

Form 59
Rule 29.02(1)

Affidavit

No. NSD719 of 2020

Federal Court of Australia
District Registry: NSW
Division: General

Etienne Alexiou

Applicant

Australia and New Zealand Banking Group Limited (ACN 005 357 522)

Respondent

Affidavit of: **Graeme Richard Liebelt**

Address: [REDACTED]

Occupation: Non-Executive Director

Date: 16 November 2023

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Graeme Richard Liebelt affirmed on 16 November 2023	1 – 41	2
2	Annexure 'GRL-1', being a copy of extracts of the minutes of meetings of the Board of Directors of ANZ on 29 April 2014 and 30 April 2014	7	11
3	Annexure 'GRL-2', being a copy of ANZ's Constitution	9	14
4	Annexure 'GRL-3', being a copy of the ANZ Remuneration Policy operative from 28 February 2014	10(a)	82
5	Annexure 'GRL-4', being a copy of the ANZ Remuneration Policy operative from 25 February 2015	10(b)	94
6	Annexure 'GRL-5', being a copy of the Human Resources Committee Charter operative from October 2013	12(a)	107

Filed on behalf of (name & role of party) Australia and New Zealand Banking Group Limited, the Respondent

Prepared by (name of person/lawyer) Michael Tamvakologos

Law firm (if applicable) Seyfarth Shaw Australia

Tel 03 9613 0712 Fax 03 9631 0790

Email mtamvakologos@seyfarth.com

Address for service Seyfarth Shaw Australia

(include state and postcode) Level 27, 55 Collins Street, Melbourne VIC 3000

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
7	Annexure ' GRL-6 ', being a copy of the Human Resources Committee Charter operative from July 2014	12(b)	115
8	Annexure ' GRL-7 ', being a copy of the Human Resources Committee Charter operative from August 2015	12(c)	124
9	Annexure ' GRL-8 ', being a copy of an extract of the minutes of a meeting of the Board of Directors of ANZ on 1 August 2013	13	133
10	Annexure ' GRL-9 ', being a copy of the Clawback Review Group Charter operative between October 2014 and September 2015	14	135
11	Annexure ' GRL-10 ', being a copy of the Clawback Review Guide last updated in July 2015	15	138
12	Annexure ' GRL-11 ', being a copy of an email from Margot Dargan to me dated 28 August 2015	23	145
13	Annexure ' GRL-12 ', being a copy of my email to Margot Dargan dated 28 August 2015	39	164

I, Graeme Richard Liebelt, of [REDACTED], Non-Executive Director, affirm:

1. I was a Non-Executive Director of the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), from July 2013 to December 2022.
2. I make this affidavit from my own knowledge, save where otherwise indicated. Where I depose to matters on the basis of information provided to me by other persons, I believe that information to be true.
3. References in this affidavit to the **Relevant Period** are references to the period from October 2014 to September 2015.
4. By making this affidavit, I do not intend to and have no instructions to waive privilege in any communication, or record of communication, that is the subject of privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.

Tenure as non-executive director

5. In July 2013, I was appointed as a Non-Executive Director of the Board of ANZ. I resigned as a Non-Executive Director of the Board of ANZ effective 15 December 2022.

6. During my tenure as a Non-Executive Director, I was a member of ANZ's Risk Committee, Audit Committee, Human Resources Committee (the **HR Committee**) and Nomination and Board Operations Committee.

The function of the HR Committee

7. The HR Committee was established under the Constitution of ANZ by the Board of Directors of ANZ. I was the Chair of the HR Committee from 1 May 2014 to 31 December 2016. Now produced, shown to me and marked '**GRL-1**' is a copy of extracts of the minutes of meetings of the Board of Directors of ANZ on 29 April 2014 and 30 April 2014 by which I was appointed as the Chair of the HR Committee.

CB 2543
ZNA.001.001.1271

8. The Constitution of ANZ contains terms including:
- (a) that a power of the ANZ Board can, without limitation, be exercised in accordance with a delegation of the power under the Constitution (clause 5.2);
 - (b) the ANZ Board may delegate any of its powers to specified persons, including a committee, or any other person, and may revoke a delegation previously made, whether or not the delegation is expressed to be for a specified period (clause 8.1);
 - (c) the ANZ Board may delegate its powers on the terms and subject to any restrictions the Board decides (clause 8.2(b)); and
 - (d) power exercised in accordance with a delegation of the ANZ Board is treated as exercised by the ANZ Board (clause 8.2(b)).

