



## POLICY

ERA endeavours to be open and accurate in all its communications cognizant of commercial sensitivities.

ERA has obligations under the Corporations Act and ASX Listing Rules to keep the market fully informed of information which may have a material effect on the price or value of ERA's securities and to correct any material mistake or misinformation in the market.

ERA is committed to providing timely and accurate information to the financial community and will disclose to the market as soon as possible any information required to be disclosed by any applicable regulation by releasing information to the ASX in the form of an ASX release or disclosure in other relevant documents (eg the Annual Report).

## PROCEDURE

The following procedure will apply to safeguard against breaches of ERA's continuous disclosure obligations:

### On-going assessment of information

It is essential that there is ongoing monitoring and assessment by directors, executives and other employees within ERA of information for the purposes of disclosure. The aim is twofold: (1) to identify new information that should be disclosed; and (2) to ensure that information that has previously been withheld from disclosure on the basis of the exceptions is released immediately, once the exceptions no longer apply.

### What to do if information may be material

If, in the performance of their duties, a director or employee becomes aware of information that **may** be material (see section 9.2 below), he or she should immediately notify that information:

- (a) In the case of a director, to the Chairman and the CEO
- (b) In the case of an employee, to the CFO or the CEO (who will inform each other of the notification).

In the case of doubt, the immediate contact point should be the CFO.

In all circumstances, should a director or employee have any doubt as to whether the information is material and requires disclosure, they should err on the side of caution and notify that information as set out above.



## Content of notification

If possible, the following information should be included in the notification:

- a) A general description of the matter
- b) Details of the parties involved
- c) The relevant date of the event or transaction
- d) The status of the matter (eg final/negotiations still in progress/preliminary negotiations only)
- e) The estimated value of the transaction
- f) The estimated effect on ERA's finances or operations
- g) The names of any in-house or external advisers involved in the matter.

## Process to determine if disclosure required

When a matter is reported, the CEO or CFO (and if required, the Chairman) will discuss the significance of the matter and possible disclosure responses. The CEO or CFO will inform the Manager External Relations if the matter involves a market rumour or inadvertent disclosure and otherwise as appropriate.

The CEO and the CFO will determine whether the matter is material and, if so, whether disclosure is required or the exceptions to disclosure apply. If in doubt, they will consult the Chairman and other directors and may, if necessary, consult (as they consider appropriate) with Rio Tinto External Affairs, Investor Relations and legal and external advisers.

## Process for disclosure

If the decision is made that disclosure is required, the Manager External Relations, Rio Tinto External Affairs and Investor Relations will be consulted prior to the announcement to the ASX.

Once the announcement has been settled, information released to the ASX by ERA in accordance with this Procedure will also be released simultaneously by Rio Tinto if it is material in the context of the Rio Tinto, as ERA is a subsidiary of Rio Tinto.

ERA must not release information that is for release to the market to any other person until it has given the information to ASX and received an acknowledgment that ASX has released the information to the market (Listing Rule 15.7). This is not intended to delay ERA's other statutory reporting obligations.

ERA will be responsible for placing the material on the ERA website and releasing to the media (if appropriate) in accordance with section **General release of information from ERA** of this Procedure.



## **No selective disclosure**

ERA will not selectively disclose information to brokers, analysts, professional bodies, the media or any other person until the information has been given to (and receipt acknowledged by) the ASX. Dealings with brokers and analysts must be through the CEO or CFO.

## **Protecting the confidentiality of information**

If a decision is made by the CEO or CFO that information does not need to be disclosed to ASX on the basis that an exception applies, the confidentiality of that information must be maintained. Accordingly, each director and employee (as well as each adviser and consultant) who possesses that information must continue to preserve the confidentiality of that information, including by:

- a) Refraining from discussing that information with, or divulging that information to, any person who is not authorised to receive that information
- b) Ensuring that any documents or other written material in their possession in relation to that information are properly and securely stored and are not disclosed to an unauthorised person.

## **Market rumours and unauthorized disclosure**

ERA's does not generally respond to reports or rumours published by analysts, fund managers or reporters. However, from time to time it may become necessary to respond to unauthorised disclosure of information or market rumours concerning ERA if that information or rumour is material.

All instances of unauthorised or selective disclosure or rumours should be reported to the CFO as soon as practicable. ERA must be able to promptly determine whether any correcting statement should be issued and to respond to requests by the ASX (see section below).

## **Referral of enquiries**

Any queries by the ASX, the media, analysts, brokers, shareholders or the public about a market rumour concerning ERA or regarding information that is subject to this Procedure must be referred to the CFO. Where appropriate, the CFO will refer the matter to the CEO or Chairman. Queries from the ASX, particularly under the new "false market" rules, are likely to be directed to the CFO and require a timely response. In these circumstances, the CFO may need to contact the CEO or Chairman immediately.



