

**Submission of specific instance under the
OECD Guidelines for Multinational Enterprises
to the Australian National Contact Point**

concerning:

**Facilitation by the Australia and New Zealand Banking Group
Limited of illegal and environmentally and socially destructive
forestry operations in Papua New Guinea**

August 23, 2006

Submitted by:

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Submitted to:

**The Australian National Contact Point
c/- The Foreign Investment Review Board
The Treasury
Langton Crescent
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Submission to the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises concerning Australia and New Zealand Banking Group Limited

This is a specific instance raised under the OECD Guidelines for Multinational Enterprises (the “Guidelines”) regarding certain conduct of the Australia and New Zealand Banking Group Limited (“ANZ”) in Papua New Guinea (“PNG”).

The parties raising this specific instance are:

- the Australian Conservation Foundation (“ACF”), one of Australia’s leading national not-for-profit environmental advocacy organisations;
- the Centre for Environmental Law and Community Rights (“CELCOR”), a not-for-profit community organisation based in Port Moresby, PNG, dedicated to promoting and defending environmental and customary rights;
- the Environmental Law Centre (“ELC”), a not for profit organization based in Port Moresby, PNG, that provides community legal training, advising and litigation support to landowners on environmental and human right issues;
- the Human Rights Council of Australia (“HRCA”), an Australian not-for-profit organization dedicated to protecting and promoting human rights; and
- the PNG Eco-Forestry Forum (“EFF”), a not-for-profit incorporated association based in Port Moresby, PNG, that promotes integrated rural community development and sustainable resource use through a viable and sustainable eco-forestry industry.

More details about each of these parties are set out in Part IV.

Summary of specific instance

This specific instance concerns ANZ’s support, through financing and provision of other financial services, of forestry businesses in Papua New Guinea that entail systematic serious human rights abuses, environmentally devastating logging practices and repeated, serious illegal conduct. By actively facilitating and supporting these businesses, ANZ is complicit in the environmental and social damage they are causing in PNG.

In particular, ANZ has acknowledged a long-standing commercial relationship with Malaysian forestry company Rimbunan Hijau (“RH”). This relationship includes substantial foreign exchange dealings and provision of bank guarantees, among other financial services.

Rimbunan Hijau’s PNG operations are notorious for their disregard of environmental sustainability, human rights, labour standards, and legal requirements. Its practices include corrupt and/or illegal acquisition of logging concessions and extensions, unsustainable exploitation of natural forests, intimidation and violence against local

landowners and protestors, regular violations of labour laws and safety standards, and other abusive behaviour.

ANZ's continuing material support for RH's operations breaches a number of the Guidelines, including:

- Article II, Section 1 – obligation to contribute to economic, social and environmental progress. By facilitating RH's operations, ANZ is detracting from rather than contributing to these goals.
- Article II, Section 2 – respect for human rights. By failing to take basic steps to ensure that its clients respect human rights, ANZ becomes closely associated with violations of those rights.
- Article II, Section 10 – encouragement of compliance by business partners. While ANZ has discussed community concerns with RH on these issues, this engagement has not demonstrated positive outcomes and is likely to be ineffective, as it does not occur within a framework of minimum environmental and human rights standards required as a condition for doing business with the bank.
- Article V, Section 1 – appropriate environmental management. ANZ has not adopted a system of environmental management appropriate to its business, in that it has not adopted forestry and human rights policies that set acceptable minimum standards for client engagement, in contrast to a number of other multinational financial institutions.

The parties to this specific instance seek commitments from ANZ to ensure its compliance with the Guidelines, including:

- The adoption of meaningful forestry and human rights policies that set basic standards for ANZ clients across all business operations, in accordance with international best practice for financial institutions;
- Immediate disengagement from socially and environmentally destructive forestry operations in PNG;
- Commitment to explore and actively foster community-based forestry operations conducted on a sustainable basis in PNG;
- Commitment to advocate for positive solutions to forestry and human rights issues in Australia and in PNG.

The parties recognise ANZ has made significant advances in recent years in recognising the importance of some environmental and social concerns, and has shown positive leadership in some areas, such as financial literacy in Australia. It is less clear that ANZ has a process for taking into account the human rights impact of its operations and funding relationships. The parties hope that this progress can be accelerated through the OECD specific instance process and extended to ANZ's operations in PNG, and look forward to working with ANZ and the Australian National Contact Point to resolve these concerns in a constructive manner.

Part I - Factual circumstances

A. ANZ's operations in Papua New Guinea

The Australia and New Zealand Banking Group Limited is a public corporation headquartered in Australia and listed on the Australian Stock Exchange. With over \$9 billion in income and over \$3 billion in profits in 2005, ANZ is among Australia's 5 largest companies.

ANZ's operations are global, but with a primary focus on Australia, New Zealand, and the Pacific Rim. ANZ is the leading bank and one of the largest employers in the South Pacific region.¹ It claims first or second position in all 10 of the Pacific jurisdictions in which it operates, including PNG.²

There are only four licensed commercial banks in PNG.³ Locally-owned Bank of the South Pacific is the largest due to an extensive retail network, but ANZ and Westpac Bank dominate the institutional and corporate financial services market.⁴ The fourth, Malaysian-headquartered Maybank, maintains a much smaller presence; one recent report suggested that it could cease operations in PNG altogether.⁵

ANZ opened its first branch in PNG in 1953, and expanded through purchases of the PNG subsidiary of Lloyd's Bank in 1990 and that of the Bank of Hawaii in 2001. Today, its PNG operations are conducted through a wholly-owned subsidiary, ANZ Banking Group (PNG) Limited, and encompass nine branches and 22 ATMs, plus internet and telephone banking facilities.⁶ It is poised for significant expansion, with plans for at least two more branches and 16 more ATMs in the near future. ANZ offers a full range of retail and commercial financial services in PNG.

It is fair to say that ANZ is one of two or perhaps three institutions that are capable of fulfilling the banking, foreign exchange, advisory and other financial services needs of a complex, export-oriented multinational business in PNG, such as that of Rimbunan Hijau.

