

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: Kathryn  
**Kathy Claire Tingate**  
Address: 833 Collins Street, Docklands, Victoria 3008  
Occupation: ~~Tribe Performance Lead & Initiative Lead Grow to Perform~~ Alignment Lead, Talent & Culture  
Date: 14 November 2023

### Contents

Document number	Details	Paragraph	Page
	<u>Kathryn</u>		
1	Affidavit of Kathy Claire Tingate affirmed on 14 November 2023	1 – 65	3
2	Annexure 'KCT-1', being a copy of the email from Steve Bellotti to Global Markets staff dated 30 November 2011	32(a)	18
3	Annexure 'KCT-2', being a copy of the email from Fred Pucci to Global Markets staff dated 3 February 2012	32(b)	20
4	Annexure 'KCT-3', being a copy of the email from Eddie Listorti and Richard Huston to Global Markets staff dated 7 February 2013	32(c)	22
5	Annexure 'KCT-4', being a copy of the email from Eddie Listorti and Richard Huston to Global Markets staff dated 19 June 2013	32(d)	24

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[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
6	Annexure 'KCT-5', being a copy of the email from Richard Huston to the Global Markets leadership team dated 7 February 2014	32(e)	26
7	Annexure 'KCT-6', being a copy of the email from Etienne to the Balance Sheet Trading business unit dated 5 August 2014	32(f)	29
8	Annexure 'KCT-7', being a copy of the Employee Information Guide	36	32
9	Annexure 'KCT-8', being a copy of The Blue Book effective June 2010	37(a)	39
10	Annexure 'KCT-9', being a copy of The Blue Book effective September 2012	37(b)	88
11	Annexure 'KCT-10', being a copy of The Blue Book effective November 2013	37(c)	137
12	Annexure 'KCT-11', being a copy of The Blue Book effective October 2014	37(d)	179
13	Annexure 'KCT-12', being a copy of The Blue Book effective June 2015	37(e)	221
14	Annexure 'KCT-13', being a copy of Etienne's training record	38	263
15	Annexure 'KCT-14', being a copy of the "ANZ Essentials: Welcome to ANZ" induction training module operative from 2009	41	265
16	Annexure 'KCT-15', being a copy of the "ANZ Essentials: Welcome to ANZ" induction training module operative from 2013	41	376
17	Annexure 'KCT-16', being a copy of the content of the "ANZ Essentials – Living the Code" training module operative from July 2010	44	409
18	Annexure 'KCT-17', being a copy of the assessment completed by Etienne for the "ANZ Essentials – Living the Code" training module on 7 October 2011, and a copy of the email from WorldLearn Pty Ltd to Joshua Trevitt dated 25 January 2016	46	493
19	Annexure 'KCT-18', being a copy of the "ANZ Essentials – Living the Code" training module operative from April 2013	49	500
20	Annexure 'KCT-19', being a copy of the "ANZ Essentials – Equal Employment the Essentials" training module operative from August 2010	52	613
21	Annexure 'KCT-20', being a copy of the disciplinary outcome letters for employees located in Korea dated November 2014	59	683
22	Annexure 'KCT-21', being a copy of the disciplinary outcome letter for the employee located in Singapore dated 6 September 2013	61	692

Document number	Details	Paragraph	Page
23	Annexure 'KCT-22', being copies of the disciplinary outcome letters for employees located in Hong Kong and Singapore dated 14 February 2014	64	695

Kathryn

I, ~~Kathy~~ Kathryn Claire Tingate, of business address 833 Collins Street, Docklands Victoria 3008, ~~Tribe Performance Lead & Initiative Lead Grow to Perform~~, affirm:  
Alignment Lead, Talent & Culture

1. I am employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), in the position of ~~Tribe Performance Lead & Initiative Lead Grow to Perform~~ Alignment Lead, Talent & Culture. I am authorised to make this affidavit on ANZ's behalf in relation to these proceedings.
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. For the purposes of preparing this affidavit, I have been shown parts of the redacted affidavit of the Applicant (**Etienne**) affirmed on 21 December 2022 (the **Applicant's Affidavit**). I do not respond to every matter raised in the Applicant's Affidavit. The absence of a response should not be taken as an indication that I agree with those matters.
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.

