

Roger Award 2009

Winner | ANZ



For The Worst
Transnational
Corporation Operating
in Aotearoa in 2009

Organised by Campaign Against Foreign
Control of Aotearoa (CAFCA)
& GATT Watchdog

Statement of the Judges' Decision for 2009

Winner
ANZ

Runner Up
Rio Tinto Aluminium

Third Place
Telecom

Accomplice
Auckland City Council & its Officials

Judges

Christine Dann
Bryan Gould
Joce Jesson
Paul Corliss
Wayne Hope

There are just over 7,500 foreign-owned companies operating in New Zealand today. They represent only 2% of all firms in New Zealand - but their collective capital invested here is worth \$91.4 billion, or 49% of Gross Domestic Product (GDP).

Many of these foreign-owned companies are huge transnational corporations, or subsidiaries of huge transnational corporations. These are the big, market-dominating companies like Telecom, Westpac, British American Tobacco, Progressive Enterprises, Carter Holt Harvey, Monsanto, the late and unlamented Tranz Rail, and the misleadingly named Bank of New Zealand - to name just some of the previous Roger Award winners. It is these big companies which are making huge profits from New Zealanders, and sending those profits back to their shareholders and head offices overseas.

Regardless of whatever other damage they may be doing to New Zealand society and the New Zealand environment, this expatriation of the profits of the investments of foreign-owned companies operating in New Zealand has a major negative impact on New Zealand's economic wellbeing. In 2008 \$16.6 billion in foreign investment income left New Zealand and only \$2.9 billion came in, leaving a huge net deficit of \$13.7 billion or 7.5% of GDP.

To put that amount of money in context, it is more than the contribution of agriculture to the NZ economy, and the same amount that was spent by the State in the Health budget that year. For more detailed information on the major contribution that foreign-owned companies are now making to national indebtedness, and how destabilising and damaging this is for New Zealand, I would refer you to Bill Rosenberg's research and presentations on this subject. See Bill Rosenberg "Forward and Leftward", *Foreign Control Watchdog* 122, December 2009 (text and figures at <http://canterbury.cyberplace.org.nz/community/CAFCA/publications/Miscellaneous/index.html>) and the New Zealand Council of Trade Unions' Submission to the Parliamentary Banking Inquiry, Wellington (2009). An edited version of this is also in *Foreign Control Watchdog* 122, December 2009, <http://www.converge.org.nz/watchdog/22/04.htm>.

For now I would just like to point once more to the elephant in the room that it is invisible to those who run this country (perhaps because they are so attached to the elephant they no longer have a clear view of it) and say once again in plain English - the foreign-owned, market-dominating transnational companies operating in New Zealand today are offering very little that is new and valuable with regard to providing goods and services which used to be provided (and could still be provided) by New Zealand-

owned companies - and they are now taking so much business away from New Zealand owned companies, and expatriating so much money, that their activities are having a highly negative impact on the New Zealand economy.

This reason alone is a sufficient reason to show the door to most of the transnationals already operating in New Zealand, and to shut the door on any more trying to get in. But wait - it gets worse. All transnational companies expatriate their profits, and this is perfectly legal, if not desirable for the NZ economy. So in taking nominations for the Roger Award, and in picking the annual winner, the Campaign Against Foreign Control in Aotearoa is looking for something more. It is looking for outrageously bad behaviour by a transnational, behaviour which is legally or morally dubious, and socially or environmentally reprehensible.

Sadly, in the 13 years in which the Roger Award has been running, there has never been any lack of nominations giving evidence of such behaviour. Some companies, like Telecom, have been nominated almost every time, and in Telecom's case it has won twice, and was strongly in the running again in 2009. The other finalists for the 2009 Roger Award are ANZ, BNZ, Infratil, Newmont, Rio Tinto Aluminium NZ, Rymans, Transpacific and Westpac.

We also have two finalists for the Accomplice Award - the Business Round Table, and the Auckland City Council and its officials (as part of the nomination of Transpacific Industries). The Accomplice Award is for those organisations which make it easier for transnationals and harder for New Zealanders to do business or have a job.

There is a theme to the 2009 Roger Award, and it is the theme of deception and betrayal. It has given rise to the use of metaphors like 'rattlesnakes in the grass' and 'wolves in sheep's clothing'. The winner of the 2009 Award engaged in deception and betrayal of its customers on a grand scale, and hence richly deserved to win. But at least there could have been no doubt in those customers' minds that they were entrusting their money to a foreign-owned transnational company. Not so, perhaps, with two of the other finalists for the 2009 Award, who personally contacted the judges or organisers and complained - not about being cited for the misdeeds they were accused of - but rather that they were listed as being foreign-owned transnational firms. So I would like to assure people that the 2009 Roger Award nominees Rymans and Infratil meet the full criteria of foreign ownership (over 25% foreign owned) and are *not* New Zealand-owned companies. No matter how much they fluff up their Kiwi sheep suits to try and look otherwise.

More details on the non-winning finalists and the reasons why they were nominated are given in the Appendix to this statement. As for the winners, they are, starting with the third place getter

Third Place: Telecom

Telecom, an all-too-frequent nominee for the Roger Award for many years, was the third place getter. Telecom gained third place for the same reasons it has won this Award in the past, which are principally its monopolisation of telephone lines and their servicing, and the extremely poor service it provides to its direct customers and to the other telcos who must contract services from Telecom. In 2009 Telecom really excelled itself in providing poor service and treating its customers like rubbish, with its deceptively over-hyped XT mobile network and fast broadband services, which both failed to deliver, cheating customers out of money and in some cases costing them their business. Telecom then rubbed salt in the wound by the slowness and inadequacy of its compensation offers. In 2009 Telecom also took further steps to ensure that its service remains below par and its reputation in rags by giving its technical staff the 'choice' between becoming a sub-contractor or joining the dole queue. At the same time as Telecom was in the process of forcing its employees to become low paid contractors (or unemployed), it was paying obscene salaries and bonuses to its top executives. This was in addition to expatriating large profits and dividends which could be better used to upgrade and provide better services in New Zealand.

Runner Up: Rio Tinto Aluminium

Second place went to Rio Tinto Aluminium. Rio Tinto has also been a finalist for the Roger in past years. As the judges noted, Rio Tinto's continual exploitation of the nation's energy grid and the subsidies that it receives from taxpayers and electricity suppliers has indirectly and negatively affected most New Zealanders. Further, its blithe disregard of the environment and its massive carbon dioxide emissions stand to negatively impact upon the country (and the world) for many years into the future. Rio Tinto is a worthy runner up.

The Winner: ANZ

The judges all noted the generally egregious behaviour of the Australian-owned banks that were nominated (ANZ, BNZ and Westpac), and were unanimous in picking them as the worst TNCs operating in New Zealand in 2009.

As the Council of Trade Unions noted in its submission to the Independent Parliamentary Banking Inquiry, the

foreign-owned banks are the Achilles heel of the New Zealand economy, given that they contribute to the lion's share of the national debt. They account for nearly 70% of investment income debts on the national balance of payments and for 74% of the economy's net overseas indebtedness.