B. ANZ's relationship with Rimbunan Hijau

ANZ has confirmed its commercial relationship with Rimbunan Hijau in PNG, referring to it as a "long-standing ANZ client".⁷ ANZ's commercial dealings with RH group companies in PNG include foreign exchange transactions, bank guarantees, and other financial services, possibly including financing relationships.

The relationship between ANZ and RH goes well beyond the mere provision of occasional transactional services. The two companies are in regular consultation on

¹ ANZ 2005 Concise Annual Report, pages 28-29.

² ANZ 2005 Concise Annual Report, page 19.

³ <http://www.bankpng.gov.pg/financialsystem/index.htm>.

⁴ CM Media Consulting, *Business Advantage: Papua New Guinea*, May 2006, pp. 23-24 (available at <http://www.cmmc.com.au/png.shtml>, visited 7 August 2006).

⁵ CM Media Consulting, *Business Advantage: Papua New Guinea*, May 2006, p. 24 (available at <http://www.cmmc.com.au/png.shtml>, visited 7 August 2006).

⁶ List of ATMs and branches available at <http://www.anz.com/PNG/importantinfo/default.asp>, last visited 7 August 2006

⁷ Australia and New Zealand Banking Group, "Information on ANZ and forestry in Papua New Guinea", 20 January 2006 (Appendix K).

a range of issues, including environmental concerns. ANZ staff have even undertaken site visits to RH field operations.

ANZ perceives that it has some influence over RH, as evidenced by the substantive discussions held by the two companies about a range of issues, including concerns about environmental and social issues. Consultation appears to be a regular feature of a major and profitable commercial relationship between the two companies.

Supporting information

- ANZ has referred to the PNG subsidiary of RH as a “long-standing ANZ client”.⁸ In addition, ANZ’s repeated references in this document to engagement with RH indicate an acceptance by ANZ that it has the capacity to influence RH’s behaviour.
- The same document states that “ANZ representatives ... have undertaken site visits to Rimbunan Hijau operations periodically, and have had open discussions with the company about the concerns raised by environmental groups.”
- ANZ is in regular communication with RH about sustainability concerns. A glimpse of the tenor and level of detail of these communications is given in a recent public relations report commissioned by RH,⁹ which refers to a letter from Mr. Axel Wilhelm, Liaison Manager, Rimbunan Hijau Group PNG, to Mr Jim Yap at ANZ Banking Group in Port Moresby in late 2005. The subject of the letter is given as “Re: Forest Sector / Intimidation by anonymous web site publications”, and the letter ran to at least 21 pages.
- ANZ has provided bank guarantees to RH forestry projects in the past. Typically, such a bank guarantee is an essential pre-requisite for a logging permit to be granted. An example of one such guarantee is provided as Appendix L. (The company in respect of which this guarantee was granted, G.L.Niugini Limited, is a subsidiary of Rimbunan Hijau.) Before granting such a guarantee, ANZ undertakes a full credit review of the counterparty, as it would for any financing proposition.
- The website “Masalai-i-Tokaut” has reported the specific details of 28 foreign exchange transactions between RH and ANZ that are said to have occurred in September and October 2005.¹⁰ Those records disclose transactions totalling US\$1,924,469 over that two-month period. While the parties do not necessarily rely on the accuracy of all information provided on that website, ANZ has not disputed the accuracy of the foreign exchange transaction records in its subsequent publications and engagement on the issue.

⁸ Australia and New Zealand Banking Group, “Information on ANZ and forestry in Papua New Guinea”, 20 January 2006 (Appendix K).

⁹ ITS Global, *Masalai i Tokaut and Rimbunan Hijau Watch: A political and deceptive campaign against Rimbunan Hijau*, July 2006, p. 29, available at www.rhpng.com.pg.

¹⁰ Masalai-i-tokaut No. 42, “Profiting from Destruction – the ANZ Bank and the PNG logging industry”, January 2006, available at www.masalai-i-tokaut.com (Appendix M).

C. Rimbunan Hijau's operations in PNG

PNG's natural forests are being cleared at an alarming rate. An important recent independent worldwide survey of the pulp, paper & timber industries sponsored by the International Finance Corporation noted that PNG's forestry industry relies heavily on natural forests (as opposed to plantations), most of which have already been allocated for logging. The report states that PNG is "expected to have fully allocated its forestlands within 3 to 6 years, exhausting natural forest timber resources after another 10 years."¹¹ In other words, PNG's natural forests will be completely depleted by around 2020 if current trends persist.

Much of this logging is illegal, according to a recent study for the Australian Government by forestry industry specialist Jaakko Pöyry Consulting. Drawing on other industry sources, that report estimates that 70% of logging in PNG is illegal.¹²

Rimbunan Hijau, a Malaysian logging giant, is the largest of these illegal loggers in PNG. With five of the 12 largest logging projects, as well as the only veneer mill and the largest sawmill in PNG, it is the country's largest logging operator by far. RH accounts directly for roughly one third of PNG's raw log exports.¹³ Including other companies in which RH has an interest, such as Turama Forest Industries, RH's actual market share may be closer to 50% or more.

Aside from forestry, RH has extensive business interests in PNG, including ownership of *The National*, one of PNG's two major newspapers, and RH Hypermarket, one of the country's largest supermarket chains.

RH's operations in PNG are characterized by repeated and flagrant disregard for PNG law and human rights, political corruption, brutality towards local communities and those opposed to its operations, and environmentally, socially and culturally destructive practices.

RH's unethical and often illegal conduct has been well documented in numerous reports over many years. Significantly, these reports are not limited to NGO commentary but include a range of official PNG government reviews, as well as independent reviews commissioned by the World Bank, independent media investigations, and other credible sources.

The following list includes some of the most important recent findings against RH. The parties would be pleased to provide further details or particulars to allay any doubts as to the veracity or seriousness of these findings.

¹¹ Association for Sustainable & Responsible Investment in Asia, "Taking Stock: Adding Sustainability Variables to Asian Sectoral Analysis", February 2006, available at www.asria.org/publications#sector (Appendix P).

