



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: **Margot Dargan**

Address: 833 Collins Street, Docklands, Victoria 3008

Occupation: Tribe Lead Talent & Culture, Regulatory Governance

Date: 16 November 2023

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I, Margot Dargan, of business address 833 Collins Street, Docklands, Victoria 3008, Tribe Lead Talent & Culture, Regulatory Governance, affirm:

1. I am employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), in the position of Tribe Lead Talent & Culture, Regulatory Governance. 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. References in this affidavit to the **Relevant Period** are references to the period from October 2014 to September 2015.
4. By making this affidavit, I do not intend to and have no instructions to waive privilege in any communication, or record of communication, that is the subject of privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.

Employment history with ANZ

5. I commenced employment with ANZ in March 2004. I have been employed by ANZ for a period of 19 years in various roles in human resources and remuneration.
6. I am currently employed by ANZ in the role of Tribe Lead Talent & Culture, Regulatory Governance. I commenced in this role in June 2019. In my current role, my core responsibilities include oversight of the remuneration structure and arrangements of the Executive Committee of ANZ, the review of significant risk and compliance issues to consider any remuneration consequences for the organisation, and the oversight of the Human Resources Committee of the ANZ Board (the **HR Committee**).

7. Prior to my current role, I was the Group General Manager, Executive Remuneration from September 2013 and the Group General Manager Remuneration & Rewards from October 2008.
8. In these roles, I focused on remuneration matters for employees across ANZ. I attended meetings of the Clawback Review Group (the **CRG**) and the HR Committee and was at times responsible for co-ordinating and/or preparing papers recording proposals put to the CRG and the HR Committee or ANZ Board where required. I occupied this role during the Relevant Period. I was not a member of the HR Committee. I describe the functions of the CRG and HR Committee below.

The function of the CRG

9. On 1 August 2013, the ANZ Board resolved to delegate authority to the CRG to approve the release or clawback of deferred remuneration for staff (excluding particular roles), subject to confirmation by the Board or the Chair of the HR Committee that the decisions taken were appropriate. At the time, ANZ used the term “clawback” to refer to the exercise of ANZ’s discretion to adjust unvested deferred equity downwards, including to zero. ANZ now uses the term “malus” to refer to the exercise of ANZ’s discretion to adjust unvested deferred equity downwards, including to zero, at any time. Now produced, shown to me and marked ‘**MD-1**’ is a copy of an extract of the minutes of a meeting of the Board of Directors of ANZ on 1 August 2013 by which the delegation of the Board’s authority to the CRG, subject to the confirmation of the Chair of the HR Committee, was effected.
10. During the Relevant Period, the function of the CRG was to support the ANZ Board in reviewing significant risk and compliance issues and considering the consequences for those involved. ANZ’s “clawback” policy, which was contained in the Conditions of Grant and introduced in 2009 in line with the Australian Prudential Regulation Authority’s (**APRA**) Prudential Standards on Remuneration, detailed ANZ’s ability to adjust components of remuneration, including previously deferred equity and/or deferred cash downwards, or to zero, at any time, including after the grant of such remuneration where:
 - (a) the Board considers such an adjustment is necessary to protect the financial soundness of ANZ; or
 - (b) to meet unexpected or unknown regulatory requirements; or
 - (c) if the Board subsequently considers that having regard to information which has come to light after the grant of deferred equity/cash, the equity/cash was not justified.

CB 2383
ZNA.001.001.1161

11. Now produced, shown to me and marked '**MD-2**' is a copy of the Clawback Review Group Charter operative during the Relevant Period.

CB 2756
ZNA.001.001.1347

12. The CRG was a committee comprised of representatives from the risk, human resources and finance divisions of ANZ. As the delegate of the ANZ Board, the CRG had authority to approve the release of deferred remuneration, or alternatively, to adjust deferred remuneration downwards.

The function of the HR Committee

13. The HR Committee was established by the Board of Directors of ANZ. The primary function of the HR Committee was to ensure Board oversight and governance of remuneration and people matters. The HR Committee performed the function of a remuneration committee, which APRA requires APRA-regulated entities such as ANZ to have.

14. During the Relevant Period, the purpose of the HR Committee was to assist the Board in relation to remuneration matters and senior executive succession. Subject to keeping the Board informed of its activities, and any conflicting legal or regulatory requirements, the HR Committee had power to deal with, and where applicable resolve, determine finally and approve, all matters falling within the scope of its purpose and duties as set out in the HR Committee Charter and all other matters delegated by the Board to the HR Committee from time to time.

15. The functions and powers of the HR Committee were governed by the ANZ Human Resources Committee Charter, which was periodically updated. Now produced, shown to me and marked:

(a) '**MD-3**' is a copy of the ANZ Human Resources Committee Charter operative from October 2013;

CB 2398
ZNA.001.001.1164

(b) '**MD-4**' is a copy of the ANZ Human Resources Committee Charter operative from July 2014; and

CB 2556
ZNA.001.001.1281

(c) '**MD-5**' is a copy of the ANZ Human Resources Committee Charter operative from August 2015.

CB 3858
ZNA.001.001.1840

16. I am not a member of the HR Committee, nor was I a member during the Relevant Period. However, during the Relevant Period, I attended meetings of the HR Committee and performed certain administrative functions for the HR Committee, including preparing and presenting papers to the HR Committee.

