

**ROGER AWARD 2002
STATEMENT FROM THE JUDGES**

Prue Hyman, John Minto, Sukhi Turner and Ranginui Walker, 31/1/03

The task facing the judges of the Roger Award for the Worst Transnational Corporation in Aotearoa/New Zealand is always a sad and difficult one. The year 2002 is certainly no exception. Sad because all six shortlisted companies - and some others - score so badly in their treatment of Aotearoa/New Zealand and some or all of its people on many of the criteria of the Award. These cover areas such as unemployment, abuse of workers, profiteering, political interference, cultural imperialism, and negative impacts on tangata whenua, women, and the environment. The judges also think it important to point out that Government is an active collaborator in the bad behaviour of many TNCs. Many of the negative effects could have been prevented or reversed by Government leadership - which appears to occur only occasionally if public outcry becomes too great to bear.

The finalists this year were **Carter Holt Harvey, Novartis, Shell, Sky City Entertainment Group, Telecom, and Tranz Rail**. Sadly, firms and industries do not appear to change their spots. CHH and Tranz Rail are past winners, while Telecom has appeared on the shortlist before. The oil industry has previously made the shortlist with BP and Mobil, while public relations spin has been represented earlier through Shandwick among others, and seed production/genetic engineering through former Roger winner Monsanto. Novartis, like Monsanto, combines seeds with public relations spin. Only Sky City represents a "new" abusive industry. Its presence on the list is regarded as justified as a borderline transnational corporation (TNC), with some 30/40% overseas ownership and its own ownership of the Adelaide casino in addition to three in New Zealand. For the rest, it is appalling that the recidivists fail to improve their records or take account of bad past publicity and justified public reaction to their behaviour.

Telecom's appearance on the shortlist would surprise few readers. There is strong evidence of abuse of their near monopoly position over many years, but profiteering in a service essential to everyday living was particularly evident in 2002 with aggressive price gouging. The biggest outcry from their actions came when they announced huge increases, in November 2002, in rural connection fees. Overkill through proposing a charge of one third of total cost, amounting in some cases to several thousand dollars per low density customer, allowed them to look responsive to public outcry and Government pressure over near violation of Kiwi Share obligations. They toned down the increase to most low-density connections, charging \$500, still up 808% from \$61.88, but retained the one third of cost for the remotest users, with increases to \$250 and \$95 for medium and high-density areas. Other price jumps were 13% increases in wiring maintenance charges, 4.5% in residential line charges and toll charge minima based on one-minute calls instead of six seconds. But its capacity to keep prices down where competition is involved was shown by street by street rental cuts where TelstraSaturn rolled out its fibre optic network. We are not alone in accusing Telecom of exploiting its monopoly power. In November 2002 the Telecommunications Commissioner slashed its charges to other phone companies for using its network from \$2.65 per minute to \$1.13. Telecom's first ever loss in 2001/2 was due mainly to unwise overseas ventures and past leakage of profits to overseas owners instead of using it for adequate investment, for example in its broadband network - yet more staff shedding has been one result.

Shell/Shell Todd Oil Services, like the whole industry, has attempted to persuade the Government to go soft on dealing with climate change, greenhouse gases and pollution generally, including working against ratification of the Kyoto Protocol. Greenpeace NZ demanded, in May 2002, that Shell withdraw from the NZ Climate Change Pan Industry Group leading the anti-Kyoto campaign, citing their hypocritical position while they were simultaneously lauding the economic benefits of reducing emissions and moving away from intensive fossil fuel use. In Taranaki the group engaged in a breathtaking piece of bureaucratic chicanery, assisted by the Taranaki Regional Council. It avoided the requirements of community consultations over discharges from the Kapuni Production fields by splitting the consent into different parts and understating emissions. Shell has also ignored concerns expressed by local *hapu*

(*sub-tribe*) in South Taranaki, pushing through resource consents to drill in an area that is *wahi tapu* (*out of bounds, sacred*). Controlling 85% of New Zealand's gas supply, Shell has monopoly power, which has enabled it to announce that the price of gas from the Pohokura field will be up to three times the price of Maui gas.

