

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: **Mark Richard Evans**

Address: Level 30, Ocean Financial Centre, 10 Collyer Quay, Singapore 049315

Occupation: ~~Country Head of Singapore, Head of South East Asia, India & Middle East~~  
Group Head Non-Financial Risk Program Delivery

Date: 16 November 2023

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

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I, Mark Richard Evans, of business address Level 30, Ocean Financial Centre, 10 Collyer Quay Singapore 049315, ~~Country Head of Singapore, Head of South East Asia, India & Middle East,~~  
Group Head Non-Financial Risk Program Delivery  
say on oath:

1. I am employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ). I am authorised to make this affidavit on behalf of ANZ.
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. I have been shown parts of the redacted affidavit of the Applicant (**Etienne**) affirmed on 21 December 2022 (the **Applicant's Affidavit**). In this affidavit, I respond to some of the matters raised in those parts. The absence of any response to a matter raised in the Applicant's Affidavit should not be understood as an acceptance or admission of that matter.
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 have been employed by ANZ since 2009. I have held my current role as Country Head of Singapore, Head of South East Asia, India & Middle East since May 2022. Prior to that, I held the following positions with ANZ:

- (a) between July 2009 and February 2013, I was the Global Head of Trade and Supply Chain;
  - (b) between October 2011 and February 2013, in addition to my existing responsibilities, I was the acting Co-Head of Transaction Banking;
  - (c) between March 2013 and September 2016, I was the Chief Compliance Officer;
  - (d) between June 2016 and June 2020, I was the Managing Director, Transaction Banking. I performed this role concurrently with the role of Chief Compliance Officer until September 2016 when my replacement returned from leave. I was later seconded to the role of Strategic Transformation, Institutional from February 2020 to June 2020; and
  - (e) between June 2020 and April 2022, I was the Head of Strategic Planning and Execution, Institutional.
6. In my role as Chief Compliance Officer between 2013 and 2016, I was responsible for developing and implementing a global compliance framework to ensure high compliance standards in all of the jurisdictions in which ANZ operates. This specifically included responsibility for:
- (a) managing relationships with regulators;
  - (b) overseeing the effectiveness of the control environment across ANZ's operations;
  - (c) managing conflicts of interest; and
  - (d) managing the Financial Crime Unit of ANZ, which oversees activities relating to anti-money laundering, sanctions, anti-bribery and corruption.
7. Now produced, shown to me and marked 'MRE-1' is a copy of the announcement by Mike Smith, Group Chief Executive Officer, on 21 January 2013 of my appointment to the role of Chief Compliance Officer.
8. From May 2015 until I changed roles in June 2016, I also had responsibility for operational risk and oversight of ANZ's approach to managing its risk culture.
9. I reported to the Group Chief Risk Officer, who at that time was Nigel Williams.

CB 2037  
ZNA.001.001.0887

#### **Compliance with ANZ policies**

10. As Chief Compliance Officer, I had responsibility for the compliance function at a Group level across all of the organisation. The compliance function is administered by the Compliance team, which is in the Risk division of ANZ. It is independent of individual business units within ANZ and is responsible for, among other things, providing guidance and oversight to the business.

11. At all times, including during the period from 1 July 2011 to 30 September 2015 inclusive (the **Relevant Period**), the Compliance team has had a role in supporting the effectiveness of all ANZ policies. This role included:

(a) analysing controls to ensure ANZ policies were known, understood, being complied with by employees, and were effective. For example, during this period, the use of technology and systems by ANZ employees was governed by a policy, the ANZ Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**). I address the Use of Systems Policy further below; and

(b) identifying any gaps in existing policies and controls and working with the business to improve those controls. ANZ's expectation is, and always has been to my knowledge, that all employees must comply with the policies that ANZ has in place from time to time. This is demonstrated by the terms of ANZ's letter of offer (for example, clauses 8 and 9 of Etienne's letter of offer dated 23 June 2011, which is exhibited at pages 116 to 122 of the Applicant's Affidavit) and mandatory learning courses for employees. The same standard was and is applied to employees throughout ANZ (with the exception that certain policies set out particular responsibilities for classes of employees, for example people leaders), and the conduct of a group of employees does not lower or change the standard of conduct expected of any particular individual employee. This is based on my experience having worked at ANZ since 2009 and my involvement in disciplinary processes during my employment; and

(c) monitoring and educating staff on regulatory requirements relating to matters such as responsible lending and money laundering and sanctions. The Compliance team's aim was to ensure that staff not only complied with regulatory requirements but also understood why the regulatory requirements were in place.

CB 1448  
ALEX.001.001.0094

**ANZ's policies**

The ANZ Code of Conduct and Ethics

12. [REDACTED]

[REDACTED]

[REDACTED]

13. During the Relevant Period, the Code of Conduct was periodically updated. Now produced, shown to me and marked:

(a) 'MRE-2' is a copy of the ANZ Code of Conduct and Ethics dated 30 August 2010;

CB 1354  
ZNA.001.001.0414

(b) 'MRE-3' is a copy of the ANZ Code of Conduct and Ethics dated 27 February 2012;  
and

CB 1702  
ZNA.001.001.0645

(c) 'MRE-4' is a copy of the ANZ Code of Conduct and Ethics dated 27 February 2013.

CB 2087  
ZNA.001.001.0259

The ANZ Values

14. [Redacted]

15. The ANZ Values are as follows:

- (a) Integrity – Do what is right;
- (b) Collaboration – Connect and work as one for our customers and shareholders;
- (c) Accountability – Own your actions, make it happen;
- (d) Respect – Value every voice, bring the customer’s view to ANZ; and
- (e) Excellence – Be your best, help people progress, be business minded.

16. Now produced, shown to me and marked 'MRE-5' and 'MRE-6' respectively are copies of the briefing pack for the introduction of the ANZ Values in March 2009 and a printout of the ANZ Values on ANZ’s intranet published on 4 June 2015.

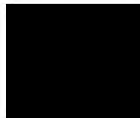
CB 1145  
ZNA.001.001.0205

CB 3581  
ZNA.001.001.1766

The Use of Systems Policy

17. The Use of Systems Policy is an ANZ group-wide policy which applies to all employees, contractors, sub-contractors, third party vendors and authorised representatives of ANZ. The policy concerns the appropriate access and use of ANZ systems, equipment and information and provides guidance on ANZ’s expectations regarding the use of social networking and content sharing sites when using ANZ or non-ANZ systems and equipment.

18. The Use of Systems Policy also describes the “no-go zone”, being any use of ANZ’s systems and equipment that are inconsistent with the interests of ANZ or its customers. Examples of the “no-go zone” include sending, creating, downloading or accessing offensive material, including material that is racist, or that could offend, bully, harass or threaten.



19. During the Relevant Period, the Use of Systems Policy was periodically updated. Now produced, shown to me and marked:

(a) 'MRE-7' is a copy of version 1 of the ANZ Use of Systems, Equipment and Information Policy dated 31 March 2011;

CB 1435  
ZNA.001.001.0493

(b) 'MRE-8' is a copy of version 2 of the ANZ Use of Systems, Equipment and Information Policy dated 31 January 2012;

CB 1686  
ZNA.001.001.0629

(c) 'MRE-9' is a copy of version 3 of the ANZ Use of Systems, Equipment and Information Policy dated 31 March 2013;

CB 2123  
ZNA.001.001.0934

(d) 'MRE-10' is a copy of version 4 of the ANZ Use of Systems, Equipment and Information Policy dated 31 March 2014; and

CB 2535  
ZNA.001.001.1264

(e) 'MRE-11' is a copy of version 5 of the ANZ Use of Systems, Equipment and Information Policy dated October 2014.

