

THE ROGER AWARD 2013



Finalists:

ANZ Bank
Chorus
IAG Insurance Group
Imperial Tobacco
Rio Tinto
Sky City Casino
Talent 2

For The Worst Transnational Corporation Operating In
Aotearoa/New Zealand in 2013

THE ROGER AWARD

For The Worst Transnational Corporation
Operating in Aotearoa/New Zealand

JUDGES' REPORT

WINNER

RIO TINTO ALCAN NZ LTD

SECOND

SKY CITY CASINO

THIRD

CHORUS

JUDGES

WAYNE HOPE, DAVID SMALL, SAM MAHON,
JOHN MAYNARD, CHRISTINA STRINGER

2013 ROGER AWARD

Chief Judge's Statement from Wayne Hope

Finalists:

- ANZ Bank**
- Chorus**
- IAG Insurance Group**
- Imperial Tobacco**
- Rio Tinto**
- Sky City Casino**
- Talent 2**

This Award For The Worst Transnational Corporation In New Zealand has been keenly contested for 16 years. From a nominated list of finalists, a judging panel selects the winner. Before proceeding with the 2013 *Report*, I shall reflect upon the purpose of this Award and explain why the standard of competition has risen over time.

The story begins in July 1984. Labour's election victory over the Muldoon-led National government facilitated major changes in the structure of New Zealand capitalism. Directorial elites, institutional investors and shareholders were already caught up in an unprecedented wave of mergers and takeovers. Corporate creditors used local or global markets to activate passive shareholders against target companies through buyouts and offers of higher divided returns¹. From 1984 to 1987, the Fourth Labour government accelerated this process by cutting tariffs, deregulating the finance sector, and floating the New Zealand dollar. These changes in economic structure subsequently transformed the role of the State. Under Finance Minister Roger Douglas, and with the backing of Treasury, Government departments were transformed into commercial enterprises. These measures prefigured a full-scale privatisation programme after Labour's re-election in 1987 and National's first term of Government in 1990. From the early 1990s, New Zealand's domestic activity was routinely incorporated within the flows and networks of global capitalism. Between 1989 and 2008, foreign-controlled shareholder value increased from 19% to 41%. From 1989 to 2006, foreign direct investment increased from \$NZ1.9 billion to \$8.2 billion. These funds were focused on the purchase of existing assets rather than the creation of new productive capacity. Between 1997 and 2006, for example, transnational corporations made \$NZ50.3 billion in profits from their New Zealand operations; yet only 32% of this sum was reinvested domestically². Financially, the economy was no longer nationally coordinated. By 1996, six of the seven major banks and nine of the top ten insurance companies were overseas-owned³. As of 2008, Australian-owned banks within New Zealand were repatriating approximately \$NZ2.5 billion per annum⁴.

Systematic Erosion Of NZ's Economic Sovereignty

The global absorption of New Zealand capitalism has never been a central theme of public debate. Under Roger Douglas, free market reforms were deemed as inevitable and necessary by the mainstream news media. National's full frontal attacks on beneficiaries and unionised workers in the early 1990s generated sparks of controversy rather than sustained political opposition. Even under Labour-led administrations between 1999 and 2008, neo-liberal precepts informed macroeconomic and public policy debate. This meant, for example, that various free trade and investment agreements involving Singapore, Malaysia, Thailand, and China escaped parliamentary and journalistic scrutiny⁵. Since 2008, under John Key's Prime Ministership, the systematic erosion of New Zealand's economic sovereignty has continued without challenge. There has certainly been popular and political opposition to National's assets sales programme. The real, underlying situation, however, was aptly described by Paul Maunder, Chief Judge for the 2012 Roger Award: "the key programme of market-based

economics, with labour being simply a traded resource, of managerialism applied across the board, of limited Government interference in free trade, and of an openly traded currency, remain in place, virtually across the political spectrum”⁶.

The title of this Award, inaugurated in 1997, highlights the singular contribution of Roger Douglas, Finance Minister under the Fourth Labour government. He implemented and endorsed, with enormous enthusiasm, a policy agenda tailor-made for transnational corporations in every economic sector. The net result has been corporate colonisation of land, fisheries, financial institutions and communication infrastructures, worsening social inequality, deunionisation, and environmental damage. These developments have been expedited by successive Governments at the expense of Parliamentary representation, the electoral mandate, and legal due process. Democratic principles are at odds with the imperatives of transnational capital accumulation. Such is the legacy of Roger Douglas. Accordingly, the categories for assessing New Zealand’s worst transnational corporations are: **economic dominance** - monopolistic behaviour, profiteering, tax evasion, economic imperialism; negative impact on **people** – unemployment, worker exploitation, over-charging of consumers, effects on tangata whenua, women, children and the aged, health and safety issues thereof; **environment** – pollution of water, land, biosphere, and local ecosystems, abuse of animals; and **political interference** – Government circumventions of Parliamentary sovereignty, electoral mandates, legal rights and judicial process.

Quality Of Finalists Deteriorates By The Year

Progressive incursions of transnational capitalism have intensified competition for the Roger Award. After four years’ judging experience, I can honestly say that the job doesn’t get any easier; the quality of the finalists deteriorates by the year. It is vital, therefore, to think across, and within, the impact categories. When our judges ranked the 2013 finalists, they kept in mind the factors of scale and severity. Some transnational corporates directly and/or indirectly affect many thousands of New Zealanders, as workers, consumers, taxpayers, and citizens of a democracy. Other transnational corporates have a narrower impact which is extremely severe (2012’s Roger winner Taejin Fisheries Co. Ltd, clearly exemplifies this factor). Both factors are equally valid; it’s just a matter of balancing them across and within the judging categories (**economic dominance, people, environment, political interference**).