During the 2009 year the banks were accused of:

1. Distorted lending margins in their favour and against their customers
2. Tax dodging on a grand scale
3. Poor lending and investment practices
4. Overcharging and profiteering
5. Poor employment and customer service practices

The banks behaved so badly in 2009 (and 2008) that they were the subject of a Parliamentary Select Committee investigation early in 2009. Despite receiving reports giving good reason to conclude that strong Government action was needed to rein in the bad behaviour of the banks, and to require them to deal with both customers (and the Government, which provided them with security during the 2008 financial crisis) more honestly and fairly, the National Party-dominated Select Committee did not recommend such actions to Government. This led to the Labour, Green and Progressive MPs setting up their own Independent Parliamentary Banking Inquiry. This Inquiry exposed more issues of concern, and called for better legislation and regulation to protect the public from predatory banks.

Also during 2009, bank after bank appeared before the High Court to answer allegations of tax evasion, amounting to billions of dollars. After high level negotiations they finally reached an out-of-court settlement that saw them collectively pay the Inland Revenue Department more than \$2.2 billion. In a political climate where we are constantly being told that taxes are an evil imposition, rather than what they really are - the price we pay for a democratic and functional society - we think that a special Public Heroes award should go to the Government lawyers, IRD officials and others responsible for getting these slippery banking snakes to pay what they rightly owe the nation.

One of the Roger Award judges noted the banks were richly deserving of the Award since they have been *"...doing great damage for many years to the whole of the New Zealand economy ...through irresponsible lending (thereby stoking inflation), and expatriating excessive profits ... while all the time avoiding censure and pointing the finger at public spending as the cause of our economic problems...[While] this year we have seen the truly scandalous tax avoidance saga, from which the banks have again escaped remarkably lightly; if you or I had committed a similar offence of*

one thousandth the size we would have ended up in jail."

However, it was a tough decision to pick the worst of the worst, considering that all the foreign-owned banks were guilty of some degree of tax dodging, overcharging on credit card fees and loans, not passing on reductions in interest rates, and treating customers and staff poorly. In the end the judges decided that ANZ deserved top place, with the ING scandal tipping the balance in its favour (for full details of the ING scandal, see the next section "Rattlesnakes In the Grass").

In 2008 ANZ was also a finalist, with the 2008 judges noting the following 'fine' qualities for its inclusion:

"Evidence presented to the judges portrayed ANZ-National as the most rapacious, inept and irresponsible of the banks over the past couple of years, which assured it a good chance of securing the Roger Award. This bank was a distinguished finalist in 2007 also, for its despicable role in the saga of Godfrey Hirst and the Feltex carpet business".

ANZ has succeeded in winning the 2009 Roger Award because the ING funds fiasco is simply and plainly 'pure greed capitalism' at its worst. This debacle saw the bank immorally misleading small investors into taking their money out of safe term deposits and putting it into highly risky investments, while assuring them that these investments were safe. In fact, most of them were highly dangerous and dodgy, and lost millions of investors' money. When the betrayed investors got organised and put pressure on the bank to repay what had been lost, ANZ's repayment offer came with big strings attached - investors who refused to sign a waiver agreeing not to take legal action against the bank would receive no compensation. In the words of the judges, this was 'the most extreme case of anti-democratic manipulation by a transnational within New Zealand during 2009. Simply, ANZ was employing financial pressure to erase the legal rights of investors – a truly Roger winning performance.'

The ING debacle was, as one judge noted, 'the icing on the already baked Roger cake.' Thus **ANZ is the winner of the 2009 Roger Award.**

Accomplice Award

There were two nominations for the Accomplice Award, which is awarded to those New Zealand institutions which act as Renfield to the transnationals' Dracula (i.e. a faithful servant). They were the Business Round Table, which has, since the election of the

National-led government in 2008, been reinvigorated, and the Auckland City Council and its officials for its role in the Auckland Transpacific saga.

After some discussion, Auckland City Council was declared the winner of the Accomplice Award for 2009 for helping to contract out Auckland's waste management to Transpacific and therefore acting as a template for future transference of public assets into private hands. As one judge noted: "Waste management company makes money from local government at the 'arse end of capitalism'... Auckland ratepayers and residents will be charged higher prices for an inferior – non carbon friendly solution".

Auckland City Council and its officials are the winners of the 2009 Accomplice Award.

In concluding the Judges' Statement, it has to be said that while CAFCA's organisation of the Roger Award for the past 13 years, with its regular and timely exposure of utterly unacceptable behaviour by foreign-owned transnational companies operating in New Zealand, may not have done much (if anything) to get those companies to clean up their acts, this is not the outcome which CAFCA expects, or is even able to achieve. Rather, CAFCA's contribution in organising the Roger Award is to provide the first step in the chain of action - the information on which to base the action. In this regard CAFCA's work in painstakingly documenting the behaviours of TNCs in New Zealand over the past 35 years is invaluable, and I commend and recommend to you both its publication *Foreign Control Watchdog* (<http://www.converge.org.nz/watchdog>) and its website (www.cafca.org.nz) as sources of well researched, reliable and detailed information.

The next step - the action - is up to us all to take, both individually and collectively. Collectively, we need to get active in supporting those political parties and non-governmental organisations which stand for a fair and just society, where large corporations (be they foreign or locally owned) cannot be practically exempt from ethical and responsible behaviour, to the degree which is permitted to them today by elected governments in New Zealand. Governments which are supposed to represent *our* interests, not the interests of foreign capital.

Individually, we can audit our personal consumer behaviour, stop supporting these ratbag companies with our own money, and encourage all our friends, families and social networks to do likewise. In doing so, I can personally vouch for how much happier it will make us with the service we get from NZ-owned companies. For example, I switched my banking to TSB in the 1990s, just after it became (at that time) the

only NZ-owned bank in the country. My reward for loyalty to the local option has been no bank fees, a lower rate of interest on the housing loan my partner and I took out ten years ago, a higher rate of interest on term deposits, and the lowest rate of interest possible on my credit card, from a bank which (unlike the Aussie-owned ones) drops its credit card interest rates when the Reserve Bank cuts the OCR, and by the same percentage. All this plus prompt, efficient and friendly service on the phone and the Net every time I need it.

In judging this Award it was an eye opener to me to see how many Kiwis (the vast majority) are still paying exorbitant fees, charges and interest rates to the Aussie-owned banks when there are much better deals available from the NZ-owned banks. They should be as worried as I am - and CAFCOA is - that those Aussie banks are siphoning billions of dollars out of the NZ economy every year, and thus creating an

insecure and unstable economic environment which could end in a major economic disaster that will make the financial bust of 2008 look like a picnic.

However, I understand that this is a rather abstract and difficult concept for most people to grasp - I don't find it easy to come to terms with myself. What I *do* find easy to understand - and so I think do the rest of us - is my personal balance of payments, and whether I am getting value for money. In this day of information being just a click on the Web away, it is not that hard to find out if your bank is giving you the best deal or not. In this regard, giving your Aussie-owned bank the boot and switching to a Kiwi-owned one is a no-brainer. You will be better off - and so will your country. Just do it.