17. During the Relevant Period, Graeme Liebelt, Non-Executive Director of ANZ, was the Chair of the HR Committee.

Remunerating employees at ANZ

18. Individual remuneration comprises an employee's fixed remuneration and may also comprise a variable component. The fixed remuneration component is designed to reward employees for their skills, experience and accountability in their role. The variable component seeks to reward performance during a particular performance year and incentivise ongoing performance during the period that the variable remuneration remains deferred. The variable component is not guaranteed and is subject to forfeiture and the exercise by ANZ of its discretion as stated in paragraph 25 below following the date of the grant and prior to the vesting date.
19. Between 1 July 2011 and 30 September 2015, only employees in certain roles at ANZ – being most commonly employees who were in executive or senior managerial roles – had the potential to earn an incentive. Incentives were delivered in the form of cash and/or deferred equity (shares or options to buy shares) subject to the specified deferral threshold and other conditions.
20. Remuneration awards (both fixed remuneration increases and variable remuneration awards) were (and are) determined based on an employee's demonstration of the ANZ Values, compliance with expected behaviours, adherence to company risk and compliance standards, individual performance, business unit/divisional performance, and ANZ's overall performance.
21. In assessing an employee's individual performance, managers must take into account the employee's performance against the performance objectives applicable to their role, and also the behaviours the employee has demonstrated in achieving that result. Performance is assessed not only in terms of what the employee achieves, but how they achieved it. If an employee does not demonstrate the ANZ Values (Integrity, Collaboration, Accountability, Respect and Excellence) or comply with expected behaviours and standards, this will form part of a manager's assessment of the employee's overall performance and impact their performance and remuneration outcome. An employee's performance and remuneration outcomes, including the grant of any incentive, are subject to ANZ's discretion.
22. ANZ has a Remuneration Policy which outlines ANZ's remuneration objectives and the structure of remuneration arrangements for ANZ employees. Now produced, shown to me and marked:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| (a) 'MD-6' is a copy of the ANZ Remuneration Policy operative from 28 February 2014; | CB 2405
ZNA.001.001.1171 |
| (b) 'MD-7' is a copy of the ANZ Remuneration Policy operative from 25 February 2015; | CB 4027
ZNA.001.001.1944 |
| (c) 'MD-8' is a copy of the ANZ Remuneration Policy reviewed by the Human Resources Committee and approved by the Board in February 2016; | CB 4797
ZNA.001.001.2378 |
| (d) 'MD-9' is a copy of the ANZ Remuneration Policy operative from 2 March 2017; | CB 5239
ZNA.001.001.2418 |
| (e) 'MD-10' is a copy of the ANZ Remuneration Policy reviewed by the Human Resources Committee and approved by the Board in May 2018; | CB 5555
ZNA.001.001.2475 |
| (f) 'MD-11' is a copy of the ANZBGL Remuneration Policy reviewed by the Human Resources Committee and approved by the Board in February 2019; | CB 5604
ZNA.001.001.2518 |
| (g) 'MD-12' is a copy of the ANZBGL Remuneration Policy reviewed by the Human Resources Committee and approved by the Board in February 2020; | CB 5662
ZNA.001.001.2565 |
| (h) 'MD-13' is a copy of the ANZBGL Remuneration Policy operative from December 2020; | CB 5686
ZNA.001.001.2589 |
| (i) 'MD-14' is a copy of the ANZBGL Remuneration Policy reviewed by the Human Resources Committee and approved by the Board in February 2021; | CB 5736
ZNA.001.001.2639 |
| (j) 'MD-15' is a copy of the ANZBGL Remuneration Policy reviewed by the Human Resources Committee and approved by the Board in February 2022; | CB 5795
ZNA.001.001.2693 |
| (k) 'MD-16' is a copy of the ANZ Group Performance and Remuneration Policy operative from 3 January 2023; and | CB 9500
ZNA.001.001.2738 |
| (l) 'MD-17' is a copy of the ANZBGL Performance and Remuneration Policy operative from 3 January 2023. | CB 9511
ZNA.001.001.2749 |

Mandatory deferral of incentives

23. For some employees, incentives (whether shares or cash) are subject to mandatory deferral for a specified period after the date of the grant. Deferred remuneration is held in trust and does not vest to the employee during the deferral period. Mandatory deferral is one of a number of measures implemented to encourage continued performance and observance of the ANZ Values and other internal standards of conduct and behaviour over the longer term, encourage retention, and assist with risk management.
24. The threshold at which mandatory deferral is applied, the quantum of an incentive which is subject to deferral, and the time period over which the incentive is deferred is specified in the ANZ Remuneration Policy, as varied from time to time. The mandatory deferral

rules apply to incentives that are granted to employees as part of the annual performance and remuneration review process.

25. Pursuant to ANZ's Remuneration Policy and the conditions that govern the payment of incentives, deferred remuneration is subject to the ANZ Board's ongoing discretion to adjust deferred remuneration downwards, including to zero, at any time before the date on which the remuneration is due to vest.

Conditions governing the payment of incentives

26. The conditions that govern the payment of incentives are set out in the ANZ Equity Grants – Conditions of Grant (the **Conditions of Grant**) made under the ANZ Employee Share Acquisition Plan Rules (the **ESAP**) and the ANZ Employee Share Option Plan Rules (the **ESOP**), as amended from time to time. The Conditions of Grant are varied from time to time. The Conditions of Grant relevant to each of Etienne's performance and remuneration reviews are addressed further below. No incentive awards under the ESOP were made to Etienne during his employment with ANZ.
27. The ESAP contains the conditions that govern the payment of incentives in the form of shares. The ESAP allows employees to participate, at the invitation of ANZ, in an incentive scheme for the acquisition of shares on such terms as the ANZ Board decides are appropriate. Now produced, shown to me and marked:
- (a) **'MD-18'** is a copy of the ESAP operative from 25 October 2010; and
- (b) **'MD-19'** is a copy of the ESAP operative from 30 July 2013.
28. The ESAP contains arrangements relating to the administration of the ESAP. Pursuant to the ESAP:
- (a) the ANZ Board is responsible for administering the ESAP (clause 11.1 of the ESAP); and
- (b) the ANZ Board may delegate the exercise of any of its powers or discretions under the ESAP for the period of time and on the terms it decides (clause 11.2(a) of the ESAP).
29. The Conditions of Grant contain the terms on which a participant is eligible to participate in the incentive scheme under the ESAP or the ESOP. The Conditions of Grant are notified to a participant around the time of the grant of equity, which is allocated in connection with the annual performance and remuneration review process.

CB 1375
ZNA.001.001.0435

CB 2352
ALEX.001.001.0296

Etienne's performance and remuneration reviews2012 Performance and Remuneration Review

30. In a letter dated 14 November 2012, Etienne was informed of the outcome of his performance and remuneration review for the performance year from 1 October 2011 until 30 September 2012 (the **2012 Performance and Remuneration Review**). Now produced, shown to me and marked '**MD-20**' is a copy of the system generated letter from ANZ to Etienne dated 14 November 2012 which ANZ has on record.

CB 1920
ALEX.001.001.0232

31. The letter:

(a) stated that Etienne's remuneration outcome took into account his performance in comparison with that of his peers across the four categories of the balanced scorecard (financial, customer, process/risk and people), as well as his demonstration of ANZ's Values;

(b) notified Etienne that ANZ had decided to award him:

- i. a short term incentive of \$2,300,000 (gross) (the **2012 STI Grant**) with \$1,100,000 of this amount to be provided as shares, 50% of which was to be deferred for one year from the date of the grant (the **2012 STI Grant Tranche 1**) and 50% of which was to be deferred for two years from the date of the grant (the **2012 STI Grant Tranche 2**). The 2012 STI Grant Tranche 1 consisted of 22,204 shares and the 2012 STI Grant Tranche 2 consisted of 22,204 shares; and
- ii. a long term incentive of \$350,000 to be provided as shares deferred for three years from the date of the grant (the **2012 LTI Grant**). The 2012 LTI Grant consisted of 14,129 shares;

(c) referred Etienne to the enclosures for the conditions attaching to the grants specified in the letter;

(d) enclosed copies of the Conditions of Grant – Short Term Incentive and the Conditions of Grant – Long Term Equity Plan summarising the rules of the ESAP as they applied to equity allocated as a result of the 2012 Performance and Remuneration Review (the **2012 Conditions of Grant**). The 2012 Conditions of Grant contained terms that:

- i. by accepting the allocation and receiving equity Etienne was deemed to have agreed to the 2012 Conditions of Grant in respect of the equity granted to him. The 2012 Conditions of Grant were also available to ANZ employees on

ANZ's intranet site. Now produced, shown to me and marked '**MD-21**' and '**MD-22**' respectively are copies of the 2012 Conditions of Grant – Short Term Incentive and 2012 Conditions of Grant – Long Term Equity Plan; and

CB 1640
ZNA.001.001.0602

CB 1649
ZNA.001.001.0611

- ii. by accepting the allocation and receiving equity Etienne was deemed to have agreed to be bound by the rules of the ESAP or the ESOP as applicable (each as varied from time to time pursuant to the rules of the plan) and the specific conditions set out in Section 1 of the 2012 Conditions of Grant. The rules of the ESAP under which the 2012 STI Grant and the 2012 LTI Grant were made are annexed to this affidavit as '**MD-18**'; and

- (e) advised Etienne that he should read the 2012 Conditions of Grant and the rules of the ESAP or ESOP (as applicable) on the basis that they together set out all of the terms of his offer.