Corporates that are *not* transnational are ineligible for this Award. Eligible contenders must be 25% or more foreign-owned. Domestic capitalists can also behave appallingly, but they are easier to scrutinise than their larger offshore counterparts. The purpose of the Roger Award is to bring these scoundrels to account annually. We will implacably record their disregard for New Zealand’s economic and political sovereignty. So, without any further ado, here are this year’s results.

The Also-Rans

All of the non-placed competitors were worthy finalists. The **ANZ Bank** won this Award in 2009; it continues to repatriate New Zealand profits to Australia and it is still a dominant player within the New Zealand home mortgage market. In the half year to 31 March 2013, ANZ’s before-tax profits rose to a record \$692 million, compared to \$578 million for the same period in 2012⁷. ANZ Chief Executive Officer, David Hisco, received a \$4.17 million remuneration package in the year to September 30, 2013, up from \$3.67 million in the previous year⁸. Record profits and excessive CEO remuneration coincided with staff layoffs; 651 in Australia and 335 in New Zealand (up to March 31)⁹. ANZ customers were also aggrieved. Complaints about proliferating bank fees led to an organised campaign and a class action suit. The newly formed Fair Play on Fees (March 2013) attracted thousands of supporters. The group filed documents in the High Court that the ANZ had charged its customers millions of dollars in excessive fees¹⁰. Clearly, this finalist shows up strongly in the **economic dominance** and **people** categories. Its’ behaviour, however, was not regarded as unexpected or exemplary, in the negative sense of that term. As one judge noted: “ANZ happens to be the initial target of the class action but I’m pretty sure that every bank will eventually be attacked in the same way because they will (well the big Australian ones anyway) engage in the same

outrageous, fee charging tactics”.

For the uninitiated, **Talent2** was the company that built the Novopay system for primary, intermediate and secondary teachers in New Zealand. Novopay is supposed to provide payroll services for 2,457 schools and 90,000 people every fortnight¹¹. Unfortunately, the system does not work, has not worked, and is unlikely to ever work. Throughout 2013, disaster stories abounded of teachers and other staff being underpaid, overpaid or not paid at all. Amidst growing protests, the Post Primary Teachers Association (PPTA) contemplated legal action against Talent2 and/or the Ministry of Education¹². The Government deputed senior Minister Steven Joyce to try and fix the problem. The Novopay debacle has negatively affected teachers and other education staff, their families, school administrators, students, and local communities. However, in terms of our judging criteria, **people** were not affected on a national scale. And, Talent2 had **economic dominance** in the teacher payment market but not within the wider economy. To be fair, the Government did recognise the problem, politically and financially, although it was reluctant to admit this publicly. The statement from an unnamed Government source that “It’s not D Day” disclosed, inadvertently, that the Key administration was indeed concerned about the situation¹³.

Transnational tobacco companies are always a problem for Roger Award judges. Whenever one makes the final, there can be no quibbles. They do, after all, trade in a lethal product. Yet, the very success of anti-smoking campaigns plus the obvious fact that most New Zealanders choose not to smoke, weakens the Award potential of tobacco companies compared to the top contenders. 2013’s nominee, **Imperial Tobacco** is certainly worthy of censure. During 2013, it provided free cigarettes to employees as part of a multi-year testing programme. This may not have been a large scale initiative, but the impact on the people concerned will be severe. The programme was only stopped as a result of an investigation by the Ministry of Health. Imperial Tobacco was compelled to donate \$85,000 to charity¹⁴.

We now turn to insurance companies; in this case **IAG**, a supposed resort for thousands of Christchurch earthquake survivors. During 2013, policyholders experienced a lack of adequate compensation and delays in the settling of claims. Over the same period, IAG raised its’ premiums. Its’ defence was that re-insurance costs had escalated since the earthquakes. This is undoubtedly true, but not the full story. At least one business analyst has noted the increasing profitability of IAG’s New Zealand operations¹⁵. And, one unnamed fund manager with investments in insurance companies told the *Sunday Star Times* that “the best time to own a general insurer is after a catastrophe”¹⁶. For the record, IAG reaped a \$NZ131 million profit from its New Zealand operations in the financial year ending June 2013. It has about 30% of total residential earthquake claims. The effects on people were succinctly expressed by IAG’s nominator for this year’s Roger Award: “instead of making thousands of Christchurch house owners feel looked after and doing their job, they quibble, penny-pinch, and weasel out of their obligations. They have worn people down until they feel stressed and defeated”. Obviously, these are local sentiments; New Zealanders outside of the earthquake zone do not fully experience this frustration and anger. IAG may not be the worst transnational operating in New Zealand, but in Canterbury it is the most despised.

3rd Place – Chorus

Our judging panel placed Chorus well ahead of the also-rans. To understand why, some background is necessary. In December 2012, the Commerce Commission ruled that Chorus must cut its charges for broadband connections by more than \$12 to \$8.93 as of December 2014¹⁷. This official acknowledgement of profiteering was immediately rejected by the Key government. It set out to assist Chorus by overruling the Commerce Commission. In 2013 the Government announced that old copper and new fibre internet connections would be priced at about the same rate. In September 2013 the newly formed Coalition for Fair Internet Pricing launched its “axe the copper tax” campaign, claiming that broadband customers were being overcharged by \$12 per month¹⁸. Economic Development Minister, Steven Joyce, admitted that he had persuaded Vodafone not to support the Coalition for Fair Internet Pricing’s campaign¹⁹. John Key claimed that the Commerce Commission’s pricing recommendations would bankrupt Chorus. This was ridiculed by Labour Leader

David Cunliffe²⁰ and a well-known business commentator²¹. Unfortunately for the Government, the Commerce Commission stood firm and, in November 2013, ordered cuts in wholesale broadband prices from December 2014. Chorus claimed that the income shortfall threatened its' completion of the ultra-fast broadband (UFB) project. For Chorus's Roger Award nominator, this was "nothing but blackmail", a declaration which was tacitly supported by the mainstream press²². It is clear from this account that our 3rd place-getter scores highly for **economic dominance**, impact on **people**, and **government interference**. As the Government's preferred broadband contractor, Chorus can set its own pricing regime. The general impact on copper and fibre optic internet users should not be under-estimated. Internet infrastructures in the early 21st Century are the equivalent of telephone lines early last century. Like the telephone, the Internet is becoming a vital communication resource for individual users, neighbourhoods, schools, tertiary institutions, health centres, farmers, and businesspeople. Chorus seeks to maintain its market dominance by pressuring, and colluding with, the Government at the expense of the Commerce Commission. The Commission's regulatory role on behalf of taxpayers and consumers is thereby undermined. In sum, therefore, Chorus's third placing is richly deserved.