¹² Jaakko Pöyry Consulting, *Overview of Illegal Logging*, 16 September 2005, available at www.daff.gov.au/corporate_docs/publications/pdf/forestry/sustainability/international/illegal_logging_report_16sept05.pdf (Appendix Q).

¹³ SGS Log Export Monitoring Reports; see summary in *Forest Trends, Logging, Legality and Livelihoods in Papua New Guinea: Synthesis of Official Assessments of the Large-scale Logging Industry, Volume 1*, Table 7 (Appendix H)

Supporting information

- In 2002-03, the PNG Government in conjunction with the World Bank authorized an independent review of six disputed logging concession extensions, including three to RH subsidiaries (Wawoi Guavi, Vailala Blocks 2&3, and Passismanua). A summary of the findings of that review is attached (Appendix A). The review, which was funded by the World Bank, addressed the legality of these extensions. It concluded that the grants of timber permits and extensions were in each case “highly irregular” and/or “illegally granted”. The review also found a range of breaches of landowner rights, environmentally unsustainable management practices, and grave procedural irregularities.
- The concerns raised in the independent review were sufficiently credible and serious that the World Bank suspended the Forestry Conservation Project loan in late 2003.
- In January 2004, Greenpeace published *The Untouchables: Rimbunan Hijau's world of forest crime and political patronage* (Appendix F). This report outlines the close connections between Rimbunan Hijau and PNG's political elite, and alleged that RH often obtained corrupt and illegal advantages from such relationships. In addition, the report details a range of human rights violations, damaging social and environmental impacts.
- In August 2004, the independent review team funded by the World Bank released a further report on 14 ongoing logging projects in PNG. The review noted “seriously deficient” performance at three specific operations (Vailala Block 1, Vailala Blocks 2 & 3, and Wawoi Guavi), all of which are RH facilities. The final report, together with the individual site reports for those three operations, are attached (Appendix B); they describe in detail a litany of serious environmental and social violations, included repeated legal breaches.
- A 2003-04 review of logging operations conducted by the PNG Department of Labour and Industrial Relations and the Department of Community Development revealed appalling work conditions and illegal labour practices. A copy of the inspection report regarding RH's Wawoi Guavi Timbers subsidiary is attached (Appendix C). Among other findings, the report noted that only 31 of 112 non-citizens employed by the company in PNG were legally employed. The review concluded that the company's “responsibilities towards their employee's welfare, safety and hygiene and employment conditions are appalling and cannot be measured against any standard. The company's treatment towards citizen employees in many aspects of their employment reflects labour exploitation and slavery, and should be condemned at all levels.”
- A further report by the PNG Department for Community Development in April of 2004 revealed a pattern of exploitation and abuse of women at RH's Panakawa mill. (Appendix D). The report found very poor working

conditions and documented allegations by workers of physical abuse, sexual discrimination, sexual coercion and termination of workers who became pregnant as a result.

- In May 2004, Lumberbank, a New Zealand subsidiary of RH, was expelled from the New Zealand Timber Importers Association on the basis of RH's illegal and/or unsustainable logging activities in PNG. Lumberbank sought to challenge the decision, but in December 2004 the New Zealand High Court upheld the expulsion, finding that the Association acted reasonably in concluding that Lumberbank failed to demonstrate that the lumber it was importing was sourced from sustainably managed forests in PNG. A copy of the judgment is attached as Appendix R.
- In November 2004, the news program Dateline aired a segment entitled *Jungle Justice*, a transcript of which is attached (Appendix E). The segment included testimony by a member of the "Southern Command Taskforce", a PNG police unit. The member described how the unit acted as private security for RH, received bribes from named RH officials, and on the direct instructions of the company bashed up protestors at RH's Panakawa mill. This evidence is consistent with the accounts given by landowners in the ACF/CELCOR report referred to below.
- In May 2005, following the above further investigations, the World Bank cancelled the \$30 million Forestry Conservation Project loan altogether. A primary reason was the inability or unwillingness of the PNG government to ensure that logging companies operate legally.
- In August 2006, ACF and CELCOR released a report detailing human rights abuses in connection with the PNG forestry industry. (Appendix G) Based on first-hand interviews with affected landowners, the report chronicles the often brutal response to opposition to logging company practices. For example, according to the courageous testimony of Mr Ben Harevela, he and others were bashed by police, their village was burnt and their crops and livestock destroyed following their complaint about the conduct of RH in Vailala logging concession operated by RH. Mr Harevela alleges that RH flew the police task force up from Port Moresby to deal with the "troublemakers". Allegations that police are in the pay of logging companies are common in PNG.

D. International human rights standards relevant to industrial forestry operations in PNG.

Significant human rights guarantees are included in the PNG Constitution and in the International Bill of Rights - The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, PNG has ratified the Convention on the Elimination of all forms of Discrimination Against

Women (CEDAW); the Convention on the Rights of the Child (CRC); and the Convention on the Elimination of Racial Discrimination (CERD).

Human rights abuses in PNG thus occur in a context of formal legal recognition of universal human rights standards. Examples of serious breaches of human rights laws in the PNG forestry industry include the following:

- There are numerous instances of physical brutality and arbitrary detention by police against landowners closely associated with logging operations. Police forces are sometimes paid by logging companies, and may even act on the direct instruction of company officials. Such conduct violates the guarantees of life, liberty and security of person in Article 3 of the UDHR, the protection against arbitrary detention in Article 9 of the UDHR, and section 42 of the PNG Constitution.
- The officially documented sexual coercion of women and discrimination against women at logging operations, including at RH's Panakawa facility, constitutes violence against women in breach of General Recommendation 19 of the CEDAW, as well as the prohibitions against degrading treatment in Article 5 of the UDHR and discrimination in Article 7 of the UDHR, and the constitutional equality of men and women set out in section 55 of the PNG Constitution.
- The serious flaws in the process of allocating and approving logging permits results in the denial of the rights of landowners to access accurate information, make informed decisions, and participate effectively in decisions about their land. Agreements with landowners frequently do not reflect true informed consent about what is being agreed to. Such conduct breaches the guarantees against arbitrary deprivation of property set out in Article 17 of the UDHR and section 53 of the PNG Constitution.
- The clearing of natural forest habitat and other deleterious environmental effects of logging operations, such as pollution of rivers, has a range of negative effects on food sources, health and culture of traditional PNG communities. These impacts constitute a denial of the right to a standard of living adequate to health and well-being protected by Article 25 of the UDHR.
- A fuller account of human rights standards in PNG, and breaches by forestry companies including RH and its subsidiaries, is set out in Appendices F and G.