CB 859
ZNA.001.001.0001

9. Now produced, shown to me and marked '**GRL-2**' is a copy of ANZ's Constitution.

10. During the Relevant Period, the purpose of the HR Committee was to assist the Board in relation to remuneration matters and senior executive succession, including periodic reviews of ANZ's Remuneration Policy. Now produced, shown to me and marked:

- (a) '**GRL-3**' is a copy of the ANZ Remuneration Policy operative from 28 February 2014; and
- (b) '**GRL-4**' is a copy of the ANZ Remuneration Policy operative from 25 February 2015.

CB 2405
ZNA.001.001.1171

CB 4027
ZNA.001.001.1944

11. The HR Committee was responsible for seeking to ensure that ANZ's remuneration policies and practices:
- (a) were reasonable and fair;
 - (b) rewarded performance;
 - (c) attracted and retained high calibre staff;

- (d) were in line with governance, legal and regulatory requirements;
 - (e) were managed to mitigate operational, financial, regulatory (including disclosure) and reputation risk;
 - (f) were approved by the Board, where appropriate; and
 - (g) were applied fairly and consistently with ANZ's other policies.
12. The powers and functions of the HR Committee were governed by the HR Committee Charter, which was periodically updated and approved by the ANZ Governance Committee. Now produced, shown to me and marked:
- (a) '**GRL-5**' is a copy of the Human Resources Committee Charter operative from October 2013; CB 2398
ZNA.001.001.1164
 - (b) '**GRL-6**' is a copy of the Human Resources Committee Charter operative from July 2014; and CB 2556
ZNA.001.001.1281
 - (c) '**GRL-7**' is a copy of the Human Resources Committee Charter operative from August 2015; and CB 3858
ZNA.001.001.1840

The review of decisions of the Clawback Review Group

13. During the Relevant Period, the Clawback Review Group (the **CRG**) had delegated authority from the Board of ANZ to release or clawback the deferred remuneration of ANZ employees (excluding particular roles), subject to confirmation by the Board or the Chair of the HR Committee that the decisions taken were appropriate. The delegation of power from the Board to the CRG was made on 1 August 2013. Now produced, shown to me and marked '**GRL-8**' is a copy of an extract of the minutes of a meeting of the Board of Directors of ANZ on 1 August 2013 by which the delegation of the Board's authority to the CRG was effected, subject to the confirmation of the Board or the Chair of the HR Committee. CB 2383
ZNA.001.001.1161
14. During the Relevant Period, the function of the CRG was to support the ANZ Board by considering any consequences to be applied to the variable remuneration of employees involved in risk and compliance matters. Now produced, shown to me and marked '**GRL-9**' is a copy of the Clawback Review Group Charter operative between October 2014 and September 2015. CB 2756
ZNA.001.001.1347
15. The functions of the CRG were carried out in accordance with the Clawback Review Guide, which provided an overview of the clawback of deferred remuneration at ANZ and the processes that the CRG had approved to seek to ensure compliance with the ANZ Remuneration Policy. Now produced, shown to me and marked '**GRL-10**' is a copy of the Clawback Review Guide last updated in July 2015. CB 3787
ZNA.001.001.1816

16. As the Chair of the HR Committee, I was responsible for approving decisions made by the CRG, amongst other things. My role, as set out at page 2 of the Clawback Review Guide, was to confirm that the decisions taken by the CRG were appropriate. Under the terms of the Clawback Review Guide, as the Chair of the HR Committee, I had the power to rectify the CRG's decisions, including by applying further adjustments if I disagreed with the decisions.
17. While the Board of ANZ also had the power to approve decisions taken by the CRG under the terms of the delegation of power from the Board to the CRG, in the period that I held the position of Chair of the HR Committee, I am not aware of any decisions of the CRG being escalated to the Board instead of the Chair of the HR Committee.
18. I was not involved in the meetings or deliberations of the CRG. Matters were escalated to the Chair of the HR Committee for review only after decisions had been made by the CRG. My interaction with the CRG in my role as the Chair of the HR Committee occurred when I was required to consider decisions of the CRG to confirm that they were appropriate. There was otherwise no overlap with, or interaction between, the HR Committee and the CRG.
19. My usual practice when determining whether a decision of the CRG was appropriate, was to review and consider the materials provided to me which related to the CRG's decision. Occasionally, I had a discussion with Margot Dargan, Group General Manager, Executive Remuneration about the CRG's decision if I had questions about a particular matter, if a matter required explanation, or if the timeframe within which I needed to review the decision was short. Depending on the circumstances, I either contacted Margot Dargan or she contacted me to have a discussion. Margot Dargan and her team were responsible for preparing the packs provided to the CRG and the Chair of the HR Committee setting out the matters for decision and approval. Margot Dargan was also a member of the CRG. I do not recall whether I had a discussion with Margot Dargan prior to considering the recommendations made by the CRG in respect of the Applicant (**Etienne**). However, I recall having discussions with Margot Dargan about recommendations made by the CRG in the context of the Code of Conduct Review which I describe in paragraph 21 below.
20. During the Relevant Period, my usual process was to review the decision of the CRG and consider whether a proper process had been followed and the decision was reasonable and open to the CRG based on the information before it. I did not understand my role as Chair of the HR Committee in considering whether the recommended decision was appropriate to involve making independent factual enquiries

