Complaint to the Australian National Contact Point

Friends of the Earth Australia et al., versus
Australia and New Zealand Banking Group

January 30, 2020

Complainants:

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Before the Australian National Contact Point
C/- The Treasury ACT 2600 Canberra, Australia

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I. Summary of Specific Instance

This complaint relates to the violation of the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises ('OECD Guidelines') by the Australia and New Zealand Banking Group ('ANZ').

We submit that ANZ has not adhered to the standards set out in chapters II, III, VI, and VIII of the OECD Guidelines, referring to Due Diligence, Disclosure, Environment, and Consumer Interests respectively. In order to comply with the OECD Guidelines, we first request that ANZ disclose high risk greenhouse gas emissions, including indirect emissions resulting from business lending and investment. Second, we request that ANZ responsibly divest from investing in coal and phase out its investment in other fossil fuel industries. Third, we request that ANZ commit to greenhouse gas emission targets that are in line with the Paris Agreement, and, fourth, conduct and disclose comprehensive climate-related scenario analysis for all sectors financed by ANZ. To this end, we request that the ANCP provide its good offices to facilitate mediation between FOE and ANZ, and, in the event that mediation fails, make a final statement as to whether ANZ has breached the OECD Guidelines. In light of the lack of Australian legislation that reflects the Paris Agreement goals with regards to disclosure, we further request that the ANCP recommend to the government that stronger laws be drafted for emissions and energy reporting.

The OECD Guidelines call for disclosure of business conduct, even in areas where reporting standards are still evolving, such as reporting of greenhouse gas emissions.[1] It further requires that businesses control the direct and indirect environmental impacts of their business activities and to set and renew their environmental targets in line with international standards.[2] The Guidelines also oblige business to provide accurate information in relation to the environmental impact of their services to enable consumers to make informed decisions.[3]

We submit that the Paris International Climate Agreement ('Paris Agreement') is the most relevant and current international standard that has set targets and requirements for combatting climate change. Therefore, the Paris Agreement targets reflect the standard to which ANZ should be held under the OECD Guidelines. Australia is a signatory to this agreement, and indeed ANZ's own Climate Change Statement acknowledges the Paris Agreement aims of 'holding the increase in global average temperature to well below 2°C above pre-industrial levels and of pursuing efforts towards limiting it to 1.5°C, as well as the position of the Intergovernmental Panel on Climate Change (IPCC) that to achieve the full ambition of the Paris commitments will require a transition to net-zero emissions of greenhouse gas by mid-century.'[4]

ANZ has contradicted this publicly stated commitment to the Paris Agreement in a number of respects, and ANZ's overall conduct over the past three years only reflects a partial commitment to the Paris Agreement targets. ANZ has not been fully transparent in relation to its indirect emissions. It remains the biggest financer of fossil fuels among the big four Australian banks and it has neglected a number of opportunities to improve its direct and

[1] OECD 'Guidelines for Multinational Enterprises' (2011 edition) *OECD Publishing* <https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en>, chapter III [33] ('*OECD MNE Guidelines*').
[2] Ibid, chapter VI, art 1, and [63].
[3] Ibid, chapter VIII, art 2, and [85].
[4] ANZ, 'ANZ Climate Change Statement' (28 February 2019) <https://www.anz.com.au/content/dam/anzcomau/documents/pdf/aboutus/climate-change-statement.pdf> ('*ANZ Climate Change Statement*')

indirect environmental impact.[5] Among the big four banks, it has invested the least amount of financial resources in renewable energy.[6] Crucially, ANZ's lack of full disclosure about its climate change impacts prevents consumers from making informed decisions about whether or not to engage with the bank.

A Specific Instance brought before the Dutch National Contact Point (DNCP) against the ING bank, ('ING complaint') provides a useful guide in relation to this complaint, as it concerned similar points.[7] In that Specific Instance, the DNCP established which international standards should be applied to measure and disclose the carbon emissions of a bank's lending portfolio, and addressed the issues of target setting and steering in relation to a bank's climate impact.

In light of the ANZ's significant influence over the emissions produced by the Australian economy, it is of the utmost importance that ANZ's policies and disclosure reflect international standards and contribute to a reduction in greenhouse emissions in order to combat climate change.

II. ANZ's conduct

1. <u>Lack of Disclosure and Inadequate Due Diligence</u>

(a) ANZ does not disclose indirect greenhouse gas emissions resulting from its business lending: Chapter III of the OECD Guidelines require transparency in relation to greenhouse gas emissions pertaining to direct and indirect, current and future, corporate and product emissions. We submit that ANZ is breaching this requirement as it finances companies and projects in industries that emit large quantities of greenhouse gases, however, the bank's report on its emissions does not disclose the volume of the greenhouse gases emitted as a result of its financing and activities.[8]

We submit that adherence with Australian law does not amount to adherence with the OECD Guidelines and the Paris Agreement in this area. While relevant Australian legislation only requires disclosure of scope 1 and scope 2 emissions,[9] international environmental standards (described herein) encourage the disclosure of scope 3 emissions, which include emissions resulting from the value chain and product portfolio of companies.

