

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: **Jonathan James Slater**

Address: [REDACTED]

Occupation: Partner, Clayton Utz

Date: 17 November 2023

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I, Jonathan James Slater, of [REDACTED]  
[REDACTED] Partner at Clayton Utz, affirm:

1. I have been a solicitor at Clayton Utz since May 2006.
2. Since January 2017, I have been a Partner at the law firm Clayton Utz in the Litigation and Dispute Resolution practice group, specialising in financial services disputes and regulatory investigations.
3. 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.
4. I have been shown parts of the affidavit of the Applicant (**Mr Alexiou**) affirmed on 21 December 2022 (the **Applicant's Affidavit**). In this affidavit, I refer to and respond to a number of those parts of the Applicant's Affidavit. Where I do not respond to a part of the Applicant's Affidavit, it should not be construed as an acceptance or admission of the matters alleged in that part.
5. 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, other than in respect of paragraphs 35 – 44. Nothing in this affidavit otherwise 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.

#### **ANZ's engagement of Clayton Utz**

6. In or around July 2014, Clayton Utz was engaged by ANZ to assist ANZ in connection with the investigation by the Australian Securities and Investments Commission (**ASIC**) into ANZ's participation in the Bank Bill Swap Rate (**BBSW**) rate setting process (the **ASIC BBSW Investigation**) and ANZ's concurrent investigation into the matters that were the subject of the ASIC BBSW Investigation (the **ANZ BBSW Investigation**).
7. At that time, I held the position of Special Counsel at Clayton Utz. I had day-to-day conduct of the matter together with Nicholas Mavrakis, Partner, Clayton Utz. Clayton

Utz was instructed by the ANZ Disputes team under the supervision of Bob Santamaria, Group General Counsel.

8. The ANZ BBSW Investigation was separate to the review that was later commenced by ANZ to investigate possible breaches of the ANZ Code of Conduct and Ethics (the **Code of Conduct**), the ANZ Values and other ANZ policies due to the misuse of ANZ's communication systems (the **Code of Conduct Review**).

**Compulsory examinations and meetings with current and former ANZ employees during the ASIC BBSW Investigation and the ANZ BBSW Investigation**

9. In or around July 2014, ASIC approached ANZ seeking its co-operation and assistance to contact current and former ANZ employees to schedule interviews as part of the ASIC BBSW Investigation.
10. Following this request, commencing in or around August 2014, ASIC conducted compulsory examinations of over 30 then current and former ANZ employees pursuant to section 19 of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**).
11. ANZ also facilitated independent legal representation for employees and former employees who were to be examined by ASIC. ANZ offered to pay for current and former ANZ employees to have legal representation in relation to any ASIC examination in which they participated and any meeting with ANZ as part of the ANZ BBSW Investigation. Where those offers were taken up by the prospective examinees, they each engaged those lawyers directly and neither ANZ nor Clayton Utz had any involvement in instructing the employees' lawyers. ANZ assumed responsibility for payment of those independent legal advisers.
12. By reason of these matters, I was aware that, on 15 August 2014, Mr Alexiou attended a compulsory examination with ASIC pursuant to section 19 of the ASIC Act. I did not become aware of the content of Mr Alexiou's discussion with ASIC during the compulsory examination until ANZ received a copy of the transcript of the examination during proceeding VID197/2016 commenced by ASIC against ANZ in the Federal Court of Australia.
13. As I describe below, I am also now aware that Mr Alexiou was scheduled to attend a resumed examination with ASIC in December 2014. I did not become aware of the content of Mr Alexiou's discussion with ASIC until I read the relevant parts of the Applicant's Affidavit.
14. During the period that Clayton Utz acted for ANZ, Mr Alexiou was represented by two law firms, Makinson d'Apice and HWL Ebsworth (**HWLE**).