#### **Employment history with ANZ**

5. I commenced employment with ANZ in July 2002.
6. Between July 2002 and 2008, I held various senior roles in Human Resources (**HR**) across the Institutional, Group HR and International Partnerships divisions of ANZ.
7. From January 2009 to December 2014, I was a HR Business Partner supporting Global Markets within the Institutional division of ANZ. During this period, I supported various business units within Global Markets:
  - (a) From January 2009 to September 2010, I supported the Global Sales business unit.
  - (b) From September 2010 to December 2014, I supported the Global FX (Foreign Exchange) and Commodities business units. I relocated from Melbourne to Singapore in October 2012.
  - (c) At some point in 2013, I also started supporting the Rates business unit.

8. From January 2015 until August 2016, I held the role of Head of HR Business Management and Organisational Effectiveness, International and Institutional Banking, based in Singapore.
9. I ceased employment with ANZ in August 2016, before re-joining ANZ in November 2018 in the role of Senior Talent and Culture Business Partner, Digital Banking and New Business Ventures, based in Melbourne.
10. In June 2019, I commenced in the role of Tribe Performance Lead Grow to Perform.
11. In June 2022, I commenced in my current role of Tribe Performance Lead & Initiative Lead Grow to Perform.
12. In June 2023, I commenced an internal secondment to the role of Product Owner, Performance and Remuneration Review, Reward and Pay.

#### **Recruitment of Etienne**

13. During 2011, I supported the Global FX (Foreign Exchange) and Commodities business units within Global Markets. I was not directly involved in Etienne's recruitment, because I was not the HR Business Partner for the Mismatch Trading business unit within Global Markets. My former colleague, Caroline Towers, HR Business Partner, Fixed Income, supported Etienne's recruitment process because she was the HR Business Partner for the Mismatch Trading business unit.
14. My first and only interaction with Etienne before the start of his employment with ANZ was during one evening in or around June 2011.
15. On that evening, I had organised to meet up with Caroline Towers at a wine bar near Martin Place before having dinner together. Caroline Towers and I both lived in Melbourne at the time and had separately travelled to Sydney for work. The wine bar was close to ANZ's office in Martin Place, Sydney, and close to the hotel where I was staying while in Sydney, but I do not remember the name of the wine bar.
16. When I arrived at the wine bar at about 6:30pm or 7:00pm to meet Caroline Towers, I saw two ANZ employees, Rob O'Callaghan, Global Head of Fixed Income, and Jason Pritchard, Head of Balance Sheet Trading Australia, having a drink with someone whom I later came to know as Etienne. I knew Jason Pritchard as a leader in Global Markets, and knew Rob O'Callaghan as a senior leader of Global Markets. At that point in time, I did not know that ANZ was in the process of recruiting Etienne. I had not planned to meet with Rob O'Callaghan, Jason Pritchard or Etienne.
17. My impression was that Rob O'Callaghan and Jason Pritchard were meeting with Etienne socially. There was nothing to suggest that Etienne was being interviewed for a

job with ANZ at the wine bar and he was not introduced to me by Rob O'Callaghan or Jason Pritchard as a candidate.