E. ANZ's response to concerns about forestry operations in PNG.

Following concerns raised about its association with Rimbunan Hijau, ANZ distributed a one-page response to a number of groups, including ACF (Appendix K). In that document, ANZ stated that it has visited Rimbunan Hijau's operations periodically, and has discussed concerns with the company and with some community groups.

The core of the response is as follows:

“In discussions with ANZ, Rimbunan Hijau has refuted claims of illegal logging activity and human rights abuses. ANZ has also received written assurance from the PNG Government that the logging activities of Rimbunan Hijau are legal and comply with Papua New Guinea’s Logging Code of Practice, which incorporates key standards of sustainable forest resource management.”

The response also refers, with apparent approval, to a number of RH initiatives said to be underway, including “investigating” external certification.

Following receipt of this publication, representatives of ACF met with representatives of ANZ on 23 May 2006. At that meeting, ACF expressed deep concern that ANZ was apparently willing to accept uncritically the self-interested assurances of the company and the PNG Forestry Authority.

ACF drew to the bank’s attention independent evidence that calls into question the assurances of the company and the PNG government, including many of the sources referenced in Section C above. ACF was disappointed and concerned that ANZ was highly selective in which PNG government reports it relied upon, and that the bank seemed to discount or call into question information from credible sources such as PNG Government departments and a World Bank-funded review when such information contradicted RH and official assurances.

ACF expressed its view that PNG government expressions of support for RH must be treated sceptically, given the well-documented ties between the logging industry and senior government officials. Indeed, ANZ analysts have in other contexts publicly noted that PNG is among the most corrupt countries in the world.¹⁴ It is therefore most troubling that ANZ nevertheless chooses to accept at face value such superficially self-interested statements.

It is perhaps useful to contrast ANZ’s approach to that of the New Zealand High Court in a recent case involving the decision of the New Zealand Timber Importers Association to expel The Lumberbank (a Rimbunan Hijau subsidiary) on the basis of alleged illegal and unsustainable logging in PNG. Presented with evidence of company and government assurance about the legality of PNG forestry operations, the Court noted that the company’s statements were “self-serving” and “less than convincing”, and characterised a PNG Ministerial statement about the legality of forestry operations as having “the air of a document issued for the consumption of the press and for political purposes.”¹⁵ The Court upheld the expulsion.

Following the May meeting with ANZ, ACF wrote to the bank on 3 July 2006, reiterating our concerns, drawing additional information to the bank’s attention, and requesting the bank’s assurances that it would not continue to involve itself in unsustainable logging in PNG. A response was requested, and ANZ indicated

¹⁴ ANZ Pacific Quarterly, February 2006, p. 4, available at <http://www.bcpng.org.pg/Documents/ANZ%20Pacific%20Quarterly.pdf> (Appendix O).

¹⁵ *The Lumberbank New Zealand Limited v The New Zealand Timber Importers Association Incorporation*, NZ High Court, case AK CIV 2004-404-003058, judgment of Cooper J, 9 December 2004 (Appendix R), see especially paras. 36 & 116-125.

verbally that they would respond. As of the date of this submission, some seven weeks later, ACF has not received a response.

ANZ has consistently stated that they have “engaged and are willing to continue to engage concerned environmental groups about forestry issues in Papua New Guinea generally.”¹⁶ Without disputing this, the parties are concerned that such engagement does not entail a balanced and fair appraisal of all available evidence by ANZ. The bank’s conduct gives the parties no reassurance that the matter is being treated with any sense of priority, or that the bank is actually prepared to change its business practices as a result of such engagement.

F. ANZ’s approach to human rights issues generally

ANZ has made no public commitment to human rights.

ANZ’s various codes of ethics and policies do not refer to human rights. While general client and transaction assessment procedures exist, ANZ’s policies do not appear to require specific assessment or monitoring of the human rights practices of its clients. Compliance with basic human rights standards does not appear to be an explicit condition of doing business with ANZ.

In its 2005 Corporate Responsibility Report, ANZ accepted the need to improve this situation, particularly in reference to operations outside of Australia and New Zealand. It stated that “ANZ is currently assessing opportunities to make a formal commitment to external human rights instruments and to enhance our existing policies and practices, which already address human rights issues relevant to our core markets of Australia and New Zealand.”¹⁷

However, this process of assessment is not reflected in any of ANZ’s goals for 2006, as set out in that report, and have not yet resulted in any commitments. ANZ’s corporate responsibility interim 2006 report (Appendix J) does not refer to human rights, suggesting that no recent developments have occurred.

G. ANZ’s approach to environmental issues generally

ANZ has adopted an overarching Environment Charter (Appendix N), which addresses in general terms the bank’s role in assessing environmental consequences of its business, including effects stemming from the clients and transactions it chooses to engage. Particularly relevant to this specific instance are commitments 3 through 5:

“We are committed specifically to

...

3. Maintaining processes and guidelines to assess the environmental impacts in the design and distribution of our products and services.

¹⁶ “Bank defends lending to RH”, 23 January 2006, Post-Courier Online, <http://www.postcourier.com.pg/20060123/business04.htm>, last visited 9 May 2006.

¹⁷ ANZ Corporate Responsibility Report 2005, “Future Challenges”, p. 7 (Appendix I).

4. Identifying and monitoring the environmental issues associated with our business and our products and services; and resolving these effectively.
5. Integrating environmental considerations into the appraisal of customers' financing or advisory propositions ahead of credit approval, including specific measures to manage environmental considerations as a condition of doing business."

While this is perhaps a useful start, in practice the environment charter is limited in several important ways. To begin with, the commitment to integrate environmental considerations extends only to "financing or advisory" propositions, not to all client engagements. Thus, it does not apply for example to foreign exchange dealings, even if those are part of a substantial and ongoing commercial relationship with a major client.