CB 2748  
ZNA.001.001.0506

#### The Whistleblower Protection Policy

20. I am aware from ANZ's records that, throughout the Relevant Period, ANZ has had in place a Whistleblower Protection Policy intended to encourage, support and promote honest and ethical behaviour by providing a framework for employees to escalate reportable conduct by making a disclosure to a designated Whistleblower Protection Officer or the ANZ Whistleblower Hotline. The Whistleblower Protection Policy also addresses ANZ's obligations under the *Corporations Act 2001* (Cth).

21. I am aware that, at the time I started in the role of Chief Compliance Officer in March 2013, the Compliance team was responsible for administering and implementing the Whistleblower Protection Policy. Prior to that, based on my review of ANZ's records, I am aware that the Compliance team was first responsible for the Whistleblower Protection Policy from about June 2012.

22. During the Relevant Period, the Whistleblower Protection Policy was periodically updated. Now produced, shown to me and marked:

(a) 'MRE-12' is a copy of Version 1.0 (February 2011) of the Whistleblower Protection Policy;

CB 1411  
ZNA.001.001.0469

(b) 'MRE-13' is a copy of version 2.0 of the Whistleblower Protection Policy dated August 2011;

CB 1491  
ZNA.001.001.0535

(c) 'MRE-14' is a copy of version 2.0 of the Whistleblower Protection Policy dated August 2011 as amended in November 2011;

CB 1594  
ZNA.001.001.0576

- (d) 'MRE-15' is a copy of version 3.0 of the Whistleblower Protection Policy dated June 2012; CB 1749  
ZNA.001.001.0690
- (e) 'MRE-16' is a copy of version 4.0 of the Whistleblower Protection Policy dated May 2013; CB 2244  
ZNA.001.001.1055
- (f) 'MRE-17' is a copy of version 5.0 of the Whistleblower Protection Policy dated June 2014; and CB 2545  
ZNA.001.001.1273
- (g) 'MRE-18' is a copy of version 6.0 of the Whistleblower Protection Policy dated April 2015. CB 3485  
ZNA.001.001.1717
23. During the Relevant Period, the process for making a disclosure under the Whistleblower Protection Policy was set out in the Whistleblower Protection Policy Procedure Guide. Now produced, shown to me and marked:
- (a) 'MRE-19' is a copy of the Whistleblower Protection Policy Procedure Guide dated 23 February 2011; and CB 1422  
ZNA.001.001.0480
- (b) 'MRE-20' is a copy of the Whistleblower Protection Policy Procedure Guide dated 1 June 2012. CB 1757  
ZNA.001.001.0692

#### **ASIC BBSW Investigation and ANZ BBSW Investigation**

24. In my role as Chief Compliance Officer and through discussions with Shayne Collins, Group General Manager, Markets Risk, and Bob Santamaria, Group General Counsel, I became aware at some point after October 2013 that the Australian Securities and Investments Commission (**ASIC**) had commenced an investigation into ANZ's involvement in the Bank Bill Swap Rate (**BBSW**) rate setting process (the **ASIC BBSW Investigation**). ANZ conducted its own investigation into these matters (the **ANZ BBSW Investigation**).
25. In or about February 2014, as part of its response to the ASIC BBSW Investigation, ANZ established a project referred to as "Project Arrow".
26. In May 2014, I was asked by Nigel Williams to take up the position of Chair of the steering committee. My main role in the early stages of the ANZ BBSW Investigation was reviewing the effectiveness of the governance structure that had been put in place.
27. At the time I was appointed as the Chair of the steering committee, the other members of the steering committee were:
- (a) Shayne Collins;
- (b) Freya Hone, General Counsel and General Manager Compliance, International and Institutional Banking;

- (c) Eddie Listorti, Co-Head of Fixed Income, Currency and Commodities, Foreign Exchange;
  - (d) Daniel King, General Manager, HR Global Products;
  - (e) Michelle Smith, Global Head of Legal, Global Markets; and
  - (f) Fred Pucci, Head of Compliance, Global Markets and Head of Compliance, International and Institutional Banking.
28. An oversight group was also established. The members of the oversight group were Bob Santamaria (as the Chair), Andrew Geczy, Chief Executive Officer, International and Institutional Banking, and Nigel Williams. ANZ retained Clayton Utz to assist with the ASIC BBSW Investigation and the ANZ BBSW Investigations.
29. In June 2014, I stood down as the Chair of the steering committee. My involvement after June 2014 was as a member of the steering committee, with my main responsibility being to manage ANZ's relationship with ASIC.
30. From about August 2014, the activities of the steering committee and the oversight group were effectively amalgamated to form a new steering committee. The members of the new steering committee were Bob Santamaria, Nigel Williams, Andrew Geczy, Shayne Collins, Eddie Listorti, Freya Hone, Kerrie Harris, Head of Human Resources, Global Markets and Loans, and me.
31. In the course of responding to the ASIC BBSW Investigation and carrying out the ANZ BBSW Investigation, it became apparent that certain employees had used ANZ's communication systems in a way that could be in breach of the Code of Conduct, the ANZ Values and the Use of Systems Policy.
32. Throughout the second half of 2014, ASIC was continuing to issue notices to ANZ in connection with the ASIC BBSW Investigation. ANZ was reviewing a significant volume of data to respond to the ASIC BBSW Investigation and conduct the ANZ BBSW Investigation (including about five million Bloomberg and Reuters chat transcripts). For this reason, the work that was required to be carried out as part of the ASIC BBSW Investigation and the ANZ BBSW Investigation was prioritised over an investigation into potential breaches of the Code of Conduct.

#### **Stand down of employees**

33. In November 2014, Bob Santamaria said to me words to the effect that seven employees who were persons of interest in the ASIC BBSW Investigation, including Etienne, had been stood down from their employment with ANZ. I was involved in discussions with other ANZ employees after the decision to stand down those employees was made about the

broader impact of the stand down, such as how to communicate the stand down with ANZ's global regulators, how to respond to media enquiries and how to message the stand down to ANZ colleagues. I was not involved in the decision to stand down Etienne or any other employees.

#### **Code of Conduct Review**

34. On or around 23 June 2015, Nigel Williams asked me to be the decision-maker as to whether to impose disciplinary consequences for breaches of the Code of Conduct, in respect of conduct that was identified during a review of the use of ANZ's communication systems by employees (the **Code of Conduct Review**). By the time I was appointed as decision-maker, a decision had been made to commence a disciplinary process in respect of some employees including Etienne, though the processes had not yet commenced. Nigel Williams asked me to lead the disciplinary processes and said to me words to the effect that I had been chosen because I was the Chief Compliance Officer, my appointment was consistent with ANZ's positioning of the Compliance team as the "owners" of conduct, behaviour and culture, and I was neutral due to my independence from Global Markets. I was not directly involved in the Code of Conduct Review until Nigel Williams contacted me and asked me to take on this role.
35. My role involved:
- (a) for those employees for whom a decision to commence a disciplinary process had not been made, reviewing the language used by employees on Bloomberg and email and determining whether the relevant employee would be subject to a disciplinary process. If I decided after reviewing the relevant communications that the employee did not have a case to answer as part of a disciplinary process, then the outcome was typically either no action taken or informal counselling;
  - (b) if they did have a case to answer, or a decision had already been made to commence a disciplinary process, meeting with the relevant employee to obtain their response; and
  - (c) deciding what, if any, disciplinary consequence was appropriate.