or findings as to the employee's conduct. To the best of my recollection, there were no occasions where I disagreed with a decision of the CRG.

Knowledge of and involvement in the Code of Conduct Review

21. As a member of the ANZ Board, in or around 2015, I was aware that ANZ was conducting a review of Bloomberg chats and emails of certain employees for potential breaches of the ANZ Code of Conduct and Ethics (the **Code of Conduct**), the ANZ Values and ANZ policies (the **Code of Conduct Review**).
22. I learned, through my position at ANZ, in or around 2015, that Etienne's communications were investigated as part of the Code of Conduct Review, although I do not recall any specific discussions about Etienne's communications.

Clawback and forfeiture of deferred equity and withholding of incentive

23. On 28 August 2015, I received an email from Margot Dargan attaching a paper entitled "Clawback Review Group Recommendations" dated 28 August 2015 detailing decisions of the CRG for my review and approval (the **HR Committee Chair Paper**). Also attached to Margot Dargan's email was a paper dated 27 August 2015 entitled "Employee Equity Matters – Etienne Alexiou" (the **CRG Paper**) and a memo from Mark Evans, Chief Compliance Officer dated 27 August 2015 entitled "Etienne Alexiou – proposed clawback of deferred equity". Margot Dargan's email indicated that the paper dated 27 August 2015 and the memo from Mark Evans had been provided to the CRG. Now produced, shown to me and marked 'GRL-11' is a copy of the email from Margot Dargan to me dated 28 August 2015 with its attachments.

CB 4101
ZNA.001.001.2017

24. The action requested of me in the HR Committee Chair Paper as the Chair of the HR Committee was, amongst other things, to consider, and if thought fit, to confirm the following decision of the CRG was appropriate:

That equity tranches 1, 2, 3 and 4 as shown in the table on page 1 of the CRG Paper of 27/8/15 entitled "Employee Equity Matters – Etienne Alexiou" which were previously allocated to Etienne Alexiou be clawed back due to behaviours & actions, which in the opinion of the Clawback Review Group are serious and warrant clawback, subject to confirmation by the Chair of the Human Resources Committee. To the extent necessary this approval operates absolutely and retrospectively.

25. The equity tranches referred to in the HR Committee Chair Paper related to deferred equity bonuses awarded to Etienne under ANZ's:
 - (a) 2012 Short Term Incentive Plan (the **2012 STI Grant Tranche 2**);
 - (b) 2012 Long Term Incentive Plan (the **2012 LTI Grant**); and

(c) 2013 Total Incentives Performance Plan (the **2013 TIPP Grant Tranche 1** and the **2013 TIPP Grant Tranche 2**).

26. The HR Committee Chair Paper stated, amongst other things, that the CRG had confirmed that:

- (a) a robust process had been followed in arriving at the decision to terminate Etienne's employment;
- (b) Etienne's behaviour was in breach of the Code of Conduct and the ANZ Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**); and
- (c) there were no dissenting views amongst the CRG on these matters.

27. [Redacted]

28. [Redacted]

29. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

30. From my review of the materials presented to me, I formed the view that a comprehensive investigation had been conducted by Mark Evans over a period of nearly two months in the context of the broader Code of Conduct Review, and Etienne had been provided with an opportunity to respond to the allegations during the investigation.
31. Mark Evans' memo also annexed examples of the communications sent by Etienne that included inappropriate and/or offensive language. I read the examples of the communications which were annexed to Mark Evans' memo and these examples contained offensive language and sexual references. I did not review any materials other than those sent to me by Margot Dargan on 28 August 2015. While I did not refer to the Code of Conduct and the Use of Systems Policy at the time I reviewed the decision of the CRG, I was familiar with these documents and their content. My review of Mark Evans' memo and its annexure was sufficient to satisfy me that the communications sent by Etienne were highly inappropriate.
32. I also understood from the materials presented to me that the CRG unanimously supported the recommendation made by Mark Evans.
33. From my review of the materials presented to me and based on my knowledge of the Code of Conduct and the Use of Systems Policy, I considered that it was open to the CRG to make the decision to clawback Etienne's deferred unvested equity in accordance with the Clawback Review Guide. That is because the materials demonstrated that findings had been made by Mark Evans that Etienne had used ANZ systems to send nearly 400 communications over a period of many years in contravention of the standards of behaviour required by ANZ.
34. Other ANZ employees were found to have engaged in the same conduct by Mark Evans following the Code of Conduct Review. These employees were either dismissed or had another disciplinary and/or remuneration outcome applied. The CRG had determined that it was appropriate to clawback the deferred unvested equity of employees in the same circumstances as Etienne, and I approved those decisions. Accordingly, I considered that the approach taken by Mark Evans, the business and the CRG in relation to Etienne was consistent with these other cases.
35. The HR Committee Chair Paper also asked that I confirm the decision taken by ANZ, that the incentive provisionally awarded to Etienne for the 2014 performance year would not be granted, provided or released to him (the **2014 TIPP Grant**).
36. I was asked to confirm this decision because, prior to the 2014 TIPP Grant being provisionally awarded, the HR Committee had been asked to consider and, if thought fit, to approve the incentive proposal for Etienne. This approval was a matter for the HR Committee because the incentive proposed to be granted to Etienne was above the

monetary threshold for the 2014 performance year of \$500,000. The HR Committee approved the quantum of the proposed 2014 TIPP Grant, but it was not responsible for deciding to award the incentive to Etienne on a provisional basis only pending the outcome of the ASIC BBSW Investigation and ANZ's own investigation of the matters the subject of the ASIC BBSW Investigation. That was a decision for the business, led by the Divisional Chief Executive Officer, who at that time was Andrew Geczy.

37. Although my approval as Chair of the HR Committee of the decision that the 2014 TIPP Grant would not be granted, provided or released to Etienne was not strictly required pursuant to any specific or general delegated function, I was asked to confirm this decision. This request was made as a matter of good governance given that the HR Committee had made the earlier decision to approve the quantum of the proposed 2014 TIPP Grant (as described in paragraph 36 above).
38. I agreed with the decision that, in light of the findings made with respect to Etienne following the Code of Conduct Review and disciplinary process, it was open to ANZ to withhold the 2014 TIPP Grant that had been provisionally awarded to Etienne in November 2014.
39. I responded to Margot Dargan's email later the same day, 28 August 2015, to confirm that I agreed with all of the recommendations in the HR Committee Chair Paper. Now produced, shown to me and marked 'GRL-12' is a copy of my email to Margot Dargan dated 28 August 2015.

CB 4119
ZNA.001.001.2035

Alleged complaints and disclosures made by the Etienne

40. I am aware that Etienne alleges in these proceedings that during his employment he made several complaints and disclosures to ANZ and ASIC. Adopting the definitions used in the Second Further Amended Statement of Claim, at no time prior to my involvement in these proceedings was I aware of:
- (a) the October 2011 Complaint;
 - (b) the February 2013 Complaint;
 - (c) the 17 July 2014 Complaint;
 - (d) the 18 July 2014 Complaint;
 - (e) the October 2014 Complaint;
 - (f) the February 2015 Complaint;
 - (g) the First ASIC Disclosure;
 - (h) the Second ASIC Disclosure; or

- (i) any other complaint or disclosure made by Etienne, including a complaint allegedly made in December 2014.

41. I did not make the alleged: Standing Down decision; decision to issue the Press Release; decision to commence the Disciplinary Investigation; or Termination decision as those matters are defined in the Second Further Amended Statement of Claim. My involvement in the Forfeitures decision and the Withholding of the 2014 Bonus decision, as those matters are defined in the second Further Amended Statement of Claim, is as I describe in paragraphs 23 to 39 above.

Affirmed by the deponent)
 at Melbourne)
 in Victoria)
 on 16 November 2023)
 Before me:)



Signature of deponent



Signature of witness

Name of witness: James David Wintle Sutherland

Qualification of witness: An Australian Legal Practitioner within the meaning of the *Legal Profession Uniform Law (Victoria)*

This document was affirmed via audio-visual link. An electronic copy of this document and not the original has been used when completing the jurat requirements under section 27(1) of the *Oaths and Affirmations Act 2018 (Vic)*.

The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000 (Vic)* have been met.