2nd Place – Sky City Casino

It is worth noting that our top two contestants were well ahead of the rest. All of our judges placed Sky City Casino in their top three. Their assessments reflect the systematic collusion between Sky City Casino and John Key's government. In July 2013 it was confirmed that Sky City would build a \$402 million international convention centre in Auckland. Their pay off included 230 more pokie machines, 40 more gaming tables, the introduction of card-based cashless gaming technology, and a gambling licence extension to 2048.

Future Governments are precluded from cancelling or relitigating this deal, a legally questionable dictate to say the least²³. Furthermore, Sky City was promised seven years of protection from taxes²⁴. This arrangement was described by political columnist Jane Clifton as "almost a Faust bargain by proxy". Her subsequent observations are worth quoting here:

"Although not a direct party to the deal, the hollow-eyed addicted gamblers who feed money into slots will be the ones to part with their souls, while the more functional sectors of society enjoy the benefits of the convention centre's boost to commerce. Except of course that it's ultimately the Government, courtesy of the taxpayer, that pays for the poverty and misery caused by problem gambling. So it becomes a veritable soul train, in which the Devil gets to clip the ticket all the way around with the exception of Sky City.²⁵"

Sky City is the dominant player in the New Zealand casino market and the only player in Auckland. Nigel Morrison, Chief Executive Officer of Sky City Entertainment stated candidly that: 'We do believe a monopoly is important. That's why we've been prepared to contemplate this deal with the New Zealand government'.²⁶

The social impact of gambling is enormous. Of course, not everyone uses pokie machines or gaming tables. But, those addicted to these activities bring damage to partners, spouses, family and friends. Social harm from gambling disproportionately affects low income and marginalised groups.

In 2012, a report to the Ministry of Health undertaken by the centre for Social and Health Outcomes and Evaluation (SHORE) and Te Ropu Whariki²⁷ found a stronger negative impact from gambling on people vulnerable and low income groups.

Those who participated more in gambling activities were more likely to be males aged between 18 – 35 years, single, sick, unemployed, and have low educational qualifications. The majority of these people were Maori or Pacific Islanders. Overall people with higher levels of participation in gambling activity reported worse physical health, worse mental health, lower self-esteem and lower satisfaction with life.

Sky City was a star performer in the **political interference** category. Any future Government with a

mandate to end or modify the Sky City Convention Centre deal faces the prospect of legal action. This level of interference in the democratic process ranks alongside the machinations of Warner Brothers in 2010. Their interest in New Zealand employment law equates with Sky City's attempt to future proof their circumvention of the electoral mandate.

1st Place – Rio Tinto Alcan NZ Limited

Before we begin, let me comment on 2013's judging process. After tallying up the reports from the judges Sky City and Rio Tinto were neck and neck. The judges were then instructed to rank these two brilliant performers with supporting reasons. This re-examination produced a clear winner, Rio Tinto Alcan NZ Limited. This previous winner (2011), and perennial finalist, has a long, well documented, track record. Our economic and financial analysts have provided a detailed résumé of the company. As Chief Judge I will look at Rio Tinto's activities during 2013 and explain why it headed off the competition.

Rio Tinto Alcan Ltd, a subsidiary of Canadian transnational corporate Rio Tinto Alcan Ltd, is majority owner of New Zealand Aluminium Smelters (NZAS). In the 1960's, Tiwai Point was chosen as the location for an aluminium smelter. The then proposed Manapouri Power Station provided a nearby source of electricity for the smelting process. After commencing operations in 1971 the smelter forged a deal with the Government which was to have long term repercussions. In return for building a plant and creating jobs in the Bluff region Rio Tinto obtained a cheap unit price for its electricity usage²⁸. The pricing details have never been publicised but the basic structure of the arrangement is crystal clear. Rio Tinto's wholesale pricing agreement is subsidised by the New Zealand taxpayer at the same time as residential electricity users are charged retail rates. As long standing critic Murray Horton pithily puts it: "The smelter is the textbook example of corporate welfare in New Zealand. It is the biggest bludger in the country"²⁹.

As the preceding summary indicates, Rio Tinto's normal operations score very well for **economic dominance**, **impact** on people and **political interference**. During 2013, however Rio Tinto exceeded even its own high performance standards.