#### **Disciplinary process – Etienne Alexiou**

36. Shortly after my telephone call with Nigel Williams on or around 23 June 2015, which I describe in paragraph 34 above, I received a bundle of Bloomberg chats and emails involving Etienne that were identified during the initial stages of the Code of Conduct Review. I can no longer locate a copy of the bundle of Etienne's Bloomberg chats and emails given to me at this time, although I believe the bundle was the same as the extracts

- of Etienne's Bloomberg chats and emails that were enclosed with my letter given to him on 25 June 2015 (as described in paragraph 43 below).
37. At the time I received the bundle of Bloomberg chats and emails involving Etienne, a decision had already been made to commence a disciplinary process in relation to his conduct. After reviewing the bundle of communications, I agreed that Etienne had a case to answer because Etienne's communications appeared to be clear breaches of the Code of Conduct, which ranged from inappropriate and offensive language to sexual references (including obscene and disparaging comments about women), references to strip clubs and references to drugs and drug use. In my view, the severity of the potential breaches warranted the commencement of a disciplinary process. I address these communications further at paragraphs 53 to 64 below.
38. The purpose of the disciplinary process was to put Etienne on notice of the allegations being made against him and to give him the opportunity to respond to them before I decided whether a disciplinary consequence was warranted and, if so, the nature of that consequence. A similar process was followed for other employees who were the subject of a disciplinary process as a result of the Code of Conduct Review.
39. The disciplinary process was conducted in accordance with ANZ's Global Performance Improvement and Unacceptable Behaviour Policy (the **Unacceptable Behaviour Policy**) and the Unacceptable Behaviour Process Overview. The Unacceptable Behaviour Policy set out the principles that applied if ANZ's standards of performance, behaviour and compliance were not met by employees. The Unacceptable Behaviour Process Overview set out the process that ANZ followed if an employee was alleged to have departed from these standards. Now produced, shown to me and marked '**MRE-21**' and '**MRE-22**' respectively are copies of the Global Performance Improvement and Unacceptable Behaviour Policy operative from 2 December 2014 and the Unacceptable Behaviour Process Overview.
40. On 25 June 2015, I signed a letter to Etienne putting him on notice of the allegations against him and arranging a time to meet with him (the **Disciplinary Invitation Letter**). The Disciplinary Invitation Letter enclosed extracts from the relevant Bloomberg chats and emails, the Code of Conduct and the Use of Systems Policy. Now produced, shown to me and marked '**MRE-23**' is a copy of my letter to Etienne dated 25 June 2015 enclosing extracts from Etienne's Bloomberg chats and emails.

CB 3004  
ZNA.001.001.1521

CB 3381  
ZNA.001.001.1671

CB 3600  
ALEX.001.001.0964

CB 3602  
ALEX.001.001.0966

41. [REDACTED]

42. [REDACTED]

43. On 25 June 2015, Bob Santamaria, Shayne Collins and Yoram Finger gave Etienne the Disciplinary Invitation Letter, extracts of the relevant Bloomberg chats and emails, the Code of Conduct and the Use of Systems Policy at a meeting with him and his lawyer, Peter Punch from Carroll & O’Dea Lawyers. I did not participate in the meeting, but after it had taken place I was informed by Bob Santamaria, in words to the following effect, that the meeting had taken place, that Etienne had attended the meeting with his lawyer and that Etienne had been handed a copy of the Disciplinary Invitation Letter and other documents during the meeting.

44. On 26 June 2015, I received a letter from Etienne’s lawyer, Peter Punch of Carroll & O’Dea Lawyers. The letter requested that Etienne be provided with copies of the primary documents from which the relevant Bloomberg chats and emails were extracted. Now produced, shown to me and marked ‘MRE-24’ is a copy of the letter from Peter Punch to me dated 26 June 2015.

CB 3737  
ALEX.001.001.1096

45. On 1 July 2015, Yoram Finger responded to the letter from Peter Punch dated 26 June 2015 by sending an email to Peter Punch which indicated that he would arrange to deliver to Etienne, via Peter Punch, full copies of the relevant Bloomberg chats and emails of Etienne, the Unacceptable Behaviour Policy (annexed to this affidavit as ‘MRE-21’) and



the Unacceptable Behaviour Process Overview (annexed to this affidavit as 'MRE-22'). I was copied to that email. Now produced, shown to me and marked:

- (a) 'MRE-25' is a copy of the email and attached letter from Yoram Finger to Peter Punch dated 1 July 2015; and CB 3801  
ZNA.001.001.1803
- (b) 'Exhibit MRE-26' is an electronic copy of the bundle of Bloomberg chats and emails delivered to Etienne via Peter Punch on or around 1 July 2015. ANZ.1000.0007.0001
46. After this date, ANZ and Etienne, either directly or through Peter Punch, exchanged correspondence in relation to the disciplinary process (exhibited at pages 1709 to 1746 of the Applicant's Affidavit). Now produced, shown to me and marked 'MRE-27' and 'MRE-28' respectively is a copy of an email from Yoram Finger to Peter Punch dated 6 July 2015 and a copy of an email from Peter Punch to Yoram Finger dated 6 July 2015 (which were not included in the documents exhibited to the Applicant's Affidavit). CB 3805-3843  
ALEX.001.001.1104  
ALEX.001.001.1106  
ALEX.001.001.1107  
ALEX.001.001.1110  
ALEX.001.001.1118  
ALEX.001.001.1122  
ZNA.001.001.1834  
ZNA.001.001.1836  
ALEX.001.001.1126  
ALEX.001.001.1129  
ALEX.001.001.1134  
ALEX.001.001.1138
47. As noted above, my intention was for Etienne to attend a meeting with me as part of the disciplinary process in order to give him the opportunity to present his views and respond to the allegations. During my time as a member of the Compliance team, in which capacity I conducted disciplinary processes on a regular basis, this was my usual practice. My preference was to have a meeting to discuss the matter so that I could take him through the communications in person and form an impression of Etienne, his responses, and level of contrition. I followed this approach with all of the employees the subject of a disciplinary process as a result of the Code of Conduct Review.
48. However, on 21 July 2015, Peter Punch sent a letter to me which said that Etienne was prepared to receive a letter from ANZ setting out all of the allegations and to provide a written response to the allegations. Although it was not my preferred approach, I agreed to Etienne's proposal so that the disciplinary process could move forward. Now produced, shown to me and marked 'MRE-29' is a copy of the letter from Peter Punch to me dated 21 July 2015. CB 3847  
ZNA.001.001.1838
49. On 4 August 2015, I signed a letter to Etienne setting out the allegations of unacceptable behaviour against him, the background to the letter, and some information regarding the process (the **Disciplinary Allegations Letter**). The Disciplinary Allegations Letter included an annexure that detailed the allegations against Etienne and contained a number of questions for him to address. I instructed Yoram Finger to send the letter to Etienne. Now produced, shown to me and marked 'MRE-30' is a copy of my letter to Etienne dated 4 August 2015. CB 3866  
ALEX.001.001.1151
50. Further correspondence was exchanged with Etienne and his lawyer on 6 August 2015, 10 August 2015 (exhibited at pages 1765 to 1770 of the Applicant's Affidavit) and CB 3929  
ALEX.001.001.1163

14 August 2015 (exhibited at pages 1771 to 1773 of the Applicant's Affidavit). Now produced, shown to me and marked 'MRE-31' and 'MRE-32' respectively are copies of a letter from Peter Punch to me dated 6 August 2015 and an email from Yoram Finger to Peter Punch dated 6 August 2015 (which were not included in the documents exhibited to the Applicant's Affidavit).

CB 3878  
ZNA.001.001.184

CB 3881  
ZNA.001.001.1851

51. Etienne sent his written response to the Disciplinary Allegations Letter on 17 August 2015 (the **Disciplinary Allegations Response**). Now produced, shown to me and marked 'MRE-33' is a copy of the letter from Peter Punch to me dated 17 August 2015.
52. Following receipt of the Disciplinary Allegations Response, I carefully considered Etienne's contentions and his responses to the questions in the Disciplinary Allegations Letter.