Further, implementation of the charter appears to have been restricted in practice largely to ANZ's Corporate and Institutional Divisions in Australia; the parties are concerned that it has not been integrated into ANZ's Asia-Pacific operations in a thorough and meaningful way.

For example, ANZ's latest corporate responsibility report notes that the bank has achieved a "complete assessment of both *Institutional and Corporate's lending portfolios*" and sets a goal of increasing "the environmental and social impact screening of all new transactions and annual client reviews *in our Institutional lending business* to 100%" (emphasis added).¹⁸ No information is provided about how the environment charter is being applied in the Asia Pacific Division. The Corporate Citizenship Company, which was commissioned to provide ANZ with external assurance and commentary on its Corporate Responsibility Report 2005, stated that the bank should extend its reporting to its Pacific Island operations.¹⁹ However, there is no indication that ANZ is acting on this suggestion. It is deeply concerning that ANZ has adopted one standard of reporting and transparency for its Australia and New Zealand operations, while failing to report in the same way on its operations in the Asia Pacific region.

ANZ's approach to the extension of credit (through a performance guarantee) to an RH subsidiary in connection with the East Awin forestry project gives a good indication of the weakness of its lending criteria in PNG, in environmental and social terms. On 11 September 2003, a timber permit was granted to GL Niugini Ltd. ("GL Niugini"), an RH subsidiary, over the East Awin forest area. A February 2004 compliance audit of the project prepared for the PNG government outlined a host of major doubts about the validity of the permit and the process used to obtain it, and suggested that the permit was void in its entirety.²⁰ For instance, the Minister for Environment and Conservation had not sought the advice of his Department when approving the project, and there was inadequate consideration of the environmental

¹⁸ ANZ Corporate Responsibility Interim Report 2006, p. 4 (Appendix J)

¹⁹ ANZ Corporate Responsibility Report 2005, "External assurance statement and commentary" by The Corporate Citizenship Company, 24 November 2005, p.47 (Appendix I)

²⁰ Audit of Compliance of the East Awin Forestry Project with the Requirements of the Forestry Policy, the Forestry Act and Other Requirements and Guidelines, prepared by the 2003/2004 Review Team, February 2004, p. ii.

impact of the sawmill, veneer mill, and treatment plant that were effectively approved by the approval of the logging permit.²¹ The annual allowable cut for the area was set far too high to be sustainable, a violation of both the National Forestry Policy 1991 and the Forestry Act 1991. The 2003/2004 Review Committee estimated that the timber allowance issued under the permit was over four times more than the actual sustainable allowable cut figures for the area. According to the Review Committee's figures, if the environmental analysis had been done correctly, the project would be unsustainable under the minimum PNG Forestry Authority standards for a stand-alone log export operation. The problems with the environmental analysis (or lack thereof) were mentioned as early as 2001, when the 2000/2001 Review Team conducted its review of the then-prospective project.

Significantly, four clans then chose to withdraw their land from the proposed project in late 2002.²² This both reduced the land available for harvesting, making the project even less viable than before, and indicated opposition by area indigenous communities for this use of the land. Despite this parade of legal, environmental and social questions hanging over the project, ANZ chose to issue a performance bond in the amount of PGK467,700 (A\$207,540 at current exchange rates) on 29 October 2003 (Appendix L), effectively giving the project a green light.

This case also highlights the very general nature of ANZ's environment charter. While it may have some utility as an overarching statement of principles, it provides little operational guidance on specific environmental issues. Unlike many other banks, ANZ does not have sector-specific policies or requirements for involvement in crucial environmentally sensitive activities.

For example, in the area of forestry, there are no minimum standards specified, no requirement or even publicly stated preference for independently certified forestry operations, no barrier against involvement in logging of high conservation value forests, and no requirements related to environmental impact assessment. In the absence of specific guidance on particular issues, it is difficult to see how the charter can be implemented consistently and clearly across ANZ's various activities. Many other financial institutions have adopted sector-specific policies, including on forestry. (see "Desired Outcomes" below for more details).

At a meeting with community representatives on 5 June 2006, ANZ gave a presentation on how the charter is being implemented. A representative of ACF was present. The material ANZ communicated at that meeting was marked in confidence, and accordingly the parties will not provide it without ANZ's consent. However, none of the material presented at that meeting satisfies ACF that the bank is implementing or planning to implement meaningful baseline conditions for involvement with forestry operations in PNG.

²¹ *Ibid.*

²² See letter of 4 November 2002 from Paiseo Company Pty. Ltd. chairman David Kayo, subject: "Withdraw from the East Awin FMA Area," reprinted at www.masalai-i-tokaut.com/Masalai%2014%20East%20Awin%20Landowners%20withdraw%20support.htm, last visited 22 August 2006.

Part II – Breaches of the OECD Guidelines for Multinational Enterprises

ANZ's conduct, as outlined above, is in breach of the following Guidelines:

- **Article II, Section 1:** *“Enterprises should ... contribute to economic, social and environmental progress with a view to achieving sustainable development.”* Rather than contributing to economic, social and environmental progress, ANZ's facilitation of RH's operations hinders those goals. The bank's failure to maintain specific forestry and human rights policies with real consequences for prospective or current clients who violate them works against sustainable development.
- **Article II, Section 2:** *“Enterprises should ... respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.”* ANZ does not appear to be taking reasonable steps to ensure that its provision of financial services in PNG is dissociated from operations that violate fundamental human rights. In particular, it has not undertaken meaningful scrutiny of RH's activities in PNG, despite credible evidence of breaches being presented to it. By not implementing reasonable policies and practices to ensure that its clients respect human rights, ANZ is itself failing to respect human rights.
- **Article II, Section 10:** *“Enterprises should ... encourage, where practicable, business partners, including suppliers and subcontractors, to apply principles of corporate conduct compatible with the Guidelines.”* ANZ has stated it has raised concerns with RH and has encouraged RH to undertake improvements, for example seeking external certification. There is little information available about the substantive content of such encouragement. The lack of any specific ANZ forestry or human rights policies implies that such engagement is occurring in an ad hoc fashion, outside of any meaningful policy context, and without any suggestion that ANZ is prepared to forego the business if minimum standards are not met. Much more thorough and meaningful “encouragement” within the meaning of the Guidelines is practicable, given ANZ's strong market position in PNG.
- **Article V, Section 1:** *“Enterprises should ... establish and maintain a system of environmental management appropriate to the enterprise”* An environmental management system for a financial institution, especially one operating in a weak governance area such as PNG, is not appropriate unless it sets some minimum social and environmental requirements for acceptable client engagement. Many multinational financial institutions have implemented specific forestry and human rights policies that impose meaningful requirements on their clients (see “Desired Outcomes” below for more details). Without such policies, it is difficult to see how a bank can reliably manage the downstream social and environmental consequences of its provision of financial services. A sound and specific policy framework, with thorough implementation should be the cornerstone of a bank's environmental management system.