Sky City's first appearance on the Roger shortlist is due largely to the meanness it shows in addition to the iniquities of any gambling business profiting from contributing to a dependence in those becoming addicted to a compulsion which ruins many lives. Such companies operate like the malarial mosquito - sucking blood from its victims and leaving many of them with a lifelong illness. Over 5,000 people newly sought help from gambling addiction services in 2001, with over 11% citing casinos as the primary source of their problem. Over two thirds of casino turnover comes from Sky Auckland. The 1999 licence for Queenstown's Sky Alpine Casino, opposed by two third of residents, was conditional on a \$100,000 per annum contribution to the Community Benefit Fund allocation to welfare groups. In November 2002, Sky applied to reduce this to \$30,000 for its first 18 months of operation and \$45,000 p.a. thereafter. For this effrontery, with the Sky City Entertainment Group making \$85.1 million profit in the year to June 2002, the casino deservedly took out the inaugural "Gambling Greed Award" from Gambling Watch in December 2002. And when Sky City was unfortunately awarded \$50,000 costs against a group seeking to stop the Hamilton casino, it charmingly offered this sum to the Salvation Army - which demanded that it be used for research into gambling problems. Sky City refused, and kept the money.

Special Spin Award - Novartis

Two special awards are being made this year in addition to the overall winner. The first is a "spin" award to **Novartis Seeds**, which after merging with AstraZeneca to become **Sygenta**, is the world's largest agrochemical and seed company, with annual turnover as large as New Zealand's total overseas trade. A read of Nicky Hager's book "Seeds of Distrust: The Story of a GE Cover-Up") is necessary to grasp the whole of "Corngate", but, in brief, Novartis Seeds was responsible for bringing GE-contaminated sweet corn seeds into Aotearoa/New Zealand. The company showed contempt for New Zealand concerns about genetic engineering (GE) and utter disregard for the potential effects on New Zealand's environment, international image, and public health, as well as on our democratic system of government. Its cover-up operation to conceal the truth and pressure on Government to change the rules were in the great tradition of TNC power over policies in defiance of public opinion - and Royal Commission recommendations. They were of course helped in this largely successful endeavour by the imminent general election (*in July 2002*).

The evidence of direct unhealthy influence on government policy also reflects appallingly on the Government itself. Any government that allows itself to be pressured and a key policy to be manipulated and rewritten by a transnational company out of public scrutiny and then works with the company to help cover it up deserves community contempt. The 1999 Labour/Alliance government also deserves censure for its behaviour on "Corngate".

Continuity Award - Carter Holt Harvey (CHH)

Carter Holt Harvey was the disgraceful winner of the Roger Award last year (2001), as well as earlier appearing on the short list. It has not mended its ways. The range of negative impacts on New Zealanders for which it is responsible include subduing its workforce and damaging their conditions, bringing in scab labour and destroying the social and economic fabric of small towns dependent on its enterprise. One employee who was among those nominating CHH for this award accuses it of "an adversarial attitude to their workers", with managers "given peace and sanctuary by this country", after coming from regions without protective labour laws and with sweat shop situations "metaphorically putting their jack boots back on".

Its worst excess in 2002 was the axing of 381 jobs at its Kinleith mill just in time to make the summer break miserable, with workers laid off soon after the chief executive officer (CEO) was awarded a 23% salary increase to more than a million dollars - a familiar pattern to New Zealanders through the past 20

years. Carter Holt Harvey's corporate greed and lack of humanity, manifested in the dismissal of half of the work force, has a huge human cost while the wider effect on Tokoroa and its district will be felt for a generation at least. Ruling that the company's procedures to consult staff about its plans had not met all its good faith obligations, Judge Colgan's August 2002 Employment Court decision delayed plans, for a month for proper consultations. Concessions offered by workers and unions were ignored in the rush to outsource maintenance and cut costs.