CB 3989  
ALEX.001.001.1178

### Termination of employment

53. I was solely responsible for determining whether Etienne's conduct was in breach of the Code of Conduct, the ANZ Values and the Use of Systems Policy. I made findings in relation to Etienne's conduct and decided that it was appropriate to terminate his employment for the reasons I describe below. I did not seek the approval of other ANZ employees when making findings in relation to Etienne's conduct or in making a decision about the appropriate disciplinary outcome in the circumstances.
54. I considered Etienne's conduct to be in breach of the Code of Conduct, the ANZ Values and the Use of Systems Policy because some of the Bloomberg chat records that I reviewed:
- (a) involved vilification or contained other derogatory comments directed towards homosexuals. For instance, at pages 92 to 93 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), Etienne asks Matt Mulcahy and Garfield Lee whether it is "ok for boys school teachers to be gay". Garfield Lee replies "gay doesn't mean kiddy fiddler", to which Etienne responds "got myself into trouble for implying that they are". From this exchange, I inferred that Etienne was implying that there is a link between boys' school teachers' homosexual orientation and paedophilic tendencies. Further, Etienne used the offensive and derogatory terms "fag" and "poof" to refer to people of a homosexual orientation or in a way that was derogatory, such as "ok ill donate u fag" and "refer poofss";
  - (b) involved the use of offensive and/or sexually explicit language. For instance, in a conversation with Garfield Lee at page 16 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit

as 'MRE-23'), which I also refer to in paragraph 55 below, Etienne says that he is "sry top hear abt ur kok". Further, Etienne said "u can fark off", "db fwits", "wot the fark were u thinking", "thinking abt farking u in ur asssssss", "my peniss wud be constantly out of my pants", "home is bad for my sex life", "he can sark me off" and "im so sick of swigging dom out of the bottle at strip clubs anyway" in his other Bloomberg chats;

- (c) contained references to drug-taking. For instance, at page 43 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), Etienne states "ill get u into a few eastern subs houses they love gardeners and drugs" in a conversation with Matt Mulcahy and Garfield Lee, and suggests they "sell some drugs". In a separate conversation with Garfield Lee at page 16 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), Etienne says "too many disco biscuits" in response to a complaint from Garfield Lee that Garfield Lee's "brain is fried too...[and] pleasure centres burnt out". In using the term "disco biscuits", Etienne is apparently referring to ecstasy tablets. Further, at page 123 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), Etienne says in a Bloomberg chat with individuals external to ANZ "I admire anyone that can win four tour de france on drugs, i usually cant find my door keys when i am on drugs"; and
- (d) contained highly sexualised, obscene and disparaging comments towards and about women. For instance, at page 67 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), in a conversation with Garfield Lee and Matt Mulcahy, Etienne responds to a comment from Garfield Lee saying "don't see me ramming japa whaling ships" by stating "ud torpedo a jap chick to" and "ramming speed straight at a jap bird", which I understand to be a reference to having sexual intercourse with a woman of Japanese descent. Further, at page 93 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), in a conversation with Garfield Lee and Matt Mulcahy, Etienne claims that his daughter Isabella's teacher is a "solid 9" and that he would like to "...eat lunch of her ass". In addition, at pages 115 and 116 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), in a conversation with Garfield Lee and Matt Mulcahy, Etienne describes in detail "twice" being in the presence of a friend of his wife's sister while she was "playing with herself".

55. Some of the Bloomberg chat exchanges between Etienne and individuals external to ANZ that I considered most egregious included the following:

Page no.	Relevant extract
276	<p>09/29/2011 06:43:13 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says sry top hear abt ur kok</p> <p>09/29/2011 06:43:50 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says wot did u do to it</p> <p>09/29/2011 06:44:54 GARFIELD LEE, COMMONWEALTH BANK OF Says too much wacking probably</p> <p>09/29/2011 06:45:07 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says burnt it out</p> <p>09/29/2011 06:45:12 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says over revved</p> <p>09/29/2011 06:45:12 GARFIELD LEE, COMMONWEALTH BANK OF Says I need a new one...retreads wont do</p> <p>09/29/2011 06:45:31 GARFIELD LEE, COMMONWEALTH BANK OF Says my brain is fried too</p> <p>09/29/2011 06:45:41 GARFIELD LEE, COMMONWEALTH BANK OF Says pleasure centres burnt out</p> <p>09/29/2011 06:47:09 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says too muany disco biscuits</p> <p>09/29/2011 06:47:16 GARFIELD LEE, COMMONWEALTH BANK OF Says nah too much porn</p> <p>09/29/2011 06:47:29 GARFIELD LEE, COMMONWEALTH BANK OF Says like I said....late starter with wack</p> <p>09/29/2011 06:47:41 GARFIELD LEE, COMMONWEALTH BANK OF Says and hold over from not enough porn pre internet</p> <p>09/29/2011 06:48:08 GARFIELD LEE, COMMONWEALTH BANK OF Says plus high sex drive and low interest from the ladies</p> <p>09/29/2011 06:48:20 GARFIELD LEE, COMMONWEALTH BANK OF Says = broken kok by 38</p>

	<p>09/29/2011 06:48:56 GARFIELD LEE, COMMONWEALTH BANK OF Says I can imagine anz and cba compliance guys reading this chat</p> <p>09/29/2011 06:49:16 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says mmm , not exactly sackable</p>
299	<p>11/24/2011 23:28:36 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says more a booty call</p> <p>11/24/2011 23:28:45 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Wouldja?</p> <p>11/24/2011 23:28:56 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says mate</p> <p>11/24/2011 23:29:04 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Done worse</p> <p>11/24/2011 23:29:06 MATT MULCAHY, UBS AG, AUSTRALIA BR Says ?</p> <p>11/24/2011 23:29:10 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says wot</p> <p>11/24/2011 23:29:14 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says fark</p> <p>11/24/2011 23:29:14 MATT MULCAHY, UBS AG, AUSTRALIA BR Says hahah</p> <p>11/24/2011 23:29:24 MATT MULCAHY, UBS AG, AUSTRALIA BR Says What's the oldest bird you have shagged</p> <p>11/24/2011 23:29:29 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Or biggest age gap</p> <p>11/24/2011 23:29:32 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Garf?</p> <p>11/24/2011 23:29:35 MATT MULCAHY, UBS AG, AUSTRALIA BR Says And et</p> <p>11/24/2011 23:29:54 GARFIELD LEE, COMMONWEALTH BANK OF Says pretty sure never done one older than me</p>

11/24/2011 23:30:41 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says u ask for id at M8?
11/24/2011 23:31:11 GARFIELD LEE, COMMONWEALTH BANK OF Says would bet none of them are 39+
11/24/2011 23:31:17 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says agreed
11/24/2011 23:31:32 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says i reckon mine is abt 10yrs
11/24/2011 23:31:53 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says i shagged a bird from home and away when i was at uni
11/24/2011 23:32:08 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says she wud hv been early 30s
11/24/2011 23:32:21 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says ended v badly
11/24/2011 23:32:36 GARFIELD LEE, COMMONWEALTH BANK OF Says you are sucha rockstar
11/24/2011 23:32:39 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says i tried to put my kok in her bum
11/24/2011 23:32:42 GARFIELD LEE, COMMONWEALTH BANK OF Says what was her name?
11/24/2011 23:32:47 GARFIELD LEE, COMMONWEALTH BANK OF Says hahahha
11/24/2011 23:32:52 GARFIELD LEE, COMMONWEALTH BANK OF Says sucha greek
11/24/2011 23:34:27 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says shocked both of us I reckon
11/24/2011 23:34:43 GARFIELD LEE, COMMONWEALTH BANK OF Says why did it shock you? because she said no?

