

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: **Philip Wayne Chronican**

Business Address: [REDACTED]

Occupation: Non-Executive Director

Date: 7 July 2023

I, Philip Wayne Chronican, of [REDACTED], Non-Executive Director affirm:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ) from November 2009 to April 2015. During this time, I held the position of Chief Executive Officer of the Australia Division of ANZ and was responsible for leading ANZ's Australian retail and commercial banking business.
2. I am currently the Chairman of National Australia Bank. I am also [REDACTED]
[REDACTED] a non-executive director of the Woolworths Group.
3. I am authorised to make this affidavit on ANZ's behalf. 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.

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

Prepared by (name of person/lawyer) Michael Tamvakologos

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[Version 3 form approved 02/05/2019]

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4. I have read those parts of Etienne's affidavit affirmed on 21 December 2022 that relate to the matters which I describe in this affidavit (the **Applicant's Affidavit**). I do not respond to every matter raised in the Applicant's Affidavit. The absence of a response from me to a matter raised in the Applicant's Affidavit should not be construed as an acceptance or admission of that matter.

September 2011 meeting

5. In paragraphs [122], [124] and [125] of the Applicant's Affidavit, Etienne describes a meeting that took place in September 2011.
6. In paragraph [124] of the Applicant's Affidavit, Etienne refers to several comments I allegedly made at a meeting in September 2011 that are said to constitute an approach to him regarding a proposal which he refers to as the **Mortgage Book Trading Proposal**.
7. At the time of that meeting, the Australia Division of ANZ managed the interest rate risk on ANZ's variable mortgages portfolio by entering into internal derivative transactions with the Mismatch Desk in Global Markets. The Mismatch Desk in Global Markets would then make a decision as to whether to enter external derivative transactions with the market to manage the interest rate risk. The existing methodology for the internal transfer of interest rate risk was known as the "transfer pricing mechanism".
8. The hedging arrangements in place under the transfer pricing mechanism were proving ineffective due to the significant increase in the cost of bank bills and overnight indexed swaps to the Australia Division of ANZ. The cost was excessive for the risk to which the Australia Division of ANZ was exposed.
9. I deny that I approached Etienne in or around September 2011 to cavass his support for the Mortgage Book Trading Proposal. I did not know Etienne at that time or the role that he held at ANZ. I engaged with Rick Moscati, Group Treasurer, who oversaw the whole transfer pricing framework, and Rob O'Callaghan, Global Head of Fixed Income, who managed the interest rate risk activities in relation to the Mortgage Book Trading Proposal.
10. I deny that I made a comment to the effect that the Mortgage Book Trading Proposal would "enable the Australian Division to seek to profit from rather than simply to neutralise or 'hedge' risk on its variable interest rate mortgage portfolio". The Australia Division of ANZ was seeking to change the hedging process because it was not meeting its objective of neutralising the risk on ANZ's variable interest rate mortgage portfolio due

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to the excessive costs associated with the transfer pricing mechanism. It was not seeking to profit from the implementation of the Mortgage Book Trading Proposal.

11. In paragraph [125] of the Applicant's Affidavit, Etienne alleges that he said during the September 2011 meeting that he did not support the Mortgage Book Trading Proposal because it would cause the Australian Prudential Regulatory Authority (**APRA**) to raise ANZ's basis capital requirements and "require ANZ to provide more capital to APRA". In paragraph [160] of the Second Further Amended Statement of Claim, Etienne also alleges that he spoke out against the Mortgage Book Trading Proposal on the grounds that altering the basis upon which variable mortgage rates were set was unfair and carried reputational risk for ANZ because mortgage holders had been sold a product linked to the Reserve Bank of Australia cash rate. I do not recall Etienne making these statements. If he did make such statements, I believe that I would recall them as they concern the bank's relationship with the regulator and I would have responded by explaining that there was no basis for such concerns to be expressed.
12. Further, such statements do not, to my mind, make sense because:
 - (a) the calculation of interest rate risk in the banking book was a mechanical process and not one that was open to "influence";
 - (b) ANZ did not provide "capital" to the regulator; and
 - (c) contrary to Etienne's statement, the Mortgage Book Trading Proposal had only a minor impact on ANZ's capital requirements.
13. I also deny making the comment "we will tell the regulator what to think".
14. In paragraph [128] of the Applicant's Affidavit, Etienne alleges that he understood from a comment from Rob O'Callaghan that he was needed in the room during the September 2011 meeting for the Board to be informed that all appropriate staff had been involved in the development of the Mortgage Book Trading Proposal. This is incorrect. Etienne was not required for any purpose related to the Mortgage Book Trading Proposal nor was the approval of the Board for the Proposal sought or required. The principal participants at the meeting and in relation to the Mortgage Book Trading Proposal were Rick Moscati and Rob O'Callaghan. As I state in paragraph 9 above, I did not know Etienne at that time or the role that he held at ANZ. I have no recollection of Etienne attending this meeting. I do not recall Etienne expressing any concerns to me regarding the implementation of the Mortgage Book Trading Proposal at the meeting or otherwise.
15. In paragraph [129] of the Applicant's Affidavit, Etienne alleges that the Board ultimately approved the Mortgage Book Trading Proposal. As stated in paragraph 14 above, the

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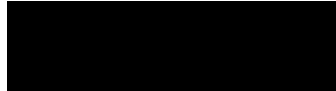
approval of the Board was not sought or required before the Mortgage Book Trading Proposal was implemented. I do not recall whether the Australia Division was required to obtain a credit authorisation, but I do not believe such an authorisation was required as it was an internal transaction within ANZ. Although I do not have a specific recollection, I believe that sign-off on the Mortgage Book Trading Proposal was required from the Group Asset and Liability Committee (GALCO). I do not recall if there was any risk limit increase required.

16. In late 2011, ANZ announced to the market that it intended to change the way it set mortgage rates. A copy of the media release is annexed to the Applicant's Affidavit at page 2124 of exhibit EA-1. ANZ met directly with APRA, the Reserve Bank of Australia and Treasury to explain the proposed change. This change was distinct from the change in the hedging process referred to above, but was aimed at addressing the same pricing pressure and margin contraction concerns. I disagree that the Mortgage Book Trading Proposal was unfair or carried a reputational risk to ANZ as the change was wholly internal to ANZ. The public change was the change in the timing of the rate announcements that was the subject of the media release referred to above.

Affirmed by the deponent)
at Sydney)
in New South Wales)
on 7 July 2023)
Before me:)



Signature of deponent



Signature of witness

James David Wintle Sutherland
Australian Legal Practitioner

I, James David Wintle Sutherland, a Solicitor admitted to practise in Victoria, certify the following matters concerning the making of this affidavit by the person who made it:

1. I saw the face of the person; and
2. I have confirmed the person's identity using an identification document and the document I relied on was the driver's licence of Philip Chronican.

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