Political Interference Of Highest Order

In 2012 and early 2013 Rio Tinto indicated that the smelter could close if it did not get a cheaper power price from Meridian Energy, (even though a long term energy contract was already in place)³⁰ Meridian was part of the Government's asset sales programme; a smelter closure would have dented its likely worth and embarrassed the Government. Such an eventuality would also have affected the asset and share prices of the then soon to be privatised Mighty River Power. This was political interference of the highest order. On April 1st 2013 John Key called Rio Tinto's bluff. The Government would offer no more than a short term subsidy to keep the Tiwai Point aluminium smelter open. However, Rio Tinto rejected this proposal and insisted on a long term deal.³¹

In early August the Government made a one off payment of \$30 million to New Zealand Aluminium Smelters' owners to help secure a revised contract with Meridian. In return Rio Tinto promised to keep Tiwai Point running till at least January 2017. Finance Minister Bill English emphasised: "The importance of the smelter to the stability of the New Zealand electricity market". He claimed that the payment "offered investors more certainty" ahead of the Meridian sale.³² This rationale did not win wide acceptance. Even the conservative *New Zealand Herald* declared that "a short term political focus has trumped clear-eyed analysis and provided a largely worthless reprieve for the struggling operation".³³ The Government deference to Rio Tinto had already been criticised by Treasury. In early July it stated: "There is no economic rationale for a long term Government subsidy for the Tiwai Point smelter".³⁴

What are we to make of these developments? Well it is now obvious to everybody, except the Government and Rio Tinto that the Tiwai Point operation should be closed down, under its present auspices. The cost of supporting the redundant workers and otherwise assisting the Southland economy is outweighed by the likelihood of cheaper electricity prices for New Zealand households.

Without the smelter's electricity usage there will be less need to finance new electricity generation projects. Such a cost benefit analysis is now broadly accepted by most of our business commentators, economists and elected representatives.

Rio Tinto's Roger Award success boils down to two factors. Firstly, its' preferential treatment over pricing levels (in a market which it dominates) and the resulting effects on residential power bills, has had a major social impact. Any individual who relies upon the electricity grid for his or her everyday life is directly or indirectly affected. The scale of Rio Tinto's impact on **people** is greater than that of any other finalist. Secondly, Rio Tinto's **political interference** in the democratic process was very high, systematic and continually reinforced. In this respect it should be ranked slightly ahead of Sky City and well ahead of all other contestants. So, from a high class field, Rio Tinto takes the trophy for 2013. Readers may now proceed to the forensic section of this document for verification of the judges' decision.

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JUDGES' REPORT

RIO TINTO

New Zealanders have long been aware that the massive transmission lines running from Manapouri down to Bluff carry millions of dollars of subsidies from electricity consumers bundled with the smelter's power supply. What has attracted less attention until recently is the smelter's other big transmission link with the New Zealand economy: a cash pipeline running down to Bluff from the Beehive, carrying millions of dollars of tax deductions, Research & Development grants, Emissions Trading Scheme (ETS) credits, and now direct cash handouts from the Prime Minister in person, all to fatten Rio Tinto's bottom line profits at the expense of New Zealand taxpayers.¹

The \$30 million handout – “bridging the gap” as State-Owned Enterprises Minister Tony Ryall described it² – was basically a bribe to Rio Tinto to stick around and shut up until the Government finished selling off half-shares in its electricity SOEs. But although this sounds like a big number, it's only the tip of the iceberg in relation to Rio Tinto Alcan (NZ) Ltd's various assaults on New Zealand's public funds.

A glance at the last financial statements, covering the year to December 2012, shows that on top of \$757 million from selling aluminium, the company collected \$12 million from a “research and development tax credit” (for what exactly is quite unclear) and \$1.7 million from Emissions Trading Scheme credits granted – down a bit from the \$5.1 million the company made from the ETS in 2011³ (readers will recall that Rio Tinto won the 2011 Roger Award in recognition of its sterling performance in simultaneously obstructing and rorting the Emissions Trading Scheme). On top of that the company reported a \$57.6 million tax credit in 2012 as its reward for a spectacular \$548.7 million write-down on the fixed assets of the Tiwai Point smelter – something explored in more detail below.

In fact Rio Tinto's performance as a corporate taxpayer in New Zealand has been less than stellar, and working out just how much tax it has paid is far from straightforward, given its accounting practices. The last time the financial statements included a cashflow statement showing tax actually paid was 2004 when the company paid \$17 million tax compared with pre-tax profit of \$95 million - less than 18%. Looking at the figures for that period in Table 1 below shows that the income tax actually paid was pretty consistently less than the tax expense appearing in the profit-and-loss (P&L) accounts – on occasion, only half as great.

Table 1: Comalco/Rio Tinto Alcan (NZ) Ltd's Costs, Profit And Reported Tax

Calendar years	Sales	Operating expenses as per annual reports	Pre-tax profit	Tax (P&L) from annual reports	Tax (cash-flow) from annual reports	(10) After-tax profit from annual reports
\$ million						
1999	725	528	138	50	25	88
2000	993	693	254	88	90	166
2001	971	655	270	95	57	175
2002	874	531	247	85	81	162
2003	721	658	52	21	14	30
2004	791	627	95	31	17	64
2005	849	730	172	47	na	125
2006	1,156	791	346	68	na	277
2007	1,098	800	301	96	na	205
2008	1,024	1,113	28	9	na	19
2009	908	906	-18	-3	na	-15
2010	1,230	1,178	-17	10	na	-27
2011	919	830	254	69	na	185
2012	757	1,433	-606	-58	na	-549

After 2004 the financial statements stopped showing any cashflow record of taxes paid, leaving only the highly deceptive “tax expense” in the P&L. The form of accounting used to produce this figure emerged in the US in the 1960s, when companies were being criticised for not paying enough tax and needed to polish up their image (without, of course, actually paying any more tax). What is shown as tax expense in the income statement might be summarised as “the tax we would pay if we really had to pay tax on our profits”. It misleads people into thinking that the tax expense reported is the tax paid.