303	<p>11/29/2011 23:46:58 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says ill get u into a few eastern subs houses they love gardeners and drugs</p>
	<p>11/29/2011 23:47:00 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says perfect</p>
	<p>11/29/2011 23:47:08 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Yeah have the combo</p>
	<p>11/29/2011 23:47:14 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says vertical integration</p>
	<p>11/29/2011 23:47:25 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Full service</p>
	<p>11/29/2011 23:47:29 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says bang a few wives as well</p>
	<p>11/29/2011 23:47:34 GARFIELD LEE, COMMONWEALTH BANK OF Says can root some of the mums too</p>
	<p>11/29/2011 23:47:34 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says for 400k hr</p>
	<p>11/29/2011 23:47:45 GARFIELD LEE, COMMONWEALTH BANK OF Says are you a good root?</p>
	<p>11/29/2011 23:47:47 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says 400 a root</p>
	<p>11/29/2011 23:47:53 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Nah too much</p>
	<p>11/29/2011 23:48:00 GARFIELD LEE, COMMONWEALTH BANK OF Says 400 a root is a lot</p>
	<p>11/29/2011 23:48:02 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says so u turn up 500 bucks for 5 hrs garden</p>
	<p>11/29/2011 23:48:05 MATT MULCAHY, UBS AG, AUSTRALIA BR Says Pool car wash...adn root...all for \$600 a visit</p>
	<p>11/29/2011 23:48:09 GARFIELD LEE, COMMONWEALTH BANK OF Says you'd better be richard gere for that much</p>

	<p>11/29/2011 23:48:11 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says sell some drugs</p> <p>11/29/2011 23:48:18 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says get 400 for sex</p> <p>11/29/2011 23:48:27 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says leave with 2k a day</p>
327	<p>12/08/2011 00:25:44 GARFIELD LEE, COMMONWEALTH BANK OF Says don't see me ramming japa whaling ships</p> <p>12/08/2011 00:25:57 MATT MULCAHY, UBS AG, AUSTRALIA BR Says I like</p> <p>12/08/2011 00:26:03 MATT MULCAHY, UBS AG, AUSTRALIA BR Says beer</p> <p>12/08/2011 00:26:06 MATT MULCAHY, UBS AG, AUSTRALIA BR Says And rippers</p> <p>12/08/2011 00:26:09 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says ud torpedo a jap chick to</p> <p>12/08/2011 00:26:09 GARFIELD LEE, COMMONWEALTH BANK OF Says yep</p> <p>12/08/2011 00:26:31 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says ramming speed straight at a jap bird</p>
352-353	<p>03/13/2012 04:53:49 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says u think its ok for boys school teachers to be gay</p> <p>03/13/2012 04:54:07 GARFIELD LEE, COMMONWEALTH BANK OF Says yeah</p> <p>03/13/2012 04:54:18 GARFIELD LEE, COMMONWEALTH BANK OF Says gay doesnt mean kiddy fiddler</p> <p>03/13/2012 04:54:26 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says got myself into trouble for implying that they are</p> <p>03/13/2012 04:54:34 GARFIELD LEE, COMMONWEALTH BANK OF Says thats like is it ok for man to teach at girls school</p>

	<p>03/13/2012 04:54:43 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says yeah i guess</p> <p>03/13/2012 04:55:18 MATT MULCAHY, Says i dont think they should be boarding masters</p> <p>03/13/2012 04:55:36 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says leadign the soggy sao session</p> <p>03/13/2012 04:55:54 MATT MULCAHY, Says i also dont think guys should be in girls school</p> <p>03/13/2012 04:56:24 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says im nota fan</p> <p>03/13/2012 04:56:53 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says i like youngish hot women to teach my girls</p> <p>03/13/2012 04:57:40 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says with good dress sense</p> <p>03/13/2012 04:58:36 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says at least till 3rd class</p> <p>03/13/2012 04:58:47 MATT MULCAHY, Says you have funny view on world</p> <p>03/13/2012 04:59:16 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says post 3rd class just good looking women , dont hv to be hot and young</p> <p>03/13/2012 04:59:37 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says and candress a bit worse</p> <p>03/13/2012 05:00:07 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says till high school whne i want those bookish looking mid age women with no style in the class</p> <p>03/13/2012 05:00:22 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says so the girls know its time to get serious</p> <p>03/13/2012 05:01:07 GARFIELD LEE, COMMONWEALTH BANK OF Says when they are young, it's essentially childcare</p> <p>03/13/2012 05:01:19 MATT MULCAHY, Says expensive childcare</p>
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	<p>03/13/2012 05:01:30 GARFIELD LEE, COMMONWEALTH BANK OF Says so you just want someone who will be good at that</p> <p>03/13/2012 05:01:51 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says hot youngish chick with style and a good smile</p> <p>03/13/2012 05:02:07 MATT MULCAHY, Says flirts a bid at parent teacher?</p> <p>03/13/2012 05:02:22 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says yeah and doesnt mind a drink</p> <p>03/13/2012 05:02:22 MATT MULCAHY, Says touches your arm and laughs?</p> <p>03/13/2012 05:02:36 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says definately no kids</p> <p>03/13/2012 05:02:57 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says sometimes doesnt wear undies to parent teacher</p> <p>03/13/2012 05:03:36 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says good cans</p> <p>03/13/2012 05:04:12 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says likes married guys</p> <p>03/13/2012 05:04:31 GARFIELD LEE, COMMONWEALTH BANK OF Says problem with that is your wife will see her and hate her even more than women normally hate each other</p> <p>03/13/2012 05:04:33 MATT MULCAHY, Says all this in narnia</p> <p>03/13/2012 05:04:49 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says Isabella's teaher is a 9</p> <p>03/13/2012 05:04:55 MATT MULCAHY, Says big score</p> <p>03/13/2012 05:04:58 MATT MULCAHY, Says never seen a 10</p>
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	<p>03/13/2012 05:05:07 MATT MULCAHY, Says reckon i have seen a few 9's</p> <p>03/13/2012 05:05:09 GARFIELD LEE, COMMONWEALTH BANK OF Says you will when you get older</p> <p>03/13/2012 05:05:15 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says blonde , great body , likes my kid</p> <p>03/13/2012 05:05:18 MATT MULCAHY, Says just hard marker</p> <p>03/13/2012 05:05:20 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says solid 9</p> <p>03/13/2012 05:05:32 MATT MULCAHY, Says should we invite her to lunch?</p> <p>03/13/2012 05:05:54 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says id eat lunch of her ass</p>
375-376	<p>01/25/2013 03:18:50 MATT MULCAHY, MST CAPITAL PTY LTD Says well she is with a wanka</p> <p>01/25/2013 03:18:59 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says her sister and berry were good friends at ascham</p> <p>01/25/2013 03:19:15 MATT MULCAHY, MST CAPITAL PTY LTD Says she was very hot</p> <p>01/25/2013 03:20:16 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says yeah used to be ebttter , i chged my opinion the 2nd time she startde playing with herself in front of me</p> <p>01/25/2013 03:20:37 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says she freakin loves it</p> <p>01/25/2013 03:20:59 GARFIELD LEE, COMMONWEALTH BANK OF Says fark</p> <p>01/25/2013 03:21:59 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says a bit ott</p> <p>ARR.421.049.2894</p> <p>01/25/2013 03:22:05 MATT MULCAHY, MST CAPITAL PTY LTD Says what</p>

01/25/2013 03:22:10 MATT MULCAHY, MST CAPITAL PTY LTD Says her playing with herself?
01/25/2013 03:22:12 MATT MULCAHY, MST CAPITAL PTY LTD Says that didnt happen
01/25/2013 03:22:13 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says yeah
01/25/2013 03:22:18 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says ah yes it did
01/25/2013 03:22:22 MATT MULCAHY, MST CAPITAL PTY LTD Says when
01/25/2013 03:22:38 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says twice in 2012
01/25/2013 03:22:41 MATT MULCAHY, MST CAPITAL PTY LTD Says when
01/25/2013 03:22:49 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says once post dinner party in my living room
01/25/2013 03:23:02 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says 2nd time in the back of car after engement party
01/25/2013 03:23:03 MATT MULCAHY, MST CAPITAL PTY LTD Says naked or just through shorts?
01/25/2013 03:23:10 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says leather pants
01/25/2013 03:23:16 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says and short skirt
01/25/2013 03:23:20 GARFIELD LEE, COMMONWEALTH BANK OF Says and you didnt go there?
01/25/2013 03:23:27 MATT MULCAHY, MST CAPITAL PTY LTD Says was bez there?
01/25/2013 03:23:37 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says bez was asleep upsatirs