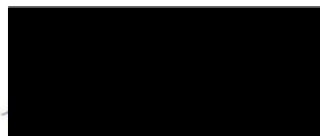
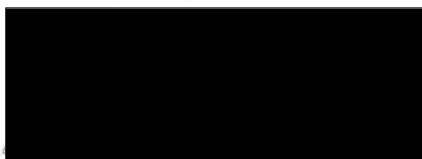


**ANZ interviews of current and former ANZ employees during the ANZ BBSW Investigation**

15. By around July 2014, ANZ had given an undertaking to ASIC that it would not speak to relevant employees as part of the ANZ BBSW Investigation until ASIC had concluded its interviews of those employees for the purposes of the ASIC BBSW Investigation.
16. On 29 July 2014, ASIC issued ANZ with a notice under section 19 of the ASIC Act directing ANZ not to provide, to a list of named employees, access to their emails and chat messages sent or received by them on or prior to 31 December 2013 save where reasonably necessary to permit them to perform their employment duties with ANZ (the **July Notice**). Mr Alexiou was one of the employees named in the July Notice. Now produced, shown to me and marked 'JJS-14' is a copy of the July Notice which has been redacted to mask the identity of each of the ANZ employees identified in the July Notice apart from Mr Alexiou in order to maintain the privacy of each of those other people, who are not party to these proceedings.
17. From about October 2014 to April 2015, I attended over 20 interviews with ANZ employees, including Mr Alexiou, as part of the ANZ BBSW Investigation.
18. In preparing for these interviews with ANZ employees, Clayton Utz prepared a script to be read by a solicitor from Clayton Utz at the commencement of the interview. The script outlined the confidentiality arrangements for the interview and the conditions which applied to the interview. A printed copy of the script was brought to each of the interviews. Now produced, shown to me and marked 'JJS-15' is a copy of Clayton Utz's standard form meeting script for conducting interviews with ANZ employees.
19. The script included the following words:
- "Clayton Utz and ANZ are aware that [employee] has recently participated in a s.19 examination with ASIC and [employee] has provided the usual s.19 confidentiality undertaking. ASIC has agreed that ANZ may conduct this interview, however, nothing in this interview should be interpreted as requiring anything other than [employee]'s strict adherence to the ASIC confidentiality undertaking."*
20. At every interview which I attended words to the effect set out above were spoken by a lawyer from Clayton Utz at, or shortly after, the commencement of each of the interviews.
21. During the interviews I attended personally I read out or spoke to the matters set out in the script at the commencement if Nicholas Mavrakis was not in attendance. If both

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Nicholas Mavrakis and I attended an interview, the usual practice was for Nicholas Mavrakis to read out or speak to the matters set out in the script.

**Meeting with Mr Alexiou and his legal representatives on 31 October 2014**

22. Mr Alexiou's first interview as part of the ANZ BBSW Investigation was scheduled to take place on 31 October 2014 at ANZ's offices on Pitt Street in Sydney.
23. The attendees who were to participate in that meeting in addition to me were:
- (a) Mr Alexiou;
  - (b) Stewart Roberts, solicitor at Makinson d'Apice;
  - (c) Doran Cook, who was, at that time, counsel for Mr Alexiou;
  - (d) Nicholas Mavrakis;
  - (e) Alexandra McCaughan, who was, at that time, a solicitor at Clayton Utz; and
  - (f) Shayne Collins, Group General Manager, Markets Risk, ANZ.
24. On 17 October 2014, prior to the meeting with ANZ, I received a letter from Makinson d'Apice. A copy of that letter is exhibited at pages 1161 to 1162 of the Applicant's Affidavit. The letter sought an assurance that any information provided to ANZ by Mr Alexiou during the upcoming interview would be kept confidential.
25. On 31 October 2014, before the interview started, Doran Cook asked Nicholas Mavrakis to have a private discussion relating to the interview. Doran Cook and Nicholas Mavrakis left the interview room along with Stewart Roberts.
26. While I was waiting with Mr Alexiou in the interview room at ANZ's offices, Mr Alexiou and I engaged in small talk for about 10 minutes. This occurred in the presence of Shayne Collins and Alexandra McCaughan. During the course of that conversation, I said to Mr Alexiou words to the effect that his Bloomberg chats were more entertaining than those of his colleagues that I had also seen as part of the ANZ BBSW Investigation. By this comment, I was referring to Mr Alexiou's social interactions with colleagues at other banks that were different to the usual work-related Bloomberg chats of other ANZ employees that I had read. One such interaction that I specifically recall is when Mr Alexiou's colleagues at other banks were making fun of him for his "eastern suburbs jacket".
27. I did not say words to the effect that Mr Alexiou's communications were highly entertaining. I said words to the effect that Mr Alexiou's chats were more entertaining because the limited selection of his Bloomberg chats that I had read in preparation for the interview were more interesting compared with others I had read. It was a

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throwaway comment, and I was not providing, nor did I intend to provide, Mr Alexiou with a view on the substance of his communications.