The Corporate Value Chain (Scope 3) Accounting and Reporting Standard provides the standard and methodology for calculating scope 3 emissions including emissions resulting from

[5] See, Market Forces, 'Big Four Banks Increase their Fossil Fuel Exposure' (January 2019) <https://www.marketforces.org.au/big-four-banks-increase-fossil-fuel-exposure/>; Market Forces, 'ANZ – Still Australia's Biggest Lender to Dirty Fossil Fuels' <https://www.marketforces.org.au/campaigns/banks-new/anz/>.
[6] See, Market Forces, 'Big Four Banks Increase their Fossil Fuel Exposure' (January 2019) <https://www.marketforces.org.au/big-four-banks-increase-fossil-fuel-exposure/>. Figures are drawn from 2018 data.
[7] See, Netherlands Ministry of Foreign Affairs National Contact Point for the OECD Guidelines for Multinational Enterprises, 'Final Statement: Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Millieudefensie) versus ING' (19 April 2019) ('*Oxfam Novib et al v ING Final Statement*').
[8] See e.g., ANZ 'ANZ Sustainability Review' (2018) <https://www.anz.com.au/content/dam/anzcomau/documents/pdf/aboutus/wcmmigration/2018-anz-sustainability-review.pdf> which includes scope 1 and 2 emissions, but only a limited set of scope 3 emissions ultimately excluding investments or business lending ('*ANZ 2018 Sustainability Review*')
[9] *National Greenhouse and Energy Reporting Act 2007* (Cth).

business lending and investment.[10] This protocol has been utilised by the Commonwealth Bank of Australia to report on the emissions of the bank's lending portfolio,[11] demonstrating that the adoption of this protocol is practicable for large Australian banks.

The ING complaint before the DNCP provides useful guidance as to how to establish an agreed methodology to measure, disclose and steer a bank's indirect emissions. In that case, the DNCP acknowledged the complexity of current methodologies to calculate greenhouse gas emissions, however it found that it should not deter a dialogue with respect to the complaint.[12] Through mediation the parties reached an agreement where ING adopted a number of methodologies[13] towards measuring, target setting and steering the bank's climate impact.

(b) ANZ does not conduct adequate due diligence regarding its climate-related risks in line with the Paris Agreement goals: We submit that ANZ is in breach of Chapters II ('General Policies'), III ('Disclosure') and VI ('Environment') of the OECD Guidelines by failing to conduct adequate due diligence regarding climate risk assessments and disclose foreseeable risk factors and risk management. A commonly accepted way to do this in the area of climate risk is by conducting climate-related scenario analysis in line with the Paris Agreement goals. To date, ANZ has only published one climate-related scenario analysis, testing customers within its thermal coal supply chain.

To do so, the ANZ relied on two of the International Energy Agency's (IEA) scenarios – namely, the 'New Policies Scenario' and the '450 Scenario'.[14] Both of these scenarios assume that policies and measures will be put in place to reduce greenhouse gas emissions. However, these IEA scenarios do not comply with the Paris Agreement goals, requiring that emissions reach net zero by 2050.[15]

Critically, the ANZ's scenario-analysis has thus far been limited to customers in the thermal coal supply chain, and has not been conducted in relation to other emissions intensive industry sectors, such as oil and gas; mining; manufacturing; and agriculture, forestry and fishing. Though ANZ's 2019 Climate Change Financial Disclosure Report indicates that a scenario analysis project was undertaken with respect to its agricultural portfolio in 2018, the details of this analysis have not been publicly disclosed by the Bank.[16]

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[10] See, Greenhouse Gas Protocol, 'Corporate Value Chain (Scope 3) Accounting and Reporitng Standard' <https://ghgprotocol.org/standards/scope-3-standard>.

[11] Commonwealth Bank of Australia, 'Assessed Emissions of the Group's Business Lending Portfolio – FY17' (2018) <https://www.commbank.com.au/content/dam/commbank-assets/about-us/2018-08/CBA-Assessed-Emissions-Report-FY17.pdf>.

[12] *Oxfam Novib et al v ING Final Statement*, above n 8, 3.

[13] Ibid. ING agreed to adopt the Terra approach with the underlying PACTA and PCAF methodologies to measure the banks' climate impact. ING agreed to implement PACTA by assessing seven of the most carbon-intensive sectors of its finances (energy including oil, gas, and conventional power, automotive, shipping and aviation, steel, cement and commercial real estate). ING agreed to use PCAF methodology for measuring the climate impact of its mortgages in the Netherlands.

[14] ANZ, 'Climate-Related Financial Disclosures' (2017) <https://www.unepfi.org/wordpress/wp-content/uploads/2019/04/ANZ-TCFD-Report.pdf> 3.

[15] Monash University Sustainable Development Institute and Climate Works Australia, 'Net Zero Momentum Tracker: Banking Sector' (October 2019) <https://www.climateworksaustralia.org/sites/default/files/documents/publications/net_zero_tracker_banking_sector_report_october_2019_1.pdf> 7, explaining that most scenarios show that, to remain below 2 or 1.5 degrees Celsius, developed countries will have to achieve net zero emissions by around 2050; ('*Net Zero Momentum Tracker*')

[16] The ANZ suggests that this work is summarised in the UNEP FI report, 'Navigating a New Climate: Assessing Credit Risk and Opportunity in a Changing Climate', though the full analysis has not been disclosed by the bank itself. See, ANZ, 'Climate-Related Financial Disclosures' (2019) <https://www.anz.com.au/content/dam/anzcom/shareholder/ANZ-2019-Climate-related-Financial-Disclosures.pdf> 4 ('*ANZ 2019 Climate-Related Financial Disclosures*')

We submit that as scenario analysis is a key factor in climate-related risk disclosure, and as ANZ has thus far failed to conduct and publish a complete scenario analysis across its entire lending portfolio in line with the Paris Agreement goals, it is in breach of Chapter III of the OECD Guidelines.