Dr Christine Dann
Chief Judge, Roger Award 2009

2009 Roger Award Report

Rattlesnakes in the Grass – ANZ (Australia New Zealand Bank)

In order to understand the announcement of ANZ as the winner of the 2009 Roger Award, it is necessary to firstly spend some time looking at the banks and their actions as a whole in New Zealand, before examining ANZ separately.

The Manufacturers and Exporters Association in its submission to the Independent Banking Inquiry established by Labour, the Greens and Jim Anderton's Progressive Party in 2009, observed that while you 'can't blame a rattlesnake for being a rattlesnake,' you could, nonetheless, handle it carefully and regulate its behaviour.

The Banking Inquiry came in the aftermath of allegations about the behaviour of banks. Principally, concern was levelled at the Big Four trading banks (ANZ, BNZ, Westpac and ASB) in their administration and setting of interest rates, loans and various other assets, particularly in the light of the 2008 international financial crisis. Despite pressure being put on it by the public, the National-led government and its support parties, ACT, the Maori Party and United Future decided not to conduct an inquiry in this area, leaving it instead to the Opposition parties to conduct their own inquiry.

In the background to the Inquiry the Opposition parties commented that;

"For many households and small businesses struggling to make ends meet in the recession the prospect of paying significantly higher interest rates than potentially warranted by the Official Cash Rate (OCR) is causing serious and widespread concern. The Prime Minister has called on the Reserve Bank of New Zealand (RBNZ) to take action in respect of the issue. However neither further RBNZ actions, nor further pass through of OCR cuts appear to have occurred.

"Against this background New Zealand's major banks contend that their interest

rates and margins are fully justified in current conditions, citing reduced margin spreads and banking profitability and rising provisions for bad debts in the face of the deepening recession. Banks note that the cost of wholesale funds sourced internationally and the cost of domestic deposits have both increased.... The New Zealand public has to date not had sufficient opportunity to see these arguments played out in the public domain, nor had access to the data that would allow them to draw their own conclusions. There is a significant public interest in establishing whether or not OCR cuts have been unreasonably withheld by the banking sector or whether this reflects reasonable increases in the banks' own costs." (1)

All The Snakes Together

The Parliamentary Inquiry focused on the role, not only of the individual banks, but on the banking system and its effect on the wider economy. The Council of Trade Unions (CTU) in its submission to the Inquiry noted the effect and influence that banks and the banking system had:

"... not only ... on the cost of housing through mortgages, on the cost of credit to our members, and the cost and availability of business finance enabling investment and continuity of business, but [they] also ha[ve] a critical effect on macro economic variables including the exchange rate, inflation and growth in the economy. In addition the banking sector is a large employer and as a business its profits are significant to both the New Zealand tax system and to our international current account balance." (2)

The CTU's submission was typical of a number of other submissions in terms of the themes that it went on to outline. As the Report of the Inquiry noted in its Introduction:

"A striking feature of the submissions from quite diverse organisations was

the high degree of agreement on the key issues.” (3)

The conclusions of the Inquiry were that despite the lower interest rates caused by the global recession, the major banks had not passed on the full impact of the OCR cuts into short term interest rates which they charged to their customers. (4)

As the Inquiry noted in its findings:

“... from the March quarter of 2008 to the June quarter of 2009 the OCR was lowered by 575 basis points. Over the same period, the floating rate (weighted average) fell only 408 basis points, the floating rate for new customers 415 basis points and the fixed rate average 61 basis points. If we allow for an increase in the costs of overseas borrowing of approximately 100 points, which would apply in particular to the floating rates, an unexplained remainder results of around 60 to 70 basis points (floating rate 67 and 60 for the floating rate for new customers).” (5)

The Inquiry’s findings were in line with the comments of Reserve Bank Governor, Alan Bollard, who had observed that the floating interest rates offered by banks were too high in comparison to the OCR.(6) Simply, the banks were making lots of money off their customers in interest during an economic recession which was driving some people to the wall.(7)

The Great Tax Dodge

At the same time as the Inquiry, the Big Four banks were also involved in defending their ‘honour’ against allegations of tax avoidance. The Inland Revenue Department (IRD) alleged that all four of the major trading banks had avoided more than \$2 billion worth of tax by using structured financial transactions which involved the banks giving loss making loans to foreign financial institutions between 1998 and 2002.(8)

The banks contested the IRD judgment with the BNZ and Westpac individually taking the IRD to Court. In both cases, the High Court found in favour of the Commissioner of Inland Revenue. The IRD was awarded \$961 million against Westpac, in a judgement in which the bank was revealed to have been choosing its own tax rate.(9) The IRD was also awarded \$654 million against the BNZ in July 2009, in a case involving transactions, which as Justice Wild commented appeared to have “no commercial rationale, logic or purpose for the BNZ.”(10) The result of these judgements was to send the Banks into fits, with both the BNZ and Westpac appealing their respective judgements and the others undertaking legal action.(11)

However, on 23 December 2009, an out of court settlement involving all four banks and IRD was reached. In what was described as the largest commercial settlement in New Zealand history, all four banks agreed to pay IRD 80% of the amounts in dispute. The settlement was estimated to have cost the banks more than \$2.2 billion. All court action and appeals on the basis of the tax avoidance issue were withdrawn.(12) It is worth noting that the unpaid 20% of avoided tax came to \$550 million, plus IRD had spent \$39 million on the cases – meaning that the whole business cost taxpayers \$589 million. Plus, by settling out of court, the Big Four banks avoided the risk of penalties of anything from 20% to 100% on top of the outstanding tax, which could have potentially cost them hundreds of millions more.

The Disquiet Of The Masses

In the aftermath of the Inquiry and the settlement, public disquiet about the actions of the four big banks remains very high. This unease is apparently shared by New Zealand’s productive sectors. As political analyst Colin Espiner noted, 86% of the members of the Manufacturing and Exporters Associations supported an inquiry into the financial sector. Whether this disquiet is the result of the fixed or floating interest rates being charged by the banks to homeowners or ordinary lenders; or in the various practices of the banks or in the monopolistic position that the largest four trading banks now occupy, courtesy of a deregulated financial sector, people are, nonetheless, upset. It is, therefore, quite a feat for one of the major banks to distinguish itself. However, such an achievement belongs to ANZ.

ANZ

“Making promises is not enough, it’s keeping them that counts”. ANZ Customer Charter Annual Report 2008, page 2.

ANZ is listed as the fourth largest bank in Australia, behind the Commonwealth Bank (which owns ASB), the National Australia Bank and Westpac. It is, due to its acquisition of the National Bank from Lloyds in 2004, the largest banking entity in New Zealand. It is also the leading banking entity in the South Pacific and the largest Australian bank in Asia.(13) ANZ also has alliances with, or shares in, a number of other firms, banks and investment and finance companies, particularly in Asia, these have substantially increased its financial dominance in this area.