18. I do not recall sitting down with Etienne at the table he was sitting at while we were at the wine bar and I do not remember spending much time talking to him. I spent most of the time talking with Jason Pritchard.
19. At paragraph 27 of the Applicant's Affidavit, Etienne says that he met Rob O'Callaghan, Caroline Towers and me at the wine bar for his "final interview" and that he "filled in some pre-employment screening forms while the four of us shared a few bottles of wine". I deny that this interaction with Etienne was a final interview (or an interview at all) or part of his recruitment by ANZ. As I state above, at that point in time, I did not know that ANZ was in the process of recruiting Etienne. I also deny that Etienne completed pre-employment screening forms in my presence at the wine bar or at any other time during the evening that I was present. The circumstances and details of my interaction with Etienne at the wine bar are as I describe above. I did not see any paperwork at any time while we were at the wine bar.
20. After leaving the bar, Caroline Towers and I had planned to go out for dinner together. Instead, we went with Rob O'Callaghan, Jason Pritchard and Etienne to dinner at a nearby Chinese restaurant. I do not remember the name of the restaurant. Having dinner as a group was not pre-planned or in any way work-related. The dinner was a spontaneous social gathering of people who from time to time worked together, which Etienne also joined. There was no discussion about Etienne's potential employment with ANZ or, to the best of my recollection, any other work-related matters.
21. As we left dinner, at around 10:30pm or 11:00pm, Rob O'Callaghan suggested that we have one more drink together. Rob O'Callaghan, Caroline Towers, Etienne and I were walking back towards the ANZ office, which was also in the direction of my hotel, when Rob O'Callaghan suggested we could go into a bar that we were walking past for a drink. I was not from Sydney and was unfamiliar with the bar that Rob O'Callaghan suggested. Jason Pritchard had left us by the time we went into the bar. I do not recall whether on the walk back from the restaurant Rob O'Callaghan stopped at an ANZ branded ATM to get cash in Martin Place, as alleged in paragraph 27 of the Applicant's Affidavit.
22. Once inside the venue, we went up to the bar and Rob O'Callaghan ordered a drink for all of us. Around that time, I realised we were at a lap dancing bar. We only stayed at the bar for a short time, around 15 to 20 minutes, before we all left together. I felt uncomfortable being in a lap dancing bar. However, I did not say anything because we were together in a social context. If it were during work hours, or the gathering was

connected to a work event, I would have said something as soon as I realised that it was a lap dancing bar and left the venue. Although I had only met Etienne earlier the same evening, his body language did not indicate that he was uncomfortable or awkward being in a lap dancing bar, and he did not say anything to me that indicated he felt uncomfortable or awkward being there. He did not suggest that we leave the venue.

23. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **ANZ leadership programs**

#### G40 Program

24. In my role as Head of HR Business Management and Organisational Effectiveness, International and Institutional Banking, I was responsible for overseeing and running ANZ's IIB G40 Program (the **G40 Program**) and had visibility of which employees participated in the G40 Program from the International and Institutional Banking division.
25. The G40 Program was a global program open to employees in the International and Institutional Banking division of ANZ who were considered as having high potential and future leadership potential. The G40 Program involved face to face workshops conducted in Melbourne, and gave participants the opportunity to attend internally-run networking events and development programs. It was typically reserved for senior managerial employees classified at the Group 3 level. In order to participate in the G40 Program, eligible employees had to be nominated by their line manager and then have this nomination approved by the Managing Director, Global Markets and Loans.
26. Etienne participated in the G40 Program in or around 2012, and graduated in or around 2013. At the time I commenced in the role of Head of HR Business Management and Organisational Effectiveness, International and Institutional Banking, Etienne had graduated from the program and I was organising the next intake.

#### Executive Leadership Program

27. ANZ's Executive Leadership Program (the **ELP**) was a three month development program comprising two workshop modules targeted at employees who had been appointed to their first Group 2 position within ANZ. In my role as Head of HR Business Management and Organisational Effectiveness, International and Institutional Banking, I also had visibility of which employees participated in the ELP from the International and Institutional Banking division.

28. Etienne was invited to participate in the ELP in or around April 2014. He was a member of the fifteenth cohort of employees to participate in the ELP. In Etienne's cohort, there were 21 participants (including Etienne) in the first module of the ELP and a further three participants in the second module of the ELP. The ELP was held in Melbourne.
29. In paragraph 203(c) of the Applicant's Affidavit, Etienne says that, during a discussion between us on an unspecified date, I told him that "you have been selected for the ELP because you are part of ANZ's succession plan for the Head of Global Markets". I deny that I said this to Etienne. Assuming that Etienne means the role of Managing Director, Global Markets and Loans when he refers to "Head of Global Markets" (which, at that time, was the role that could have been described as the "head" of Global Markets), that role was a Group 1 role. Due to the seniority of the role, I was not involved in the succession planning for the role and did not know what the succession plan was. Succession planning is a highly confidential and structured process at ANZ and I do not (and did not at the time that Etienne alleges that this conversation took place) have a practice of speaking with employees about succession planning in the way described by Etienne, especially when I do not know whether an employee was on a succession plan.