2. Environmental polices

In the following three subsections, we submit that ANZ's financing of fossil fuel industries, in particular coal-fired power plants and the oil and gas, and other fossil fuel investments demonstrates that ANZ has an inadequate system of environmental management appropriate to the enterprise, and as such is in breach of the Guidelines.

(a) ANZ is failing to prevent or mitigate its adverse environmental impacts, and does not have an environmental management appropriate to the enterprise, as it is a major financer of fossil fuel energy: We submit that ANZ is failing to prevent or mitigate an adverse environmental impact, namely climate change, to which its business operations are directly linked, in breach of Chapter II ('General Policies') of the OECD Guidelines. Further, we submit that ANZ is in breach of Chapter VI ('Environment') of the Guidelines, by failing establish and maintain a system of environmental management appropriate to the enterprise, that includes targets consistent with relevant international environmental commitments, namely the Paris Agreement. In contravention of these obligations, ANZ continues to be Australia's largest financer of fossil fuel industries.

Research conducted in May 2018 found that since 2015, ANZ has lent AUD$7.39 billion to the fossil fuel energy sector and AUD$1.37 billion to expansionary projects, enabling the emission of 2.8 billion tonnes of CO2.[17] At AUD$6.36 billion, ANZ's financing of fossil fuel stands higher than the combined spending of National Australia Bank and Westpac on financing fossil fuel.

Furthermore, ANZ's exposure to coal mining increased 27 per cent to AUD$1.4 billion in 2018 and another 7 per cent to AUD$1.5 billion in the first half of 2019.[18]

In the same period, ANZ has only lent AUD$964 million to the renewable energy sector. This provides a ratio of 7.70:1 between fossil fuel and clean energy spending in ANZ's lending portfolio. By comparison, National Australia Bank has lent $1.60 to fossil fuel for $1 spending on clean energy.[19]

We acknowledge that ANZ has made positive changes with respect to its operational emissions and is taking *some* steps to reduce its portfolio emissions (though has not made any commitments to a net zero emissions target that includes both their operational and portfolio emissions). For instance, ANZ is a signatory to the RE100 initiative, the Principles for Responsible Banking, Take2, and has indicated its support for the Task Force on Climate-Related Financial Disclosure recommendations.[20] It has also developed a project finance policy that links interest rates to environmental, social and governance criteria. ANZ has not pledged support for the Science Based Targets initiative (SBTi), which is currently developing a

[17] Market Forces, 'Banks 2ºC Scorecard' (2018) <https://www.marketforces.org.au/wp-content/uploads/2018/05/2018-Banks-two-degree-scorecard.pdf> 3 ('*Banks 2ºC Scorecard*').
[18] See, Market Forces, 'Big Four Banks Increase their Fossil Fuel Exposure' (January 2019) <https://www.marketforces.org.au/big-four-banks-increase-fossil-fuel-exposure/>. Figures are drawn from 2018 data.
[19] *Banks 2ºC Scorecard,* above n 19.
[20] *Net Zero Momentum Tracker*, above n 17, 8.

methodology that will require banks to submit targets consistent with net zero emissions by 2050 for their operations and their investment and lending activities.

In addition, ANZ has been certified as carbon neutral under the Australian Government's National Carbon Offset Standard (NCOS)—though crucially, this certification only takes into account the Bank's efforts to offset their operational emissions, including direct emissions and purchased electricity, and does not extend to the Bank's indirect and portfolio emissions. As the Net Zero Momentum Tracker explains, 'offsetting is not a substitute for reducing emissions through energy efficiency improvements, use of renewable energy and supply chain modifications, and should only be undertaken as a short-term or complementary measure as part of a net zero emissions strategy. Ideally offsetting should only be required to mitigate unavoidable emissions.'[21]

Despite these pledges and the offsetting of the Bank's operational emissions, ANZ's remains Australia's major financer of the fossil fuel industry. We submit this is at odds with the Bank's public endorsement of the Paris Agreement. The scale and extent of its fossil fuel investments, and its relative neglect of renewable energy investments, demonstrates that the environmental management of ANZ's lending portfolio is failing to prevent or mitigate an adverse environmental impact, namely climate change.

