

# Class action against Rio Tinto Limited and Bougainville Copper Limited over the Panguna Mine

## The rush to mine, whatever the consequences

**Port Moresby, Papua New Guinea, 14 June 2024:** The Panguna Mine was operated by Bougainville Copper Limited (“BCL”) under the Bougainville Copper Agreement with the Government of Papua New Guinea. The Agreement originally provided that profits from the mine would be almost totally tax exempt up until 1 April 1975.<sup>1</sup>

The nature of the wide porphyry copper-gold deposit at Panguna meant that the mine would produce large amounts of solid waste, overburden and tailings. Tailings are the mine waste slurry left over after the extraction of copper ore from other materials.

Notwithstanding the availability of alternative waste disposal methods, BCL decided to dump tailings and overburden directly into the Jaba-Kawerong river system, relying on the rivers to carry the material to the ocean via the Empress Augusta Bay.<sup>2</sup> The consequence of this decision was that, over the life of the mine, millions of tonnes of tailings and overburden were dumped into the river system.

Much of the waste material was not, in fact, carried all the way to the ocean. As the waste accreted along the rivers, a vast plain of nutrient deficient alluvial material was deposited over land which had previously been used for housing, agriculture, burials and all the other aspects of the life of the local communities.

Instead of dumping the tailings into the river system, BCL could have constructed an open flume to carry the tailings to retaining dams or a pipeline to pump tailings directly to the Empress Augusta Bay. Such methods of disposal would likely have caused significantly less environmental degradation and dislocation of communities.

It is also noted that the decision to dump tailings directly into the river system was made at a time when the profits of the mine were then expected to be tax exempt up until 1 April 1975. Delaying the commencement of mining until infrastructure to dispose of the tailings by flume or pipeline had been constructed would have shortened the period during which the mine produced profits during the tax-exemption.

Rio Tinto Limited (which was then known as Conzinc Riotinto of Australia Ltd) (“Rio”) was then the majority shareholder of BCL and had appointed a majority of the directors of BCL.

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<sup>1</sup> In 1974, in response to a request from the PNG Government, BCL agreed that the tax-free period would end earlier, with effect from 1 January 1974.

<sup>2</sup> This decision is recorded in publications about the Panguna Mine authored by the former Managing Directors of BCL, who also held roles with Rio: Paul Quodling, *Bougainville: The Mine and the People* (The Centre for Independent Studies, 1991), p. 29 (**Quodling Book**); Don Vernon, ‘The Panguna Mine’ in Anthony J Regan and Helga M Griffin (eds), *Bougainville before the conflict* (ANU Press, 2015), p. 269 (**Vernon Chapter**).

So, it may be inferred that BCL decided to proceed with the dumping of waste material directly into the river system because it was the least costly and most expedient option and that this decision was made with Rio's knowledge.<sup>3</sup>

During the period of tax exemption from January 1972 to the end of 1973, BCL mined 103 million tonnes of ore and waste rock;<sup>4</sup> generated approximately A\$249,000,000 in revenue; and paid A\$107,000 in tax.<sup>5</sup>

In 1974, the first year BCL became liable for tax, 56 million tonnes of ore and waste rock were mined,<sup>6</sup> A\$279,825,000 of revenue was generated, and A\$66,474,000 of tax was paid.<sup>7</sup>

## ENDS

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<sup>3</sup> The contention that Rio and BCL were aware of the likely environmental impact of dumping tailings and overburden into the rivers and the other options available for the disposal of the waste material is supported by:

- (a) communications between Rio and the Territory of Papua and New Guinea: see Department of Foreign Affairs and Trade, *Australia and Papua New Guinea* (2006), pp. 919-920;
- (b) the preparation of various consultants' reports regarding tailings disposal and the anticipated impact on the Jaba-Kawerong river system in the years prior to the commencement of mining, as recorded in: Applied Geology Associates Limited, 'Environmental, Socio-economic and Public Health Review of Bougainville Copper Mine, Panguna', report (Wellington, 1989), [3.7]; Roman Grynberg and Jack Nouairi, 'The Environmental Costs of Development in PNG – The Case of Bougainville Copper' in Regional co-operation on environmental protection of the marine and coastal areas of the Pacific basin (UNEP Regional Seas Reports and Studies No. 134, 1991), pp. 111-113;
- (c) the Quodling Book which, at p. 29, acknowledges that "*Disposal of tailings is an inevitable result of mineral extractions. In the case of BCL, the impact of this on the environment is monumental... Alternative methods of disposing of tailings dams were studied before the start of operations*"; and
- (d) the Vernon Chapter which, at p. 270, records that "*From the start of operations BCL carried out environmental research into the effect of its activities. Some of that work focussed on how best to treat the 9,000 hectares of tailings... The environmental impacts of BCL's operations were real and considerable*".

<sup>4</sup> BCL Annual Report 1973, p. 20.

<sup>5</sup> BCL Annual Report 1973, p. 12.

<sup>6</sup> BCL Annual Report 1974, p. 5.

<sup>7</sup> BCL Annual Report 1974, p. 10.