Existence of an “investment nexus”

ANZ’s lack of appropriate environmental and human rights screening policies for prospective and current clients is sufficient on its own to constitute a violation of the Guidelines.

In some circumstances, however, OECD National Contact Points have required demonstration of an “investment nexus”, particularly in cases involving supply chain issues. In this specific instance, the existence of an investment nexus, if one is indeed required, is demonstrated by the following:

- ANZ has invested very substantially in developing and operating its network of branches and other activities on the ground in PNG, as the second-largest bank in that country.
- ANZ has acknowledged a “long-standing relationship” with RH, which includes periodic site visits by ANZ staff and “open discussions” with RH regarding environmental and social issues. In its communications on forestry issues, ANZ implies that it has influence over RH and the ability to affect RH’s activities. Further, it has actively defended RH’s operations, rather than taking a position that ANZ as a bank is a mere passive provider of financial services.
- The foreign exchange dealings between ANZ and RH are regular, ongoing and involve substantial amounts of funds. RH’s ability to conduct its operations in PNG depends on the capacity to move financial resources easily in and out of PNG, and it is not clear that any institution other than ANZ would be both capable of and willing to handle such transactions.
- ANZ’s provision of bank guarantees to RH operations is a form of direct investment, functionally equivalent to a loan. A guarantee can be called upon by the Principal (in this case, the PNG Forestry Authority) at any time, and the bank would be required to pay it unconditionally. In that event, a debt between the beneficiary (RH) and the bank (ANZ) would come into being, just as if the bank had simply granted a loan to the beneficiary. No doubt for these reasons, ANZ’s website indicates that the bank’s “normal credit assessment criteria” apply equally to guarantees. ANZ categorises guarantees as a type of financing, rather than a transactional service.

Assuming usual commercial practice, a bank will may require security and/or attach conditions to a guarantee, to ensure that the beneficiary of the guarantee undertakes its operations in a manner that minimises the chance that the guarantee will be called upon and ensures that, if called upon, the beneficiary is able to repay the debt. A guarantee has all of the characteristics of an investment relationship, including the assumption of a substantial degree of ongoing risk by the bank, the ability to tailor a rate of return and contractual conditions to suit specific operations, the undertaking of due diligence in connection with the transaction, the existence of a degree of trust among the parties, and monitoring of the client by the bank in the course of the bank’s management of its outstanding financial commitments.

- It would not be surprising to find, given the number and extent of other ties, that ANZ's relationship with RH extends to direct lending or investment arrangements as well.
- Finally, ANZ's involvement in RH's activities must be viewed in light of the highly concentrated nature of PNG's banking sector. The fact that there are few if any market alternatives for RH mean that ANZ has much greater influence over its clients in PNG than it might in a country like Australia, where clients may have the choice of a dozen or more sophisticated, full-service financial institutions.

Taken together, these factors indicate that a sufficient investment nexus exists between ANZ and RH for purposes of the Guidelines.

Illegal logging and breaches of the Guidelines

The facts set out in Part I include a range of credible findings related to the illegality of a range of RH's activities. While RH's disregard for PNG law is well documented, the question whether ANZ has breached the Guidelines (as set out above) does not hinge on the formal legal characterisation of RH's activities. This is because the Guidelines go beyond requiring mere legal compliance; they set out generally applicable substantive standards which are not tied to specific national laws. Thus, even if (hypothetically) all of RH's conduct were permitted under PNG law, ANZ's facilitation of such conduct would still form a valid basis for this specific instance, because it would still contravene the basic environmental and human rights principles embodied in the Guidelines.

Part III – Desired outcomes

The parties would be pleased to explore with ANZ the full range of actions that may assist in ensuring full compliance with the Guidelines in the future. However, it may be useful to outline a number of steps that would, in the parties' opinion, significantly improve performance. The following solutions are, at this point, intended to be starting points for a dialogue, and the parties remain open to other possible solutions.

A. Adoption of a meaningful forestry policy

An appropriate environmental management system for a financial institution must go beyond general statements of commitment and processes. To comply with the Guidelines, the system should be capable of providing clear and specific guidance to decision-makers in the institution on concrete environmental concerns, and should clearly articulate the bank's expectations and requirements of clients and specific projects and transactions.

Many institutions have begun to achieve this through the adoption of sector-specific policies relating to key environmental issues, such as forestry. In the opinion of the parties to this specific instance, a credible and effective forestry policy should at a minimum:

- Require independent certification of forestry operations by the Forest Stewardship Council (FSC);
- Provide for progressive extension of certification requirements to downstream users of forestry products, including manufacturers and retailers of furniture, paper and other forestry product derivatives;
- Prohibit involvement with logging of high conservation value forests, primary moist tropical forests, habitat for threatened or endangered species, and protected or other sensitive areas;
- Establish training, monitoring, enforcement and reporting processes, and ensure that compliance is a contractual condition in financial services agreements;
- Apply to all clients across all business lines, including lending, investment, advisory, nominee and transactional relationships; and
- Require FSC certification for all of the bank's own procurement of paper and other forestry products.