(b) ANZ is failing to prevent or mitigate its adverse environmental impacts, and does not conduct environmental management appropriate to the enterprise, due to its continued lending to coal-fired power plants: We submit that by continuing to finance new coal fired power plants, the Bank is breaching Chapters II ('General Policies') and VI ('Environment') of the OECD Guidelines. In its climate change statement,[22] ANZ states that it will not finance any new building of conventional coal fired power plants, but it will consider financing new coal fired power plants if they use advanced technologies and higher quality thermal coal. In its 2019 Climate-Related Financial Disclosures, ANZ further stated that it would only consider lending to new customers involved in coal-related mining, transport and power generation if their thermal coal operations contribute less then 50 per cent of their revenue, installed capacity or generation.[23]

A report by Professor Will Steffen published by the Climate Council in 2015 indicates that in order to limit global temperature rise to no more than 2 degrees Celcius (as agreed upon by 195 countries in the Paris Agreement), only 12 precent of the world's coal reserves can be burned.[24] Consequently 'more than 90 percent of known, extractable coal in Australia's existing coal reserves must stay in the ground'.[25] The report concludes that 'tackling climate change effectively means that existing coalmines will need to be retired before they are exploited fully and new mines cannot be built.'[26]

In order to meet the Paris Agreement targets, the world therefore needs to move away from fossil fuels and there is no justification for ANZ to continue financing fossil fuels, even if they use advanced technologies and higher quality thermal coal.

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[21] Ibid, 9.

[22] *ANZ Climate Change Statement*, above n 4.

[23] *ANZ 2019 Climate-Related Financial Disclosures,* above n 18.

[24] Professor Will Steffen is a climate change expert and researcher at Australian National University, and has served as the Science advisor to the Australian Department of Climate Change and Energy Efficiency. Will Steffen, 'Galilee Basin – Unburnable Coal' *Climate Council of Australia* (2015) <https://www.climatecouncil.org.au/uploads/af9ceab751ba2d0d3986ee39e1ef04fd.pdf> 1.

[25] Ibid.

[26] Ibid, 4.

Other Australian banks such as National Australia Bank have ruled out financing any new thermal coal mining projects.[27] As noted in the DNCP Final Statement, ING committed in December 2017 to reduce its thermal coal exposure to close to zero by 2025, and refrain from financing new coal fired power plants, in an attempt to steer its lending portfolio towards meeting the Paris Agreement's goal well-below 2 degrees.[28]

(c) ANZ is failing to prevent or mitigate its adverse environmental impacts, and does not have an environmental management appropriate to the enterprise, as ANZ does not have a policy in place to reduce its financing of the oil and gas industries: We submit that ANZ's continued financing of oil and gas companies constitutes a breach of Chapters II ('General Policies') and VI ('Environment') of the OECD Guidelines. While ANZ has policies in place to restrict finance of coal power plants, it has continued to finance oil and gas companies. In December 2017, ANZ loaned US$45 million to MedcoEnergy, Indonesia's largest private oil and gas firm for development of a gas field in Sumatra. In April 2016, ANZ contributed to refinancing a deal for InterOil to develop Elk-Antelope, one of Asia's largest undeveloped gas fields in Papua New Guinea. In late 2015, ANZ made a loan to LNG for the Ichthys gas field project off the coast of Western Australia.[29] In fact, research shows a 5.7 per cent increase in financing oil and gas industries in 2017-18.[30] In 2019, the Banks' exposure to oil and gas industries increased again, totaling AUD$19.9 billion, up from AUD $18.4 billion in the previous financial year.[31]

Research from the International Energy Agency and the Carbon Tracker Initiative has suggested that a significant portion of the world's fossil fuel reserves will need to remain in the ground to reasonably avoid a rise in global average temperatures of more than 2 degrees Celsius—the level required to avoid extreme and irreversible impacts on human and natural systems.[32] We submit that ANZ's increased financing of oil and gas industries without regard for the goals of the Paris Agreement suggests the bank is not genuinely committed to transitioning to a low carbon economy. Its continued support for expanding the scale of the fossil fuel industry—including support for new projects in Australia and abroad—demonstrates that the Bank's environmental management policies are inadequate.

3. Disregard for Consumer Interests

(a) ANZ does not provide sufficient information to enable its customers to make informed decisions: We submit that ANZ does not adhere to fair business, marketing and advertising practices by providing accurate, verifiable and clear information that would allow consumers to make informed decisions in adherence with Chapter VIII of the OECD Guidelines. ANZ's indirect emissions resulting from business lending and investments are omitted from its sustainability report.[33] As a result, customers do not obtain accurate information relating to the environmental impact of the full scope of ANZ's business activities. Customers are entitled to

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[27] National Australia Bank, 'Update on Financing of New Thermal Coal Mining Projects' (14 December 2017) <https://news.nab.com.au/update-on-financing-of-new-thermal-coal-mining-projects/>.
[28] *Oxfam Novib et al v ING Final Statement*, above n 8, 5.
[29] *Banks 2ºC Scorecard,* above n 19.
[30] See, Market Forces, 'Big Four Banks Increase their Fossil Fuel Exposure' (January 2019) <https://www.marketforces.org.au/big-four-banks-increase-fossil-fuel-exposure/>. Figures are drawn from 2018 data.
[31] *ANZ 2019 Climate-Related Financial Disclosures,* above n 18, 9.
[32] Greenhouse Gas Protocol and UNEP Finance Initiative, 'Financed Emissions Initiative: Technical Working Group on Greenhouse Gas Risk Management: Project Overview' <https://www.unepfi.org/fileadmin/publications/cc/Project_Overview__TWG_5__GHG_Risk__2-25__FINAL_.pdf> 1.
[33] *ANZ 2018 Sustainability Review*, above n 9.

this information in order to make informed decisions, not just based on the bank's direct environmental impact but also the environmental footprint of its value chain portfolio. Further, we submit that the Bank is misleading consumers by publicly stating that it is adhering to the Paris Agreement, but continuing to manage its lending portfolio without regard for the Agreement's targets.