Attacking the Resource Management act and the Kyoto Protocol in its *Annual Report*, CHH continued the efforts of the forestry industry to prevent New Zealand leadership on reducing greenhouse gas emissions. Its other unwelcome activities have included participation in growing genetically modified pine trees and lack of care for public amenities, with its earlier withdrawal of Hanmer's public forest reserve, a popular local walking area.

Winner Of The 2002 Roger Award - Tranz Rail

By now, through elimination it will be clear that Tranz Rail has won the Roger Award for the third time. Its "proud" record is victory in the first year, 1997; a continuity award in 1998; victory again in 2000 and a position on the short list in all six years of the Award. It would, sadly, have been worthy winners every year, as the input of the public to this Award testifies. This company has taken a major community asset and run it into the ground over a period of ten years. The effects are not only to be worn by the community as a whole in terms of needing to fund an upgrade because of poor maintenance of the infrastructure, but the company's appalling safety record leaves one aghast.

NZ Railways was a public utility built up progressively over 100 years by the taxpayers of New Zealand. From its inception in the 1880's to its privatisation in the 1980's, NZR built a huge capital asset comprised of the network of lines, tunnels, bridges, deviations and stations that linked the major towns and cities of New Zealand. In addition, it accumulated rolling stock and locomotives, which it maintained and replaced when necessary, including the switch from steam powered locomotives to diesel engines in the 1950s-60s. Permanent rail gangs were employed to maintain the lines. NZR transported New Zealand produce to the ports for export, and thousands of passengers in safety.

Since privatisation, the company has cut staff, services, safety, and many corners. Recently, the culture of corporate greed has included extended depreciation, asset stripping and inflated income through creative accounting, with track renewals treated as capital expenditure and the costs added to fixed assets rather than treated as a deduction from revenue, practices which fooled the sharemarket into thinking that Tranz Rail was in good heart and its shares worth buying. Profits were also artificially inflated by the sell-off (and lease-back) of the Aratere ferry for \$55 million and of rolling stock for \$93 million. This generated a profit of \$90 million. The hidden cost is the lease commitment of \$542 million on these two deals over the life of the leases. These sharp practices initiated a recovery in the share price to \$3.50 and \$3.70 a share, whereupon Fay Richwhite and Wisconsin Central sold out in February 2002. In September 2002 these shares were worth only \$1.70, an indication of what the robber barons had done to TR. The other downstream effect of the failure to deliver service to customers is the proliferation of juggernaut truck and trailer rigs on our roads transporting logs and containers that should be transported by rail.

The record in 2002 is no improvement on past behaviour. Disregard of the health and safety of passengers and the few workers who have not been downsized out of the company is an ongoing scandal. Another 350 jobs were cut in 2002, with contracting out of track maintenance together with past welding mistakes resulting in the heat-related chaos on the Wellington commuter system early in 2003. Heat buckled lines and derailments the previous summer caused the Land Transport Safety Authority to commission the Halliburton KBR report which found that passenger lives had been endangered by these decisions. LTSA ordered Tranz Rail to rehire 92 sacked staff and slow passenger trains to 40 kmh.

The sell-off of infrastructure and retreat from passenger services to ferry and freight only continued with the sale of the Auckland rail corridor to Government, with the lease and infrastructure priced probably

too high at \$81 million. Wellington is next. And there have been two more employee deaths and a number of near misses. The saga never ends. Tranz Rail deserves huge censure with successive governments' handling of rail little better. **The Roger Award 2002 is the least Tranz Rail can expect.**

A sting in the tail for the New Zealand government: when discussing the award to Novartis above we referred to the Government's complicity. Any government that allows itself to be pressured and a key policy to be manipulated and rewritten by a transnational company out of public scrutiny, and then works with the company to help cover it up, deserves community contempt. The 1999/2002 Labour/Alliance government thus deserves censure for its behaviour on "Corngate". As well, earlier administrations and the present one deserve censure for their actions and inaction on Tranz Rail. Accordingly, the 2002 Roger Award judges decided to make an extra award:

To the 2002 Labour-Led Governments: A Collaboration Award - for failure to assert the public good against corporate pressure at a critical point.