The only persons authorised to speak to the media or any other person outside the company about **material** information relating to ERA are:

- a) The Chairman
- b) The CEO (in regard to analysts, brokers, shareholders, the media and public)
- c) The CFO (in regard to the ASX, analysts, brokers, shareholders)
- d) The Manager – External Relations (in regard to the media and public),

provided that these discussions only occur after consultation with the CEO and CFO regarding the key messages to be delivered.

## **Board Meetings/ Routine Business Reporting**

At each Board meeting, the Directors will consider any information that potentially may require disclosure, and if any disclosure is necessary it shall be in accordance with the procedure set out in this Procedure.

When a *routine* event occurs that requires disclosure, such as an appointment of a new director, the CFO will disclose the information to the ASX and, once an acknowledgment of receipt has been received from the ASX, ERA will release the information to the media and on ERA's website (as appropriate).

## **General release of Information from ERA**

To ensure that ERA approaches its continuous disclosure obligation consistently and that information is not released publicly prior to its disclosure to the ASX, it is important that:

- a) No-one other than the CFO releases information to, or communicates with, the ASX unless specifically authorised to do so by the Chairman or CEO. This includes responding to market rumours, leaks of sensitive information and inadvertent disclosures
- b) Any employee proposing to disclose material information about ERA publicly (other than routine reporting to regulators), such as at private briefings or on the ERA internet, must:
  - (i) Inform Manager - External Relations and CFO of the information to be disclosed, to ensure that ERA's disclosure obligation is not breached
  - (ii) Provide to Manager - External Relations and the CFO a copy of any presentation slides or other documents to be used, for timely release to the ASX and posting on the website (as appropriate)
  - (iii) Only discuss information that has been released to the ASX or is not of a material nature
  - (iv) Decline to respond to, or must take on notice, any question the answer to which would require disclosure of material information until the information has been disclosed to the ASX;
  - (v) Particularly in discussions with analysts, not comment on any financial projections other than to correct errors in publicly available factual information and underlying assumptions
  - (vi) Comply with other applicable guidelines.



## GUIDELINES

### LEGAL POSITION

#### Introduction

The Corporations Act and the ASX Listing Rules require ERA, as a company listed on the ASX, to comply with continuous disclosure obligations.

#### Obligation to disclose

##### *ASX Listing Rule 3.1*

Under Listing Rule 3.1, ERA is required to notify the ASX immediately of :

*Any information of which ERA becomes **aware**, concerning ERA, that a **reasonable person** would expect to have a **material effect** on the price or value of ERA's securities.*

##### *Information of which ERA "becomes aware"*

Under ASX Listing Rule 19.12, ERA becomes aware of information if a director or executive officer of ERA has, or ought reasonably to have, come into possession of information in the course of the performance of their duties as a director or executive officer of ERA.

That is, the disclosure obligation applies not only to information of which the directors or executive officers are actually aware, but also information of which those persons ought reasonably to have been aware.

##### *"Reasonable person" and "material effect"*

A reasonable person will be taken to expect particular information to have a material effect on the price or value of any of ERA's securities if the information would, or would be likely to, influence persons who commonly invest in such securities in deciding whether to acquire or dispose of the securities. As this is an assessment of market behaviour, advice may be required from a suitable expert.

#### Exceptions to disclosure

Disclosure under Listing Rule 3.1 is not required where each of the following conditions is satisfied:

- a) A reasonable person would not expect the information to be disclosed; **and**
- b) The information is confidential; **and**
- c) **One or more** of the following applies:
  - (i) It would be a breach of a law to disclose the information
  - (ii) The information concerns an incomplete proposal or negotiation
  - (iii) The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - (iv) The information is generated for ERA's internal management purposes; or
  - (v) The information is a trade secret.



ERA must meet its continuous disclosure obligation as soon as any one of paragraphs (a), (b) and (c) is no longer satisfied.

For example, any information which is not confidential does not qualify for the exceptions from disclosure (even if the other exceptions in paragraph (a) and (c) apply). It is therefore essential that information which is not disclosed is and remains subject to strict confidentiality obligations and is not leaked. If the information has been leaked, even in breach of a duty of confidentiality, it is no longer confidential and disclosure of the information to ASX will be required.

“Confidential” means confidential as a matter of fact. ERA may give confidential information to its advisers and will continue to satisfy the exception as long as ERA retains control over the use and disclosure of the information.

Disclosure may also be required if ASX forms the view that the information has ceased to be confidential.

### **Correcting a false market**

Under Listing Rule 3.1B, if ASX considers that there is or is likely to be a false market in ERA's securities and asks ERA to provide information to it to correct or prevent a false market, ERA must provide the information. ERA is required to give ASX this information even if the exceptions to disclosure (as set out in section 9.1.3 above) apply.

ASX has indicated that it is likely to consider that there is or is likely to be a false market in a company's securities if:

- a) The company has information that has not been released to the market (eg, because the exceptions to disclosure (as set out in section 9.1.3 above) apply)
- b) There is reasonably specific rumour or media comment in relation to the company that has not been confirmed or clarified by an announcement to the market
- c) There is evidence that the rumour or comment is having, or ASX forms a view that the rumour or comment is likely to have, an impact on the price of the company's securities.

### **Principles of Corporate Governance and Best Practice Recommendations**

The Principles of Corporate Governance and Best Practice Recommendations of the ASX Corporate Governance Council recommend the development and public disclosure of a number of documents relating to corporate governance. In accordance with those recommendations, a summary of this Procedure (dealing specifically with compliance with Listing Rule disclosure requirements) has been placed on the ERA website.

### **Contravention and Liability**

A breach of the Australian continuous disclosure obligations can result in criminal and civil liability under the Corporations Act (including heavy fines and adverse publicity orders) and various types of actions for compensation by persons who have suffered or were likely to suffer loss as a result of the contravention.



ASIC has the power to impose financial penalties and issue infringement notices in relation to contraventions of the continuous disclosure regime.

In addition, officers (including directors and employees) and advisers who are involved in a contravention may also face criminal and civil liability. The maximum criminal penalty for an individual would be a fine or imprisonment or both.

Contravention of continuous disclosure obligations may also lead to unwanted publicity for ERA and may cause damage to its reputation in the market place, which may adversely impact upon the market value of its securities.

## **MATERIALITY**

### **Introduction**

The following guidelines are provided to assist directors and employees in identifying matters that may require disclosure. The purpose of these guidelines is to identify matters which can then be considered more fully, with a view to determining whether disclosure is required.

Matters which will require consideration under these guidelines will not necessarily require disclosure. Conversely, it is important to remember that a matter may be discloseable even if it does not come within any of the following categories.

### **Materiality**

The thresholds are:

- (a) qualitative; and
- (b) quantitative.

#### *Qualitative test*

These matters (some of which are drawn from the note to ASX Listing Rule 3.1) may include, but are not limited to, a matter:

- a) That might affect the ability of ERA to carry on business
- b) That might have a material effect on future activity of ERA;
- c) That might have a material effect on income, cash flow or the ability to generate profits (including where there would be a long term effect even if the effect in any one year is not material)
- d) Involving any significant changes in technology or the application of technology which could affect the business of ERA
- e) Involving any significant proposed change in regulation or law that could have a significant effect on the business of ERA or any of its employees
- f) Involving an allegation of any significant breach of the law, whether civil or criminal, by ERA or any of its employees
- g) Involving a change in financial forecasts or expectations
- h) Involving the appointment of a receiver, manager, liquidator or administrator to ERA or an event which could result in ERA or any "material" affiliate entity becoming insolvent
- i) Involving a declaration of a dividend or a decision that a dividend will not be declared
- j) Involving an agreement between ERA (or a related party of either) and a director (or a related party of a director)
- k) Involving a change in executive personnel or structure



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- l) That may have an adverse effect on the reputation of ERA
- m) Concerning information regarding the beneficial ownership of ERA's securities obtained
- n) Relating to the giving or receiving of an indication of intention to make a takeover
- o) Concerning any rating applied by a rating agency to ERA, and any change to such rating
- p) Involving a change in accounting policy adopted by ERA
- q) Involving a proposal to change the auditor of ERA; or
- r) That is in some other way onerous, unusual or so outside the ordinary course of business that it ought to be considered.  
If material, disclosure may be required.

#### *Quantitative test*

The following quantitative tests are provided as a guide only as to whether a matter may be considered "material". They are not definitive tests. As noted above, qualitative considerations may mean that disclosure is required, even if these quantitative tests are not met.

- a) Matters which potentially may affect ERA's profit (loss) before tax in any one year by more than A\$2 million
- b) Matters which potentially may affect the assets or liabilities of ERA by more than A\$4 million
- c) Matters involving any claim against ERA exceeding A\$2 million
- d) Matters involving a transaction for which the consideration payable or receivable may exceed A\$2 million.

## **RAISING AWARENESS OF CONTINUOUS DISCLOSURE OBLIGATION**

The CFO will arrange for training and briefing sessions to be conducted for directors and relevant employees to provide information about ERA's continuous disclosure obligations, to describe the operation of this Procedure and to raise awareness of the principles underlying continuous disclosure, as well as providing assistance and advice as required.

## **QUERIES**

If, at any time, directors or employees have any queries regarding their information reporting obligations, or ERA's continuous disclosure obligations, they should contact the CFO.

## **REVISION**

To ensure ERA's compliance with its continuous disclosure obligations, ERA will:

- a) Conduct a regular review of the adequacy of this Procedure and the procedures established under it to ensure ERA identifies in a timely manner all material disclosure events, that the CEO or CFO are promptly made aware of such events and that ERA's disclosure obligations (if any) are met
- b) Conduct a regular review of the adequacy of the materiality thresholds and, through the CFO, recommend changes



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- c) Keep up to date with any changes in ERA's continuous disclosure obligations and update this Procedure to reflect any developments
- d) Further develop policies that promote a considered and consistent approach to disclosure.

In any case, this procedure shall be reviewed no later than 12 months from the date of last major revision.