28. At the time of meeting with Mr Alexiou, I had only seen a limited selection of his Bloomberg chats and emails that were flagged as potentially relevant to the ANZ BBSW Investigation.
29. The interview with Mr Alexiou did not resume after Doran Cook, Nicholas Mavrakis and Stewart Roberts left the interview room. At some point following the termination of the meeting, I was informed by Nicholas Mavrakis that the meeting could not resume due to a potential conflict of interest raised by Mr Alexiou's legal representative that had to be resolved.

**Telephone call with HWLE on 1 December 2014**

30. On or around 1 December 2014, I received a call with Robert Schneider and Alexandra White, Mr Alexiou's representatives from HWLE, and Peter Silver, Mr Alexiou's counsel. By this time, Makinson d'Apice and Doran Cook had ceased to act for Mr Alexiou. The purpose of this call was to speak to Mr Alexiou's legal representatives in advance of an interview with Mr Alexiou scheduled for 5 December 2014.
31. I have been shown a file note of that call prepared by Robert Schneider which records that I said that ANZ would "live or die" by Mr Alexiou's statements to ASIC. A copy of that file note is exhibited at pages 1242 to 1245 of the Applicant's Affidavit. I do not recall saying those words during that call. I had, however, used the phrase on other occasions because I considered that ANZ's defence of the allegations made by ASIC may be dependent on the responses provided by employees. I used the phrase to emphasise the importance of an employee's role in the ASIC BBSW Investigation. CB 2995  
ALEX.001.001.0616
32. I have also been shown a file note of that call prepared by Alexandra White. The file note records that I said that I had requested the interview to "get on top" of what Mr Alexiou had told ASIC during his compulsory examination. I deny that I made such a comment. The file note incorrectly records what I said. I did not ask Mr Alexiou and his solicitors to disclose his discussions with ASIC during his compulsory examination. Instead, I said that Mr Alexiou should be on top of what he had discussed with ASIC so that he did not breach his confidentiality obligations to ASIC by discussing those matters with ANZ. Now produced, shown to me and marked 'JJS-16' is a copy of Alexandra White's file note dated 1 December 2014. ANZ.1000.0009.0002
33. The file note taken by Robert Schneider (exhibited at pages 1242 to 1245 of the Applicant's Affidavit) more accurately reflects my recollection of what I said during the call on this subject, specifically the following extract:



*“Be on top of s19 examination so ensure doesn’t breach confidentiality undertaking*

*Be on top of things that are important to him.”*

34. My statement “[b]e on top of s19” was a direction to HWLE and Peter Silver (his new Counsel) to ensure that Mr Alexiou understood the confidentiality undertakings that he had given to ASIC when providing responses during the interview with ANZ.

**Meeting with Mr Alexiou and his legal representatives on 5 December 2014**

35. On 5 December 2014, I attended the re-scheduled interview with Mr Alexiou at Clayton Utz’s offices at 1 Bligh Street, Sydney with his legal advisers, Robert Schneider and Alexandra White from HWLE and Peter Silver (the **ANZ Interview**).
36. I attended the ANZ Interview with Nicholas Mavrakis and Alexandra McCaughan from Clayton Utz, along with Shayne Collins on behalf of ANZ.
37. The ANZ Interview was conducted consistently with the usual practice adopted in relation to the conduct of interviews with ANZ’s employees at this time (as described in paragraphs 18 – 21 above).
38. During the ANZ Interview, Nicholas Mavrakis showed Mr Alexiou a number of his chats and the Bloomberg chats of other employees and asked him questions about them. These chats were of various dates between 2008 to 2011.
39. I prepared a file note of the ANZ Interview (the **ANZ Interview File Note**). The ANZ Interview File Note is a six-page file note recording the substance of certain communications which occurred during the ANZ Interview, together with certain impressions, thoughts and conclusions which I formed. Now produced, shown to me and marked ‘**JJS-17**’ is a copy of my file note of the meeting on 5 December 2014.
40. I am informed by Emily Tranter, a solicitor (now partner) at Clayton Utz, and believe that she caused a typewritten transcript of the ANZ Interview File Note to be prepared in about March 2021. In September 2021, I reviewed the typewritten transcript of the ANZ Interview File Note for the purposes of this proceeding in the Federal Court of Australia and confirmed it was an accurate transcript. Now produced, shown to me and marked ‘**JJS-18**’ is a copy of the transcript of my file note of the meeting on 5 December 2014.
41. Following the ANZ Interview, Alexandra McCaughan prepared a draft file note of the ANZ Interview. I cannot now recall whether Nicholas Mavrakis or I, or both of us, settled the file note. However, I believe that at least one of us did settle the file note, as that was our usual practice during the course of our engagement by ANZ.