32. Section 1 of the 2012 Conditions of Grant contained express terms including that:

- (a) the allocation of deferred shares is offered under the ESAP;
- (b) the shares will be held in trust and will not vest, and therefore may not be traded, until the conclusion of the deferral period; and
- (c) the entitlement to deferred shares was subject to the ANZ Board's ongoing and absolute discretion to adjust performance-based components of remuneration, including previously deferred equity and/or deferred cash downwards, or to zero at any time, including after the grant of such remuneration, where the ANZ Board considers such an adjustment is necessary:
 - i. to protect the financial soundness of ANZ; or
 - ii. to meet unexpected or unknown regulatory requirements; or
 - iii. if the ANZ Board subsequently considers that having regard to information which has come to light after the grant of deferred equity/cash, the deferred equity/cash was not justified.

33. On 28 November 2012, ANZ paid Etienne \$1,200,013.84 (inclusive of superannuation contributions), less applicable taxation, in respect of the non-deferred component of the 2012 STI Grant. Now produced, shown to me and marked '**MD-23**' is a copy of Etienne's payslip showing the payments made on 28 November 2012.

CB 1970
ZNA.001.001.0832

2013 Performance and Remuneration Review

34. In a letter dated 19 November 2013, ANZ notified Etienne of the outcome of his performance and remuneration review for the performance year from 1 October 2012 until 30 September 2013 (the **2013 Performance and Remuneration Review**). Now produced, shown to me and marked '**MD-24**' is a copy of the system generated letter from ANZ to Etienne dated 19 November 2013 which ANZ has on record.

CB 2484
ALEX.001.001.0339

35. The letter:

(a) stated that Etienne's remuneration outcome took into account external market practice, his "Overall Performance Rating", his demonstration of the ANZ Values, his performance compared to peers and ANZ's overall performance;

(b) notified Etienne that:

i. ANZ had decided to award him a Total Incentives Performance Plan grant of \$4,000,000 (gross) (the **2013 TIPP Grant**) with \$2,352,000 of this amount to be provided as deferred shares; and

ii. in line with ANZ policy at that time, 20% of the 2013 TIPP Grant above \$80,000 would be deferred as ANZ equity for one year (the **2013 TIPP Grant Tranche 1**), 20% would be deferred as ANZ equity for two years (the **2013 TIPP Grant Tranche 2**), and 20% would be deferred as ANZ equity for three years (the **2013 TIPP Grant Tranche 3**), subject to a minimum deferred amount of at least \$18,000. The 2013 TIPP Grant Tranche 1 consisted of 24,694 shares, the 2013 TIPP Grant Tranche 2 consisted of 24,692 shares and the 2013 TIPP Grant Tranche 3 consisted of 24,692 shares;

(c) referred Etienne to the enclosures for the conditions attaching to the grants specified in the letter;

(d) enclosed a copy of the Conditions of Grant summarising the rules of the ESAP as they applied to equity allocated as a result of the 2013 Performance and Remuneration Review (the **2013 Conditions of Grant**). The 2013 Conditions of Grant contained terms that:

i. by accepting the allocation and receiving equity Etienne was deemed to have agreed to the 2013 Conditions of Grant in respect of the equity granted to him. The 2013 Conditions of Grant were also available to ANZ employees on ANZ's intranet site. Now produced, shown to me and marked '**MD-25**' is a

CB 1982
ALEX.001.001.0247

copy of the 2013 Conditions of Grant – Total Incentives Performance Plan;
and

- ii. by accepting the allocation and receiving equity Etienne was deemed to have agreed to be bound by the rules of the ESAP or ESOP as applicable (each as varied from time to time pursuant to the rules of the plan) and the specific conditions set out in Section 1 of the 2013 Conditions of Grant. The rules of the ESAP under which the 2013 TIPP Grant was made are annexed to this affidavit as '**MD-19**'; and

(e) advised Etienne that he should read the 2013 Conditions of Grant and the rules of the ESAP or ESOP (as applicable) on the basis that they set out all of the terms of his offer.

- 36. The 2013 Conditions of Grant contained the express terms stated at paragraph 32 above.
- 37. On 28 November 2013, ANZ paid Etienne \$1,648,000 (inclusive of superannuation contributions), less applicable taxation, in respect of the non-deferred component of the 2013 TIPP Grant. Now produced, shown to me and marked '**MD-26**' is a system generated extract of Etienne's payslip showing the payments made on 28 November 2013.

CB 1972
ZNA.001.001.1250

2014 Performance and Remuneration Review

- 38. In a letter dated 12 November 2014, ANZ notified Etienne of the provisional outcome of his performance and remuneration review for the performance year from 1 October 2013 until 30 September 2014 (the **2014 Performance and Remuneration Review**). Now produced, shown to me and marked '**MD-27**' is a copy of the letter from ANZ to Etienne dated 12 November 2014 which ANZ has on record.
- 39. The letter:
 - (a) stated that Etienne's remuneration outcome took into account external market practice, his performance against objectives, his demonstration of the ANZ Values and ANZ's overall performance;
 - (b) notified Etienne that:
 - i. ANZ had decided to award him a salary increase of \$25,000 (gross) (the **2014 Salary Increase**);

CB 2909
ALEX.001.001.0552

- ii. ANZ had decided to award him a Total Incentives Performance Plan grant of \$5,000,000 (gross) (the **2014 TIPP Grant**) with \$2,952,000 of this amount to be provided as deferred shares; and
 - iii. in line with ANZ policy at that time, 20% of the 2014 TIPP Grant above \$80,000 would be deferred as ANZ equity for one year (the **2014 TIPP Grant Tranche 1**), 20% would be deferred as ANZ equity for two years (the **2014 TIPP Grant Tranche 2**), and 20% would be deferred as ANZ equity for three years (the **2014 TIPP Grant Tranche 3**), subject to a minimum deferred amount of at least \$18,000. For the reasons in paragraph 41 below, the 2014 remuneration outcome for Etienne was provisionally rather than finally awarded and as a result, the deferred equity for the 2014 TIPP Grant was not allocated to Etienne on 21 November 2014 as stated in the letter annexed to this affidavit as '**MD-27**'. If the deferred equity of the 2014 TIPP Grant had been allocated to Etienne on that date, I have calculated that the 2014 TIPP Grant Tranche 1 would have consisted of 30,856 shares, the 2014 TIPP Grant Tranche 2 would have consisted of 30,856 shares and the 2014 TIPP Grant Tranche 3 would have consisted of 30,856 shares;
- (c) referred Etienne to the Conditions of Grant available from ANZ's intranet site summarising the rules of the ESAP as they applied to equity allocated as a result of the 2014 Performance and Remuneration Review (the **2014 Conditions of Grant**). The 2014 Conditions of Grant contained terms that:
- i. by accepting the allocation and receiving equity Etienne would be deemed to have agreed to the 2014 Conditions of Grant in respect of the equity granted to him. Now produced, shown to me and marked '**MD-28**' is a copy of the 2014 Conditions of Grant – Short Term Incentive or Total Incentive Performance Plan; and
 - ii. by accepting the allocation and receiving equity Etienne would be deemed to have agreed to be bound by the rules of the ESAP or ESOP as applicable (each as varied from time to time pursuant to the rules of the plan) and the specific conditions set out in Section 1 of the 2014 Conditions of Grant. The rules of the ESAP under which the 2014 TIPP Grant was made are annexed to this affidavit as '**MD-19**'; and
- (d) advised Etienne that he should read the 2014 Conditions of Grant and the rules of the ESAP or ESOP (as applicable) on the basis that they set out all of the terms of his offer.