OFF THE RAILS

Ruth Richardson rarely takes a train. The former 1990s' National government Finance Minister is too busy these days, running an international consultancy for industry groups and think tanks about market reforms. It is probably just as well she is often overseas, far from the shambles created by her 1993 privatisation of New Zealand Rail. That legacy has been celebrated yet again with Tranz Rail taking out an unprecedented Roger Award "three-peat", a remarkable achievement given the award has been running for just six years.

Ms Richardson sees it differently. To her, Tranz Rail's profiteering, unsafe tracks, chaotic timetables, passenger complaints, and dismal health and safety record are all healthy signs of the market at work. When Wellington newspaper, the *Dominion Post*, ran daily stories from outraged and frustrated rail commuters in January 2003, a reporter asked Ms Richardson whether selling rail had been such a good idea.

"Absolutely," she replied.⁽¹⁾ But what about all the angry passengers? "Normal competitive forces will operate if they're allowed to." So why doesn't Tranz Rail have any competitors? It wasn't her place to "second guess" the market. So what is the remedy? "Moving more in the direction of the market," stated the New Right fundamentalist. Ms Richardson has good reason to be in denial, for Tranz Rail's history over the past decade is a sorry tale of greed and incompetence.

It took over 100 years to build New Zealand's railway system, a massive public and taxpayer investment. By linking isolated towns, training apprentices for a range of industries, and providing hundreds of jobs for labourers, tunnellers, engine drivers, signalmen, track maintenance staff and workshop staff, the Railways always had a community value and social role way beyond its balance sheet. In 1993, the National government sold the entire system for \$400 million. At the time, New Zealand was buying Anzac frigates for \$610 million each, so the country's railway network passed into private hands for two-thirds the price of one warship.

"A Damn Good Deal"

Later analysis showed the \$400 million price tag was just for the headlines. \$72 million was immediately used to pay off New Zealand Rail's debt. Of the remaining \$328 million, the new owners had borrowed \$220.9 million. So they stumped with up just \$107.4 million of their own capital to buy:

- three interisland ferries

- 337 locomotives, 9,415 freight wagons, and 257 passenger vehicles
- 821 cars and vans, 209 forklifts, and 181 trucks
- 152 tunnels and 92 stations
- 4,000 km of track, and
- 2,299 bridges.

On the advice of merchant bankers Fay Richwhite, New Zealand Rail's financial advisers, Ms Richardson defended this sale as "a damn good deal". Certainly, from Fay Richwhite's point of view, it was a stunningly good deal. They had put together a consortium of foreign, mainly American buyers. Wisconsin Central took 27.3%; investment group Berkshire Fund another 27.3%; and Alex van Heeren 9.1%. Fay Richwhite, who had been New Zealand Rail's main advisors for three years prior to its sale, knew a bargain when they saw one. They snapped up 31.8%, with another 4.5% going to Richwhite family interests.

Thus not only did they advise the Government and the company on the sale, they also bought a large chunk of it. Fay Richwhite denied any conflict of interest because "Chinese walls" in their offices kept the transactions separate. As the 1990s unfolded, it became clear these walls were made of rice paper. According to respected *New Zealand Herald* business journalist Brian Gaynor, the original shareholders had effectively paid just 16 cents per share⁽²⁾ In 1995, Tranz Rail made a capital repayment of \$100 million. As \$90.6 million of that went back into the pockets of the original shareholders, their investment reduced from \$107.4 million to \$16.8 million – 16 cents per share.

Grab The Money And Run

In mid-1996, the company issued 31 million new shares at \$6.19 each. The shares were snapped up by investors and peaked at \$9 in mid-1997. As the share price began to dip, the foundation shareholders began to sell. Alex van Heeren, the Auckland-based honorary Dutch consul and owner of Huka Lodge, illustrates the scale of the profiteering. Having paid 16 cents a share, Mr van Heeren cashed up 7.4 million shares in 1998 for \$5.99 per share, collecting the tidy sum of \$42 million. Berkshire Fund had already sold its shares for more than \$8 each, walking away with over \$100 million.