In March 2005, it formed a strategic alliance with Vietnam’s Sacombank, which saw ANZ acquire 10% of Sacombank for \$27 million. Since that date ANZ has established ten outlets in Vietnam, the most recent of these outlets being established in Ho Chi Minh City.(14)

The bank has also followed a similar alliance strategy in other Asian countries. In China, it brought a 20% share in Tianjin City Commercial Bank in July 2006 and negotiated a similar deal with Shanghai Rural Commercial Bank.⁽¹⁵⁾

All of this is in addition to its recent purchase of the Royal Bank of Scotland's (RBS) retail, wealth and commercial business in Vietnam and in Asia for \$US550 million which was completed in August 2009. The purchase of RBS plc's groups gained the ANZ:

"... [a] ...portfolio of businesses [which] represents 54 branches, \$US3.2 billion (\$A4 billion) in loans and \$US\$7.1 billion (\$A8.9 billion) in deposits, serving a client base of approximately two million affluent and emerging affluent clients."⁽¹⁶⁾

The bank subsequently gained the ownership of "RBS businesses in Singapore, Taiwan, Indonesia, Hong Kong, Philippines and Vietnam" and allowed the bank to "accelerate its 'super regional strategy'.⁽¹⁷⁾

ANZ And ING Group – Simple And Transparent

The most commonly (and popularly) mentioned acquisition of ANZ has been that of ING. ANZ, as part of its overall strategy, had been looking at means by which it could diversify and expand its interests in the commercial and financial sectors. In 2002, ANZ and the Netherlands-based ING Group had merged their Australian and New Zealand insurance and wealth management operations, with the result that ANZ had acquired a 49% stake in ING. With ING's decision to disinvest in this sector (back to basics) and ANZ's decision to increase its investment, ANZ then proceeded to buy out a controlling interest (51%) in ING New Zealand for €1.1 billion in September 2009. This purchase made an estimated net profit of €300 million for the ING group.⁽¹⁸⁾

In the aftermath of the purchase, ANZ's Chief Executive Officer, Mike Smith, commented that the principal aim of the ING takeover was the continued growth of a "successful super regional bank." Smith then went on to elaborate that:

".... [ANZ is] bullish on Australia and [it] would continue to look for growth opportunities within [its] retail, commercial and wealth businesses.

"Today's announcement, that we have signed an agreement with ING to acquire its 51% shareholding in the ANZ-ING joint ventures is another step in achieving our objective.

"It brings certainty to our wealth management position through full ownership of what is an established specialist wealth management and

protection business with a 120-year history in Australia."⁽¹⁹⁾

ANZ – Simple And Transparent Everyday Banking?

ANZ differentiated itself from the other Big Four trading banks operating in New Zealand on two key issues in 2009. Namely, the ANZ's gross interest margin (i.e. this is the difference between how much a bank pays for money and how much it lends it out for); and its floating mortgage rates.

Sunday Star Times Business journalist Tim Hunter revealed in an article, in May 2009, that the ANZ had the highest margin of the Big Four. He noted that the margin for the 2009 March quarter was 35.4%, compared to Westpac's 31% and the BNZ's 30.3%. When the margin was compared to the September 2008 quarter, it was revealed that ANZ had the largest margin increase of all the banks. ANZ's gross interest margin had increased by 12.7% between the two surveys, in comparison to an increase of 6% for the BNZ and 5.6% for Westpac.

The other area in which ANZ also differentiated itself was in the vexed area of mortgages, particularly floating mortgage rates. Here again ANZ outstripped its competitors with Beck Vass revealing in a *Weekend Herald* article of 17 October 2009 that the ANZ with a floating mortgage rate of 6.06% was higher than that of Westpac with 5.69% and the BNZ with 5.59%.⁽²⁰⁾ This was in a year (2009) when floating mortgage rates well exceeded the Reserve Bank's reductions in the Official Cash Rate (OCR).⁽²¹⁾

The ING Fiasco - Simple And Transparent Everyday Investing?

As mentioned previously, it was the ANZ/ING relationship which proved to be one of the more popularly commented upon events in 2008 and 2009. It also proved to be the largest fiasco for the bank. More than 13,000 investors had invested in two funds operated by ING. These were a Regular Income Fund (RIF) and a Diversified Yield Fund (DYF). 2,700 of these investors had been ANZ customers. While it could be argued that in any capitalist investment if you play the game and lose, then it is your loss, it transpired that ANZ had urged these (mostly small) investors, who were also mostly elderly, to put their money into these funds on the basis that they were lower risk, but higher yielding alternatives to safe term deposits.

Both funds originally had over \$500 million invested in them. Investors brought into the funds for \$1 (DYF) and \$1.13 (RIF) per unit. However, the funds were based on risky investments that were exposed by the global financial crisis and by March 2008, units in the

funds had collapsed to 81 cents (DYF) and 70.5 cents (RIF). Nervous investors also found to their alarm that their funds had been frozen. Unable to get out of the funds, investors could then only watch as the worth of the funds continued to tumble, eventually ending up at 22.7 cents (DYF) and 19.2 cents (RIF) a year later. (22)

To quote from the nomination of ANZ for the Roger Award: "And what did these two ING funds invest in? Why, nothing less than collateralised debt obligations (CDOs) and an offshoot, collateralised loan obligations (CLOs). CDOs, in particular, were at the very heart of the 2008/09 meltdown of the global financial system, because of their insanely risky nature. So, thousands of ordinary New Zealanders, trusting the advice of financial professionals (and the transnational rating agencies, who talked up these worthless investments), lost a total of several hundred million dollars. ... The sort of customers that ANZ targeted were the likes of a middle aged son who was persuaded to invest the life savings of his 90 year old, senile, institutionalised mother. All gone, as is his inheritance".

Furious investors alleged that ANZ had misled them over the funds, claims that ANZ denied. However letters and documents from ANZ advisors appeared to prove investors' claims that they had been misled. Under intense pressure, ING offered to lend investors 15 cents for each unit they had until the funds could be wound up. This offer was furiously rejected.

A group representing the investors, aptly named the Frozen Funds Group, was formed to contest the actions of ANZ and ING as a result of that offer. As a result of their actions and the subsequent pressure now put on ANZ and ING, a partial settlement offer was made to investors in February 2009. Under the new offer, ANZ and ING offered to buy investors' units for 60 cents (DYF) and 62 cents (RIF). However, acceptance of the offer was conditional on investors taking no legal action in relation to the funds. Further, those investors who came through ANZ were offered the chance to apply for additional compensation, while those investors who did not were not offered the same deal.