	1st time
	01/25/2013 03:23:47 MATT MULCAHY, MST CAPITAL PTY LTD Says just 2 of you or lots of people?
	01/25/2013 03:23:51 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says in the car there were 4 other ppl inc ryan sitting next to her
	01/25/2013 03:24:10 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says but she leant over onto left cheek
	01/25/2013 03:24:29 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says and put her hand down her g banger
	01/25/2013 03:24:39 MATT MULCAHY, MST CAPITAL PTY LTD Says and everyone could see?
	01/25/2013 03:24:44 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says started flicking

56. In reaching the decision to terminate Etienne's employment, I considered the following matters:
- (a) The highly inappropriate content of the Bloomberg chats over a two year period between August 2011 and September 2013.
  - (b) The fact that the communications in question began shortly after the commencement of Etienne's employment. As an employee joining ANZ at an executive level, Etienne had choices in relation to the way he behaved when using Bloomberg and email platforms, and he did not need to engage in the conduct despite how he said he perceived ANZ's culture.
  - (c) The volume of inappropriate communications sent by Etienne. In total, there were almost 400 communications sent by Etienne that were of concern.
  - (d) The fact that Etienne had accepted that his conduct was immature and adolescent, that he regretted the use of such language, that he acknowledged that he made poor choices and that he appreciated that ANZ could be exposed to reputational risk should such communications be published or observed by industry participants. Etienne acknowledged that he was aware that the chats did contain reference to ANZ's name,

and therefore that ANZ could be associated with the content of those comments or views.

- (e) Despite the acknowledgements referred to in subparagraph (d) above, Etienne's responses revealed a lack of genuine accountability in that he suggested that his behaviour should be viewed in light of the alleged behaviour of other employees at ANZ, including managers. I considered this position to be inconsistent with the Code of Conduct, which emphasises personal responsibility and accountability. I considered that Etienne's attempts to justify his behaviour by reference to the conduct of others demonstrated a lack of insight into what was expected of senior leaders of ANZ, and a lack of understanding of the seriousness of his behaviour. Etienne, as a "Group 2 – Executive" in ANZ's global grading structure, was part of a relatively small group of the senior management team. Group 2 employees report into the "Group 1 – Senior Executive" classification, who in turn report directly to the Chief Executive Officer of ANZ. Although it fluctuates from time to time, during Etienne's employment there were only approximately 800 of ANZ's full-time equivalent employees, or less than 2% of the workforce, who were employed in roles that were classified as Group 1 and 2. Approximately 45,000 employees, or over 99% of the workforce, were employed in roles that were classified lower than Etienne's role.
- (f) Etienne confirmed that he understood the Code of Conduct, the Use of Systems Policy and the ANZ Values and was aware of ANZ's expectation that he comply with those standards. He was aware of this expectation from the commencement of his employment as it was stated in his employment contract and he undertook training on the content of the policies. In light of Etienne's acknowledgement and awareness of these standards, I considered it to be inexplicable that he would engage in conduct that departed from those standards and then seek to justify his behaviour by reference to ANZ's asserted culture.
- (g) The following exchange of chats in September 2011, at page 16 of the extracts of Etienne's Bloomberg chats and emails enclosed with the Disciplinary Investigation Letter (annexed to this affidavit as 'MRE-23'), indicated that Etienne was aware that the content of his chats may not be considered appropriate or acceptable to ANZ, but he nevertheless continued to converse in a similar manner until September 2013:

*"09/29/2011 06:48:46 GARFIELD LEE, COMMONWEALTH BANK OF Says I can imagine anz and cba compliance guys reading this chat.*

*09/29/2011 06:49:16 ETIENNE ALEXIOU, ANZ BANKING GROUP LI Says mmm, not exactly sackable"*

This was further evidenced by the use of slang and misspelt profanities to avoid detection by any Bloomberg chat filters that might have existed, for example using "fck" and "fark" instead of "fuck".

- (h) Etienne's responses to the allegations were inconsistent. He said that he acknowledged that a number of the communications were inappropriate, did not reflect the use of professional language and did not reflect the requirements to use ANZ's systems appropriately and for proper purposes. However, despite this acknowledgement, one of his responses to the allegations was that ANZ should take into consideration a number of matters in determining whether they can "properly be considered as breaches" of the Code of Conduct, Use of Systems Policy and ANZ Values. I was concerned that this displayed poor judgement on Etienne's part. As an executive, ANZ expected Etienne to display role model behaviours consistent with the Code of Conduct and ANZ Values, and expected him to apply sound judgement to matters relating to the Code of Conduct and the ANZ Values (including in relation to whether or not particular behaviours were a breach of the Code of Conduct and/or ANZ Values).
- (i) Etienne's claim that the content of some of the chats presented to him were not offensive could not properly be reconciled with those particular communications.
- (j) Etienne's response that it was a "significant matter" that none of the chat room participants indicated to him they had an issue with or concern about the language he used, and that his conduct did not constitute harassment or bullying, was concerning. It was irrelevant whether or not the chat room participants indicated to him that they had concerns with his language. The attitude of other chat participants also did not mitigate the significant risks to ANZ's reputation associated with his chat content.
- (k) In attempting to justify the chats, Etienne made statements to the effect that ANZ did not make him aware of any rules as to the use of the Bloomberg chat platform, that ANZ did not have clear guidelines in the period of 2011 to 2013 as to whether the Bloomberg chat platform could be used for non-deal related chat, and that ANZ did not put him on notice that monitoring of the Bloomberg chat platform could result in sanctioning. These statements were concerning in circumstances where Etienne had received training on using ANZ's systems and equipment, the Code of Conduct and the ANZ Values. Etienne's responses indicated that he felt ANZ had to specifically direct him not to engage in the conduct when using the Bloomberg chat platform and constantly supervise him in order for him to appreciate that it was not acceptable, which I thought was a significant issue for someone of his seniority.

- (l) I also considered Etienne's statement to the effect that his use of inappropriate language in some of the chats was due to (and a manifestation of) work-related stress and anxiety and occurred in a context where he was working long hours. If it was the case that Etienne was working long hours and felt under pressure, it was not clear to me how such circumstances explained or mitigated the nature of the communications in question, especially where the chats were not a "one off" but continued over many years (including from early in his employment with ANZ).
57. Based on his detailed responses in the Disciplinary Allegations Response, I held serious concerns about Etienne's judgement, his willingness to take accountability for his actions and his ability to meet ANZ's expectations of him as an executive and a leader. While Etienne acknowledged his failure to comply with the standard and to role model effective behaviours, he made statements to attempt to justify and excuse his conduct. I felt that his responses showed a lack of genuine contrition and that Etienne did not take accountability for his actions. I did not consider that Etienne had the necessary leadership attributes to continue as a senior leader, given his claim that his behaviour was in part caused by ANZ's culture, the lack of guidelines specifically with respect to use of the Bloomberg chat platform, and that ANZ did not bring to his attention earlier that his conduct was unacceptable.
58. I considered Etienne's conduct and his breaches of the Code of Conduct, the Use of Systems Policy and the ANZ Values to be extremely serious. As an employee and manager, Etienne had placed ANZ's reputation at significant risk by engaging in the communications with employees of the bank and external parties while in the workplace using ANZ's systems. In my view, his conduct was sufficiently serious to constitute serious misconduct warranting termination without notice, but I decided to terminate his employment for misconduct with payment in lieu of notice. In electing to terminate Etienne's employment with payment in lieu of notice, I took into account that it had been a difficult time for Etienne given his involvement in the ASIC BBSW Investigation and the ANZ BBSW Investigation and that he had been stood down from work for almost 10 months. Even though he was stood down on full pay, I had empathy for Etienne and the financial impact that the termination of employment would have on him, and so considered that termination on notice rather than summarily was the right decision. However, I did not consider that the stress associated with the ASIC BBSW Investigation and the ANZ BBSW Investigation excused his conduct, which mostly pre-dated both investigations. I considered that termination of his employment was the only appropriate outcome because his conduct meant that ANZ could not have the necessary trust and confidence in him in the future, and this was fundamental to his ongoing employment.