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42. This process resulted in the preparation of a detailed file note of the ANZ interview (the **ANZ Interview Detailed File Note**). The ANZ Interview Detailed File Note is an eight-page document recording the substance of certain communications which occurred during the ANZ Interview, together with certain impressions, thoughts and conclusions formed or drawn by the Clayton Utz solicitors both during and after the ANZ Interview. Now produced, shown to me and marked '**JJS-19**' is a copy of the detailed file note of the meeting on 5 December 2014.
43. For the purposes of preparing this affidavit, I have been provided with, and reviewed, copies of HWLE file notes titled "027. 141205 File Note Conference with Mavrakis Slater Alexander McCaw Shane Col" (the **HWLE File Note 1**) and "026. 141205 File Note Conference with JS, NV, AM, FB, PS, RS, AG" (the **HWLE File Note 2**) produced by Mr Alexiou. HWLE File Note 1 and HWLE File Note 2 appear to record matters discussed during the ANZ Interview. These file notes are annexed to the Applicant's Affidavit at pages 1259 and 1297 respectively.
44. Mr Alexiou alleges that during the ANZ Interview, he made a complaint which he refers to as the December 2014 Complaint in the Second Further Amended Statement of Claim. Mr Alexiou was shown a number of chats that had language that may have been interpreted in one way, but could have other meanings. These were the reasons for the questions by Nicholas Mavrakis to Mr Alexiou, and the context of the responses given by Mr Alexiou.

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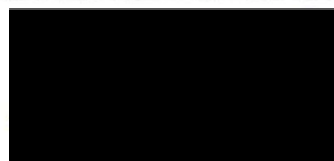
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#### **Telephone call with HWLE on 11 December 2014**

45. On 11 December 2014, I had a telephone call with Robert Schneider. During the discussion, Robert Schneider said to me words to the effect that ASIC was proposing to conduct a further section 19 examination of Mr Alexiou as part of the ASIC BBSW Investigation. I do not recall whether I communicated this to ANZ.

#### **Interaction at ASIC premises on 22 December 2014**

46. On 22 December 2014, I attended ASIC's offices with Fred Pucci, Head of Compliance at ANZ, who was there to attend a compulsory examination with ASIC. Fred Pucci had appointed an independent legal adviser, so I attended ASIC's offices in my capacity as ANZ's legal representative in case a legal professional privilege issue arose that I needed to address on behalf of ANZ. I did not participate in the compulsory examination of Fred Pucci, but rather waited in the reception area of ASIC's offices for the duration of the meeting.
47. I refer to paragraph 301 of the Applicant's Affidavit. While waiting in the reception area, I saw Mr Alexiou and his legal representatives from across the other side of the reception.



Mr Alexiou approached me to say hello, in response to which I said words to the effect, I wonder what you've been discussing. This was intended to be a rhetorical "tongue in cheek" comment, as I was already aware that Mr Alexiou was meeting with ASIC because Robert Schneider had told me during our telephone discussion on 11 December 2014. I did not make this comment in an attempt to find out what Mr Alexiou had told ASIC. I did not become aware of the content of Mr Alexiou's discussion with ASIC at this meeting until I read the relevant paragraph of the Applicant's Affidavit.