Since that time, a number of investors have applied to the Banking Ombudsman's Office for an investigation into the offer and the conduct of both the ANZ and ING. The Office expects to receive up to 300 requests for additional compensation claims, although final numbers would not be known until late February 2010. In addition, the Commerce Commission has also started an investigation into the actions of ING and ANZ in relation to the selling of the funds, with the likelihood of legal action against both if the Commission is convinced that either misled investors. (23)

And, in another twist, it also appears that, like the animals in "Animal Farm", not all the ANZ investors were treated equally – some (it appears), were more equal than others. One of the latest revelations is that the bank apparently warned its wealthiest customers some time previously in relation to investing in the funds. Rob Stock of the *Sunday Star Times* (31/01/10) reported the comments of Auckland manufacturer and property speculator, Bryan Jackson, as stating that he had been warned by an ANZ banking advisor not to invest his money in the funds. The advisor allegedly informed Jackson that the funds were far riskier than term deposits.⁽²⁴⁾ Other wealthy investors were apparently provided with the same information with the result that "the private clients who did invest, all sold their holdings at the urging of their personal bankers around August 2007, well before the funds closed the following year."⁽²⁵⁾ At the same time, ordinary, non-millionaire investors were being told by ANZ banking advisors to 'sit tight'. As the Frozen Funds Group's spokesperson, Gerard Prinsen, ruefully admitted, "it appears that Mum and Dad investors funded the outflow of the millionaire investors."⁽²⁶⁾

ANZ: Handling The Rattlesnake Carefully?

However, the ANZ and the Big Four banks do have their supporters, such as Alasdair Thompson, Chief Executive of the Employers and Manufacturers Association. In the Association's submission to the Banking Inquiry, Mr Thompson noted that while businesses had had concerns with the banks in the past, especially in relation to bank loans to business, these concerns had been overcome after the banks had explained their actions. Mr Thompson implored Inquiry Committee members to "keep their perspective" on this matter and to merely publish their report. This, he stated, "would be as far as we would like you to go."⁽²⁷⁾

Mr Thompson is out of step with the public over this matter. He, and the others of his ilk, obviously sincerely believes the maxim, that what is good for business is good for society. The actions of ANZ (and its sister agencies) demonstrate more than aptly that what is good for the ANZ (and the other banks) is not necessarily good for everyone else.

Footnotes

- 1 Background from Banking Inquiry – A Multi-party Inquiry into New Zealand Banks from <http://issues.co.nz/bankinginquiry/>
- 2 New Zealand Council of Trade Unions. *Submission to the Parliamentary Banking Inquiry*, August 2009, page 2.
- 3 *Report of the Parliamentary Inquiry into the Banking System*, November 2009, page 6.
- 4 “Inquiry finds Banks Failed to Pass on Cuts”, *New Zealand Herald*, 11/11/09.
- 5 *Report of the Parliamentary Inquiry into the Banking System*. November 2009, pages 26-7.
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Appendix

The 2009 Roger Award Finalists – Also Rans

There were a number of finalists who did not make the big three – although not for lack of trying. They and the brief outlines of their skulduggery are found below, listed in alphabetical order.

Infratil

Infratil is a company that has previously been a finalist for the Roger. It is commonly assumed that it is a New Zealand-owned company, but in fact it is not.

Infratil has invested heavily in the transportation arena in New Zealand and elsewhere. Unfortunately for several of New Zealand's principal cities, Infratil is the 100% owner of New Zealand Bus. In 2008, Infratil was a Roger finalist for the manner in which it attempted to intimidate and bully its Wellington bus drivers during wage negotiations (while holding Wellington commuters to ransom). In 2009, it was the turn of Auckland's bus drivers (and Auckland commuters) to experience the 'Infratil experience'.

Despite making an 18% return since its founding, the company refuses to pay its drivers a decent wage. After five fruitless months of negotiation, the unions involved decided to 'work to rule' as a means of ending the stalemate. NZ Bus immediately locked out the drivers, bringing Auckland's buses to a standstill and prompting considerable outrage in the wider community. The Auckland Regional Council waded into the dispute by noting that NZ Bus had broken its contract with the Council by instigating a lockout and denying the public a bus service. It then went on to withhold its daily subsidy to NZ Bus and went on to state that it was examining whether the NZ Bus contract should be terminated.

After more meetings, New Zealand Bus/Infratil was forced to settle.

Newmont Mining

Newmont Mining is an American-owned mining firm which has been responsible for open cast and underground mining near the town of Waihi. The

social and environmental costs of mining are particularly significant in Waihi with a recent report undertaken by Queensland University detailing that Waihi residents live with employment uncertainty, losses in property values (after all, who wants to live next door or on top of a mine?) and physical uncertainty, due to cavities opening up in the ground due to mining, which then proceed to swallow anything around it (in one case, this happened to be a house) For those with a longer memory, cast your minds back 31 years and think of Abbotsford in Dunedin (the suburb that literally slid down a hill).

In addition to the blasting from Newmont's mining creating massive amounts of noise, dust and vibrations, the mining has also produced vast amounts of tailings which contain heavy metal sulphides. These tailings are then transported to an enormous dam at Baxter's Road, which is, in the words of its nominator, going to 'require monitoring in perpetuity' to ascertain the cumulative effects of harmful chemicals and metals leeching into the ground and local waterways.

The Distressed Residents Action Team (DRAT) and former Green MP, Jeanette Fitzsimons, are attempting to negotiate compensation for local families caught up in this "House of Ussher" situation.

Newmont is one of the industries that are set to reap the benefits from the proposed opening up of the conservation estate proposed by the Government.

Ryman Healthcare

Rymans Healthcare has been nominated previously for a Roger. Despite its' contentions (and the naming of its retirement villages after New Zealand icons), it is a foreign-owned transnational. Ryman is typical of the new trend in long term care for New Zealand's elderly, in which large corporations fight it out for the elderly dollar. Ryman makes its money though through real estate, principally the sale of 'licences to occupy' to those in independent accommodation. In 2008, the company's Annual Report reported a 22% increase in its profit and had "exceeded [its] own medium term

target of 15% growth in underlying earnings for the 6th consecutive year...”

One would think that with all that money that Rymans is making then it would be a jewel in the crown for elderly care – well, apparently not. Rymans, has a poor reputation in terms of its care for its elderly residents. Anecdotal evidence of family and resident unhappiness is considerable. The Edmund Hillary Home in Auckland was subject to a number of complaints which became public. *Consumer* magazine in August 2009 ran an article titled, “Rest Home Roulette” which claimed that the Ministry of Health had investigated over 40 rest homes over a two year period, but that Edmund Hillary was one of only two facilities that have been named and the complaints against them detailed. The result was that Rymans was put on notice to remedy its outstanding problems (‘significant issues’) which related to pain management, medication, resident weight loss and admissions. By May 2009, Rymans had met all but one of these conditions.

Rymans has also been labelled as a poor employer by the Service and Food Workers Union with the union detailing a list of complaints and grievances against the company. The union was denied a presence at Rymans despite numerous attempts over the past decade. Union delegates have been subject to intimidation and the company refuses to have a collective agreement.

Rymans would be better off naming a retirement house after a person they really obviously take after, *The Simpsons’* Montgomery Burns.

Transpacific Industries

Anyone living in Auckland and especially on Waiheke Island would be aware of Transpacific Industries. It took over the local rubbish collection from ‘Clear Stream’, which was a locally owned not for profit initiative which had significant local support and had achieved 42% diversion from the landfill to recycling. However, Auckland City Council, in what was a distinctly controversial, questionable as well as ill consulted decision, decided to award the new contract to Transpacific Industry, an Australian-owned transnational (which is why the Auckland City Council and its officials won the 2009 Accomplice Award). Transpacific has reversed the progressive recycling policies pursued by its predecessor and is simply trucking waste into Auckland and then dumping most of the rubbish in the landfill.