#### **ANZ policies and procedures**

30. I refer to:
- (a) paragraph 32 of the Applicant's Affidavit, where Etienne says that he does not recall ever receiving any documents from ANZ relating to conduct, ethics or systems use either prior to, or on commencing, employment with ANZ; and
  - (b) paragraph 51 of the Applicant's Affidavit, where Etienne says that he does not recall receiving either the ANZ Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**) or the ANZ Code of Conduct and Ethics (the **Code of Conduct**) when he commenced employment with ANZ in 2011, and that the first time he recalls receiving or reading these policy documents was in 2015 when they were provided to him during a disciplinary process.
31. As an HR practitioner who has worked at ANZ for approximately 20 years, I am familiar with ANZ's suite of policies and procedures which set out the terms and conditions of employment together with the employee's contract. ANZ's template contracts of employment contain clauses in words to the effect that ANZ has codes, policies and procedures that apply to employees, and that employees must read and be familiar with all ANZ codes, policies and procedures as varied from time to time. I have been provided with copies of Etienne's signed contracts of employment (annexed to the Applicant's Affidavit at pages 116 to 129 and 951 to 964), which each contain a clause in these terms. ANZ's policies and procedures were at the time, and are available to all

CB 1448  
ALEX.001.001.0094

CB 2109  
ALEX.001.001.0281

employees on ANZ's intranet page called "Max", and employees are notified that they can be accessed on this portal (such as by way of the Employee Information Guide which I describe below).

32. During the period that I was in HR roles that supported Global Markets, email communications were sent to employees reminding them of the standards of expected behaviour, including:

(a) on 30 November 2011, Steve Bellotti, Managing Director, Global Markets and Loans, sent an email to all Global Markets staff (which included Etienne and me, as I supported Global Markets at that time) that said, among other things, that the Code of Conduct and ANZ Values are to be followed at all times. Now produced, shown to me and marked 'KCT-1' is a copy of the email from Steve Bellotti to Global Markets staff dated 30 November 2011;

CB 1621  
ZNA.001.001.0585

(b) on 3 February 2012, Fred Pucci, Global Head of Business Risk Management, sent an email to all Global Markets staff (which included Etienne and me, as I supported Global Markets at that time) that contained a reminder that ANZ has a zero tolerance approach for breaches of the Code of Conduct and Use of Systems Policy and that Global Markets staff found to be in breach of these policies will be subject to consequence management. Now produced, shown to me and marked 'KCT-2' is a copy of the email from Fred Pucci to Global Markets staff dated 3 February 2012;

CB 1698  
ZNA.001.001.0641

(c) on 7 February 2013, Eddie Listorti, Co-Head of Fixed Income, Currency and Commodities (FICC), Foreign Exchange, and Richard Huston, Co-Head of FICC, sent an email to all Global Markets staff (which included Etienne and me, as I supported Global Markets at that time) to reiterate the requirement to uphold high standards in every aspect of the business. Now produced, shown to me and marked 'KCT-3' is a copy of the email from Eddie Listorti and Richard Huston to Global Markets staff dated 7 February 2013;

CB 2083  
ZNA.001.001.0933

(d) on 19 June 2013, Eddie Listorti and Richard Huston sent an email to all Global Markets staff (which included Etienne and me, as I supported Global Markets at that time) relating to the outcome of a review by the Monetary Authority of Singapore. The email reminded employees of the importance of compliance with the Code of Conduct, asked that employees immediately review the Code of Conduct and the Global Markets Business Instruction Manual, and gave examples of unacceptable behaviour. Now produced, shown to me and marked 'KCT-4' is a copy of the email from Eddie Listorti and Richard Huston to Global Markets staff dated 19 June 2013;

CB 2297  
ZNA.001.001.1107

(e) on 7 February 2014, Richard Huston forwarded an email chain to senior leaders in Global Markets (which included Etienne) containing two earlier email reminders on

the Code of Conduct and the Use of Systems Policy that had been sent to all Global Markets staff in ANZ's Hong Kong office. Now produced, shown to me and marked 'KCT-5' is a copy of the email from Richard Huston to the Global Markets leadership team dated 7 February 2014; and

CB 2525  
ZNA.001.001.1257

- (f) on 5 August 2014, Etienne sent an email to all staff in the Balance Sheet Trading business unit of Global Markets reinforcing an earlier reminder on appropriate conduct (a copy of which is retained on Enterprise Vault, ANZ's email archive system, and has been provided to me). Now produced, shown to me and marked 'KCT-6' is a copy of the email from Etienne to the Balance Sheet Trading business unit dated 5 August 2014.