40. The 2014 Conditions of Grant contained the express terms that I describe at paragraph 32 above.
41. At the time of the 2014 Performance and Remuneration Review, the 2014 remuneration outcomes for 16 employees of ANZ, including Etienne, had been provisionally rather than finally awarded. The outcomes were provisionally awarded in light of the Australian Securities and Investments Commission's (**ASIC**) and ANZ's respective investigations into historic trading practices in the Australian interbank market known as the Bank Bill Swap Rate (**BBSW**) interbank market (respectively the **ASIC BBSW Investigation** and the **ANZ BBSW Investigation**).
42. I have obtained copies of Etienne's payslips for the period from 31 October 2014 to 17 September 2015. The payslips indicate that, while Etienne was notified that the 2014 Salary Increase was awarded on a provisional basis, the increase was processed by payroll and as a result, the 2014 Salary Increase was applied and paid to Etienne. Now produced, shown to me and marked '**MD-29**' are copies of Etienne's payslips during the period from 31 October 2014 to 17 September 2015.

CB 1934
ZNA.001.001.1462

Meetings of the CRG

43. Prior to the scheduled meetings of the CRG, each division of ANZ was asked to consider whether there were any matters which would warrant the downward adjustment of an employee's deferred remuneration that was due to vest. The consideration to adjust deferred remuneration could also be made at the time that a consequence was being considered in accordance with the ANZ Performance Improvement and Unacceptable Behaviour Policy.
44. Practically, this meant that a manager would consider any unacceptable behaviour and determine if the findings about the behaviour were such that, had it been known when the equity/cash was granted, the grant would not have been justified. The Clawback Review Guide contained a non-exhaustive list of circumstances that may give rise to the consideration of the downward adjustment of deferred remuneration, including a material/significant breach of the ANZ Code of Conduct and Ethics (the **Code of Conduct**) or a material/significant breach of ANZ policies. Now produced, shown to me and marked '**MD-30**' is a copy of the Clawback Review Guide last updated in July 2015.
45. In accordance with the Clawback Review Guide, a recommendation for the downward adjustment of remuneration had to be supported by the Divisional Chief Executive Officer, Divisional Chief Risk Officer, and the Divisional General Manager of Human Resources.

CB 3787
ZNA.001.001.1816

46. During the Relevant Period, a decision of the CRG to approve the release or clawback of deferred remuneration was subject to confirmation by the Chair of the HR Committee. In exercising this function, the Chair of the HR Committee reviewed the CRG's decision and considered whether it was appropriate based on the information provided by the CRG, as specified in the Clawback Review Guide.
47. During the Relevant Period, I was responsible for seeking approval for decisions of the CRG to release or clawback deferred remuneration from the Chair of the HR Committee. When seeking that approval, it was my practice to write to the Chair of the HR Committee attaching the papers describing the decisions made by the CRG for approval. Further, in some instances, I also provided a verbal briefing on the matter. From time to time, the Chair of the HR Committee contacted me to ask questions or request further information concerning a particular decision. I do not recall an occasion where I sought the approval of a decision of the CRG from the Chair of the HR Committee and the decision was not approved.
48. Under the terms of the Clawback Review Guide, if the Chair of the HR Committee or ANZ Board considered that the decisions taken were not appropriate, they retained the ability to amend or adjust the CRG's decisions, including by applying further adjustments. Decisions could not be actioned until confirmation from the Chair of the HR Committee was received. If there was a need to expedite the process at any time, a paper would be presented to the CRG by circular resolution, or an extraordinary meeting would be held at which a decision would be made and subsequently provided to the Chair of the HR Committee for confirmation.

Clawback and forfeiture of deferred equity

49. By August 2015, Mark Evans, Chief Compliance Officer, had been appointed as the decision-maker in respect of any disciplinary consequences to be applied following a review of the use of ANZ communications systems by employees of ANZ (the **Code of Conduct Review**).
50. On 27 August 2015 at 6:24pm, Mark Evans sent an email to Andrew Geczy (Chief Executive Officer, International and Institutional Banking), Douglas Stolberg (Chief Risk Officer, International and Institutional Banking) and Anouk De Blicke (General Manager, Human Resources, International and Institutional Banking) regarding a recommendation to the CRG in respect of Etienne's deferred equity. I was copied to this email. Now produced, shown to me and marked 'MD-31' is a copy of the email and attachments from Mark Evans to Andrew Geczy, Douglas Stolberg and Anouk De Blicke dated 27 August 2015. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- [REDACTED]
- [REDACTED]
51. The “clawback” of Etienne’s equity was a reference to the downwards adjustment of his deferred and unvested equity to zero. At this time, Etienne’s deferred and unvested equity was being held in trust and had not vested.
52. On 28 August 2015, each of Andrew Geczy, Douglas Stolberg and Anouk De Blicke separately responded to Mark Evans’ email and confirmed that they supported the Clawback Recommendation. I was copied to these emails. Now produced, shown to me and marked ‘**MD-32**’ is an email chain dated 28 August 2015 containing Andrew Geczy’s, Douglas Stolberg’s and Anouk De Blicke’s respective responses.
53. On 27 August 2015 at 6:43pm, Mark Evans emailed a paper to the members of the CRG entitled “Employee Equity Matters – Etienne Alexiou” for circular resolution in relation to the clawback of Etienne’s deferred and unvested equity. This paper was prepared by Sharon Christie, Head of Enterprise Remuneration, Reward & Recognition Services, in my team who assisted me to prepare papers recording proposals put to the CRG and the HR Committee. Sharon Christie was not a member of the CRG and did not have any role in approving Mark Evans’ recommendation to the CRG, or making the decision to put the matter to the CRG for resolution.
54. The paper indicated that the Clawback Recommendation had been provided to the International and Institutional Banking division management for support, which was concurrently being sought. A circular resolution was proposed because the CRG were not scheduled to meet prior to 31 August 2015. Mark Evans’ email to the members of the CRG forwarded his earlier email dated 27 August 2015 attaching the paper and sample of communications (which is annexure ‘**MD-31**’ to this affidavit). Mark Evans’ email was copied to members of the Legal, Remuneration and Human Resources teams at ANZ for their information, along with the Executive Assistant of each member of the CRG, but they did not have any role in approving the recommendation or making the relevant decision. Now produced, shown to me and marked ‘**MD-33**’ is a copy of the email and attachments from Mark Evans to the CRG dated 27 August 2015.