Even the positively spun tax expense figure took a sudden tumble after 2007. As Table 1 shows, total revenue held steady while operating costs suddenly shot through the roof, producing a collapse of accounting profits that was sufficient to bring the tax expense down to nothing. More precisely, over the five years to 2012 the total tax expense recorded was \$27 million while profits were shown as negative in three of the five years. Before reaching for a tissue to wipe away tears of sympathy, it’s worth pausing to ask what actually happened between the 2007 and 2008 accounts to suddenly kill a healthy looking stream of accounting profits. The answer lies in that sudden jump in “operating expenses” from the \$800 million reported in 2007 to \$1,113 million reported in 2008, at a time when revenues and aluminium volumes were steady. The Global Financial Crisis was not the cause, since its full impact on the world economy was felt only some years further down the track. The key is the restructuring of Rio Tinto’s operations towards the end of calendar year 2007 which suddenly eliminated the company’s reported profitability and its tax bill within New Zealand.

Name Changes

Up to the end of 2005 annual accounts were filed at the Companies Office by “Comalco New Zealand Ltd and Subsidiaries”. In 2006 the name changed to “Rio Tinto Aluminium (New Zealand) Ltd and Subsidiaries” but this was merely a name change with no restructuring. The 2007 accounts, however, were in the name of “Rio Tinto Alcan (New Zealand) Ltd and Subsidiaries” and this is the name on all accounts since then.

The background to the second name change was set out as follows in the 2011 Roger Award *Judges’ Report*:

“Until 2006 the main owner’s name was Comalco, but then the ultimate owners, Rio Tinto, stepped out from behind the Australian company name.

On 6 November 2006 Comalco New Zealand Ltd changed its name to Rio Tinto Aluminium (New Zealand) Ltd.⁴

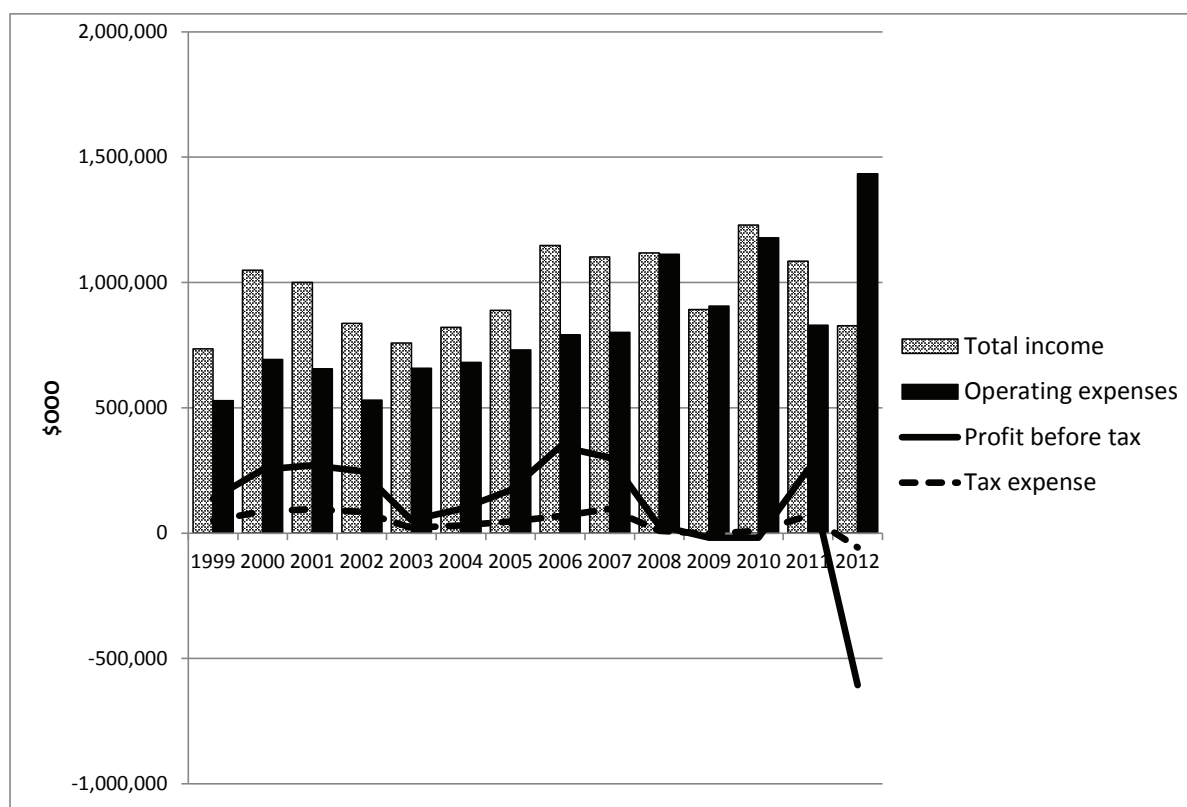
“The following year there was another name change:

On 3 December 2007, Rio Tinto Aluminium (New Zealand) Ltd changed its name to Rio Tinto Alcan (New Zealand) Ltd.⁵

“These name changes reflected only a reshuffling of assets around the Rio Tinto transnational empire, not any substantive change from the point of view of New Zealand. What happened in 2007 was a successful takeover bid in October-November 2007 by Rio Tinto Plc’s Canadian subsidiary Rio Tinto Canada Holding Inc for the Canadian aluminium producer Alcan Inc.⁶ The success of the bid was followed by merger of the two companies on 17 November 2007, resulting in a new company named Rio Tinto Alcan Inc.⁷ The [company’s share of the] Tiwai Point smelter was one of the assets shifted to Rio Tinto Alcan Inc in the reorganisation, but the ultimate owner throughout remained Rio Tinto Plc. Essentially the smelter was part of a game of pass-the-parcel around the Rio Tinto transnational organisation”.

The transfer of ownership to Rio Tinto Canada was followed by a rearrangement of the cost structure that saw the profitability of the New Zealand operation drastically reduced via the sharp rise in costs seen in Table 1 and Figure 1, which effectively ended a period 1999-2007 during which reported profit averaged over \$200 million and tax averaged around \$65 million. From 2008 to 2012 reported losses averaged \$72 million and “tax expense” averaged \$5 million.

Figure 1: Rio Tinto Alcan (NZ) Ltd Revenues, Costs, Profits And Tax



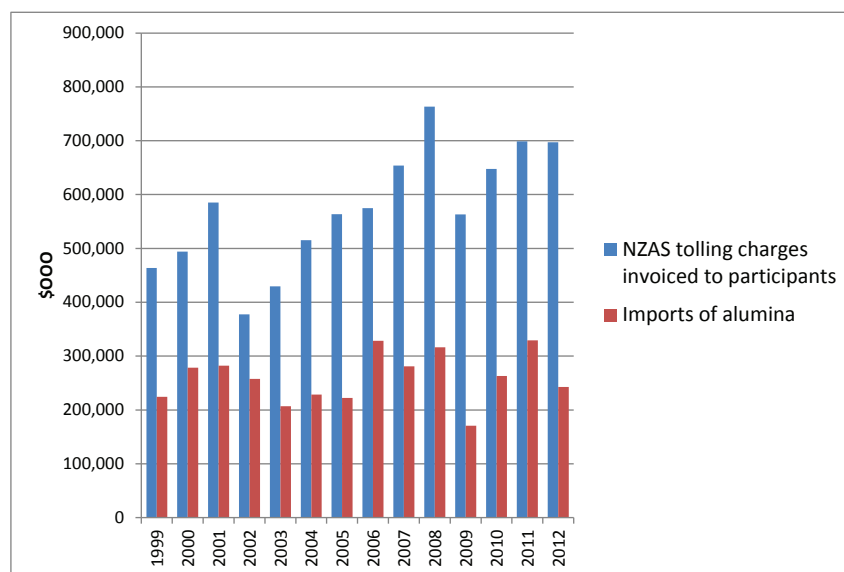
The big loss shown for the 2012 year is due primarily to “impairments” of \$574.3 million from writing down plant and equipment, which will be explained later.

It is important to note that the jump in operating expenses between 2007 and 2008 was not related to any increase in either smelting costs at Tiwai Point or costs of imported alumina. Table 2 and Figure 2 show these (note that Rio Tinto Alcan (NZ) Ltd records in the vicinity of 80% of the tolling charges, the remainder being recorded by its partner Sumitomo). There’s no big step change in these in 2008 (though the tolling fee has an interesting cycle to it).

Table 2: NZAS Tolling-Fee Revenue And NZ Imports Of Alumina.

	NZAS tolling charges invoiced to participants \$000	Imports of alumina \$000
1999	463,825	224,519
2000	494,160	278,466
2001	585,064	282,064
2002	377,487	257,675
2003	429,490	207,007
2004	515,412	228,539
2005	563,633	222,296
2006	574,625	328,588
2007	654,054	281,125
2008	763,162	316,543
2009	563,313	170,820
2010	647,467	262,932
2011	698,920	329,330
2012	697,114	242,715

Figure 2



The increase in costs is also unrelated to changes in the NZ dollar. Most likely it was due to some new arrangement introduced at the time, under which the New Zealand operation paid overseas affiliates for services or finance.

The detail of this may be traced a little way into Rio Tinto Alcan (NZ) Ltd's *Financial Report* which separates out some expenses and shows unspecified "other operating expenses" as having jumped from \$505 million in 2007 to \$811 million in 2008,⁸ but provides no comment or explanation of why such a significant jump might have occurred. It is not possible to know exactly what this is, but it is worth noting that the inter-company balance between Rio Tinto Alcan (NZ) Ltd and Rio Tinto Finance Ltd which is not part of the New Zealand group changed by a similar amount. If this cost increase, which first occurred in 2008 and continued subsequently, is simply a new payment to an overseas affiliate in the form of, say, a management fee, it will give the impression of increasing costs while being, in reality, yet another means to extract pre-tax profits from Rio Tinto's operations in New Zealand.

Rio Tinto's operations in New Zealand are multi-layered and involve much buying and selling between parts of the company, both within New Zealand and outside New Zealand. This means that Rio Tinto has considerable flexibility to use prices and arrangements that allow it to produce whatever it wants for the reported financial results in New Zealand.

Short Term Plans Only Now

Rio Tinto's tantrums over the last couple of years have made it clear to all that Rio's plans in New Zealand are now short term only. When world aluminium prices fell, the aluminium parts of Rio Tinto's Australian-based operations became perceived as struggling and in 2011, Rio Tinto decided to sell what it called Pacific Aluminium, which comprises all the Australian and New Zealand aluminium operations.⁹

In 2010, Rio Tinto had reported its recently negotiated electricity contract with Meridian would take effect in 2012 and run through until 2030. In 2011, Rio Tinto changed its mind over this contract and sought to renegotiate it, clearly seeking much lower prices and, it seems, a reduced term. When Rio Tinto was unable to achieve what it called a "commercial outcome" with Meridian, it sought Ministerial involvement. According to the Treasury, in Rio Tinto's eyes, a "commercial outcome" meant "Meridian agreeing to PA's [Rio Tinto's] terms."¹⁰ Eventually, as we now know, Rio Tinto achieved a renegotiated (less costly) electricity contract that would also allow it to exit New Zealand earlier, plus a \$30 million payment courtesy of New Zealand's taxpayers. So it wasn't just the \$30 million that Rio Tinto extracted from New Zealand's taxpayers in 2013, it was also the amount of the reduction in electricity price. While the actual figures are redacted in the Treasury's assessment

of the economics of the smelter, Treasury did make it clear that “Meridian (and therefore the New Zealand public)” was being asked to transfer between [redacted] of value to [Rio Tinto’s] shareholders.”¹¹ Commentary on Rio Tinto’s “bumper profits” and increased dividends announcement for the 2013 financial year reports that “Rio Tinto has been among the most aggressive cost-cutters”, but doesn’t mention the practices used by Rio Tinto to achieve the reduced costs and increased profits. New Zealand experienced those practices in 2013.¹²

Rio Tinto’s half billion dollar asset write-downs in 2012 gave the impression that Rio Tinto had actually invested that much in its New Zealand operations. The history of Rio Tinto’s financial activities since 2007 reveals a different picture. When Rio Tinto last won the Roger Award, the *Reports* to mark the award noted that:

“Rio Tinto’s investment in New Zealand is represented by very small investments in ordinary shares and a much larger investment in hybrid financial instruments with characteristics of both shares and debt. Presumably this arrangement allows Rio Tinto to take best advantage of the tax regimes in each country.”

While there had been a more significant investment prior to 2007, after that point the pattern was one of disinvestment as very large dividends were extracted and Rio Tinto’s operations in New Zealand became largely debt funded, with the result that Rio Tinto’s investment was relatively minor.

Rio Tinto’s investment runs through several NZ Rio Tinto companies starting with RTA Investment (NZ) Ltd. An Australian company, RTA Pacific Pty Limited, owns the \$5,000 of ordinary shares in this company and another Australian company, Rio Tinto Aluminium Ltd holds mandatory convertible notes which RTA Investment (NZ) Ltd records as a liability and on which it must pay interest. Each year the amount of interest due has been added to the mandatory convertible notes on issue with the result that from a starting point of \$495 million in 2007, the liability recorded for these mandatory convertible notes has reached \$916 million. By 31 December 2011, the equity interest recorded in RTA Investment (NZ) Ltd was \$50 million, comprising \$5,000 of shares and more than \$49 million in retained earnings.

Hybrid Financial Instruments

The next level is RTA Pacific (NZ) Ltd where there is a similar picture. Until 2011, RTA Pacific Pty, Australia, held just \$200,000 of shares in RTA Pacific (NZ) Ltd, while RTA Investment (NZ) Ltd held \$680 million of redeemable participating preference shares. It was these arrangements in both RTA Investment (NZ) Ltd and RTA Pacific (NZ) Ltd with very small shareholdings plus the mandatory convertible notes and redeemable participating preference shares that prompted the comment about hybrid financial instruments in the previous Roger Award *Report*. Hybrid instruments have been associated with tax avoidance schemes, although there is no way of knowing whether that is the intent with these ones.

That \$200,000 investment in ordinary shares in RTA Pacific (NZ) Ltd continued until September 2011 by which time, as we know, Rio Tinto Australia had decided to sell all its aluminium operations. What followed seems strange because, in September 2011, RTA Pacific Pty Australia increased its share investment in RTA Pacific (NZ) Ltd from \$200,000 to \$550,200,000. In other words, RTA Pacific Pty Australia increased its investment in the New Zealand operation by the half a billion dollars, that it would write down just months later.

That increased investment in RTA Pacific (NZ) Ltd flowed down through the Rio Tinto operations in New Zealand. RTA Pacific (NZ) Ltd holds the shares in Rio Tinto Alcan (NZ) Ltd which is the main subject of analysis here. In 2010 RTA Pacific (NZ) Ltd held \$300,564,000 of shares in Rio Tinto Alcan (NZ) Ltd but in 2011 this share investment was increased to \$600,654,000, an increase of \$250,000,000. And Rio Tinto Alcan (NZ) Ltd which held 79.36% of the shares in the New Zealand Aluminium Smelters recorded an advance of the same amount to NZAS.

Although Rio Tinto has long held 79.36% of NZAS’ shares, with Sumitomo Chemical Company

holding the remaining 20.64%, the arrangement was claimed to be a joint venture with the result that the method of accounting to produce the group *Financial Reports* simply recorded the amount of the investment in NZAS adjusted for profits and losses since the date of the investment. In 2011, this investment was shown as \$88,314,000. Had this method of accounting continued, the write-down on the NZAS investment would have been just this \$88 million.

In 2012, Rio Tinto Alcan (NZ) Ltd changed its accounting policy for reporting the investment in NZAS. The effect of the change in policy was to bring 79.36% of all the assets and liabilities of the New Zealand Aluminium Smelters into Rio Tinto Alcan (NZ) Ltd's *Financial Reports* as if they are Rio Tinto Alcan (NZ) Ltd's assets. It is worth comparing Rio Tinto Alcan (NZ) Ltd's balance sheet over the three years of 2010, 2011, and 2012.

Table 3: Some Key Figures From Rio Tinto Alcan (NZ) Ltd's Financial Statements

Rio Tinto Alcan (NZ) Ltd	31 December 2010	31 December 2011	31 December 2012
Contributed equity (held by RTA Pacific (NZ) Ltd, previously (Comalco Pacific NZ Ltd)	350,654,000	600,654,000	600,654,000
Retained earnings		-129,106,000	
Total Shareholders' funds	36,295,000	471,548,000	-77,227,000
Total Assets	288,438,000	739,028,000	393,460,000
Total liabilities	252,143,000	267,480,000	470,687,000
Net Assets	36,295,000	471,548,000	-77,227,000

Between 2010 and 2011 the contributed equity in Rio Tinto Alcan (NZ) Ltd increased by \$250,000,000 and retained earnings by a further \$185,252,000 to give a much increased figure for shareholders funds at December 2011 of \$471,548,000. By including NZAS' assets and liabilities as if they were Rio Tinto Alcan (NZ) Ltd's the half a billion dollar write-down Rio Tinto wanted to make could then be applied against those assets. In 2012, the write-down meant that shareholders' funds ended up being reduced to minus \$77 million. Changing the accounting policy for including NZAS in Rio Tinto Alcan (NZ) Ltd's accounts meant the write-down had to be made against the various assets that were now included. Such a write-down can't be applied against financial assets, so it has to be applied against the physical assets and intangible assets, such as computer software. Consequently, the write-down was made against the NZAS reported assets which had been included in Rio Tinto's *Financial Reports*; the explanation given being that the write-down was based on the "fair value less costs of sale of the smelter."