III. Violations of the OECD Guidelines for Multinational Enterprises

In light of the aforementioned conduct, we consider that ANZ is in breach of the following provisions of the OECD Guidelines:

1. **Chapter III ('Disclosure'), article 3 and paragraphs 28 and 33 of the commentary, which state that:**

'3. Enterprises are encouraged to communicate additional information that could include: a) value statements or statements of business conduct intended for public disclosure including, depending on its relevance for the enterprise's activities, information on the enterprise's policies relating to matters covered by the Guidelines; b) policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply; c) its performance in relation to these statements and codes;

[...]28. The purpose of this chapter is to encourage improved understanding of the operations of multinational enterprises. Clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to other constituencies such as workers, local communities, special interest groups, governments and society at large. To improve public understanding of enterprises and their interaction with society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information.

[...]33. ***The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting. This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions;*** *biodiversity is another example. Many enterprises provide information on a broader set of topics than financial performance and consider disclosure of such information a method by which they can demonstrate a commitment to socially acceptable practices. In some cases, this second type of disclosure – or communication with the public and with other parties directly affected by the enterprise's activities – may pertain to entities that extend beyond those covered in the enterprise's financial accounts. For example, it may also cover information on the activities of subcontractors and suppliers or of joint venture partners. This is particularly appropriate to monitor the transfer of environmentally harmful activities to partners.'* [emphasis added]

The OECD Guidelines emphasise the need for transparency on the part of corporations in relation to their operations and for their responsiveness to the public's demands for clear and complete information. This transparency must be conducted in the way of disclosing corporate policies and codes of conduct as well as their performance in relation to these policies.

As paragraph 33 explains, the required disclosure also relates to areas of environmental management, particularly greenhouse gas emissions. Critically, the scope of such disclosure extends to 'direct and indirect, current and future, corporate and product emissions'.

ANZ has published policies and statements in relation to the bank's response to climate change and the ways in which it will reduce its environmental impact in line with the Paris Agreement goals. In relation to its performance, ANZ has only communicated its improved scope 1 and 2 emissions. However, its Sustainability Report does not include ANZ's indirect emissions resulting from its lending and investment portfolio.[34]

Therefore while ANZ discloses its 'direct' and 'corporate' emissions, it fails to disclose 'indirect' emissions. In the case of major financial institutions such as ANZ, the indirect emissions caused by their lending are many times greater than their direct emissions. It follows that the disclosure of these figures is much more important than what ANZ does report. ANZ therefore does not comply with article 3(c) of Chapter III of the Guidelines.

2. **Chapter III ('Disclosure'), articles 2 and 3 and paragraph 33 of the commentary, which state that:**

2. Disclosure policies of enterprises should include, but not be limited to, material information on: […] f) foreseeable risk factors […]

3. Enterprises are encouraged to communicate additional information that could include: […] d) information on internal audit, risk management and legal compliance systems […]

*33. **The Guidelines also encourage a second set of disclosure or communication practices in areas where reporting standards are still evolving such as, for example, social, environmental and risk reporting.** This is particularly the case with greenhouse gas emissions, as the scope of their monitoring is expanding to cover direct and indirect, current and future, corporate and product emissions;* [emphasis added]

The Guidelines indicate that disclosure policies for enterprises should include information on foreseeable risk factors and risk management. As we set out in section II 1(b), ANZ does not have a comprehensive disclosure policy for climate-related risk disclosures, and its approach to such disclosures thus far have been ad hoc, incomplete and inconsistent with the Paris Agreement targets.

As paragraph 33 of the commentary makes clear, the fact that such reporting standards may still be evolving does not excuse the Bank for failing to develop and adhere to a disclosure policy with respect to greenhouse gas emissions.

Climate-related scenario analysis is a key factor in climate-related risk disclosure. As explained in section II 1(b), ANZ has so far failed to produce and publish a complete scenario analysis in line with the Paris Agreement goals. To date, ANZ has only published one climate-related scenario analysis, testing customers within its thermal coal supply chain. Further, the scenarios used by the Bank in that analysis do not comply with the Paris Agreement goals, requiring that emissions reach net zero by 2050.

We submit that in order to comply with articles 2 and 3 of Chapter III of the OECD Guidelines, ANZ should conduct and publish a complete scenario analysis across its entire lending portfolio in line with the Paris Agreement goals.

3. **Chapter II ('General Policies') articles 10 and 12, and Chapter VI ('Environment'), article 1 and paragraph 63 of the commentary which state that:**

[34] Ibid, 43-45.