CB 4097
ZNA.001.001.2013

CB 4064
ZNA.001.001.1981

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The CRG was not asked to approve the decisions already made by Mark Evans in relation to the disciplinary process concerning Etienne's conduct and the termination of his employment. The CRG was concerned only with remuneration consequences and did not have the power to revoke findings made in disciplinary processes or disciplinary consequences applied under the ANZ Performance Improvement and Unacceptable Behaviour Policy.

56. The tranches of equity that were the subject of the Clawback Recommendation were as follows:
- (a) the 2012 STI Grant Tranche 2;
 - (b) the 2012 LTI Grant;
 - (c) the 2013 TIPP Grant Tranche 1; and
 - (d) the 2013 TIPP Grant Tranche 2.
57. Pursuant to the 2013 Conditions of Grant:
- (a) the 2013 TIPP Grant Tranche 3 would be automatically forfeited on termination of employment; and
 - (b) in the case of termination on notice, all unvested shares at the "full notice termination date" would be forfeited. Etienne's "full notice termination date" for this purpose was 1 January 2016 (which would have been the end of his notice period had he not been paid in lieu of notice).
58. It was proposed by Mark Evans that Etienne's employment would be terminated on notice. Given that the 2013 TIPP Grant Tranche 3 was due to vest in 2016, the automatic consequence under the 2013 Conditions of Grant was that the shares would be forfeited. As a result, no decision was required to be made by the CRG in respect of the 2013 TIPP Grant Tranche 3.

59. In my experience as a non-voting member of the CRG, in deciding whether to exercise the discretion to clawback an employee's unvested deferred equity, the CRG could take into account a number of considerations including: the specific incident and impacts of the incident upon ANZ; the strength of the evidence; the employee's history of behaviour and performance; and the employee's seniority and expected level of accountability and knowledge given their role. The CRG considered each situation on its own merit according to the specific circumstances. However, it was not the role of the CRG to remake a factual decision or reopen a factual enquiry in relation to a matter presented to it for consideration.
60. On 28 August 2015, the CRG approved the Clawback Recommendation made in the paper. Now produced, shown to me and marked '**MD-34**' is a copy of the correspondence from the CRG dated 28 August 2015 approving the Clawback Recommendation. CB 4087
ZNA.001.001.2003
61. On 28 August 2015 at 11:27am, after the CRG approved the Clawback Recommendation, I sent an email on behalf of the CRG to Graeme Liebelt, as Chair of the HR Committee. My email to Graeme Liebelt attached:
- (a) the paper circulated to the CRG dated 27 August 2015;
 - (b) a paper that I prepared dated 28 August 2015 entitled "Clawback Review Group Recommendations" which summarised the background, the process followed by the CRG, and the action requested of the HR Committee Chair. This paper had my name on it because when writing to the HR Committee Chair to seek confirmation of decisions made by the CRG, it was my practice to prepare a paper describing the decision that had been made by the CRG; and
 - (c) the paper prepared by Mark Evans dated 27 August 2015 and the sample of communications provided by Mark Evans.
62. Now produced, shown to me and marked '**MD-35**' is a copy of my email to Graeme Liebelt dated 28 August 2015 and its attachments. CB 4101
ZNA.001.001.2017
63. The action requested of Graeme Liebelt in my email of 28 August 2015 was to consider the decision of the CRG to clawback Etienne's unvested deferred equity and determine whether that decision was appropriate. I do not recall speaking with Graeme Liebelt at the time I sent him the materials for his consideration, nor do I recall giving Graeme Liebelt a verbal briefing on the decision of the CRG to clawback Etienne's unvested deferred equity. However, I had previously discussed the Code of Conduct Review with him. These discussions occurred in or around mid-2015 in relation to other employees

(not including Etienne) whose deferred equity was the subject of consideration by the CRG as an outcome of the Code of Conduct Review.

64. Later the same day, on 28 August 2015, Graeme Liebelt replied to my email to confirm his agreement with the CRG decision. Now produced, shown to me and marked '**MD-36**' is a copy of the email from Graeme Liebelt to me dated 28 August 2015.

CB 4119
ZNA.001.001.2035

Withholding the 2014 TIPP Grant

65. On 28 August 2015, I sent an email to Andrew Geczy regarding the 2014 TIPP Grant provisionally awarded to Etienne. In that email, I informed Andrew Geczy that, given the circumstances outlined by Mark Evans in the email sent to Andrew Geczy the previous day (annexed to this affidavit as '**MD-31**'), Mark Evans was recommending that the 2014 TIPP Grant not be made. I asked Andrew Geczy whether or not he approved Mark Evans' recommendation. I said that this was a decision for him, as the Divisional Chief Executive Officer, rather than the CRG. Now produced, shown to me and marked '**MD-37**' is a copy of my email to Andrew Geczy dated 28 August 2015.

CB 4086
ZNA.001.001.2002

66. Later the same day, on 28 August 2015 at 9:36am, Andrew Geczy replied to my email to confirm that he supported the recommendation with respect to Etienne's 2014 TIPP Grant. Now produced, shown to me and marked '**MD-38**' is a copy of the email from Andrew Geczy to me dated 28 August 2015.

CB 4093
ZNA.001.001.2009

67. I forwarded Andrew Geczy's reply to my email confirming that he supported the recommendation with respect to Etienne's 2014 TIPP Grant to Nigel Williams, Chief Risk Officer, Susie Babani, Chief Human Resources Officer, and Shayne Elliott, Chief Financial Officer, on 28 August 2015 at 11:22am. When doing so, I stated in my email that ANZ had decided that the \$5,000,000 incentive provisionally awarded to Etienne following the 2014 performance year would not be granted, provided or released to him, subject to confirmation by the Chair of the Human Resources Committee. My email stated that no action was required by the Clawback Review Group. Now produced, shown to me and marked '**MD-39**' is a copy of my email to Nigel Williams, Susie Babani and Shayne Elliott dated 28 August 2015.

CB 4099
ZNA.001.001.2015

68. In the paper that I sent to Graeme Liebelt on 28 August 2015 at 11:27am (to which I refer at paragraph 61 above), I asked him to confirm the decision that the 2014 TIPP Grant provisionally awarded to Etienne would not be granted, provided or released to him. The reason I sought Graeme Liebelt's confirmation of the decision not to grant, provide or release to Etienne the 2014 TIPP Grant was because, prior to the 2014 TIPP Grant being provisionally awarded, the HR Committee had been asked to consider and,

if thought fit, to approve the 2014 TIPP Grant for Etienne. This approval was a matter for the HR Committee because the incentive proposed to be granted to Etienne was \$500,000 or greater. Given this, as a matter of good governance, the decision not to grant, provide or release the 2014 TIPP Grant was presented to Graeme Liebelt as the Chair of the HR Committee. As referred to in paragraph 64 above, Graeme Liebelt replied to my email the same day to confirm Andrew Geczy's decision.