Not only that but it has cost local employment in Northland, with one of Kaikohe’s biggest businesses being forced to lay off workers. Apparently, Transpacific has only hired back approximately 30% of the workers laid off. Even the financial benefits of the

tender are questionable with the loss of hundreds of thousands of dollars in the longer term for perceived short term savings.

Transpacific’s feelings were apparently hurt when it was labelled as an Australian-owned company with its Managing Director sobbing in the local media that, “... [Transpacific]... has 80 branches and 2,000 employees in New Zealand ... and thousands of New Zealand shareholders.” But then again, Microsoft also has lots of employees in New Zealand and it probably has thousands of New Zealand shareholders too...

Financial Analysis ANZ

Sue Newberry

The ANZ Banking Group operates in New Zealand through its wholly owned subsidiary ANZ Holdings (New Zealand) Ltd. This subsidiary operates both ANZ and National Bank activities. In Australia, the ANZ is not the largest of the Australian banks, but in New Zealand its operations are larger than those of the other Australian banks. According to the ANZ's Website: "In one way or another, ANZ in New Zealand touches the lives of almost every New Zealander".

In recent years the ANZ's New Zealand activities have contributed roughly 25% to the ANZ Banking Group's reported profits of \$A3.688 billion in 2006, \$A4.180 billion in 2007, and \$A3.319 billion in 2008. In 2009, when the ANZ Banking Group reported a profit of \$A2.943 billion, the contribution from New Zealand was just 5% because of provisions for additional tax in New Zealand following the recent court decisions, provisions for costs to meet the up to 62c in the dollar pay out of the ING frozen investment funds, and provisions for possible losses on loans made.

While the ANZ Banking Group's annual reports published in Australia provide an overview of the whole company, they contain little to assist any analysis of the ANZ's activities in New Zealand. For that reason, this financial analysis focuses on the annual financial reports of ANZ Holdings (New Zealand) Ltd which are available to the public via the Companies Office Website. The ANZ Banking Group's 2009 *Annual Report* was published in Australia in early November 2009, and this included the 2009 results of ANZ Holdings (New Zealand) Ltd. At the time of writing this financial analysis (mid-February 2010), the 2009 financial reports for ANZ Holdings (New Zealand) Ltd had not been filed with the Companies Office. This financial analysis of the ANZ's activities in New Zealand is therefore limited to the financial reports provided for the New Zealand company up to 2008.

ANZ Holdings (New Zealand) Ltd

ANZ Holdings (New Zealand) Ltd is a wholly owned subsidiary of the ANZ Banking Group. The financial reports of any wholly owned subsidiary should always be read with caution because transactions and arrangements between a subsidiary and its parent company may be structured to produce particular desired outcomes. The ANZ's New Zealand income statements are summarised in Table 1 using +, -, and = signs to show how the numbers should be interpreted reading down the column for each year. These figures (in NZ\$) provide an overview of the ANZ's reported financial results in New Zealand.

Table 1: ANZ Holdings (New Zealand) Ltd: Income Statement

	2006 \$ millions	2007 \$ millions	2008 \$ millions
Interest income	+ 7,195	+ 8,296	+ 9,858
Interest expense	- 5,246	- 6,239	- 7,829
Net interest income (subtotal)	= 1,949	= 2,057	= 2,029
Other income	+ 801	+ 862	+ 1,126
ING proposal: frozen funds			- 161
Expenses and other (incl tax)	- 1,799	- 1,880	- 2,117
Profit after tax	= 951	= 1,039	= 877

The ANZ regards its activities as occurring across three main business segments: retail banking; relationship banking; and institutional; plus an "other" segment which largely relates to the ANZ's treasury function. The retail segment includes individuals and small businesses with turnover below \$5 million, plus private banking services to very wealthy individuals. Relationship banking serves rural and larger commercial and corporate customers, while the institutional segment offers more specialised services to large customers seeking more "sophisticated product and structuring solutions." According to the ANZ Banking Group's 2008 *Corporate Social Responsibility Report* published in Australia,

the ANZ had recently restructured “from a product-focused approach to a business that is organised around key customer segments – retail, commercial and institutional.”¹

The judges’ comments about the ANZ make particular mention of the ANZ’s floating interest rate charges on mortgages and the ING frozen funds fiasco. Both of these relate to the retail banking segment. This retail banking segment contributes at least 50% of ANZ’s annual revenues and profits in New Zealand. Clearly it is very important to the ANZ’s overall results in New Zealand and the ANZ should be concerned if its retail customers are unhappy with its services. The ANZ Banking Group’s *Corporate Social Responsibility Reports* reveal the results of the ANZ’s surveys of retail customer satisfaction. In New Zealand, retail customer satisfaction with the ANZ was 59% in 2006, rose to 64% in each of 2007 and 2008, and fell to 62% in 2009. These figures contrast with the survey results from the ANZ’s Australian retail customer base which have been consistently around 77%.

This financial analysis examines first the ANZ’s interest income, and then the ANZ’s joint venture with ING and the frozen funds fiasco.

Interest Rate Charges

The ANZ has been criticised in New Zealand for charging the highest floating interest rates on mortgages and for the low reductions in interest rate charged when the Reserve Bank’s official cash rate was reduced. As is apparent from Table 1, most of the ANZ’s profit comes from interest. Table 2 reproduces the first three lines of the summarised income statement to show interest income, interest expense and net interest income for the ANZ’s overall activities in New Zealand. Net interest income may be thought of as the equivalent of a gross profit. The ANZ’s interest income needs to be higher than its interest expense so it can earn net interest income.

Table 2: ANZ Holdings (New Zealand) Ltd: Interest Income

	2006 \$ millions	2007 \$ millions	2008 \$ millions
Interest income	+ 7,195	+ 8,296	+ 9,858
Interest expense	- 5,246	- 6,239	- 7,829
Net interest income	= 1,949	= 2,057	= 2,029
Net interest income as percentage of interest income (gross profit)	27%	25%	21%

The percentage “gross profit” has fallen over these three years from 27% in 2006, to 25% in 2007, and to 21% in 2008. That these gross profit percentages should fall despite the concerns about high floating mortgage rate charges and low reductions in interest rate charges when the Reserve Bank official cash rate reduced suggests other factors affect these figures. Closer examination reveals that the interest income includes gains to the ANZ from the changing values of its own financial investments, and the interest expenses include losses to the ANZ from the changing values of its own financial investments. In 2008, these gains and losses were identified separately for the first time. The gains included in interest income were \$728 million while the losses included in interest expense were \$997 million. This means the net interest income includes losses of \$269 million arising from the changing values of the ANZ’s financial investments. Continuing to charge bank customers relatively high interest rates as the Official Cash Rate falls and bank deposit rates fall too would help the ANZ to offset some of these losses. The banking group’s 2008 *Corporate Social Responsibility Report* confirms the ANZ’s funding costs are not “tied solely to the [Reserve Bank’s] Official Cash Rate. The rates paid on customer deposits have moved in line with the official rate but this is only one source of funding for Australian banks; it is not sufficient to meet the demands of home loan borrowers. We also rely on ‘wholesale’ funds sourced from international and domestic debt markets for the difference, funding which has become considerably more expensive since the global financial crisis began. The interest rate changes recovered part of the increased costs we faced from ‘wholesale’ funding rather than customer sources.”² In doing this, the ANZ seems to be striving to meet its “first responsibility [which] is to remain profitable for our shareholders and help our business and retail customers adjust to the changing economic conditions....”³

Closer analysis of the ANZ’s interest income and net interest income shows how the ANZ “helps” its business and retail customers to adjust. Table 3 analyses interest income and net interest income across the ANZ’s business segments for each of the three years from 2006 to 2008.