‘*10.* ***Enterprises should […] Carry out risk-based due diligence****, for example by incorporating it into their enterprise risk management systems****, to identify, prevent and mitigate actual and potential adverse impacts*** *as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*

12. ***Enterprises should […] Seek to prevent or mitigate an adverse impact*** *where they have not contributed to that impact,* ***when the impact is nevertheless directly linked to their operations, products or services by a business relationship****. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.*

*1. ‘****Enterprises should […] Establish and maintain a system of environmental management appropriate to the enterprise****, including: a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities; b) establishment of measurable objectives and, where appropriate, targets for improved environmental performance and resource utilization, including periodically reviewing the continuing relevance of these objectives; where appropriate, targets should be consistent with relevant national policies and international environmental commitments; and c) regular monitoring and verification of progress toward environmental, health, and safety objectives or targets. […]*

*63. In the context of these Guidelines, ‘****sound environmental management’ should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities*** *over the long-term, and involving both pollution control and resource management elements.’ […]* [Emphasis added]

We submit that ANZ is failing to prevent or mitigate an adverse environmental impact, namely climate change, to which its business operations are directly linked, in breach of articles 10 and 12 of Chapter II of the OECD Guidelines.

Further, we submit that ANZ is in breach of Chapter VI (‘Environment’) of the Guidelines, by failing establish and maintain a system of environmental management appropriate to the enterprise, that includes the collection and evaluation of adequate and timely information regarding the environmental … impacts of their activities, as well as targets consistent with relevant international environmental commitments, namely the Paris Agreement.

We submit that the ANCP should also make reference to the 2019 OECD Due Diligence for Corporate Lending and Securities Underwriting (‘Due Diligence for Corporate Lending’) regarding what may be expected of ANZ in this case.[35] The new Due Diligence Guidelines for Corporate Lending provides a common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with their clients. It emphasises that “financial institutions have a key role to play in driving global sustainability through directing financing towards measures to achieve the Sustainable Development Goals and the Paris Climate Agreement and through seeking to avoid and address environmental and social risks associated with their activities.”[36]

In the ING case before the DNCP, the Final Statement noted, ‘Under the terms of the OECD Guidelines companies are expected to conduct a due diligence process in respect of their

[35] OECD 'Due Diligence for Responsible Corporate Lending and Securities Underwriting: Key Considerations for Banks Implementing the OECD Guidelines for Multinational Enterprises’ (2019) *OECD Publishing* <https://mneguidelines.oecd.org/rbc-financial-sector.htm>.
[36] Ibid, 3.

environmental impact, including climate impact. This relates not only to their own negative environmental impact, but also to the impact in their value chain.'[37] This principle is particularly salient for enterprises operating in the financial sector, which are typically implicated in the value chain of numerous industries by virtue of their expansive lending portfolios.

ANZ does not fully and clearly disclose the environmental impact of its finance and lending portfolios, therefore it is not clear whether such information is collected and evaluated by ANZ as part of its environmental management system.

As discussed above in section II (2)(a)), ANZ remains Australia's largest financer of fossil fuel industries. Its continued, and indeed *increased,* investment in fossil fuel industries suggests that the Bank's own environmental management system is not following a set of 'measurable objectives' and 'targets for improved environmental performance' consistent with 'international environmental agreements', as required by article 1 of Chapter VI of the Guidelines.

Although ANZ continually reaffirms its support for the Paris Agreement goals, and has provided some strategies for reaching those goals,[38] it is clear that the scope of the Bank's lending portfolio is inconsistent with the Paris Agreement targets. As we have shown, available data indicates that ANZ's exposure to coal, gas and oil industries have increased since the Paris Agreement. Therefore, while ANZ has targets and objectives in place, the record of ANZ's activities does not demonstrate overall progress towards reaching these objectives.

Accordingly, ANZ does adequately manage the environmental impacts (both direct and indirect) of its activities as required under paragraph 63 of the commentary to chapter VI and it does not comply with article 1 of chapter VI of the Guidelines.

4. **Chapter VI ('Environment'), articles 4 and 6 and paragraph 69 of the commentary, which state that:**

4. 'Enterprises should [...] Consistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of full scientific certainty as a reason for postponing cost-effective measures to prevent or minimize such damage; [...]

*6. **Continually seek to improve corporate environmental performance, at the level of the enterprise and, where appropriate, of its supply chain**, by encouraging such activities as: [...] b) development and provision of products or services that have no undue environmental impacts; are safe in their intended use**; reduce greenhouse gas emissions; are efficient in their consumption of energy and natural resources**; can be reused, recycled, or disposed of safely; c) **promoting higher levels of awareness among customers of the environmental implications of using the products and services of the enterprise, including, by providing accurate information on their products (for example, on greenhouse gas emissions**, biodiversity, resource efficiency, or other environmental issues); and d) **exploring and assessing ways of improving the environmental performance of the enterprise over the longer term, for instance by developing strategies for emission reduction**, efficient resource utilization and recycling, substitution or reduction of use of toxic substances, or strategies on biodiversity. [...]*

*69. **The basic premise of the Guidelines is that enterprises should act as soon as possible,***

[37] *Oxfam Novib et al v ING Final Statement*, above n 8, 3.
[38] See e.g., ANZ '2019 Annual Report' <https://www.anz.com/content/dam/anzcom/shareholder/ANZ-2019-Annual-Report.pdf> ('*ANZ 2019 Annual Report*').

and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities.'

The OECD Guidelines urge enterprises to take timely action to prevent serious and irreversible environmental damage. Enterprises are obliged to continually improve their environmental performance, as well as the environmental performance of entities within their supply chain. This obligation entails the provision of accurate information to customers about the environmental implications of its products, including the greenhouse gas effects of its operations. Enterprises are also required to act to reduce their emissions and actively seek ways of improving their environmental performance over the long term.