59. On 1 September 2015, I sent a letter to Etienne notifying him of the outcome of the disciplinary process (the **Outcome Letter**). At the time I sent the Outcome Letter to Etienne, I was genuinely concerned for his wellbeing and wanted to make sure that he had the necessary support around him when he received the letter. Unfortunately, because Etienne refused to meet with me in person, I had no choice but to send the Outcome Letter to him, rather than to give it to him in person. Now produced, shown to me and marked 'MRE-34' is a copy of my letter to Etienne dated 1 September 2015.
60. The Outcome Letter appended a small number of Etienne's Bloomberg chats that I considered as part of the disciplinary process. In my view, these communications were the most egregious and demonstrated the seriousness of Etienne's conduct and the length of time Etienne had been engaging in this conduct. The communications indicated that Etienne had been engaging in these communications since the time he had commenced employment with ANZ, and during the period that he was a senior manager of ANZ.
61. I was satisfied that the process followed by ANZ, and that I followed, in reaching this decision was fair and that Etienne had been given a proper opportunity to respond. The disciplinary process was conducted by ANZ in accordance with the Unacceptable Behaviour Policy and the Unacceptable Behaviour Process Overview that governs other conduct investigations at ANZ. Etienne had multiple opportunities to respond to the allegations against him, both in writing and in person at a meeting (which he declined to attend). During the disciplinary process, ANZ responded to questions received from Etienne and his lawyer, provided him with additional materials when requested, such as details of his training records, and accommodated his requests for additional time to consider the materials.
62. I conducted the disciplinary process with respect to Etienne solely because of Etienne's conduct as described in the Disciplinary Allegations Letter. The outcome of the disciplinary process was similarly determined only by reference to Etienne's conduct as described in the Disciplinary Allegations Letter. Etienne was not the only employee subject to a disciplinary process following the Code of Conduct Review because they had engaged in inappropriate and offensive communications in breach of the Code of Conduct, the ANZ Values and the Use of Systems Policy.

CB 4120  
ALEX.001.001.1217

63. There were no reasons aside from those set out in the Outcome Letter and this affidavit that factored into my decision to terminate Etienne's employment. Specifically, I deny that I decided to terminate Etienne's employment because of the complaints and disclosures allegedly made during his employment, including:
- (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; and
  - (i) any other complaint or disclosure made by Etienne, including a complaint allegedly made in December 2014,
- as those terms are defined in the Second Further Amended Statement of Claim.
64. At the time I made my decision to terminate Etienne's employment, I was only aware that Etienne had informed Fred Pucci that he had reported a concern to Rob O'Callaghan, Global Head of Fixed Income, at some stage. The concern allegedly expressed by Etienne was about the behaviour of traders in the Global Markets dealing room in relation to financial markets transactions carried out by ANZ (defined as the October 2011 Complaint in the Second Further Amended Statement of Claim). Etienne had sent an email to Fred Pucci that said: *"I would like to see what was recorded by group investigations when I disclosed a concern I had in BBSW back in late 2011"* (defined as the 18 July 2014 Complaint in the Second Further Amended Statement of Claim). I first learnt about the October 2011 Complaint and the 18 July 2014 Complaint on 18 July 2014, when Fred Pucci came into my office in Sydney as part of our regular catch-ups and informed me about the email he had received from Etienne that same day. Whether Etienne did in fact make the alleged October 2011 Complaint to Rob O'Callaghan was investigated by ANZ in or around July 2014 and, to my knowledge, no evidence was found that he had made the alleged complaint. Neither of these matters factored into my decision to terminate Etienne's employment.

### Clawback and forfeiture of deferred equity and withholding of the 2014 bonus

65. After making the decision to terminate Etienne's employment, but before providing the Outcome Letter to him, I considered the remuneration consequences that should apply. At that time, Etienne had been provided with a provisional remuneration outcome for the 2014 performance year, pending the outcome of the ASIC BBSW Investigation and the ANZ BBSW Investigation (the **2014 TIPP Grant**). Etienne had also been granted equity in previous performance years which had been deferred in accordance with ANZ's Remuneration Policy. These awards had been granted based on ANZ's assessment of his performance, and the information known to ANZ at the time of the grant. These awards were conditional, and remained subject to forfeiture or clawback after their award if reasons came to light justifying that outcome.
66. At the time, ANZ's Clawback Review Group (the **CRG**) was responsible for supporting the ANZ Board in reviewing significant risk and compliance issues and considering the consequences for those involved. As the decision-maker in respect of the disciplinary process, I was responsible for making a recommendation to the CRG in respect of Etienne's remuneration consequences. That decision was to be made in accordance with the procedures set out in the Clawback Review Guide. Now produced, shown to me and marked '**MRE-35**' is a copy of the Clawback Review Guide dated July 2015.
67. I considered the appropriate outcome in respect to Etienne's remuneration in accordance with the Clawback Review Guide. My recommendation to the CRG was that, in light of Etienne's conduct that I outlined in the Outcome Letter, ANZ should "clawback" 100% of his deferred equity (the **Clawback Recommendation**). The reference to "clawback" means the adjustment of Etienne's deferred equity downwards to nil. I also notified the CRG that a further tranche of equity would be automatically forfeited on termination of Etienne's employment. The tranches of equity that were the subject of the Clawback Recommendation were:
- (a) the second tranche of Etienne's 2012 short term incentive grant (the **2012 STI Grant Tranche 2**);
  - (b) Etienne's 2012 long term incentive grant (the **2012 LTI Grant**);
  - (c) the first tranche of Etienne's 2013 Total Incentives Performance Plan grant (the **2013 TIPP Grant Tranche 1**); and
  - (d) the second tranche of Etienne's 2013 Total Incentives Performance Plan grant (the **2013 TIPP Grant Tranche 2**).
68. I made the Clawback Recommendation because Etienne had breached the Code of Conduct, the ANZ Values and the Use of Systems Policy for the reasons set out at

CB 3787  
ZNA.001.001.1816

[68] second sentence, underlined words: Admitted as evidence only of Mr Evans' belief or understanding, rather than as evidence of the truth of the facts about which that belief or understanding is expressed.

[68] fourth sentence, underlined words: Admitted subject to a s 136 limitation that the evidence is received as evidence only of Mr Evans' belief or understanding, rather than as evidence of the truth of the facts about which that belief or understanding is expressed.

paragraphs 54 to 64 above. If Etienne's conduct had been known at the time the incentives were awarded (which it was not), my view was that those incentives would not have been awarded to him. This is because an employee's conduct, compliance with ANZ's policies and accountability for their own conduct were amongst the factors which managers were required to take into account when considering whether to award an incentive to an employee. If senior management within ANZ, including the Divisional Chief Risk Officer and the Divisional General Manager Human Resources, had known about Etienne's conduct at the time when the incentives were being awarded, the conduct would have been seen as a breach of policies in effect at the time, been taken into account during the annual performance and remuneration review and informed his remuneration outcomes from each of those reviews. I found Etienne had engaged in this conduct in each of the years for which he had been awarded an incentive and therefore it was appropriate to clawback all of his deferred equity because his communications were at the extreme end of seriousness and he had shown a lack of accountability for his conduct.