CB 2591  
ZNA.001.001.1310

33. I refer to paragraph 126 of the Second Further Amended Statement of Claim where Etienne says that he was provided with a document entitled "ANZ – Employee Information Guide" in or around August 2011 when he commenced employment with ANZ. I understand from Seyfarth Shaw, the solicitors for ANZ in this proceeding, that Etienne has also produced a copy of that document to ANZ in this proceeding. The Employee Information Guide provided a general summary to new employees of their conditions of employment, leave entitlements, benefits, career management options and employee communications arrangements.

34. Under the heading "ANZ Code of Conduct", the Employee Information Guide states that:

*ANZ has a code of conduct, which sets ethical standards for ANZ employees to embrace and advocate. The code of conduct provides an ethical framework within which ANZ employees can behave to ensure we are and are seen to be responsible, trustworthy and law-abiding in all we do.*

*The ANZ code of conduct is available on Max. It consists of eight principles of ethical behaviour. It should be applied as a guide in all situations and as an umbrella for more detailed codes issued by some business units.*

35. Under the heading "Use of ANZ Systems and Equipment", the Employee Information Guide states that:

*ANZ provides access to systems and equipment so that you can do your job. ANZ invests in technology to improve our service to our customers and make your job easier.*

*All systems and equipment (including files and e-mail messages created, sent, received or stored) are the property of ANZ and must only be used in accordance with the Use of ANZ Systems and Equipment policy (available on Max).*

*ANZ allows some limited and reasonable personal use of systems and equipment under certain conditions – i.e. the personal use does not offend, does not interrupt or interfere with the performance of your duties or anyone else's, does not cause significant cost or drain on ANZ resources (such as*

*long distance calls or large group emails) and is not otherwise in conflict with ANZ values or the interests of ANZ or our customers. Further details regarding “no-go zones” are set out in the Use of ANZ Systems and Equipment policy.*

*ANZ has absolutely no tolerance for the use of its systems and equipment to access, create, store or download pornographic, or otherwise offensive, material. Employees who are found to have engaged in such activities will be subject to disciplinary action, including in some cases, immediate termination of employment.*

*Refer to the People Policies Online for the full policy.*

36. Now produced, shown to me and marked '**KCT-7**' is a copy of the Employee Information Guide.

CB 927  
ZNA.001.001.0070

37. ANZ also publishes (and, at the time of Etienne's employment with ANZ, published) a document called "The Blue Book", which provides a summary of the ANZ business and how it is organised, the standards and behaviours expected of employees and the key policies and procedures that must be followed at ANZ. The Blue Book was not intended exhaustively to summarise ANZ's policies and expected standards of behaviour. Rather, The Blue Book was designed to operate as an easy to understand summary that signposts, and is to be read together with, ANZ's policies and procedures. Employees were required to sign an attestation to confirm that they had read and understood the terms of The Blue Book on an annual basis. The Blue Book is periodically updated by ANZ. Now produced, shown to me and marked:

- (a) '**KCT-8**' is a copy of The Blue Book effective June 2010;  
 (b) '**KCT-9**' is a copy of The Blue Book effective September 2012;  
 (c) '**KCT-10**' is a copy of The Blue Book effective November 2013;  
 (d) '**KCT-11**' is a copy of The Blue Book effective October 2014; and  
 (e) '**KCT-12**' is a copy of The Blue Book effective June 2015.

CB 1154  
ZNA.001.001.0214

CB 1807  
ZNA.001.001.0742

CB 2416  
ZNA.001.001.1182

CB 2758  
ZNA.001.001.1349

CB 3538  
ZNA.001.001.1725

### **Employee training**

38. ANZ employees are trained on the content of key ANZ policies and any material changes to those policies at regular intervals during their employment. I instructed Annamiekea Riddell, Product Owner, Mandatory Learning in the Grow to Perform – Talent and Culture team, to extract a copy of Etienne's training record from ANZ's learning management system, EDGE. Now produced, shown to me and marked '**KCT-13**' is a copy of Etienne's training record provided to me by Annamiekea Riddell.