ANZ's 2019 Climate-Related Financial Disclosure Statement indicates that the Bank has "encouraged and supported" 100 of its largest emitting customers in the energy, transport, buildings and food, beverage and agricultural sectors to establish, and where appropriate, strengthen existing low carbon transition plans by 2021.[39] With respect to its customers in the energy sector, ANZ's engagement is focused on customers with thermal coal operations. As discussed in section II (2)(b), in order to limit global temperature, rise to no more than 2°C, there is an urgent need to completely move away from thermal coal mining and coal-fired power generation, rather than gradually seeking to improve its emissions. Despite this, ANZ continues to finance new coal power plants.

Therefore, while the reported action may lead to a small and incremental improvement in ANZ's environmental impact, ANZ continues to engage in other activities that are harmful to the environment and on balance it cannot be said that ANZ is taking sufficient action to prevent serious and irreversible environmental damage.

Article 6 of the Guidelines also oblige enterprises to encourage the development and provision of products and services that have no undue environmental impacts, that reduce greenhouse emissions, and are efficient in their consumption of energy and natural resources. Despite this obligation, data from Market Forces indicate that ANZ's fossil fuel to renewables lending equates to a ratio of 7.70:1.[40] This can be compared to National Australia Bank's ratio of 1.60:1.[41]

ANZ's 2019 Climate-Related Financial Disclosure Statement indicates that the Bank's financing of renewables projects has increased by 27 per cent compared to the previous year, and such increases are no doubt welcomed.[42] However, we submit that the ANZ's relative lending to fossil fuel industries versus renewables still amounts to a breach of the Bank's obligation under Article 6 of the Guidelines. Increased lending to renewables needs to be coupled with decreased lending to fossil fuel industries, which ANZ has shown little commitment to undertaking.

5. Chapter VIII ('Consumer Interests'), articles 2 and 4, and paragraph 85 of the commentary, which state that:

2. 'When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they

[39] *ANZ 2019 Climate-Related Financial Disclosures,* above n 18, 6.
[40] Market Forces, 'ANZ – Still Australia's Biggest Lender to Dirty Fossil Fuels' <https://www.marketforces.org.au/campaigns/banks-new/anz/>.
[41] Market Forces, 'NAB – Australia's Third Biggest Supporter of Dirty Fossil Fuels' <https://www.marketforces.org.au/campaigns/banks-new/nab/>.
[42] *ANZ 2019 Climate-Related Financial Disclosures,* above n 18, 10.

should: […] 2. Provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions, including information on the prices and, where appropriate, content, safe use, environmental attributes, maintenance, storage and disposal of goods and services. Where feasible this information should be provided in a manner that facilitates consumers' ability to compare products.

4. [Enterprises should]… Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent or unfair.

85. ***Business conduct is increasingly considered by consumers when making their purchasing decisions. Enterprises are therefore encouraged to make information available on initiatives they have taken to integrate social and environmental concerns into their business operations and to otherwise support sustainable consumption.*** *Chapter III of the Guidelines on Disclosure is relevant in this regard. Enterprises are there encouraged to communicate value statements or statements of business conduct to the public, including information on the social, ethical and environmental policies of the enterprise and other codes of conduct to which the company subscribes. Enterprises are encouraged to make this information available in plain language and in a format that is appealing to consumers. Growth in the number of enterprises reporting in these areas and targeting information to consumers would be welcome.'* [Emphasis added]

In its public statements, ANZ presents the view that it takes climate change seriously, and it has repeatedly affirmed its commitment to the Paris Agreement targets.[43] ANZ also publishes in detail the bank's environmental achievements, but it fails to disclose instances in which the bank continues to engage in activities that are harmful to the environment.

While we acknowledge that ANZ is increasing its reliance on green and renewable energy sources for its operations, the Bank continues to be Australia's largest financer of finance fossil fuel industries. By holding itself out as in support of the Paris Agreement, while simultaneously failing to disclose the carbon emissions and climate-risks of its lending portfolio and other scope 3 emissions, we submit that the Bank's conduct is apt to mislead consumers.[44] We submit this in breach of the Bank's obligation under the Guidelines to 'provide accurate, verifiable and clear information that is sufficient to enable consumers to make informed decisions,' and not to make representations or practices that are 'deceptive, misleading, fraudulent or unfair.'

IV. Conclusion

In its public statements, ANZ has consistently supported the Paris Agreement targets. Indeed, we acknowledge that the Bank has made some positive changes related to the its climate-relayed policies, disclosures, and environmental management systems since endorsing the Agreement. However, this has been primarily to the ANZ's internal operations, and a commitment to the Paris Agreement targets has yet to meaningfully influence the Bank's decisions and practices in relation to its lending portfolio and other scope 3 emissions. To the contrary, ANZ has remained Australia's largest financer of fossil fuel industries since its public endorsement of the Paris Agreement.

The Guidelines are clear in that enterprises are responsible for the environmental impact of their activities, and must avoid contributing to adverse environmental impacts through their

[43] *ANZ 2019 Annual Report,* above n 42; *ANZ Climate Change Statement*, above n 4.