Early in 2002, Sir Michael Fay and David Richwhite sold their remaining 14.5% shareholding for \$3.60 a share. By the end of the year, with the share price sitting at 99 cents, the company had become the second-worst performer on the New Zealand Stock Exchange. By then all the original shareholders had taken the money and run, leaving small shareholders to face up to long-term debt and re-capitalisation problems. "Fay Richwhite has never been on the wrong end of a transaction with the public sector," noted Gaynor.⁽³⁾ Ed Burkhardt, the founder of Wisconsin Central and Tranz Rail's first chairman, was more scathing. He was sacked in 1999 after a bitter falling out with the other shareholders. According to Mr Burkhardt, the company's decline during the decade was "Fay Richwhite writ large, the investment banker way of doing business, spin everything off or else".⁽⁴⁾

A mix of foreign banks and financial institutions now owns Tranz Rail. AXA has 15%, the Commonwealth Bank of Australia 10% and Westpac Banking Corporation 6%. Brian Gaynor said although these institutional shareholders were fuming over Tranz Rail's falling share price, they had only themselves to blame. "Wisconsin Central and Fay Richwhite have sold shares in a company severely weakened by an over-emphasis on creative financing and accounting and a poor business strategy. [Institutional shareholders] did not recognise the unreality of Tranz Rail's accounting policies, its huge lease commitments, and the absence of independent directors to curtail the self-interest of the controlling shareholders."⁽⁵⁾

Appalling Safety Record

Tranz Rail's boardroom battles reflect the feeding frenzy of shareholders squabbling over the carcass of our railway network. For over a decade the company enriched itself at every turn, indifferent to its impact on communities, the public, and its own staff. In May 2000, Christchurch shunter Robert Burt was killed when caught under a moving train. A month earlier, rail worker Neil Faithful had been crushed to death under a derailed wagon filled with scrap metal. As a result of the accident that claimed Mr Faithful's life, Tranz Rail was fined \$50,000. For the 1999 death of seafarer Nigel Cook on the interisland ferry *Arahura*, Tranz Rail had been fined \$37,500. A record of five deaths in two years sparked a ministerial inquiry in 2000.

South Island locomotive drivers threatened early in 2002 to slow the railway network to a snail's pace amid safety concerns about buckling rails. One driver of 40 years' experience was reported to have stopped at each rail bridge to ensure there were no "wiggles in the track" before he proceeded.⁽⁶⁾ Following a series of derailments and disruptions a union spokesperson said the poor state of the tracks was not surprising. "We have not got the men or the money to go through and put brand new gear in. That stuff has to stay there till we get the resources to do it. This company has been run down for years since Wisconsin Central took over," he said.⁽⁷⁾

The Land Transport Safety Authority eventually intervened to halt company plans to contract out its maintenance work. Tranz Rail had said it would lay off 92 maintenance staff and give the work to a Sydney firm, but the LTSA ordered the company to rehire the staff and to slow passenger trains to 40 km per hour on hot tracks until an inquiry was completed. The inquiry found parts of the railway network are being run close to their practical limit, and are not supported by appropriate systems, with railway maintenance a particular concern.

Ditching Passenger Services

By this stage, inconvenience to passengers from slow moving trains was of little consequence. Tranz Rail had announced late in 2001 a strategic decision to get out of passenger services. The Tranz Scenic service had already been sold to Australian interests, and four lines were simply closed: the Wellington-Napier Bay Express; the Tauranga-Auckland Kaimai Express; the Hamilton-Auckland Waikato Connection; and the Rotorua-Auckland Geyserland. Closure of the Christchurch-Invercargill Southerner followed. Many local authorities scrambled to organise rescue packages but none succeeded. Tranz Rail had decided it couldn't afford the capital outlay needed to maintain its railway networks.