CB 933  
ZNA.001.001.0076

39. I have read Etienne's training record (annexed to this affidavit as 'KCT-13') which shows that during his employment, he attended training and/or completed training assessments, including the following:

Course title	Date marked complete
ANZ Essentials – Equal Employment the Essentials	28 September 2011
ANZ Essentials – Welcome to ANZ (New Employee Online Induction)	7 October 2011
LTC0910OLA-1-ANZ Essentials – Living the Code	7 October 2011
ANZ Essentials – Living the Code	7 October 2011
The Blue Book Attestation	26 February 2012
TBBA0810IR-1-The Blue Book Attestation	26 February 2012
ANZ Essentials: Living The Code (English Version)	9 April 2013
The Blue Book Attestation	27 May 2013
ANZ Essentials – Equal Opportunity (English Version)	23 December 2013
ANZ Essentials: Living The Code (English Version)	23 June 2014 (unsuccessful)
ANZ Essentials: Living The Code (English Version)	24 June 2014
The Blue Book Attestation	1 July 2014

#### Induction training

40. When employees first commence employment with ANZ, they are required to undertake induction training. As stated at paragraph 39 above, Etienne's training record shows that he completed a module called "ANZ – Essentials – Welcome to ANZ (New Employee Online Induction)" on 7 October 2011. [REDACTED]

[REDACTED] Annamiekea Riddell has instead provided me with copies of the training modules operative from 2009 and 2013. Based on these versions of the training modules, and my roles as a HR professional and personal experience as an employee of ANZ, I am aware that induction training typically covered the following topics:

- (a) ANZ as an organisation, including its history;
  - (b) ANZ's strategy, vision and purpose;
  - (c) the ANZ Values and expected behaviours of ANZ employees; and
  - (d) ANZ guidelines and standards.
41. Now produced, shown to me and marked 'KCT-14' and 'KCT-15' are copies of the "ANZ Essentials: Welcome to ANZ" induction training modules operative from 2009 and 2013 respectively, provided to me by Annamiekea Riddell.

CB 1035  
ZNA.001.001.0095

CB 2005  
ZNA.001.001.0855

Code of Conduct training

42. The Code of Conduct sets out the standards that guide the way employees work at ANZ.

[REDACTED]

43. [REDACTED] ANZ conducts dedicated interactive training which is delivered when employees first commence employment and is repeated during their employment.

44. As stated at paragraph 39 above, Etienne’s training record shows that he completed a training module called “ANZ Essentials – Living the Code” on 7 October 2011. I instructed Annamiekea Riddell to provide a copy of the training content delivered in this module. Now produced, shown to me and marked ‘KCT-16’ is a copy of the content of the “ANZ Essentials – Living the Code” training module operative from July 2010, provided to me by Annamiekea Riddell.

CB 1202  
ZNA.001.001.0262

45. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

46. At the end of the module, employees had to undertake an assessment and answer questions posed to them in scenarios relating to the eight principles of the Code of Conduct. ANZ has obtained a copy of Etienne’s training results in relation to the assessment that he completed on 7 October 2011, which indicate that he scored 100% on the multiple choice questions, from an external provider, WorldLearn Pty Ltd. Joshua Trevitt, Mandatory Learning Consultant in ANZ’s HR Enterprise Talent and Culture team

instructed WorldLearn Pty Ltd to retrieve this data in late-2015. Now produced, shown to me and marked '**KCT-17**' is a copy of the assessment completed by Etienne for the "ANZ Essentials – Living the Code" training module on 7 October 2011, and a copy of the email from WorldLearn Pty Ltd to Joshua Trevitt attaching the assessment dated 25 January 2016.