Knowledge of alleged complaints and disclosures and involvement in decisions relating to Etienne's employment

69. Etienne alleges that he made various complaints and disclosures to ANZ and ASIC during his employment. Those complaints and disclosures, as identified in the Second Further Amended Statement of Claim in these proceedings, include:

- (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) a complaint or disclosure allegedly made by Etienne in December 2014.

70. Etienne did not make any complaints or disclosures to me. I was not informed by others within ANZ, nor did I have any knowledge that he had made such complaints or disclosures during his employment.

71. I did not make the alleged: Standing Down decision; the decision to issue the Press Release; the decision to commence the Disciplinary Investigation; the Termination decision; the Forfeitures decision; or the Withholding of the 2014 Bonus decision as defined in the Second Further Amended Statement of Claim. My participation in the internal decision-making process that led to the making of the Forfeitures decision and the Withholding of the 2014 Bonus decision is as described in this affidavit.

Expert Report from Zeynep Ertugrul Lockyer

72. I have read the expert report from Zeynep (Zoe) Ertugrul Lockyer dated December 2022 (the **Expert Report**) filed by Etienne in these proceedings.

73. In paragraph 10 of the Expert Report, Zoe Lockyer says that the Short Term Incentive awarded to Etienne following the 2012 Performance and Remuneration Review was governed by the Conditions of Grant attached in Appendix 42 to the Expert Report. This is incorrect. The 2012 STI Grant was governed by the ESAP and subject to the 2012 Conditions of Grant.
74. In paragraph 19 of the Expert Report, Zoe Lockyer says that as a result of the decision to terminate his employment, Etienne “forfeited...the final increase to his Total Fixed Remuneration which was awarded to him...in his remuneration review letter dated 12 November 2014”. As stated at paragraph 42 above, while Etienne was notified that the 2014 Salary Increase was awarded on a provisional basis, the increase was processed by payroll and as a result, the 2014 Salary Increase was applied and paid to him. In “Table 2” at paragraph 20 of the Expert Report, Zoe Lockyer summarises Etienne’s contractual remuneration versus his earned (actual) remuneration. I understand the term “contractual remuneration” is used in the Expert Report to refer to the amounts that Etienne was entitled to, and the term “earned (actual) remuneration” is used to refer to the amounts paid by ANZ to Etienne. The table specifies that Etienne was paid a “Total Fixed Remuneration” in the amount of \$421,667 (gross) in the period from 1 October 2014 to 1 September 2015. Etienne was paid a “Total Fixed Remuneration” of \$444,583, comprising a base salary of \$406,011 (gross) and superannuation contributions totalling \$38,572 (gross) during this period. Etienne’s payslips for the period from 31 October 2014 to 17 September 2015 are annexed at ‘MD-29’ above.
75. Table 2 identifies Etienne’s contractual remuneration as including the “Total Incentives” granted in 2012, 2013 and 2014. As stated in paragraph 41 above, the 2014 TIPP Grant was only provisionally awarded to Etienne, and the unvested tranches of the 2012 STI Grant, the 2012 LTI Grant and the 2013 TIPP Grant remained at-risk during the deferral period.
76. In paragraph 22(c) of the Expert Report, Zoe Lockyer says that “100% clawback was applied to his [Etienne’s] deferred equity granted on 12 November 2012 and 22 November 2013” which resulted in the “forfeiture” of equity, including 24,692 shares due to vest on 22 November 2016 (referred to in paragraph 35(b)ii above as the 2013 TIPP Grant Tranche 3). [REDACTED] Under the 2013 Conditions of Grant, the 2013 TIPP Grant Tranche 3 was automatically forfeited, because the equity was unvested at Etienne’s full notice termination date. ANZ did not exercise its discretion to adjust the 2013 TIPP Grant Tranche 3 to nil.

77. In paragraph 19 of the Expert Report, Zoe Lockyer says that as a result of the decision to terminate his employment, Etienne “forfeited...100% of his incentive pay from 2014”. In paragraph 22(d) of the Expert Report, Zoe Lockyer says further that “[f]ollowing ANZ’s decision not to classify Mr Alexiou’s departure as a “good leaver” in September 2015, his TIPP related to 2014 which was totalling \$5,000,000 [sic] was also forfeited”. [REDACTED] [REDACTED] As stated in paragraph 41 above, the 2014 TIPP Grant was provisionally, rather than finally, awarded to Etienne. The “good leaver” rules in the 2014 Conditions of Grant did not apply because the 2014 TIPP Grant had not been finally awarded to Etienne. The good leaver rules in the Conditions of Grant only apply in respect of incentives that have been finally awarded by ANZ and are held in trust. The decision whether to award a remuneration outcome to an employee in a particular performance year is at the discretion of the head of the relevant area of the business. In Etienne’s case, it was a decision for Andrew Geczy whether to award or cancel the 2014 TIPP Grant.
78. In paragraph 26 of the Expert Report, Zoe Lockyer relies on a Volume Weighted Average Price (**VWAP**) of shares referred to in ANZ’s 2015 annual report to calculate the number of shares that she says would have been allocated to Etienne in respect of the 2014 Performance and Remuneration Review (being \$31.93). The VWAP to which Zoe Lockyer refers applies to grants under the ANZ Employee Share Offer, but not the 2014 Conditions of Grant. I instructed Melanie Deefholts, Equity Consultant, Reward and Pay in the Talent and Culture team, to provide me with the VWAP in the five days leading up to, and including the award date of 21 November 2014 for grants under the 2014 Conditions of Grant. Now produced, shown to me and marked ‘MD-40’ is a copy of an email and attachments retained on ANZ’s systems confirming the VWAP in the five days leading up to, and including 21 November 2014, which was provided to me by Melanie Deefholts. The VWAP in the five days leading up to, and including the award date of 21 November 2014 for grants under the 2014 Conditions of Grant (i.e., the 2014 TIPP Grant) was \$31.89. Based on an allocation price of \$31.89, I have calculated that the 2014 TIPP Grant Tranche 1 would have consisted of 30,856 shares, the 2014 TIPP Grant Tranche 2 would have consisted of 30,856 shares and the 2014 TIPP Grant Tranche 3 would have consisted of 30,856 shares.
79. In paragraphs 30 and 62 of the Expert Report, Zoe Lockyer says that she understands that Etienne was receiving \$1,000 worth of ANZ shares as part of the ANZ Employee Share Offer on an annual basis during his employment with ANZ, and provides an opinion on his loss of income relating to the Employee Share Offer. Each year, the Board of ANZ determined if an Employee Share Offer should be made, and if it was

made, the quantum of the offer. There was no guarantee that the Board would determine to make an Employee Share Offer in any year. Under the Employee Share Offer, if an offer was made, eligible employees received an award of shares equal to the value of a nominated monetary amount at no cost. The monetary amount varied from one year to the next, and the maximum value of the Employee Share Offer was \$925, not \$1,000 as set out in paragraph 30 of the Expert Report. The Employee Share Offer ceased operation after the 2019 calendar year. Now produced, shown to me and marked:

- (a) **'MD-41'** is a summary of allocations made under the Employee Share Offer between 1998 and 2019, which is contained in an explanatory document titled "Employee Share Offer – Australia FAQs" published for ANZ employees on PeopleHub, ANZ's intranet; CB 947
ZNA.001.001.0089
- (b) **'MD-42'** are copies of the employee brochures for the Employee Share Offer from 2011 to 2019 (excluding 2016, when no offer was made); and CB 1390
ZNA.001.001.0448
- (c) **'MD-43'** are copies of audit certificates for the Employee Share Offer from 2011 to 2019 (excluding 2016, when no offer was made). CB 1624
ZNA.001.001.0586

80. I refer to paragraph 31 of the Expert Report. The awards made to Etienne under the Employee Share Offer during his employment were not clawed back or forfeited by ANZ on termination of his employment and he was free to dispose of the shares on the date they became available to him. Etienne was awarded three tranches of shares under the Employee Share Offer during his employment, as follows:

- (a) on 6 December 2012, he was awarded a total of 40 shares with an allocation price of \$24.44, which became available on 6 December 2015;
- (b) on 4 December 2013, he was awarded a total of 31 shares with an allocation price of \$31.85, which became available on 4 December 2016; and
- (c) on 4 December 2014, he was awarded a total of 29 shares with an allocation price of \$31.84, which became available on 4 December 2017.

81. I instructed Melanie Deefholts to provide me with a summary of the awards made to Etienne under the Employee Share Offer. Melanie Deefholts has administration rights to the portal operated by ANZ's equity plan administrator, Computershare Plan Managers. Now produced, shown to me and marked **'MD-44'** is a screenshot recording the awards

CB 935
ZNA.001.001.0077

made to Etienne under the Employee Share Offer during his employment, which has been extracted from the Computershare Plan Managers online portal and provided to me by Melanie Deefholts.

82. In "Table 3" and "Table 4" in paragraphs 24 and 28 of the Expert Report, Zoe Lockyer purports to summarise Etienne's "forfeited remuneration" as a result of the termination of his employment. I respond to parts of those tables as follows:

(a) as stated in paragraph 74 above, Etienne was paid a "Total Fixed Remuneration" of \$444,583, comprising a base salary of \$406,011 (gross) and superannuation contributions totalling \$38,572 (gross) during the period from 1 October 2014 to 1 September 2015;

(b) as stated in paragraph 77 above, the 2014 TIPP Grant was provisionally, rather than finally, awarded to Etienne. Accordingly, it was not "forfeited" on termination of the employment within the meaning of that term in the 2014 Conditions of Grant;

(c) as stated in paragraph 78 above, the VWAP in the five days leading up to, and including the award date of 21 November 2014 for grants under the 2014 Conditions of Grant (i.e., the 2014 TIPP Grant) was \$31.89, not \$31.93. Based on an allocation price of \$31.89, I have calculated that the 2014 TIPP Grant Tranche 1 would have consisted of 30,856 shares, the 2014 TIPP Grant Tranche 2 would have consisted of 30,856 shares and the 2014 TIPP Grant Tranche 3 would have consisted of 30,856 shares; and

(d) as stated in paragraph 80 above, Etienne was awarded three tranches of shares under the Employee Share Offer in 2012, 2013 and 2014, which were not subject to clawback or forfeiture by ANZ on termination of his employment. The total number of shares awarded on 4 December 2014 was 29 shares with an allocation price of \$31.84 (not 31 shares with an allocation price of \$31.84 as recorded in Table 4).

83. In paragraph 32 of the Expert Report, Zoe Lockyer has assumed that dividend payments would have been paid to Etienne in cash, rather than being reinvested under ANZ's Dividend Reinvestment Plan. With the exception of the 2012 LTI Grant, participation in the Dividend Reinvestment Plan was mandatory in respect of the shares either granted, or provisionally awarded to Etienne during his employment (i.e., the 2012 STI Grant, the 2013 TIPP Grant, the 2014 TIPP Grant and each award made under the Employee Share Offer). I am informed by Melanie Deefholts that she made enquiries with

Computershare Plan Managers and on 3 July 2023, Computershare Plan Managers confirmed that Etienne did not elect to participate in the Dividend Reinvestment Plan for the 2012 LTI Grant and as a result, his dividends were paid as cash. Now produced, shown to me and marked '**MD-45**' is a record of Etienne's dividend history from 2011 to 2015 obtained from ANZ's equity plan administrator, Computershare Plan Managers.

Etienne's potential loss of income between 2015 and 2022

84. In paragraphs 37 to 68 of the Expert Report, Zoe Lockyer projects Etienne's potential loss of income in the period between 2015 and 2022, if he had continued in the same position at ANZ and performed at the same level. During this period, employees performing the role of Global Head of Balance Sheet Trading continued to be eligible for variable remuneration at ANZ's discretion and subject to the rules of the ESAP or ESOP as applicable, and the Conditions of Grant or other rules governing the award of incentives. Now produced, shown to me and marked:

- | | |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------|
| (a) ' MD-46 ' is a copy of the 2015 Conditions of Grant – Incentive Mandatory Deferred Shares; | CB 3243
ZNA.001.001.1611 |
| (b) ' MD-47 ' is a copy of the 2016 Conditions of Grant – Incentive Mandatory Deferred Shares; | CB 4472
ZNA.001.001.2241 |
| (c) ' MD-48 ' is a copy of the 2017 Conditions of Grant – Incentive Mandatory Deferred Equity; | CB 5213
ZNA.001.001.2394 |
| (d) ' MD-49 ' is a copy of the 2018 Conditions of Grant – Variable Remuneration Deferred Equity; | CB 5527
ZNA.001.001.2450 |
| (e) ' MD-50 ' is a copy of the 2019 Conditions of Grant – Incentive Mandatory Deferred Equity; | CB 5580
ZNA.001.001.2494 |
| (f) ' MD-51 ' is a copy of the 2020 Conditions of Grant – Variable Remuneration Mandatory Deferred Equity; | CB 5638
ZNA.001.001.2541 |
| (g) ' MD-52 ' is a copy of the 2021 Conditions of Grant – Variable Remuneration Mandatory Deferred Equity; | CB 5711
ZNA.001.001.2614 |
| (h) ' MD-53 ' is a copy of the 2022 Conditions of Grant – Variable Remuneration Mandatory Deferred Equity; | CB 5765
ZNA.001.001.2663 |

(i) 'MD-54' is a copy of the ESAP as amended on 31 May 2017; and

CB 5447
ZNA.001.001.2433

(j) 'MD-55' is a copy of the ESAP as amended on 26 July 2022.