69. I prepared a paper addressed to the CRG explaining the disciplinary process and the Clawback Recommendation. Now produced, shown to me and marked '**MRE-36**' is a copy of my paper addressed to the Clawback Review Group dated 27 August 2015.
70. Under the Clawback Review Guide, I was required to obtain the support of the Divisional management team (comprising Andrew Geczy, Chief Executive Officer, International and Institutional Banking, Douglas Stolberg, Chief Risk Officer, International and Institutional Banking, and Anouk De Blieck, General Manager, Human Resources, International and Institutional Banking) to make the Clawback Recommendation to the CRG. On 27 August 2015, I spoke with each of Andrew Geczy, Douglas Stolberg and Anouk De Blieck to seek this support. I do not now recall the details of my discussions with Andrew Geczy, Douglas Stolberg or Anouk De Blieck. I then sent an email to them the same day at 6:24pm with the documents supporting the Clawback Recommendation. Now produced, shown to me and marked '**MRE-37**' is a copy of my email and attachments to Andrew Geczy, Douglas Stolberg and Anouk De Blieck dated 27 August 2015.
71. Andrew Geczy, Douglas Stolberg and Anouk De Blieck individually replied to me the following day, on 28 August 2015, to advise that they supported the Clawback Recommendation. Now produced, shown to me and marked '**MRE-38**' is a copy of the email chain with replies from Andrew Geczy, Douglas Stolberg and Anouk De Blieck dated 28 August 2015.
72. On 27 August 2015 at 6:42pm, I presented the Clawback Recommendation to the CRG for circular resolution. The voting members of the CRG at that time were Shayne Elliott, Chief Financial Officer, Susie Babani, Chief Human Resources Officer, and Nigel Williams.

CB 4039  
ZNA.001.001.1956

CB 1051  
ZNA.001.001.1968

CB 4097  
ZNA.001.001.2013

After I had made the decision to terminate Etienne's employment, I considered that there was a degree of urgency required to notify Etienne of the outcome as quickly as possible. I understood that Etienne was stressed, had been away from the office since 19 November 2014 and desired a speedy resolution to the disciplinary process. For this reason, I considered it appropriate to present the Clawback Recommendation to the CRG for circular resolution to expedite the process. Given the proposed termination date of 31 August 2015 (which later changed to 1 September 2015), I presented the Clawback Recommendation to the CRG subject to the endorsement of the Divisional management referred to in paragraph 70 above. Before sending the materials to the members of the CRG, I spoke with each of Shayne Elliott, Susie Babani and Nigel Williams before formally presenting the Clawback Recommendation to the CRG for circular resolution. I do not now recall the details of my discussions with Shayne Elliott, Susie Babani or Nigel Williams. Now produced, shown to me and marked 'MRE-39' is a copy of my email to the Clawback Review Group dated 27 August 2015.

CB 4064  
ZNA.001.001.1981

73. On 28 August 2015, the CRG approved the Clawback Recommendation. On the same day, I was copied to the correspondence approving the Clawback Recommendation and a subsequent email from Margot Dargan, Group General Manager, Executive Remuneration, to Graeme Liebelt, Chair of the Human Resources Committee, requesting that he confirm the Clawback Recommendation was appropriate. Now produced, shown to me and marked 'MRE-40' and 'MRE-41' respectively are copies of the correspondence dated 28 August 2015 approving the Clawback Recommendation and the email from Margot Dargan to Graeme Liebelt dated 28 August 2015.

CB 4087  
ZNA.001.001.2003

CB 4101  
ZNA.001.001.2017

74. On 28 August 2015, I was copied to an email from Graeme Liebelt to Margot Dargan confirming the Clawback Recommendation was appropriate. Now produced, shown to me and marked 'MRE-42' is a copy of the email from Graeme Liebelt to Margot Dargan dated 28 August 2015.

CB 4119  
ZNA.001.001.2035

75. On or around 27 August 2015, I also recommended to Andrew Geczy that Etienne's 2014 TIPP Grant not be made in the circumstances (the **Withholding Recommendation**). Margot Dargan communicated this recommendation to Andrew Geczy, who responded confirming his support for my recommendation. Now produced, shown to me and marked 'MRE-43' is a copy of the email chain between Margot Dargan and Andrew Geczy dated 28 August 2015.

CB 4093  
ZNA.001.001.2009

76. I made the Withholding Recommendation for the same reasons that I made the Clawback Recommendation. I state these reasons in paragraph 68 above.

77. I deny that I made the Clawback Recommendation or the Withholding Recommendation because of complaints and disclosures allegedly made by Etienne during his employment, including those listed in paragraph 63 above.

**Other employees the subject of the Code of Conduct Review**

78. In addition to Etienne, a large number of other ANZ employees were considered as part of the Code of Conduct Review. Etienne was one of a number of employees whose employment was terminated and to whom an adverse remuneration outcome was applied as a result of the Code of Conduct Review.
79. Initially, the group of employees who were the subject of the Code of Conduct Review was limited to employees and former employees who were involved in the ASIC BBSW Investigation and the ANZ BBSW Investigation. This initial group of employees included Etienne and the six other employees who had been stood down from their employment.
80. After I became involved in the disciplinary processes connected with the Code of Conduct Review, the group of employees who were part of the Code of Conduct Review expanded to include employees whose chats had not been reviewed as part of the ASIC BBSW Investigation and the ANZ BBSW Investigation. I requested the scope be expanded because I saw that other Global Markets employees had participated in inappropriate behaviour but were not, at that time, part of the Code of Conduct Review.
81. I was the decision-maker in respect of all employees who were considered as part of the Code of Conduct Review.
82. By the time the Code of Conduct Review concluded, 97 current and former employees in Global Markets had been considered. Forty five of these employees were at some stage relevant to the ASIC BBSW Investigation and/or the ANZ BBSW Investigation. Of the employees who were still employed by ANZ at the time, I decided to commence a disciplinary process for 26 of them.
83. In respect of the individuals who were employed by ANZ at the time of the Code of Conduct Review, the outcome I decided was as follows:
- (a) 3 employees were dismissed (including Etienne);
  - (b) 17 employees received formal warnings;
  - (c) 16 employees required informal counselling;
  - (d) 5 employees resigned during the disciplinary process; and
  - (e) 24 employees were not subject to any disciplinary action.

84. As stated at paragraph 79 above, each of the other six employees who were stood down alongside Etienne pending the outcome of the ASIC BBSW Investigation and the ANZ BBSW Investigation were reviewed as part of the Code of Conduct Review. Of those employees, two employees were also dismissed for serious breaches of the Code of Conduct, the ANZ Values and the Use of Systems Policy by reason of their communications using the Bloomberg platform and email. The deferred remuneration of the two employees was also adversely impacted due to their respective dismissals consistent with the approach applied to Etienne.
85. The remaining four employees were cleared on the basis that no breaches of the Code of Conduct or Use of Systems Policy were identified as part of the Code of Conduct Review.
86. In paragraph 363 of the Applicant's Affidavit, Etienne says that his understanding was that "ANZ imposed a significantly lesser disciplinary consequence on the employees who were directly involved in the transactions that were the subject of ASIC's case against ANZ, including Paul Woodward, Matthew Ritter and Matthew Morris". The disciplinary consequence for an employee who was the subject of a disciplinary process following the Code of Conduct Review was unrelated to their involvement in the ASIC BBSW Investigation and/or the ANZ BBSW Investigation. If an employee received a disciplinary consequence that was less than termination of employment, it was because I decided that the employee's conduct did not warrant termination of their employment.

**Involvement in decisions relating to Etienne's employment**

87. I was the sole decision-maker in respect of the Termination (as defined in the Second Further Amended Statement of Claim).



88. I was not a decision-maker in respect of the alleged Standing Down decision or the decision to issue the Press Release (as defined in the Second Further Amended Statement of Claim). My involvement in the decision to commence the Disciplinary Investigation; the Forfeitures decision; and the Withholding of the 2014 Bonus decision is as I describe above.

Sworn by the deponent  
at Singapore  
on 16 November 2023  
Before me:

)  
)  
)  
)  
)  
Signature of deponent

[Redacted]

Signature of witness

Name of witness: YAP LIAN SENG

Qualification of witness:

