

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: **Shayne Cary Elliott**
Address: 833 Collins Street, Docklands, Victoria 3008
Occupation: ~~Chief Executive Officer~~ Retired
Date: 17 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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[Version 3 form approved 02/05/2019]

I, Shayne Cary Elliott, of business address 833 Collins Street, Docklands, Victoria 3008, ~~Chief Executive Officer~~ Retired, affirm:

1. I ~~am~~ ^{was} employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**) in the position of Chief Executive Officer.
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. 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

4. I commenced employment with ANZ in June 2009 in the role of Group Managing Director, Institutional. In February 2010, my job title changed to Chief Executive Officer, Institutional.
5. From June 2012 to December 2015, I held the role of Chief Financial Officer. I was responsible for the group finance, legal, strategy, mergers and acquisitions, treasury and investor relations teams at ANZ.
6. Since January 2016, I have held the role of Chief Executive Officer and Executive Director.

The Clawback Review Group

7. At the time the Applicant (**Etienne**) was employed with ANZ, the Clawback Review Group (the **CRG**) dealt with matters related to employee conduct which were sufficiently serious to warrant a financial consequence for the employee. The CRG provided oversight and review of the employee's conduct and determined the appropriate consequence only in relation to deferred equity/cash.
8. At the time of the termination of the Applicant's employment with ANZ, I was a member of the CRG.

Clawback of Etienne's equity

9. The CRG was presented with a recommendation to cancel 100% of Etienne's deferred equity. I do not recall meeting with the other members of the CRG to discuss or decide on the proposal concerning Etienne. I recall having discussions in the lead up to this



decision being made with Nigel Williams, Chief Risk Officer (who was also on the CRG), Shayne Collins, Group General Manager, Markets Risk and other senior managers within the Institutional business. It was not unusual for discussions to occur between senior managers within the business to understand the circumstances pertaining to a decision such as the clawback of deferred equity. As outlined further below, I was not aware of any complaints or disclosures allegedly made by Etienne at this time.

10. For the purposes of preparing this affidavit, I have been provided with a copy of an email from Mark Evans, Chief Compliance Officer sent to me on 27 August 2015. Now produced, shown to me and marked 'SCE-1' is a copy of that email with attachments.

CB 4064
ZNA.001.001.1981

11. I do not now recall Mark Evans' role in the process of reviewing Etienne's communications, or discussing the proposal with Mark at the time. I remember seeing the communications presented in the format of transcripts (which are attached to Mark Evans' email) and some of the language and comments made by Etienne, including misspelt profanities. It was my usual practice to read the documents presented to the CRG.

12. I supported the proposal to clawback Etienne's equity because I considered that his conduct was completely improper and at odds with the Code of Conduct. I firmly believed that, if we backed down, it would send a strong message to others that it was acceptable behaviour. Etienne had clearly violated the Code. I still believe that to be the case. Any compromise by ANZ would have meant that we were not abiding by and enforcing our policies. I was satisfied that a proper process had occurred on the basis of the supporting documents presented to the CRG.

[12] underlined words:
Admitted subject to a
limitation under EA, s 136 as
evidence only of Mr Elliott's
belief or understanding,
rather than as evidence of
the truth of the facts about
which that belief or
understanding is expressed

13. On 28 August 2015, I replied to Mark Evans' email with my decision to approve the recommendation to clawback Etienne's equity. Now produced, shown to me and marked 'SCE-2' is a copy of my email to Mark Evans dated 28 August 2015.

CB 4082
ZNA.001.001.1998

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

14. At the time of making the decision to clawback Etienne's equity I did not have knowledge of:

- (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;