CB 4564  
ZNA.001.001.2254

47. As stated in paragraph 39 above, Etienne's training record shows that he undertook further training on the Code of Conduct (the "ANZ Essentials – Living the Code" training) on 9 April 2013 and 24 June 2014. Etienne's training record indicates that he:
- (a) successfully completed the training on 9 April 2013, having received a result of 100%; and
  - (b) unsuccessfully completed the training on 23 June 2014, having received a result of 95%, but repeated the training the following day and achieved the required mark of 100%.
48. The results of Etienne's training on these dates is shown in Etienne's training records annexed to this affidavit as '**KCT-13**'.
49. I instructed Annamiekea Riddell to provide a copy of the training content delivered in this module. Now produced, shown to me and marked '**KCT-18**' is a copy of the "ANZ Essentials – Living the Code" training module operative from April 2013, provided to me by Annamiekea Riddell.
50. [REDACTED]

CB 2130  
ZNA.001.001.0941

Equal opportunity training

51. ANZ also delivers training to assist employees to understand ANZ's equal opportunity, bullying, discrimination, unlawful harassment and victimisation policies. This training also informs employees about what unacceptable conduct is, and the potential disciplinary consequences that could apply for engaging in such conduct.
52. As stated in paragraph 39 above, Etienne's training record shows that he completed training modules called "ANZ Essentials – Equal Employment the Essentials" on 23 December 2011 and "ANZ Essentials – Equal Opportunity (English Version)" on 24 September 2013. I instructed Annamiekea Riddell to provide a copy of the training content delivered in these modules. Now produced, shown to me and marked '**KCT-19**' is a copy of the "ANZ Essentials – Equal Employment the Essentials" training module operative from August 2010, provided to me by Annamiekea Riddell.

CB 1285  
ZNA.001.001.0345

53. [REDACTED]

**Consequence management at ANZ**

54. I refer to paragraph 93 of the Applicant’s Affidavit and Etienne’s statement that he did not witness or otherwise become aware that ANZ took any disciplinary steps in relation to any of the coarse or lewd language spoken in person, by telephone, on Bloomberg chat or work email that he observed. I worked in various HR roles at ANZ between 2011 and 2015 when Etienne was employed by ANZ, including in the Global Markets business. In these roles, I provided support to managers when investigating breaches of ANZ policies and deciding upon the appropriate disciplinary and remuneration consequences. Through my involvement in the provision of support with respect to such investigations and disciplinary outcomes, I am aware that, during this period, ANZ conducted disciplinary processes involving the investigation of, and disciplining of employees for using coarse, lewd and offensive language in their communications, including on Bloomberg chat. I outline some of those investigations and disciplinary processes below.

Korea disciplinary process in 2014

55. In paragraph 67 of the Applicant’s Affidavit, Etienne refers to an alleged investigation undertaken by ANZ in Korea in about 2014 involving the display of pornography in the dealing room. He says that the subsequent complaints from two ANZ employees were investigated with reference to Bloomberg chat conversations between the employees.

56. Further, in paragraph 95 of the Applicant’s Affidavit, Etienne says that the senior trader who was involved in the pornography incident in Korea was not the subject of any disciplinary action and that he was informed by his manager, Richard Huston, that “there was a finding that the pornography was displayed but there was no disciplinary outcome because the CEO of [ANZ] Korea vouched for him”.

57. [REDACTED]

58. Although it does not match the description of the incident in paragraphs 67 and 95 of the Applicant’s Affidavit, ANZ conducted an investigation in Korea in 2014 that related to several employees sending instant chat messages which included inappropriate sexual content or coarse language. I became aware of this investigation and the consequences

applied to the employees, as a result of my participation in ANZ's performance and remuneration review for the performance year ending 30 September 2014. As part of this process, the HR team supporting the Global Markets business of which I was part, was required to identify any employee who had been subject to a disciplinary outcome in that performance year. This exercise was undertaken as part of ANZ's Consequence Management Framework so that the business could consider this information when deciding the employee's performance rating and remuneration outcome. The Consequence Management Framework forms part of ANZ's Global Performance and Improvement and Unacceptable Behaviour Policy and sets out the process for determining consequences for risk and compliance breaches.