[44] We note that misleading and deceptive conduct claims have recently been filed against British Petroleum before the UK National Contact Point, in relation to BP's advertising campaigns regarding climate change. See 'Green Lawyers Launch Complaint over BP Ad Campaign amid 'Climate Emergency' *BT* (4 December 2019) <https://home.bt.com/news/latest-news/green-lawyers-launch-complaint-over-bp-ad-campaign-amid-climate-emergency-11364415667238>.

business relationships. Enterprise bear the responsibility of measuring, evaluating, disclosing and reducing these impacts. As established throughout this complaint, ANZ has fallen short of these obligations in a number of key respects.

We submit that ANZ must urgently disclose and reduce its indirect emissions, so that its overall actions are in line with targets set by the Paris Agreement. The good offices of the Australian National Contact Point can play a key role in facilitating such a shift. This was affirmed in the ING case, in which the DNCP encouraged ING to commit to the full and frank disclosure of its scope 3 emissions, to set targets, and to steer its activities and the activities of its clients towards reduction of greenhouse gas emissions to align with the Paris Agreement.

Finally, we find it important to acknowledge that many of the issues raised in this complaint also implicate the inadequacies of Australia's current legislative framework, which does not require the calculation and disclosure of an enterprise's scope 3 emissions under the *National Greenhouse and Energy Reporting Act* 2007. We therefore underscore that as a signatory to the Paris Agreement, the State of Australia has an obligation to adhere to the Agreement by adopting laws and regulations requiring the private sector to take measures in accordance with the Agreement's targets and objectives—not only related to emissions disclosures but to comprehensively address the climate emergency in Australia more broadly.

V. Requests

In light of the foregoing, we respectfully make the following requests:

1) Of the Australian National Contact Point:

- Offer its good offices to facilitate mediation between FOE and ANZ to resolve the breaches discussed in this instance, in particular, focusing on how divestment from fossil fuel investment could occur; and
- If mediation fails, the ANCP examine the facts and make a determination as to whether or not ANZ has breached the Guidelines; and
- Make a recommendation to the government of Australia to develop a new regulatory framework for greenhouse and energy reporting which—in line with international standards—requires a higher standard of disclosure from enterprises and encourages on-going improvement and transparency. This should include a methodology for measuring Scope Three emissions; and
- Encourage the Australian government to introduce legislation that ensures that the actions, policies and reporting of Australian banks are aligned with the objective of limiting global warming to +1.5°C.

2) Of ANZ:

- Disclose its high-risk greenhouse gas emissions, including indirect emissions resulting from business lending and investment portfolios; and
- Disclose which investments are stranded assets which will need to be divested from in order to meet the Paris Agreement goals; and
- Responsibly divest from investing in coal and reduce its investment in other fossil fuel industries; and
- Publish ambitious, concrete and measurable targets to lower its indirect greenhouse gas emissions. These targets must bring emissions financed by ANZ in line with efforts to limit global warming to 1.5°C, as agreed under the Paris Agreement.
- Publish complete and clear climate-related scenario-analysis in line with the Paris Agreement goals, for all the sectors financed by ANZ.

VI. Interests in the complaint / Process leading to the complaint

1. Complainants' interests in the complaint

Friends of the Earth -Australia
Friends of the Earth Australia (FOE-Australia) is a member of Friends of the Earth International, which is the world's largest grassroots environmental network, uniting 77 national member groups and some 5,000 local activist groups on every continent. With over 2 million members and supporters around the world, we campaign on today's most urgent environmental and social issues. We challenge the current model of economic and corporate neoliberal globalization, and promote solutions that will help to create environmentally sustainable and socially just societies

Jack Egan
Jack Egan is an Australian citizen who has been personally impacted by the climate crisis. Egan lost his North Rosedale home, south of Bateman's Bay in coastal New South Wales in December 2019 in the catastrophic Australian bushfires.

Joanna Dodds
Joanna Dodds is an Australian citizen who has been personally impacted by the climate crisis. Her home was impacted by a bushfire on March 18, 2018. The fire was due to unprecedented weather conditions which fanned sparks from powerlines.

Patrick Simons
Patrick Simons is an Australian citizen who has been personally impacted by the climate crisis. His family property and surrounding bushland in New South Wales were badly burnt in December 2019 in catastrophic Australian bushfires.

2. Process leading to the complaint
Friends of the Earth Australia and has been engaging with ANZ over a period of over five years through its affiliate project, Market Forces. Over this period, Market Forces has campaigned ANZ to divest from fossil fuels and support Australia's transition to a low carbon economy. For instance, in 2014, Market Forces launched 'Divestment Day', encouraging bank customers to divest from ANZ and other banks in protest of the banks' continued support for fossil fuel industries in Australia and abroad. Market Forces also publishes regular research on ANZ's commitment to the Paris Agreement targets and continues to monitor the climate impact of the Bank's lending portfolio through the publication of 2°Bank Scorecards.

In October 2019, Friends of the Earth affiliate Market Forces lodged a shareholder resolution requesting that the company disclose in annual reporting from 2020 strategies and targets to reduce exposure to fossil fuel (oil, gas, coal) assets in line with the climate goals of the Paris Agreement, including the elimination of exposure to thermal coal in OECD countries by no later than 2030. The resolution achieved a 14.89% vote in favour, representing $10.47 billion dollars worth of support from investors. This shareholder resolution is appended below.

Appendix A: Market Forces Shareholder Resolution