**Telephone call with HWLE on 2 February 2015**

48. On 2 February 2015, I made a telephone call to Robert Schneider. Now produced, shown to me and marked 'JJS-20' is a copy of my file note of the call with Robert Schneider on 2 February 2015.
49. During the telephone call, I asked Robert Schneider whether he had heard anything further from Colin Luxford (the ASIC investigator leading the ASIC BBSW Investigation) since I saw Mr Alexiou at ASIC's offices in December 2014. Robert Schneider said that they had, but he was not at liberty to disclose anything further to me. Robert Schneider did not disclose to me the content of Mr Alexiou's discussions with ASIC, nor did I ask him to disclose this information.
50. At that point in time, I knew that ASIC was continuing to correspond with Mr Alexiou as part of the ASIC BBSW Investigation because his legal representatives had told me. I did not consider, nor did I understand that ANZ considered, the fact that employees had attended compulsory examinations and were engaging in discussions with ASIC to be controversial. ANZ and its employees who were the subject of the ASIC BBSW Investigation were co-operating in responding to the investigation.

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**Telephone call with HWLE on 10 March 2015**

51. On 10 March 2015, Nicholas Mavrakis and I had a telephone call with Robert Schneider, Alexandra White and Peter Silver. Now produced, shown to me and marked 'JJS-21' is a copy of my file note of the call with Nicholas Mavrakis, Robert Schneider, Alexandra White and Peter Silver on 10 March 2015.
52. The purpose of this telephone call, as I understood it, was for Mr Alexiou's legal representatives to discuss the possibility of sharing our respective legal analysis of the matters that were the subject of the ASIC BBSW Investigation.
53. I have reviewed my file note of the call. My file note records that Nicholas Mavrakis asked Robert Schneider whether there had been a request for a further section 19 examination, and Robert Schneider responded that it had not yet taken place. My file note records that Nicholas Mavrakis also asked if there had been an "informal approach"

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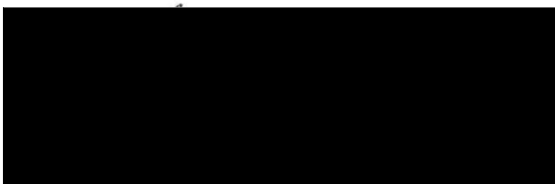
and my file note records that Peter Silver said in response, "Constrained by what can be discussed. ASIC will be pressing it". I do not agree that the Voluntary Assistance Representation (as defined in the Second Further Amended Statement of Claim) was made during this call because it is not recorded in my file note and I have no independent recollection of the Voluntary Assistance Representation being made.

54. For the purposes of preparing this affidavit, I have been provided with, and reviewed, a copy of a HWLE file note entitled "20150310 – File Note Alexandra White" produced by Mr Alexiou to ANZ in this proceeding. The file note appears to be authored by Alexandra White and records the matters discussed at this meeting. Alexandra White's file note records that statements to the effect recorded in my file note were made by Robert Schneider.

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#### **HWLE invoices**

55. HWLE represented several ANZ employees. Clayton Utz acted as a single contact point for billing purposes and to review the reasonableness of the fees incurred by ANZ employees.
56. Upon receipt of an invoice from HWLE in respect of Mr Alexiou, Nicholas Mavrakis or I reviewed the invoice at a high level to ensure the fees appeared reasonable to us for the work done. I read the narratives on the invoices as part of this review, but it was for the purposes of determining whether the fees charged were reasonable. While I cannot recall each narrative that I read, the narratives were typically descriptive of procedural aspects of the matter and did not describe any substantive advice given.
57. In respect of invoices relating to Mr Alexiou, HWLE used the acronym "FB" when referring to him in those invoices. I was aware at the time that this acronym referred to Mr Alexiou, because I was told by Jonathan Tapp, a Partner at HWLE, that HWLE used a system to refer to their clients whereby HWLE would use the letter in the alphabet that came immediately after the client's first and last initials respectively. In Mr Alexiou's case, "EA" became "FB".



58. After Nicholas Mavrakis or I reviewed the invoices, we provided them to ANZ so they could be paid. We did not provide any commentary along with the invoices, other than to confirm that the fees appeared reasonable to us.

Affirmed by the deponent  
at Sydney  
in New South Wales  
on 17 November 2023  
Before me:

)  
)  
)  
)  
Signature of deponent

[Redacted]

Signature of witness

Name of witness: Ian Donaldson Napier

Qualification of witness: Solicitor