59. The conduct of the employees located in Korea was investigated and found to be in breach of the Code of Conduct and the Use of Systems Policy. As a result of the investigation, two employees received verbal warnings, two employees received written warnings, and two employees received final written warnings with a bonus deduction of 100%. I instructed Emma Ley to locate copies of the disciplinary outcome letters issued to each of the employees held by ANZ on the local ANZ shared drive. Now produced, shown to me and marked '**KCT-20**' are copies of the disciplinary outcome letters for employees located in Korea who received written warnings dated November 2014, provided to me by Emma Ley, which have been redacted to mask the identity of current and former employees of ANZ in order to maintain the privacy of each of those other people, who are not party to these proceedings.

CB 2923  
ZNA.001.001.1494

#### Singapore disciplinary process in 2013

60. In August 2013, ANZ commenced a disciplinary process in relation to the conduct of an employee in the Singapore office. Following the disciplinary process, the employee was dismissed for using offensive language on Bloomberg chat with an individual external to ANZ, in breach of the Code of Conduct and the Use of Systems Policy.
61. I provided HR support to the business during this disciplinary process. Now produced, shown to me and marked '**KCT-21**' is a copy of the disciplinary outcome letter for the employee located in Singapore dated 6 September 2013, which has been redacted to mask the identity of current and former employees of ANZ in order to maintain the privacy of each of those other people, who are not party to these proceedings.

CB 2396  
ZNA.001.001.1162

#### Singapore and Hong Kong disciplinary process in 2014

62. In January 2014, ANZ commenced a disciplinary process in relation to the conduct of two ANZ employees in the Singapore and Hong Kong offices after their Reuters chats were detected by ANZ's electronic surveillance of communications covering the rates

submission process and escalated for review to determine whether they suggested potentially inappropriate market conduct.

63. I provided HR support to the business during this disciplinary process because the employees were based in Asia and there were no HR Business Partners in Asia who supported Global Markets. Following this process, the employees' line manager found that, while there was no evidence of market manipulation:
- (a) the employee in Singapore, in a Reuters chat message with the employee in Hong Kong, had made derogatory, sexually explicit and threatening comments regarding another staff member, in breach of the Code of Conduct; and
  - (b) the employee in Hong Kong had engaged in multiple, extended and pervasive conversations on Reuters chat with internal and external persons involving sexually explicit language, derogatory remarks about colleagues and management and reference to (although no admission of involvement in) drug use and prostitution, in breach of the Code of Conduct.
64. The disciplinary consequence applied to the employee in Hong Kong was termination of their employment. The disciplinary consequence applied to the employee in Singapore was a first and final written warning with a zero bonus for the financial year ending 30 September 2014. Now produced, shown to me and marked '**KCT-22**' are copies of the respective disciplinary outcome letters for the employees in Hong Kong and Singapore dated 14 February 2014, which are retained on ANZ's systems, and have been redacted to mask the identity of current and former employees of ANZ in order to maintain the privacy of those other people, who are not party to these proceedings.

CB 2530  
ZNA.001.001.1262

#### **Former employees of ANZ**

65. Having been employed by ANZ for a period of approximately 20 years, I am aware that the following individuals are no longer employed by ANZ:
- (a) Steve Bellotti.
  - (b) Robert Brajkovic.
  - (c) Mark Budrewicz.
  - (d) Sean Collier.
  - (e) Wendy Cornford.
  - (f) Luke Davidson.
  - (g) Michael Dodd.
  - (h) Sam Ellis.
  - (i) Ben Gulliver.

- (j) Freya Hone.
- (k) Peter Marriott.
- (l) David McGowan.
- (m) James Millen.
- (n) Rick Moscati.
- (o) Edward Muir.
- (p) Rob O’Callaghan.
- (q) Patrick O’Connor.
- (r) Jason Pritchard.
- (s) Matthew Ritter.
- (t) Michelle Smith.
- (u) Mike Smith.
- (v) Sarah Thompson.
- (w) Caroline Towers.
- (x) Nigel Williams.
- (y) Carina Wong.
- (z) Paul Woodward.

Affirmed by the deponent  
 at Melbourne  
 in Victoria  
 on 14 November 2023  
 Before me:

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 ) \_\_\_\_\_  
 Signature of deponent



\_\_\_\_\_  
 Signature of witness

Name of witness: James David Wintle Sutherland

Qualification of witness: An Australian Legal Practitioner within the meaning of *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.