effect on the price or value of RTL's securities in accordance with their rules.

42. During the period 21 December 2012 to 17 January 2013, application of the foregoing processes in RTL's careful consideration of the Orebody Information did not cause RTL to appreciate the immediate need to notify the ASX of the Orebody Information from 21 December 2012.

Relevant executive officers no longer involved in RTL

43. The executive officers who received the Orebody Report are no longer employed or otherwise involved with RTL.

Size of RTL

44. RTL:

    (a) is (and at all material times was) one of the largest mining and metals companies listed on the ASX and one of the world's largest mining companies;

    (b) has (and at all material times had) a market capitalisation among the largest 20 companies listed on the ASX; and

    (c) conducts (and at all material times conducted) mining operations in 35 countries.

45. For the financial year ending 31 December 2012:

(a) RTL's shares were principally traded on the ASX;

(b) the RT Group's consolidated sales revenue was US$50.967 billion;

(c) the RT Group's earnings before interest, tax, depreciation and amortisation (EBITDA) was US$19.411 billion;

(d) the RT Group's net assets were US$58.021 billion;

(e) the number of issued shares in RTL was 435,758,720; and

(f) the RT Group's market capitalisation was approximately US$81.97 billion.[1]

46. As at 7 February 2022, the RT Group had a market capitalisation of approximately US$123.33 billion.

[1] This was the RT Group's approximate market capitalisation as at 31 December 2012.