Table 4: Detail Of The Write-Down

	Amount before Write-Down	Amount of Write-Down in 2012
Construction in progress	14,374,000	14,013,000
Land and buildings	87,151,000	84,961,000
Plant and equipment	444,972,000	429,389,000
Rehabilitation provision asset	45,536,000	44,392,000
Computer Software	1,585,000	1,545,000
Total impairment recorded in Rio Tinto Alcan's <i>Financial Reports</i>		574,300,000

This write-down occurred independently of what shows in the New Zealand Aluminium Smelters' *Financial Reports*. No such write-down of assets has occurred in the New Zealand Aluminium Smelters' *Financial Reports*.

It appears on paper that Rio Tinto Australia increased its investment in Rio Tinto NZ just shortly before making the big write-downs so it could claim the big asset write-downs. It seems unlikely that this would have been solely for the purpose of grandstanding over how unprofitable the operation in New Zealand has become. There had been a change of management in Australia and one way of viewing this is to see it as the "big bath" accounting trick often used in companies when there is a change of management. Wikipedia provides a good explanation of big bath techniques.¹³

Toxic Waste Liability Dumped On Taxpayers

There is one final point to make in this analysis of Rio Tinto's operations in New Zealand. Aluminium smelting is known to be environmentally damaging, and for many years the waste product from smelting has been dumped in a landfill at Tiwai Point. Rio Tinto's *Financial Reports* have long included an amount calculated to provide the environmental restoration necessary when it finishes its activities there. In its analysis of the economics of the NZ aluminium smelter, the Treasury had commented on the limited public information about the smelter's "obligations to remediate the site at Tiwai Point", noting that the closure plan to "cover, shape and revegetate the area...is not a public document". Treasury also noted there was a provision in NZAS' *Financial Reports*, but that "the provision is not backed by a cash reserve and only the assets of NZAS (mostly plant) support it."¹⁴ It is interesting to note that in 2012, the Government's *Financial Reports* disclosed for the first time a Government indemnity issued to the "New Zealand Aluminium Smelters and Comalco. The indemnity relates to costs incurred in removing aluminium dross and disposing of it at another site if required to do by an appropriate authority. The Minister of Finance signed the indemnity on 24 November 2003. In February 2004 a similar indemnity was signed in respect of aluminium dross currently stored at another site in Invercargill."¹⁵

It is difficult to know what to make of this new information, other than that it implies yet more taxpayer funding of Rio Tinto's activities. Does the indemnity relate to all waste dumped in the Tiwai Point landfill over the 40 years of Rio Tinto's activities in New Zealand or does it relate only to some? Rio Tinto's *Sustainability Report* for 2003 makes the following comment:

"In December 2003, Environment Southland granted resource consent for NZAS to dispose of dross, a waste product from the aluminium production process; that had been stored in a Bluff warehouse for many years. The material originally belonged to NZAS, but was sold to a recycling company that closed suddenly in 1991. The Ministry for the Environment, P&O (the owners of the warehouse) and NZAS have worked together to facilitate the movement of the dross to the NZAS landfill. NZAS has provided the landfill facility. P&O has paid for the transport and the Ministry has provided an indemnity

in the unlikely event that the dross material ever has to be removed from the Tiwai landfill.”¹⁶

Even as it prepares to depart New Zealand, it appears that Rio Tinto is leaving a legacy of thousands of tonnes of aluminium dross deposited in the Tiwai Point landfill that it will cover and plant over but, should this turn out to be toxic and require removal, the liability to remove it has, it seems, been transferred to New Zealand’s taxpayers.

Cheap electricity, research and development grants, ETS profiteering, a \$30 million cash gift from the Prime Minister on behalf of the long-suffering New Zealand public, apparently very little income tax actually paid, especially since the restructuring, and now Rio Tinto is leaving it to the Government to clean up the mess the smelter will leave behind. The Roger Award is in deserving hands.

Endnotes

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- 2 Chalkie, “Pull The Other Leg, It’s Made Of Aluminium”, *The Press* 3/4/13 p.A12.
- 3 Rio Tinto Alcan (NZ) Ltd and Subsidiaries Annual Report for the year ended 31 December 2012 p.21 Note 4.
- 4 Rio Tinto Aluminium (NZ) Ltd and Subsidiaries Directors’ Report for the year ended 31 December 2006, p.2.
- 5 Rio Tinto Alcan (NZ) Ltd and Subsidiaries Directors’ Report for the year ended 31 December 2007, p.2.
- 6 http://www.riotinto.com/media/5157_6844.asp .
- 7 http://en.wikipedia.org/wiki/Rio_Tinto_Alcan .
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- 9 Matt Chambers, “Aluminium Unit Weighs Down On Rio Tinto”, *The Australian*, 18/1/12
- 10 Treasury, “Update On Project 14”, T2012/2375, 21/9/12, p.4
- 11 Treasury report, “The Economics Of The NZ Aluminium Smelter” T2012/3275, 19/12/12, p.9
- 12 Rhiannon Hoyle, “Rio Tinto Swings To Profit”, *Wall Street Journal*, 13/2/14, <http://online.wsj.com/news/articles/SB10001424052702304434104579379971718084630?mg=reno64wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F/SB10001424052702304434104579379971718084630.html>
- 13 http://en.wikipedia.org/wiki/Big_bath
- 14 Treasury, “Update On Project 14”, T2012/2375, 21/9/12, p.3.
- 15 Government *Financial Statements*, year ended 30/6/12, Note 32
- 16 NZAS 2003 *Sustainability Review*, p.13.

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