Similar features have actually been adopted by a number of multinational financial institutions. To give but one example, HSBC's "Forest Land and Forest Products Sector Guideline" (see Appendix S) prohibits that institution from any involvement with commercial logging in:

- Primary Tropical Moist Forest
 - High Conservation Value Forest
 - Logging operations that are in violation of local or national laws in respect of illegal logging
 - Logging operations that include any species listed in CITES (Convention on International Trade in Endangered Species of Wild Flora and Fauna)
- Appendix I.

Banks that have adopted stand-alone forestry policies or statements, or detailed forestry provisions in a broader environment policy, include ABN AMRO, Bank of America, Citigroup, Goldman Sachs, HSBC, and JP Morgan Chase. Further, some banks have required FSC certification as a condition of investing in forestry as part of their implementation of general environmental or ethical policies. An example of this approach is Rabobank. ABN AMRO's policy is not publicly available; the other five statements and an account of Rabobank's approach are attached (Appendix S).

Although these documents can be improved, they are nevertheless a very useful starting point for dialogue.

B. Adoption of a meaningful human rights policy

To ensure that its operations and business relationships are conducted in a way that respects human rights, consistent with the Guidelines, ANZ should adopt a human rights policy. At a minimum, such a policy should endorse the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the

International Covenant on Economic, Social and Cultural Rights; and the ILO Conventions. It should also prohibit involvement with clients who have breached fundamental human rights standards, and establish clear training, monitoring, enforcement and reporting processes.

Again, many international financial institutions have adopted explicit human rights policies. As examples of a variety of approaches, copies of the policies and statements of the Co-operative Bank, Lloyds TSB, Rabobank and Westpac are attached (Appendix T). The Co-operative Bank's practice of specifically disclosing business they have rejected as incompatible with human rights and other ethical standards, and openly discussing how they have addressed human rights and other issues in specific transactions, is particularly noteworthy.

C. Disengagement from unsustainable logging in PNG

In light of the serious issues raised in this specific instance, ANZ should suspend all involvement with forestry operations in PNG that are not being conducted in accordance with basic environmental and human rights standards. Independent certification by FSC, or meaningful and steady progress towards certification on a definite and reasonable timeframe, should be required of forestry clients.

With regard to clients with a significant history of abusive conduct in PNG, such as Rimbunan Hijau, ANZ should additionally refrain from any further involvement until the company compensates the victims of past abuse.

D. Support for community forestry in PNG

ANZ has demonstrated that it is capable of being a strong force for socially just financial services; for example, its work on financial literacy programs in Australia has been widely recognised. It should undertake a similar level of commitment in other countries in which it operates. In PNG, active investigation and support for community-based forestry projects and other sustainable alternatives to destructive large-scale logging would be a positive contribution to environmental and social progress. Specifically, ANZ could investigate creating low-interest loans to establish and grow eco-forestry businesses, advocating for more responsible forestry policies with the PNG Government, and supporting NGOs addressing sustainability issues in PNG.

There are a number of successful community-based forestry projects in PNG whose methods are more sustainable and socially just than the prevailing abusive conduct of foreign logging giants. These organisations include the Foundation for People and Community Development, Village Development Trust, Madang Forest Resource Owners Association, Turubu Eco-Forestry Development Program and the Aitape Conservation Programme as well as education institutions and private businesses.²³ In particular, the Village Development Trust, in partnership with donor organisations

²³ "Community Based Sawmilling" at www.ecoforestry.org.pg/sawmilling.html, last visited 22 August 2006.

and commercial lenders, provides assistance to qualifying operators for the securing of loans required to establish and operate small scale eco-timber businesses.²⁴

E. Advocacy for positive solutions to forestry and human rights issues in Australia and PNG

Finally, ANZ can play a positive role in fostering positive solutions in PNG and Australia. Examples may include working with Australian traders and consumers, including ANZ's customer base, to increase awareness of the problem of illegal logging and encourage responsible purchasing practices; encouraging the Australian government to support sustainable forestry in PNG and to ban imports of illegally logged forestry products; and working with the PNG government directly and through PNG business associations to protect landowners' interests and prevent further destructive logging practices.

Part IV – About the parties to this specific instance

The Australian Conservation Foundation Inc. (ACF) is committed to inspiring people to achieve a healthy environment for all Australians. For 40 years ACF has been a strong voice for the environment, promoting solutions through research, consultation, education and partnerships. ACF works with the community, business and government to protect, restore and sustain our environment.

ACF's Asia Pacific Unit is working hard to achieve social and environmental justice in the region, focusing on two of Australia's closest neighbours, Timor Leste and Papua New Guinea. ACF supports partner organisations in these countries in their struggles to balance development with protection of their natural resources.

Within Australia, ACF is an advocate for positive Australian foreign policy in the region, including promoting Australia's ability to contribute to environmentally sustainable development in PNG, and inclusion of environmental issues in Australian aid programs.

Website: www.acfonline.org.au

The Centre for Environmental Law and Community Rights Inc. (CELCOR) is a public interest law NGO based in Port Moresby, PNG. CELCOR was founded in February 2000 by Mr. Damien Ase with the assistance of Dr. Owen Lynch, the director for law and communities program for International Environmental Law (CIEL). The main aim of CELCOR is to provide legal assistance to landowners affected by large scale environmentally destructive projects including industrial logging, mining and oil palm plantation developments and to promote community based natural resource management through promotion of effective law and policies. CELCOR now has seventeen full-time staff including six lawyers and has interacted with communities in thirteen provinces in PNG.

²⁴ "Village Eco-Timber Project" at www.global.net.pg/vdt/, last visited 22 August 2006.

CELCOR pursues its goals through four main avenues: direct legal assistance to customary resource owners, NGOs and community groups; policy research and law reform; community legal education for community leaders, NGOs, community-based organizations, local officials and government officials including environmental monitoring and assessment; and campaigning, advocacy and networking for the development of better and responsible environmental and resource management laws and policies.

Website: www.celcor.org.pg

The Environmental Law Centre, Ltd. (ELC) is a non-profit community legal centre specializing in public interest environmental law issues. Established in 1999, the Centre provides legal assistance to communities and landholder groups with environmental protection as a priority. ELC collaborates with similar organizations to identify policy issues and vital national issues affecting communities and their environment. The Centre provides legal advice and representation to landholder communities who cannot otherwise afford it; promotes environmental awareness education; and conducts policy and reform work.