This decision has put enormous pressure on roads, and created transport problems throughout New Zealand. Many provincial regions have lost a key transport link just as they are set to experience big increases in logging activity. In 2000, MAF forecast that our potential wood supply would nearly double to 30 million cubic metres by 2006. Much of this freshly cut timber will now have to be moved by road, with logging trucks on East Coast roads expected to surge from 10-20 a day to 300-400 a day. According to the Greens, trucks use around five times more energy per tonne kilometre than diesel-powered trains. While trains carry about 13% of the country's freight, they account for only 4% of the energy used in moving freight.

Truck safety is another issue. In 2001, trucks were involved in 76 of 395 fatal road crashes. That's over 19%, a higher than expected proportion of the total number of vehicles on our roads. Surviving motorists trapped for hours behind slow-moving heavy trucks and trailers can only look at the rusting railway lines running alongside our highways and wonder whether market efficiency is all it is cracked up to be.

"The Point Is That This Is Not A Social Institution"

The social value of the railways disappeared off the radar the day the network was privatised, and there's no sign that will change despite last year's ownership wrangles. In March 2003 one shareholder said Tranz Rail needed to start making "politically unpopular" decisions to deal with poorly performing parts of the company. Simon Botherway, head of 4.6% shareholder Brook As-

set Management, said these include Wellington's Tranz Metro, the services north of Auckland, the Napier-Gisborne line, and the "coal route" from the West Coast of the South Island to Christchurch, "to name a few". The troubled rail operator needed to put the Government's social objectives to one side, said Mr Botherway. "The point is that this is not a social institution."⁽⁸⁾ Alliance Capital, manager of Tranz Rail's biggest shareholder AXA, said Mr Botherway's general views were "absolutely right".

With New Zealand's railway network already a national joke, Tranz Rail's plans are bound to make the company even more unpopular. **The time is ripe to re-nationalise it and for the Government to implement a coherent national transport strategy.** However, their inaction is one reason they won a special "Collaboration Award" attached to the 2002 Roger Award. Although presented with a golden opportunity to drive a further nail into the coffin of privatisation, the Government has done little more than grumble. In December 2002, Transport Minister Paul Swain revealed the Government was considering an attempt to buy back railways. Its earlier purchase of the Auckland rail corridor for \$81 million had "showed its hand... to a certain extent", said Mr Swain.⁽⁹⁾ Speculation about a takeover has since been rife. One economist valued the company at \$420 million, and said new owners would also have to take on a Tranz Rail debt of \$241 million. That means taxpayers would fork out \$661million to regain an asset they once owned.

In the meantime, Tranz Rail wins either way. If it holds on, it can continue to extract subsidies from local authorities desperate to keep suburban networks and regional links open. If services become too threadbare, Tranz Rail knows the Government will be forced to come knocking. When the Wellington Regional Council sought to purchase the region's suburban rail network following public outcry over the poor level of service, it was prepared to pay up to \$40 million. Tranz Rail wanted \$200 million. The Government had set a costly precedent with its \$81 million purchase of Auckland's suburban rail. Faced with Tranz Rail's threat to close the lines and create chaos on Auckland's already congested roads, the Government coughed up.

The tragedy is that New Zealand once had a thriving railway network, the envy of many countries with congested roading systems. We don't have to build a rail system from scratch. But instead of enhancing and developing it, rail was gifted to a mercenary set of foreign and local investors who let it rust while gouging out phenomenal profits. With a little political will, the Government could begin by mounting an inquiry into how those investors enriched themselves while a strategic asset was stripped bare.

Sources:

- (1) "Rail sale view stays", *Dominion Post*, 20/1/03.
- (2) "Track record costly to public", *NZ Herald*, 21/10/00.
- (3) *Ibid.*
- (4) "Former Tranz Rail boss fires broadside at Fay Richwhite while plotting board coup", *NBR Personal Investor*, 27/10/00.
- (5) "Shares in a downhill train ride", *NZ Herald*, 13-14/7/02.
- (6) "Derailment sparks safety fears", *Press*, 21/1/02.
- (7) "Tranz Rail 'ignored warnings'", *Press*, 22/2/02.
- (8) "Shareholder urges Tranz Rail action", *Dominion Post*, 15/3/03.
- (9) "Govt considers Tranz Rail buy-back", *Press*, 4/12/02.