Table 3: ANZ Holdings (New Zealand) Ltd: Interest Income by Business Segment

	Retail banking \$ millions	Relationship banking \$ millions	Institutional \$ millions	Other \$ millions	Total \$ millions
2006					
Interest Income	\$3,634 m	\$2,044 m	\$1,370 m	\$147 m	\$7,195 m
Net Interest Income	\$1,193m	\$525 m	\$241 m	-\$10 m	\$1,949 m
Net interest inc as percentage of interest inc (gross profit)	33%	26%	18%		27%
2007					
Interest Income	\$4,200 m	\$2,465 m	\$1,630 m	\$1 m	\$8,296 m
Net Interest Income	\$1,296 m	\$588 m	\$164 m	\$9 m	\$2,057
Net interest inc as percentage of interest inc (gross profit)	31%	24%	10%		25%
2008					
Interest Income	\$4,945 m	\$3,002 m	\$1,875 m	\$36 m	\$9,858 m
Net Interest Income	\$1,315 m	\$639 m	\$125 m	-\$50 m	\$2,029 m
Net interest inc as percentage of interest inc (gross profit)	27%	21%	7%		21%

This business segment analysis shows that the net interest from the retail banking segment subsidises that from the ANZ's other business segments. While the percentage "gross profit" has fallen for all segments over these three years, the ANZ's gross profit from the retail segment is always significantly higher than for the other business segments. Of course retail profits would always be expected to be higher in dollar terms than for the other segments, but the analysis here, which shows that it is also significantly higher in percentage terms, may help with understanding why the judges' concerns seem to relate largely to this retail sector.

Table 4 takes a slightly different angle on this by comparing interest income and net interest income for the retail banking segment with the ANZ's total interest income and total net interest income.

Table 4: ANZ Holdings (New Zealand) Ltd: Interest Income by Business Segment

	Retail banking \$millions	Total ANZ \$ million	Retail banking contribution to totals
2006			
Interest Income	\$3,634 m	\$7,195 m	51%
Net Interest Income	\$1,193m	\$1,949 m	61%
2007			
Interest Income	\$4,200 m	\$8,296 m	51%
Net Interest Income	\$1,296 m	\$2,057	63%
2008			
Interest Income	\$4,945 m	\$9,858 m	50%
Net Interest Income	\$1,315 m	\$2,029 m	65%

This comparison shows that the retail banking segment has contributed consistently around 51% of the ANZ's total interest income over the last few years, while at the net interest income level it has contributed an increasing proportion of the ANZ's total net interest income (61% of the ANZ's net interest income in 2006, 63% in 2007, and

65% in 2008). The increasing proportion of net interest income (from 61% to 65%) suggests increasing use of the retail banking sector to subsidise the other sectors. The ANZ could become increasingly vulnerable to the mood of its retail banking customers and should pay close attention to the relatively low levels of retail customer satisfaction in New Zealand. The ANZ might prefer to maintain its own profitability and “help” its customer base to “adjust” to these efforts, but if a significant portion of that customer base were to go elsewhere the ANZ itself would face additional financial challenges.

The ING Frozen Funds Fiasco

The ANZ’s “product-focused” approach to its activities in key business segments seems to have been at the heart of the ING frozen funds fiasco. The products the ANZ promoted to its retail business segment customers included managed funds investments which were presented as viable alternatives to term deposits. These managed funds products included some designed and managed through a joint venture between the ANZ and the Dutch company ING Insurance International. Among these managed funds are the ING’s Regular Income Fund and Diversified Yield Fund both of which invested heavily in sophisticated collateralised debt obligations (CDOs). The dubious nature of CDOs became the subject of widespread debate in late 2007/early 2008 and both of these managed funds were frozen in March 2008 thus locking up more than \$400 million of investors’ money.

Investment in these ING funds had been promoted to the ANZ’s retail banking business segment which comprises both “mum and dad” type customers as well as wealthy “private banking” customers. Recent comment suggests that customers in each of these sub-segments were advised differently with the result these two funds were promoted most heavily to the “mum and dad” investors. Further, that recent comment suggests the different advice was such that the private banking customers (but not the “mum and dad” customers) who did invest in these funds seemed to have got out before the funds were frozen. Following an outcry, an up to 62c in the dollar payout was offered on a take it or leave it basis provided that those accepting the payout offer waived their right to take legal action. Shortly after the 62c in the dollar offer closed, the ANZ announced it was buying out the joint venture. This analysis examines how the joint venture came about and how it was portrayed in ANZ Holdings (New Zealand) Ltd’s financial reports.

The ANZ entered into a joint venture with ING Insurance International on 30 September 2005, the last day of the ANZ’s 2005 financial year. The process leading to this joint venture involved the ANZ selling two of its subsidiaries (NBNZ Life Insurance Ltd and NBNZ Investment Services Ltd) to the joint venture for \$158 million and then investing \$145 million to obtain a 49% interest in that joint venture. In the ANZ’s financial reports, the establishment of the joint venture made little difference to the ANZ’s reported total assets.

The financial statements of the joint venture, ING (New Zealand) Holdings Ltd, show that ING (New Zealand) Holdings Ltd paid \$333 million to purchase some investment and insurance business activities from both the ANZ and ING. Of this \$333 million purchase price, \$219 million (66%) was reported as acquired goodwill, thus suggesting the perceived value in the investment was related predominantly to anticipated future profits, rather than to the values of the specific assets and liabilities acquired in the deal. The deal leading to the establishment of this joint venture seems curious and more complicated than this summary implies, with the arrangements running through subsidiary and associate companies of the joint venture. It may warrant further investigation to learn just what was going on and what was achieved. This analysis concentrates on the joint venture’s activities after its establishment and how it was reflected in ANZ Holdings (New Zealand) Ltd’s financial reports.

The joint venture company, ING (New Zealand) Holdings Ltd was active from 1 October 2005, its main business activities being funds management and life insurance from which it earns funds management fee revenue and insurance premium income. Table 5 summarises ING (New Zealand) Holdings Ltd’s reported revenues, profits before tax, and profits after tax from the time of its establishment through to 31 December 2008. The table presents this information by business segments.