ELC's Chief Executive Officer, Annie Kajir, holds a law degree from the University of Papua New Guinea and was admitted to the National and Supreme Courts to practice as a lawyer in 1997. In her first year of practice as a lawyer she successfully defended a precedent-setting appeal in the Supreme Court of Papua New Guinea that awarded damages for trespass on customary land for logging purposes. Annie is a recent recipient of the prestigious Goldman Environmental Prize in recognition of her tireless efforts to protect PNG's communities and environment.

The Human Rights Council of Australia (HRCA) is a private non-government organization which promotes understanding of and respect for human rights for all persons without discrimination through adherence to the International Bill of Rights, and other human rights instruments, internationally and within Australia.

The Council was established in 1978 and for many years, under the leadership of James Dunn, has been an important link between the Australian human rights movement and human rights activists in other parts of the world. The Council is affiliated with the International League of Human Rights and has Special Consultative Status with ECOSOC.

The Human Rights Council of Australia Inc is incorporated under the *Associations Incorporation Act 1984* (N.S.W.) and is a non-profit organization.

The Human Rights Council of Australia is active in many fields and endeavours concerning the promotion of human rights in Australia and throughout the world. It has pioneered the Rights Way to Development and been instrumental in raising awareness on issues such as landmines and sport and human rights.

The HRCA was involved as a party in the first OECD specific instance raised in Australia, concerning the activities of GSL (Australia) Pty Ltd, the private contractor responsible for managing Australia's immigration detention centres.

Website: www.hrca.org.au

The PNG Eco-Forestry Forum (EFF) is a PNG not-for-profit incorporated association formed in 1999 with the goal of promoting integrated rural community development and sustainable resource use through a viable and sustainable eco-forestry industry.

EFF has quickly established a position as the premier umbrella group in PNG and is recognised both within the country and internationally for the quality of its work and the endeavour of its staff and members.

The purpose of EFF is to support the activities of its members and other groups involved in eco-forestry and to promote their work to a wider audience. EFF does this through three distinct but interlinked campaigns on illegal logging, sustainable forestry and strengthening partnerships among its member organizations.

Website: www.ecoforestry.org.pg

List of appendices

Documentation of ANZ client Rimbunan Hijau's conduct in Papua New Guinea

- Appendix A** Summary of Review of Disputed Forest Allocations (May 2003)
- Appendix B** Towards Sustainable Timber Production – A Review of Existing Logging Projects (August 2004)
- Individual Project Review Report 7 – Vailala Block 1 (April 2004)
- Individual Project Review Report 8 – Vailala Blocks 2&3 (April 2004)
- Individual Project Review Report 14 – Wawoi Guavi (April 2004)
- www.forest-trends.org/documents/publications/PNG2006/png.php
- Appendix C** PNG Department of Labour and Employment Inspection Report, Wawoi Guavi Timbers (May 2004)
- Appendix D** PNG Department for Community Development Draft Individual Project Review Report, Wawoi Guavi & Panakawa (April 2004)
- Appendix E** Transcript, SBS *Dateline* segment “Jungle Justice” (November 2004)
- Appendix F** Greenpeace, *The Untouchables: Rimbunan Hijau's world of forest crime & political patronage*, (January 2004)
- www.greenpeace.org/raw/content/international/press/reports/the-untouchables-rimbunan-hi.pdf
- Appendix G** Centre for Environmental Law and Community Rights & Australian Conservation Foundation, *Bulldozing Progress: Human Rights Abuses and Corruption in Papua New Guinea's Large Scale Logging Industry* (August 2006)
- www.acfonline.org.au/uploads/res_PNG2_full.pdf
- Appendix H** Forest Trends, *Logging, Legality and Livelihoods in Papua New Guinea: Synthesis of Official Assessments of the Large-scale Logging Industry, Volume 1* (March 2006)
- www.forest-trends.org/documents/png/index.php

ANZ publications and documentation of ANZ links to RH

- Appendix I** ANZ Corporate Responsibility Report 2005
- www.anz.com.au
- Appendix J** ANZ Corporate Responsibility Interim Report 2006
- www.anz.com.au
- Appendix K** Information on ANZ and forestry in Papua New Guinea (ANZ company document, January 2006)
- Appendix L** Australia and New Zealand Banking Group (PNG) Bank Guarantee for East Awin forestry project (29 October 2003)

Appendix M *Masalai i tokaut*, No. 42: “Profiting from Destruction – The ANZ Bank and the PNG logging industry” (January 2006)
www.masalai-i-tokaut.com

Appendix N ANZ Environment Charter (June 2005)
www.anz.com.au

Appendix O ANZ Pacific Quarterly (February 2006)
www.bcpng.org.pg/publications.html

Further information about logging in PNG

Appendix P Association for Sustainable & Responsible Investment in Asia, *Taking Stock: Adding Sustainability Variables to Asian Sectoral Analysis* (February 2006)
www.asria.org/publications#sector

Appendix Q Jaakko Pöyry Consulting, *Overview of Illegal Logging* (September 2005)
http://www.daff.gov.au/corporate_docs/publications/pdf/forestry/sustainability/international/illegal_logging_report_16sept05.pdf

Appendix R *The Lumberbank New Zealand Limited v The New Zealand Timber Importers Association Incorporation*, NZ High Court, case AK CIV 2004-404-003058, judgment of Cooper J, 9 December 2004.

Environment and human rights policies of other financial institutions

Appendix S Bank of America, Forests Practices – Global Corporate Investment Bank Policy

Citigroup, New environmental initiatives

Goldman Sachs, Environmental Policy Framework

HSBC, Forest Land and Forest Products Sector Guideline

JPMorgan Chase, Public Environmental Policy Statement

Rabobank, “Dilemmas in 2005”

Appendix T The Co-operative Bank, Human Rights Statement

Lloyds TSB, Human Rights Policy

Rabobank, Human Rights Statement

Westpac Bank, Human Rights Statements