CB 5823
ZNA.001.001.2721

85. Subject to the Board's discretion and in accordance with the applicable version of the Conditions of Grant, in the period from 2015 to 2022, the proportion of any incentive delivered as equity, the mandatory deferral amount and period, and the allocation value of the shares were as follows:

Year	Proportion paid as cash and equity	Mandatory deferral amount and period	Allocation value of shares
2015	The first \$80,000 of the incentive is paid in cash. In respect of the balance, 60% of the incentive above \$80,000 is awarded in shares subject to mandatory time based deferral and the remaining 40% above \$80,000 is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$26.32
2016	The first \$80,000 of the incentive is paid in cash. In respect of the balance, 60% of the incentive above \$80,000 is awarded in shares subject to mandatory time based deferral and the remaining 40% above \$80,000 is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$27.91

Year	Proportion paid as cash and equity	Mandatory deferral amount and period	Allocation value of shares
2017	The first \$80,000 of the incentive is paid in cash. In respect of the balance, 60% of the incentive above \$80,000 is awarded in shares subject to mandatory time based deferral and the remaining 40% above \$80,000 is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$29.31
2018	The first \$80,000 of the incentive is paid in cash. In respect of the balance, 60% of the incentive above \$80,000 is awarded in shares subject to mandatory time based deferral and the remaining 40% above \$80,000 is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$25.37
2019	The first \$80,000 of the incentive is paid in cash. In respect of the balance, 60% of the incentive above \$80,000 is awarded in shares subject to mandatory time based deferral and the remaining 40% above \$80,000 is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$24.99

Year	Proportion paid as cash and equity	Mandatory deferral amount and period	Allocation value of shares
2020	60% of the total incentive is awarded in shares subject to mandatory time based deferral and the remaining 40% of the total incentive is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$23.06
2021	60% of the total incentive is awarded in shares subject to mandatory time based deferral and the remaining 40% of the total incentive is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$27.70
2022	60% of the total incentive is awarded in shares subject to mandatory time based deferral and the remaining 40% of the total incentive is paid in cash.	One third of the award value is deferred for one year, one third of the award value is deferred for two years and one third of the award value is deferred for three years.	\$24.46

86. Now produced, shown to me and marked '**MD-56**' are copies of the ANZ Employee Shares & Rights Tracker and the historical share and option allocations intranet article, both of which are available to ANZ employees on PeopleHub, ANZ's intranet.
87. In paragraph 36 of the Expert Report, Zoe Lockyer calculates Etienne's loss of dividend income in the period between 2014 and 2022 as \$2,310,114. Since September 2018, participation in the Dividend Reinvestment Plan has been mandatory in respect of all ANZ deferred equity incentive plans. Prior to September 2018, participation in the Dividend Reinvestment Plan was mandatory in respect of all ANZ deferred equity incentive plans except for the Long Term Incentive (in respect of which dividends were paid in cash unless an employee elected to participate in the Dividend Reinvestment Plan).

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88. In paragraph 40 of the Expert Report, Zoe Lockyer assumes that, based on Etienne's individual performance between 2011 and 2014, and the performance of the International and Institutional Banking division, he would have continued receiving an incentive of between \$3,000,000 and \$5,000,000 (gross) in each year, excluding dividends. I have caused the Regulatory Governance team to extract the following remuneration data (which is confidential) from ANZ's systems for the period from 2014 until 2022:
- (a) the actual salary increases and variable incentives granted to the incumbent in Etienne's former role of Global Head of Balance Sheet Trading in respect of the performance years ending 30 September 2018, 30 September 2019, 30 September 2020 and 30 September 2022;
 - (b) the actual minimum, 25th percentile, average, 75th percentile and maximum salary increases and the actual minimum, 25th percentile, median, 75th percentile and maximum variable incentives granted to employees classified at Group 2 (Etienne's former classification) in the Markets business unit of ANZ; and
 - (c) the actual minimum, 25th percentile, average, 75th percentile and maximum salary increases and the actual minimum 25th percentile, median, 75th percentile and maximum variable incentives granted to employees classified at Group 2 (Etienne's former classification) in the Institutional division of ANZ.
89. Now produced, shown to me and marked '**Confidential Exhibit MD-57**' is an electronic copy of the spreadsheet containing the remuneration data for the period from 2014 to 2022.
90. In 2019, ANZ applied a one-off adjustment to the salaries of all employees outside of the annual performance and annual remuneration review process. The purpose of this adjustment was to account for the shift in the mix between fixed and variable remuneration in ANZ's remuneration structure, wherein a proportion of the variable remuneration opportunity available to employees was shifted to fixed remuneration (i.e., employee salaries). The salaries of employees were increased to compensate for the lower potential to earn variable remuneration. With effect from 1 October 2019, variable remuneration at ANZ has two key components:
- (a) the "Group Performance Dividend", which all ANZ employees excluding the CEO, the Executive Committee and the Group General Manager Internal Audit are eligible

to achieve, subject to meeting the minimum standards of performance and behaviour. The Group Performance Dividend outcome for each financial year is communicated as a multiplier following the release of the ANZ annual results and is based on ANZ Group performance only. The multiplier is applied to the applicable Group Performance Dividend targets, which are calculated as a percentage of fixed remuneration. The targets range between 2.5% of fixed remuneration for Groups 5 and 6 employees and up to 20% of fixed remuneration for Group 1 employees; and

(b) “At Risk Pay”, which a small portion of permanent ANZ employees are eligible to receive as an additional discretionary incentive, subject to meeting the minimum standards of performance and behaviour. The At Risk Pay incentive is based on division, business and individual performance. All Group 1 to 3 employees, excluding the CEO, the Executive Committee and the Group General Manager Internal Audit are eligible for the At Risk Pay incentive.

91. While employees are separately notified of any allocation under the Group Performance Dividend and At Risk Pay, the incentives are aggregated for the purposes of calculating the proportion of an employee’s incentive that is to be deferred as equity, and subject to time-based hurdles.
92. In paragraph 64 of the Expert Report, Zoe Lockyer states that:
- (a) if ANZ’s superannuation policy had required superannuation guarantee contributions to be capped at the maximum limit, the total superannuation guarantee contributions made by ANZ in respect of Etienne between 2015 and 2022 would have been \$164,552. This is because Etienne’s annual base salary would have exceeded the quarterly income threshold; and
- (b) if ANZ’s superannuation policy had required superannuation guarantee contributions to be paid at the applicable superannuation guarantee rate without being subject to a cap, his total potential superannuation guarantee contributions during this period would have been \$347,198.
93. During Etienne’s employment, Group 1, 2, 3 and 4 employees could elect to limit the superannuation guarantee contributions made by ANZ on their behalf to the maximum contributions base (the **MCB**). The MCB is the quarterly cap on the amount of income employers must make contributions on under superannuation laws. An employee could elect to limit contributions to the MCB rather than their notional salary so that, if the

employee earned above the MCB in a quarter, ANZ would not make contributions on earnings above the MCB (which otherwise would have reduced their take-home pay).

94. In October 2011, Etienne made an enquiry with People Assist, ANZ's human resources advisory service for employees, relating to the superannuation contributions made by ANZ on his behalf. The People Assist case notes are stored on ANZ's Service Desk and indicate that the matter was referred to Matt McCrory, Superannuation Specialist at ANZ, and on 7 October 2011 he emailed Etienne to confirm that Etienne had elected for superannuation contributions to be capped at the MCB. Now produced, shown to me and marked 'MD-58' is a copy of the extract from ANZ's Service Desk containing the email from Matt McCrory to Etienne dated 7 October 2011. [REDACTED]

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

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[REDACTED]

Signature of deponent

[REDACTED]

Signature of witness

Name of witness: James David Wintle Sutherland

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

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

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