Table 5: ING (New Zealand) Holdings Ltd

	Funds management \$ millions	Life Insurance \$ millions	Other \$ millions	Total \$ millions
2005 (3 months)				
Revenue	21	22	- 5	38
Profit before tax				13
Profit after tax	2	6	4	5
2006				
Revenue	61	122		183
Profit before tax				28
Profit after tax	9	18		27
2007				
Revenue	68	122		190
Profit before tax				35
Profit after tax	9	27		36
2008				
Revenue	44	130		173
Profit before tax				13
Profit after tax	-13	39		26

ING (New Zealand) Holdings Ltd designed and managed investment and insurance products, and the ANZ helped to market and distribute these products as part of its retail banking activities. In doing so, the ANZ earned fees and commissions from its joint venture. These fees and commissions were included in the ANZ's reported profits for its retail banking segment thus, perhaps, explaining the ANZ's enthusiasm for selling these managed investment and insurance products to its retail customers. While there has been widespread comment about pressures on bank staff to promote investment products to customers, little has been said about the commissions paid to the bank for selling these products, and whether the bank's customers being advised to so invest were informed about those commissions.

In each of the years 2006 to 2008, the ANZ reported earning from the joint venture \$23 million of fees and commissions. The idea of commissions suggests that the fees and commissions earned would vary with the investments directed into the joint venture's products by the ANZ but the ANZ's financial reports show the same figure each year (\$23 million). The reason for this is not apparent.

In addition to receiving the commission and fee revenue the ANZ was entitled to a 49% share of ING (New Zealand) Holdings Ltd's profits. Table 5 shows that ING (New Zealand) Holdings Ltd's profits varied each year, but in its financial reports the ANZ reported its share of profits at the same amount each year, that is, \$22 million. The reason for that is not apparent.

This \$22 million share of profit in the joint venture was not paid to the ANZ. Rather, the ANZ added it to the amount reported as the investment, that amount appearing as an asset in the ANZ's balance sheet. By 30 September 2008 the initial investment asset had increased from \$145 million in 2005 to \$212 million. At that point, the ANZ still viewed its investment in the joint venture as having held its value – there was no write-down of the asset.

Clearly, the ANZ was well aware of the problems that had emerged with the frozen funds. The 2008 financial statements of both ANZ Holdings (New Zealand) Ltd (for the year ended 30 September 2008) and ING (New Zealand) Holdings Ltd (for the year ended 31 December 2008) refer to the frozen funds. Neither set of financial statements had been finalised until late February 2009, by which time the proposed settlement had been decided upon, and the likely cost of the settlement ascertained. Both reports contained comment about the proposed settlement, these comments revealing that the proposed settlement was to be funded, not by ING (New Zealand) Holdings Ltd but, rather by the two shareholders in the joint venture, ANZ Holdings (New Zealand) Ltd and ING Insurance International. Each of these comments is reproduced below

ING (New Zealand) Holdings Ltd

Under the heading, "Global Market Conditions": "...On 25 February 2009 a proposal to unit holders of the Diversified Yield Fund and the Regular Income Fund was announced. The offer is intended to be put before unit holders in June 2009. ING (New Zealand) Holdings Ltd's shareholders have committed to fund the offer as such, no impairment and/or liability has been recognised in the accounts."⁴

ANZ Holdings (New Zealand) Ltd

Under the heading, "ING New Zealand Funds": "There has been recent publicity in New Zealand regarding the suspension of trading in the ING Diversified Yield Fund and the ING Regular Income Fund ("the funds") on 13 March 2008 due to deterioration in the liquidity and credit markets. These funds are managed by the joint venture partner ING (New Zealand) Ltd. These funds were sold to ANZ National customers. On 25 February 2009, ING (New Zealand) Ltd announced that investors will be receiving a proposal which allows them either a guaranteed value in five years time or the ability to exit the investment immediately for a cash amount. The estimated cost of this proposal to the Banking Group is approximately \$161 million. These financial statements include an adjustment for this amount. The ultimate cost to the Banking Group will depend on the final value of the units, recoveries under insurance cover and approval of the offer by unit holders."⁵

In their 2008 financial statements, neither ANZ Holdings (New Zealand) Ltd nor ING (New Zealand) Holdings Ltd reported or acknowledged any fall in value of their investment product marketing base. In other words, at that point, although the problem with the ING frozen funds was recognised as a problem requiring attention and a payout, the underlying ideas about managed funds and the means of promoting them was still perceived as valuable and likely to be profitable in the future. The ANZ took over the joint venture during the 2009 financial year and it will not be possible to see the financial ramifications of that and the attributed values of the investment until the ANZ Holdings (New Zealand) Ltd and ING (New Zealand) Holdings Ltd financial statements for 2009 are released on the Companies Office Website. In the meantime, a few quotes from the ANZ Banking Group's 2008 *Corporate Social Responsibility Report* suggest the ANZ is aware that its customers have some concerns about the ANZ's activities:

- "The lending practices which contributed to the US sub-prime crisis remind us that we must ensure our products are responsibly sold and easy to understand."⁶
- "Customers are ... demanding simplicity. The consistent feedback across all ages, incomes and geographies was that customers value simple, uncomplicated products and services that respond to their individual needs."⁷
- "This year also held some unique challenges for ANZ requiring us to translate commitments to responsible business practices into business reality."⁸

Whether these comments will translate into responsible business practices remains to be seen. In the past, bankers have been regarded as trusted advisers but their move into promoting investment products on which they earn commissions leads them into the same conflicts of interest known to be facing financial advisers. The banks' financial interests are benefited by requiring staff to promote products on which the bank earns commissions and, possibly, on which the bank staff also earn bonuses. There is no suggestion in the ANZ's financial statements that it will stop promoting investment products to its customers, only that maybe it will reconsider the promotion of such complex investment products which, in this case, were dodgy. The ANZ's retail customers who invested in the ING frozen funds on ANZ advice have paid heavily for the ANZ to learn this lesson. Of course, promoting simpler dodgy investment products may well remain a possibility for the ANZ. If the ING frozen funds fiasco tells us nothing else, it should tell us loud and clear that the days of regarding bankers as trusted advisers are over.

Sue Newberry is Associate Professor of Accounting at the University of Sydney.

¹ ANZ Banking Group, *Corporate Social Responsibility Report*, 2008, p.10.

² ANZ Banking Group, *Corporate Social Responsibility Report*, 2008, p. 13.

³ ANZ Banking Group, *Corporate Social Responsibility Report*, 2008, p. 3.

⁴ ING (New Zealand) Holdings Ltd, Annual Financial statements for the year ended 31 December 2008, Note 34.

⁵ ANZ Holdings (New Zealand) Ltd, Annual Financial Statements for the year ended 30 September 2008, Note 44.

⁶ ANZ Banking Group, *Corporate Social Responsibility Report*, 2008, p.15

⁷ ANZ Banking Group, *Corporate Social Responsibility Report*, 2008, p.15

⁸ ANZ Banking Group, *Corporate Social Responsibility Report*, 2008, p.3

