

Class action skewers Rio's redemption

Tony Boyd (Financial Review)– 1 Sep 2024

While I admire Rio Tinto for finally setting the wheels in motion to compensate the people of Bougainville for the horrendous damage caused by its Panguna copper mine, I am stunned at the company's strategic naivety.

Instead of taking control of an issue that has festered since 1989 by making a firm commitment to actually pay the affected residents of Bougainville, Rio chief executive Jakob Stausholm opted for a process that left the question of compensation in limbo.

This strategic blunder sent the wrong message to those affected by the mine and left the door wide open for a class action vulture to enter the fray. That's precisely what happened.

Panguna Mine Action, which is registered to an office in St Kitts and Nevis in the Carribean and is backed by an unknown entity, has managed to sign up 5000 people on Bougainville.

The class action, which is seeking billions of dollars for the environmental damage caused by the Panguna mine, has capitalised on the uncertainty and distrust towards Rio and its former subsidiary, Bougainville Copper.

Local support for the class action is understandable. For the first time since the mine closed in 1989 someone is holding out the prospect of cash compensation, even though there is no certainty about the size or timing of the payout.

Panguna Mine Action's "fee" for the class action is on a sliding scale from 20 per cent to 40 per cent of the resolution amount depending upon how long the matter is in the National Court of Justice of Papua New Guinea, which is not known for the speedy resolution of cases.

Not only is Panguna Mine Action entitled to recover its costs and its percentage commission of the resolution sum, it is also entitled to a "project management fee" in return for providing the claimants with project management services.

After reading the litigation funding document, which I obtained from a source other than the law firm representing Panguna Mine Action, Morris Mennilli, it became clear that Panguna Mine Action has covered all the bases.

Clauses 7.5, 7.7.3 (a) and 7.7.3 (b) of the agreement give Panguna Mine Action the right to decide that the resolution sum may consist of "other economic benefits", which can include royalties payable by the Panguna mine should it be reopened.

BCL, which this year gained a five-year extension of its exploration licence at Panguna, is owned 36.4 per cent shares by the Autonomous Bougainville Government and 36.4 per cent by the government of Papua New Guinea. The Autonomous Bougainville

Government is in the throes of taking over the shares held by the PNG government.

The latest BCL annual report says the Panguna reserves amount to about 5.3 million tonnes of copper and 19.3 million ounces of gold.

Rio and BCL have taken slightly different positions on the class action. A Rio spokesman said: “ We are reviewing the details of the claim. As this is an ongoing legal matter, we are unable to comment further at this time.”

BCL was much more strident in declaring its position. It told the ASX: “ The company will fully consider the matters raised in the claim and intends to vigorously defend its position.”

Until the class action emerged this year, Rio had the ground to itself thanks to an agreement made in May 2021, about five months after Stausholm took over the reins of Rio from JS Jacques.

From the get-go , Stausholm and Rio chairman Dominic Barton made support for sustainability and winning back Rio’s social licence to operate as key planks of his leadership. This is eminently sensible given the disastrous Juukan Gorge incident.

But the agreement to fund an independent environmental and human rights impact assessment of the Panguna mine without any indication that Rio would be bearing some liability was a mistake.

There is no doubt that the legacy impact assessment is the most comprehensive community consultation process ever undertaken on Bougainville.

It is overseen by a joint committee that includes the Autonomous Bougainville Government, clan leaders and landowners, local communities, Rio, BCL and the Human Rights Law Centre in Melbourne.

But this compensation process carries the baggage of being funded by the company that caused the damage and triggered a civil war that killed thousands. Unfortunately, it is following a timeline that could push the resolution out for several years.

Rio was dragged to the compensation table by the Human Rights Law Centre, which lodged a human rights complaint in 2019 against Rio on behalf of 156 Bougainville residents with the Australian National Contact Point (an offshoot of the Paris-based Organisation for Economic Cooperation and Development).

The Human Rights Law Centre’s complaint said more than 20,000 people living near the mine continue to experience serious health problems including gastrointestinal, skin and respiratory disease. It said the legacy mine’s “ pollution continues to contaminate rivers and flood large areas of land” .

In essence, the community is living with the consequences of BCL pumping 1 billion

tonnes of tailings from the Panguna mine into the Kawerong Valley and into the Jaba river between 1972 and 1989. During that 17-year period, the company earned about \$1 billion in profits .

In those days environmental impact statements did not exist, and it was adjudged that the national interest outweighed the cost of protecting those living downstream through the construction of a tailings dam.

Rio showed disdain for the people of Bougainville in 2014 when it reneged on a commitment to undertake remediation studies with the United Nations Environment Program.

It seemed to wash its hands of the place in 2016 when it transferred its shares in BCL to the PNG government and the Autonomous Bougainville Government.

When it decided to bow to pressure from the Human Rights Law Centre and commission an independent assessment by consulting firm Tetra Tech Coffey, it refused to put its hand up for financial accountability.

Tetra Tech Coffey delivered its preliminary findings to the legacy assessment oversight committee late last month and these have been shared with the stakeholders.

It behoves Rio to ensure that, when it releases the Tetra Tech Coffey report next month, Stausholm will announce the company will compensate those who have suffered for 35 years.

One compensation figure that resonates with locals is the 10 billion kina (\$3.7 billion) figure that was used in a failed compensation effort launched by former Bougainville Revolutionary Army leader Francis Ona in the United States. The case was tossed out on jurisdictional grounds.

Rio's own 150-year history of the company published last year – Elements of Progress – admits the company made mistakes “ that do not live up to the values we hold today” .

“ We are learning from those moments in our history when we have fallen short, and we are focused on striving to do better,” the foreword to the book says.

Agreeing to compensation with the communities in Bougainville will go a long way towards neutering the class action in Port Moresby. After all, the Tera Tech Coffey report goes far beyond the narrow environmental damage claimed in the class action.

It includes the environmental, social and human rights impacts of the mine with particular emphasis on the UN Guiding Principles on Business and Human Rights. The human rights element brings in the suffering from the Bougainville civil war.

The legacy assessment has the opportunity to avoid BCL's mistakes of the 1970s and 1980s. Despite seeking the advice of American anthropologist Douglas Oliver, the

original payments made by BCL to local communities failed to recognise the complex systems of land ownership.

Several people who have spent time on Bougainville talking to the locals over the past six months have told this columnist there is deep distrust and cynicism about the legacy assessment and the class action.

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